

LANDS GRANTED WILLAMETTE VALLEY AND CASCADE
MOUNTAIN WAGON-ROAD COMPANY.

FEBRUARY 22, 1881.—Recommitted to the Committee on Military Affairs and ordered to be printed.

MARCH 1, 1881.—Ordered to be reprinted.

Mr. UPSON, from the Committee on Military Affairs, submitted the following

REPORT:

The Committee on Military Affairs, to whom was referred the letter of the honorable Secretary of the Interior, with accompanying papers, relating to a grant of land by the United States to the State of Oregon to aid in the construction of a military road, respectfully report:

By act of Congress approved July 5, 1866, there were granted to the State of Oregon to aid in the construction of a military road from Albany, Oreg., to the eastern boundary of said State, three sections of land per mile of said road as the same should be constructed under the provisions and conditions of said act. The road constructed, as certified to by the proper authorities of the State of Oregon, was 448.7 miles in length, making the entire land grant 1,346 sections, amounting to 861,440 acres of land. As the act above referred to did not provide for the issuance of patents for the lands granted, a subsequent act, approved June 18, 1874, was passed by Congress authorizing and directing the issuance of patents for said lands from the General Land Office as fast as the same should be selected and certified, after the construction of said road under said first-named act.

Under an act of the legislature of the State of Oregon approved October 24, 1866, all lands, right of way, rights, privileges, and immunities granted to said State by said first-named act of Congress, and all moneys, lands, rights, privileges, and immunities which might thereafter be granted to said State to aid in the construction of said road under said act of Congress, were granted to the "Willamette Valley and Cascade Mountain Wagon-Road Company."

Subsequently the road was duly certified to have been constructed in accordance with the act of Congress, as follows: From Albany 153 miles, by the secretary of state as acting governor of Oregon, February 20 and April 11, 1868; from the 153d to the 290th mile, by the governor, September 8, 1870; from the 290th to the 368th mile, by the governor, January 9, 1871; and from the 368th to the 448.7th mile to the eastern boundary of the State, by the governor, June 24, 1871. Four maps, in the usual form, verified by the surveyors and officers of the company and duly certified to by the governor of Oregon, showing the entire length, 448.7 miles, of the road constructed, were duly filed in the General Land Office.

After the completion of the 368th mile of the road, the Commissioner

of the General Land Office issued the following certificate, which was approved by the Secretary of the Interior:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
May 2, 1871.

I, Willis Drummond, Commissioner of the General Land Office, do hereby certify that the foregoing, on the pages 1 to 6 inclusive, is a correct and true list of the tracts of land within the six-mile limits set apart to the State of Oregon by the act of Congress approved July 5, 1866, entitled "An act granting land to the State of Oregon, to aid in the construction of a military road from Albany, Oreg., to the eastern boundary of said State," as amended by the act of July 15, 1870, being the vacant and unappropriated odd-numbered sections and parts of sections within the limits thereby granted.

And further it is shown by certificates on file of governor of said State, bearing date April 1, 1868, and September 8, 1870, and January 9, 1871, that said Willamette Valley and Cascade Mountain Military Road Company had completed their road from Albany to the thirty-six and eight-tenth section, distance three hundred and sixty-eight miles, in conformity with the provisions of the aforesaid acts.

I respectfully recommend that the same be approved subject to any valid interfering right which may have existed at the date of selection.

In testimony whereof I have hereunto subscribed my name, and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first hereinabove written.

[SEAL.]

WILLIS DRUMMOND,
Commissioner.

Approved.

C. DELANO, Secretary.

Up to June 19, 1876, on due selection, 107,893.01 acres had been patented to the company. Subsequently other selections of said land were made, for which patents are now demanded, viz :

	Acres selected.
April 10, 1879	77, 335. 80
April 10, 1879	73, 670. 06
April 10, 1879	33, 805. 02
June 24, 1879	78, 223. 84
June 24, 1879	75, 996. 48
August 11, 1879	76, 204. 51
August 11, 1879	22, 761. 99

Total selected and unpatented 437, 997. 70

By deed bearing date August 19, 1871, and duly acknowledged, the Willamette Valley and Cascade Mountain Wagon-Road Company conveyed the entire grant of lands to H. R. W. Clarke.

September 1, 1871, Clarke conveyed by deed the same lands to David Cahn, in trust for T. Edgerton Hogg, Alexander Weill, and the said Clarke.

February 18, 1879, Hogg conveyed his interest to said Alexander Weill.

April 9, 1879, Sarah M. Clarke, widow of H. R. W. Clarke, and Fred. W. Clarke, son of H. R. W. Clarke, by separate deeds, conveyed their entire interests to said Weill; whereby the entire interest and title of the Willamette Valley and Cascade Mountain Wagon-Road Company became vested in and is now held and claimed by said Alexander Weill.

Before issuing a certificate for the last section of the road constructed, the governor of Oregon appointed Hon. N. B. Humphrey to examine that portion of the road not before accepted, who made a report to the governor in writing, of which the following is a copy :

ALBANY, LINN COUNTY, OREGON,
June 19, 1871.

SIR: Having been appointed by the governor of the State of Oregon on the 13th day of April, A. D. 1871, to act in his behalf to view and examine the work done on the line of the Willamette Valley and Cascade Mountain Military Wagon-Road, in the

State of Oregon, not heretofore accepted, and make report to the office of the governor of said State of Oregon of the same, and particularly with reference to all requirements of the act of Congress, and of the legislature of the State of Oregon touching the construction of the same, I beg leave to make the following report :

On the 18th day of April, 1871, in compliance with said appointment, I entered upon the discharge of my duty. I completed the examination of said road on the 28th day of May, 1871, by passing over and along the line thereof, and carefully examining the work done on the same, beginning at a point on said road 368 miles east of Albany, at a stake on the line of said road, and ending at Washoe Ferry on Snake River, the eastern boundary of the State of Oregon, a distance of 80 miles and 58.39 chains from the place of beginning.

I hereby certify that the said wagon-road is constructed according to the requirements of the act of Congress, and of the legislature of the State of Oregon, with such width, graduation, and bridges as to permit of its regular use as a wagon-road.

Very respectfully, your obedient servant,

N. B. HUMPHREY.

To his Excellency L. F. GROVER,
Governor of Oregon.

UNITED STATES OF AMERICA,
State of Oregon :

SECRETARY'S OFFICE,
Salem, January 24, 1881.

I, R. P. Earhart, secretary of the State of Oregon, do hereby certify that I am the custodian of the great seal of the State of Oregon; that the foregoing copy of a report made by N. B. Humphrey to Hon. L. F. Grover, then governor of the State of Oregon, under date of June 19, 1871, and filed in the executive office June 20, 1871, has been by me compared with the original report now on file in executive department of the State of Oregon, and said copy is a correct transcript therefrom, and of the whole of the said original report.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Oregon the day and year first above written.

[SEAL.]

R. P. EARHART,
Secretary of State.

Upon the foregoing report the governor of Oregon made the following certificate, which is similar to three other certificates previously made by him in regard to portions of said road already completed :

STATE OF OREGON,
Executive Department :

To all to whom these presents shall come, greeting :

I, L. F. Grover, governor of the State of Oregon, do hereby certify that this plat or map of the Willamette Valley and Cascade Mountain Military Wagon-Road has been filed in my office by the Willamette Valley and Cascade Mountain Military Wagon-Road Company, and shows the location of route as actually surveyed (there being no public surveys in connection with said route; to my knowledge) of the said Willamette Valley and Cascade Mountain Military Wagon-Road, from Albany to the eastern boundary of the State, that part herein being from the 36.8th section to the 44.87th sections inclusive, in line of said road, terminating at the eastern boundary of the State of Oregon, as definitely fixed in compliance with the act of Congress approved July 5, A. D. 1866, entitled "An act donating lands to the State of Oregon to aid in the construction of a military road from Albany, Oreg., to the eastern boundary of said State," and with the act of the legislative assembly of the State of Oregon, approved October 24, 1866, entitled "An act donating lands to the Willamette Valley and Cascade Mountain Military Wagon-Road Company," granting certain lands to the company herein mentioned; and that said road, by my direction, has been examined and accepted from the 36.8th section to the 44.87th section inclusive, terminating at the eastern boundary of the State of Oregon aforesaid. And I certify that the same has been completed according to said act of Congress.

In testimony whereof I have hereunto signed my name and affixed the seal of the State of Oregon, this 24th day of June, A. D. 1871.

[SEAL.]

L. F. GROVER,
Governor of Oregon.

Attest :

S. F. CHADWICK,
Secretary of State.

The governor of Oregon, having certified to the completion of the road as above stated, on the 2d day of October, 1871, issued under the great seal of the State the following :

THE STATE OF OREGON :

To all to whom these presents shall come, greeting :

Know ye, that by an act of Congress of the United States of America, entitled "An act granting lands to the State of Oregon to aid in the construction of a military road from Albany, Oreg., to the eastern boundary of said State," approved July 5, 1866, and an act amendatory of said act, approved July 15, 1870, the Government of the United States of America granted unto the State of Oregon in aid of the construction of a military wagon-road from the city of Albany, by way of Great Harney Lake Valley, to the eastern boundary of said State, three full sections of land of 640 acres each for each mile of road that should be constructed under the provisions of said grant, the lands to be selected along the line of the road and within a distance of six miles on either side thereof; that the State of Oregon, by an act of its legislature entitled "An act donating lands to the Willamette Valley and Cascade Mountain Wagon-Road Company," approved October 24, 1866, donated and granted unto said Willamette Valley and Cascade Mountain Wagon-Road Company, a body corporate under the laws of Oregon, all the lands granted by the acts of Congress aforesaid and all lands that might be hereafter granted in aid of the construction of said military road; that said company, pursuant to the provisions of said grant, constructed said road from the city of Albany through the Great Harney Lake Valley and to the eastern boundary of the State of Oregon, a distance of 448 miles. And the road so constructed by said company has been duly and formally accepted by the Government of the United States, and by the State of Oregon, and in the manner by said acts of donation and grant prescribed; and the lands along the line of said road, to the extent of 860,000 acres, have, under said donation and grant, passed to and become the absolute property of said Willamette Valley and Cascade Mountain Wagon-Road Company, and are subject to said company's disposal.

In testimony whereof I, L. F. Grover, governor of the State of Oregon, have hereunto set my hand and caused the great seal of State to be affixed.

Done at Salem this second day of October, anno Domini one thousand eight hundred and seventy-one, and of the Independence of the United States the ninety-fifth.

[THE SEAL OF THE
STATE OF OREGON.]

L. F. GROVER,
Governor.

Attest :

S. F. CHADWICK,
Secretary of State.

It appears that the Secretary of the Interior received the following communication, but at what date your committee are uninformed, and on the 20th August, 1878, by his chief clerk, referred the same to the Commissioner of the General Land Office. The letter bears date March 17, 1878, more than seven years after a greater portion, 368 miles, and nearly seven years after the last 80.7 miles of the said road were duly certified by the governor of Oregon to have been constructed in accordance with the act of Congress, and six years and seven months after the said company had conveyed its entire interest in said land grant to said H. R. W. Clarke.

Said communication is as follows :

PRINEVILLE, WASCO COUNTY, OREGON,
March 17, 1878.

SIR: Please permit me to call your attention to the fact that whereas, in the year 1865, the Congress of the United States passed an act granting lands to the State of Oregon to aid in the construction of a military wagon-road from Albany, in Linn County, State of Oregon, to the eastern boundary of said State; and whereas the State of Oregon, by the act of its legislative assembly, approved October 24, 1866, granted all of said lands and privileges to the Willamette Valley and Cascade Mountain Wagon-Road Company, a corporation incorporated under the laws of the State of Oregon, with the express understanding that the said company was to complete said road within five years from date of said act, and in case the said company failed to complete said road within the time specified all lands remaining unsold was to revert back to the government.

Now, by referring to the act of Congress above mentioned you will see that it was

never intended that the company was to have this land as a remuneration for constructing their road, but that it was to be sold by the Secretary of the Interior in quantities not exceeding thirty sections at any one time, and the proceeds of such sale to be applied to aid in the construction of said road.

Now, Mr. Secretary, the facts in the case are these: The time for completing the road has long since expired, and the company above named has never built or constructed any road as the laws of this State requires roads of that character.

The only work that the company has ever done on their road was commenced at Sweethome Valley, about 50 miles east of Albany, and partly opened a road to a point called Smith's Rock, on Lower Crooked River, a distance of about 75 or 80 miles, constructing it in such a manner that makes it barely possible for light-loaded teams to pass over the same in the summer and fall when the waters are low, there being several streams that often get past fording that has neither bridge or ferry. From Smith's Rock to the eastern boundary of the State, a distance of about 300 miles, there has been no attempt to open or construct any road by the above-named company or any one else; and, in fact, there is no earthly use for a road of this character in this country, as the settlements along the route can make all the roads that are necessary for their own convenience, and it would be a useless waste of the public lands by applying them on such an enterprise.

All of the odd sections of the public land lying within six miles of the entire line of road, on either side, was withdrawn from market some eight or nine years ago, and still remains in that condition, which is a great drawback to the settlement and development of the country.

There is an attempt on the part of the company or corporation to defraud the government out of something over 1,300 sections of land, for which they have done nothing.

If you would, at your earliest convenience, appoint a committee whose duty it shall be to investigate the proceedings of the Willamette Valley and Cascade Mountain Wagon-Road Company, and make a full and complete report to you of the manner in which the said road has been constructed, and in which said lands have been appropriated and disposed of by said corporation, the number of miles of said road which have been completed, and the character of the work done, and to investigate fully the whole proceedings of said corporation in relation to said road, and the lands and privileges granted for the construction of the same; by so doing you will confer a great favor on a grateful community, besides saving the government from being swindled out of a large amount of land that should be thrown open for settlement by actual settlers, as there could be thousands of comfortable homes made on this land that is now claimed by this above-named company.

If you will only look after this matter you can find hundreds of the best citizens in this country that will make affidavit to all of the facts contained in this communication.

We have long been waiting for some one to occupy the position that you now hold that would take some interest in looking after the interests of the citizens and the government, and break up those attempts at such high-handed swindling. And we now come to you with confidence that you will look after this matter.

Your most obedient servant,

ELISHA BARNES.

HON. CARL SCHURZ,
Secretary of the Interior.

We, the undersigned, do hereby certify that we are citizens of Wasco County, State of Oregon, and have been living for several years on the proposed line of the Willamette Valley and Cascade Mountain wagon road, and are personally acquainted with the facts stated in the above communication, and know that they are substantially true.

JOHN L. LUCKEY.
W. G. PICKET.
W. G. BARNES.

When this communication was made public, or brought to the knowledge of the present, or any claimant of the land does not appear, but it seems that no answer was made to the same by the Interior Department until October 2, 1879, more than eighteen months after its date, when the Acting Commissioner forwarded the following reply:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 2, 1879.

SIR: Your letter of March 17, 1878, addressed to the honorable Secretary of the Interior, respecting the Willamette Valley and Cascade Mountain wagon road, has been referred to this office.

In reply, I have to state that under date of June 24, 1871, the governor of Oregon formally certified to the completion of said road, in the manner prescribed by the granting act of July 5, 1866.

Upon that certificate the lands have been conveyed to the State, and it is not within the power of this department to inquire into the regularity of the governor's act.

Should you believe that the State authorities have been imposed upon, and that the road has not actually been constructed as required by the act referred to, you should present the facts to the governor, who would, I presume, institute appropriate inquiry in the premises.

You are in error in supposing that the duty of selling the lands embraced in the grant is cast upon the Secretary; it is imposed by the act upon the State.

Very respectfully,

J. M. ARMSTRONG,
Acting Commissioner.

ELISHA BARNES, Esq.,
Prineville, Wasco County, Oregon.

No further action seems to have been taken in the matter until April 27, 1880, when the Commissioner of the General Land Office addressed to the Secretary of the Interior the following letter:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., April 27, 1880.

SIR: By act of Congress approved July 5, 1866, entitled "An act granting lands to the State of Oregon to aid in the construction of a military road from Albany, Oregon, to the eastern boundary of said State" (14 Stats., 89), there was granted by section 1, "alternate sections of public lands designated by odd numbers, three sections per mile, to be selected within six miles of said road: *Provided*, That the lands hereby granted shall be exclusively applied in the construction of said road, and shall be disposed of only as the work progresses; and the same shall be applied to no other purpose whatever." There were reserved from the operation of the grant any and all lands theretofore reserved to the United States, except as to the right of way.

Section 2 provided that the lands granted should be disposed of by the legislature of the State "for the purpose aforesaid and for no others; and the said road shall be and remain a public highway for the use of the Government of the United States, free from tolls or other charge upon the transportation of any property, troops, or mails of the United States."

Section 3 enacted "that said road shall be constructed with such width, graduation, and bridges, as to permit of its regular use as a wagon road, and in such other special manner as the State of Oregon may prescribe," and section 4 provided that when ten miles of the road should be completed, not exceeding thirty sections might be sold, coterminous to such completed road; and when the governor of the State should certify to the Secretary of the Interior that any ten continuous miles of said road were completed, then another quantity, not more than thirty sections, coterminous, might be sold, and so on, from time to time, until completion of the road; "and if said road is not completed within five years, no further sales shall be made, and the land remaining unsold shall revert to the United States."

The act did not in any manner provide for the certification or patenting of the lands granted by the United States.

By act of Congress approved June 18, 1874 (18 Stats., 80), after reciting that grants of land had been made to Oregon to aid in the construction of wagon roads, without provision for the issuing of patents, it was provided "that in all cases when the roads in the aid of the construction of which said lands were granted are shown by the certificate of the governor of the State of Oregon, as in said acts provided, to have been constructed and completed, patents for said lands shall issue in due form to the State of Oregon as fast as the same shall, under said grants, be selected and certified, unless the State of Oregon shall by public act have transferred its interests in said lands to any corporation or corporations, in which case the patents shall issue from the General Land Office to such corporation or corporations upon their payment of the necessary expenses thereof: *Provided*, That this shall not be construed to revive any land grant already expired, nor to create any new rights of any kind, except to provide for issuing patents for lands to which the State is already entitled."

There are on file in this office four duly executed maps, showing the line of the Willamette Valley and Cascade Mountain military wagon road as surveyed, located, adopted, and constructed, viz: 1., from Albany to the 153d mile, sworn by the surveyor and certified by the president under the seal of the company February 18, 1868, and by the Secretary of State, as acting governor, February 20 and April 11, 1868; 2, from the 153d to the 290th mile, sworn by the surveyor July 23, certified by the president July 25, and by the governor September 8, 1870; 3, from the 290th to the 368th

mile, sworn by the surveyor January 6, 1871, certified by the president December 10, 1870, and by the governor January 9, 1871; 4, from the 368th to the 448.7th mile, the eastern boundary of the State and the terminus of the road, sworn by the surveyor, and certified by the president and by the governor June 24, 1871. The affidavits and the certificates of the president on each map are in the usual form, and the certificate of the governor, in each instance, is to the effect that the portions of the road shown had been completed in accordance with the act of Congress making the grant and with an act of the legislative assembly of Oregon approved October 24, 1866, entitled "An act donating lands to the Willamette Valley and Cascade Mountain Wagon Road Company," and that said road, so completed, had been examined and accepted. Thus the formal legal evidence of the survey, location, adoption, construction, and completion of the road, and of its acceptance by the State in accordance with the granting act and with the legislation of the State, seems to be full and complete.

Upon that evidence the odd sections within six miles of the road have been withdrawn for the benefit of the grant, and they so remain. Upon regular selections made, there were patented to the State, for the use and benefit of the company named, June 19, 1876, 107,893.06 acres of land. There are now pending lists of selections by the company to the amount of 446,600.73 acres of land, and I am urged to immediately prepare lists for approval by you, and thereupon to issue patents to the company direct.

The grant amounts to more than 860,000 acres; and there can probably be found, within the limits, nearly the entire quantity free from conflict.

August 20, 1878, there was referred to this office, from the department, a communication from Elisha Barnes, dated Prineville, Wasco County, Oregon, March 17, 1878, herewith inclosed. He asserts that the company has not constructed the road in accordance with State laws; that the only work ever done on the road was such as, in places, made it barely possible to pass over it with lightly loaded vehicles in summer and autumn at times of low water; that "from Smith's Rock to the eastern boundary of the State, a distance of about three hundred miles, there has been no attempt to open or construct a road by the above-named company or any one else." He asks an investigation as to the manner in which the work on the road has been done, and asserts that hundreds of citizens will testify to the truth of his allegations. Appended to his letter is a certificate signed by three other persons to the substantial truth of this assertion.

I also inclose a copy of a letter to Mr. Barnes in reply, dated October 2, 1879. I am well aware how little weight should ordinarily be given to unsworn allegations of this character. But taking into consideration the magnitude of the grant, the remote location of the road and the lands, and the meager information in my possession, aside from the certificates on the maps as above set forth, after full consideration, I deem it my duty to submit the matter for your determination whether or not any investigation is called for in the premises, and for your instructions as to whether or not, without further inquiry, I shall prepare from the selections on file clear lists for your approval to be followed by patents to the company in due course.

I have to add that should an investigation on the ground be deemed advisable, I am not aware of any provision of law by which the money necessary to meet the expense could be paid.

Very respectfully, your obedient servant,

J. A. WILLIAMSON,
Commissioner.

Hon. C. SCHURZ,
Secretary of the Interior.

August 16, 1880, the following instructions were given to one W. F. Prosser, a special agent of the Interior Department, viz :

A.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington D. C., August 16, 1880.

SIR: By act of Congress approved July 5, 1866 (14 Stats., 89), there was granted to the State of Oregon certain lands to aid in the construction of a military road from Albany, Oreg., to the eastern boundary of the State. Section 3 of said act provided "that said road shall be constructed with such width, graduation, and bridges as to permit of its regular use as a wagon road," &c.

There are on file in this office papers and maps presented by the Willamette Valley and Cascade Mountain Wagon Road Company, the grantee of the State, to show its compliance with law and the construction of the entire road, covering a distance of 448.7 miles. It is claimed that the road was completed in 1871. By a letter on file

from Elisha Barnes, of Prineville, Wasco County, Oregon, dated March 17, 1878, it was asserted that the company had not constructed the road in accordance with law; that the only work ever done on the road was such as in places made it barely possible to pass over it with lightly loaded vehicles, in summer and autumn, at times of low water; that "from Smith's Rock to the eastern boundary of the State, a distance of about 300 miles, there has been no attempt to open or construct a road by the above-named company or any one else." He asserts that hundreds of citizens will testify to the truth of his allegations. Bearing in mind the requirements of section 3 of the act of Congress herein referred to, you will proceed to make a careful personal examination, on the ground, of the entire length of route, from the initial point at Albany to the eastern boundary of the State. You will ascertain the present condition of the road with reference to its fitness for "regular use as a wagon road," in whole or in part; its general graduations and width; the location of any and all bridges on the line; and the absence of bridges where they are necessary and practicable. You will use every possible means by intercourse with the people, or in any way, to inform yourself what has been the previous condition of the road, and whether or not it has ever been such a road as was contemplated by the statute.

During your examination you should make full and complete notes of all facts learned and information acquired, locating particular portions of the line as exactly as possible.

When you have completed your examination and inquiries, you will make a report in writing to this office, setting out fully and in detail the result of the same, and stating your opinion as to whether or not the road has been constructed in the prescribed manner. Of course, in such an investigation, much must be left to your judgment and discretion which could not be embraced in instructions from this distance, but in proceeding you must keep in mind that the object in view is to determine whether or not the lands granted have been lawfully earned. For your information I inclose a copy of the granting act.

You will forward your accounts for compensation for your services at \$5 per diem for the time employed, and actual traveling and other necessary expenses incurred, the same to be verified under oath, setting forth the time actually and necessarily employed, and to be accompanied by vouchers for expenses incurred, whenever practicable. During the time you are employed on this work you will be paid from another appropriation than the one from which you are now paid as special agent to prevent trespasses upon the timber on the public lands, and will therefore keep an accurate account of time and necessary expenses while making the examination.

Payment of your per diem and expenses will be made out of the moneys appropriated by act of Congress approved June 16, 1880, for contingent expenses of local land offices.

Very respectfully,

M. E. N. HOWELL,
Acting Commissioner.

MR. W. F. PROSSER,
Seattle, Wash.

B.

Agent W. F. Prosser's report.

SEATTLE, WASH., October 30, 1880.

SIR: I have the honor very respectfully to submit the following report, in answer to your letter of instructions of August 16, last past, directing me to make an examination of the Willamette Valley and Cascade Mountain wagon-road, from Albany, Oreg., to the line which separates Oregon from the Territory of Idaho, a distance of 448.70 miles. In obedience thereto I left Seattle, Wash., on the morning of September 16, and arrived in Albany on the 20th following. During the next three days I obtained such information as I could in relation to the road, its history and construction. Finding that I should probably have some difficulty in going over the line of the road, I engaged Mr. Jason Wheeler, of Albany, Oreg., to accompany me with a spring wagon drawn by two horses. Mr. Wheeler had been a leading stockholder and director of the company which built this road, and was one of the first settlers of the Willamette Valley. He had superintended the location and construction of the road (as far as the work of construction was carried on) from Albany to Fort Harney, a distance of 293½ miles, and being familiar with the country through which the road passes, I deemed it important to secure his services. It had also been arranged that Milton Hale, an old resident of the vicinity of Albany, and a stockholder and director of the original company which built this road and received the land grant, should go with us, but before our preparations were completed for traveling, Mr. Hale declined to go for the reason, as he stated, that his private business would not permit him to leave home for the time which would be required by the journey. This I regretted, because Mr.

Hale was the only man I could find who knew anything of the line of the road from Fort Harney to the Oregon State line, a distance of about 155 miles. Mr. Hale also stated that as far as he knew there had never been but one wagon through or over that portion of the road unless within the past one or two years, and it would therefore be difficult to follow. I was quite anxious that he should go with us, but no inducement that I could offer seemed sufficient to secure his services. However, Mr. Wheeler and I determined to go alone. The lateness of the season, with the possibility of snow storms blockading the road, not unusual in October, made it desirable that no time should be lost either in going or returning. Camp equipage and provisions were procured, as it would be necessary to camp out occasionally where there are no settlements; and our preparations being complete, we left Albany on the morning of the 24th of September, and on the fourteenth day of our travel, or on the 7th day of October, about 12 m., after traveling about 340 miles, we reached the last trace of the road which we could discover, and, as we could follow it no further, we were reluctantly compelled to return to Albany by the same way we had gone out. — We arrived at Albany on the evening of October 19, having traveled twenty-six days consecutively. But for the lateness of the season, I should have devoted more time to inquiries amongst the citizens along the line of the road as to its original construction and present condition, but the material facts in connection therewith are presented here with affidavits of a few reliable and respectable citizens, as I am informed, which will, I presume, be sufficient to establish the general character of the road and to secure a full comprehension of the questions at issue. I shall make my statement as brief as possible.

HISTORY OF THE ROAD.

In the years 1863 and 1864 the citizens of Linn County, Oregon, including Albany, chiefly farmers and stock-raisers, desiring to secure direct communication with Eastern Oregon as a range for their surplus cattle, sheep, and horses, organized a joint-stock company, called the Willamette Valley and Cascade Mountain Wagon-Road Company, to build a road across or through the Cascade Mountains. The capital stock was fixed at \$30,000, much of which was soon subscribed, and the work of building the road was commenced. A county road already existed from Albany in the desired direction to Willey Creek, a point about 4 miles east of Sweet Home, or 36 miles east of Albany. However, in consideration of some improvements made, and more especially the keeping up of a bridge across Willey Creek, the county turned over the two miles next to the mountains to the road company, and the company established a toll-gate about two miles east of Sweet Home, or 34½ miles east of Albany, and at this toll-gate the road properly begins. The distances given in the report are approximate only, there being no means of ascertaining them other than from the statements of persons living on the line of the road or otherwise familiar with it. The company claims to have done some work by way of improving the road between the toll gate and Albany, but I apprehend this work never amounted to much, and it is still kept up by the county of Linn. The stockholders in this company included nearly all the leading men of Linn County. Finding that the expenditure of considerable money and labor would be necessary to secure even a passable road across the mountains, the suggestion was made that a land grant should be obtained from Congress to assist in its construction. When the company was first organized, and the work of building the road was commenced, no idea of such a grant was entertained, and the company proceeded for a time upon the supposition that the road could be built from their own resources, and without any aid from other and outside parties, or from the government. In the mean time their subscriptions of money and labor were exhausted, and in the year 1866 a land grant was obtained. This enabled them to increase their capital stock, restore their credit, and they were enabled to construct a passable road over the mountains. This road, however, was destitute of bridges in many places where they were needed, and was only a tolerable road late in the season, when the streams were low, and when the surplus snow had disappeared from the mountains. In the construction of this portion of the road most of their additional subscriptions were exhausted, and most of the five years allowed them by the act of Congress making the grant had expired. It should be stated here, perhaps, that but little land under this grant has ever been sold, either by the original company or the present one, and that little is on the west side of the Cascade Mountains. I am told that no land whatever has been sold east of the mountains, except 200 acres at Camp Polk, and it is said that this 200 acres did not belong to the road company. In order, however, to secure the land grant the company, having exhausted its means in making a road across the mountains, took advantage of the open character of the country and simply made a wagon track from Cache Creek—a point about 14 miles west of Camp Polk—to the eastern boundary of the State, and upon this they secured the grant. In all that distance—more than 350 miles—they did not build a single bridge, and occasionally only a little grading, just sufficient to admit of the passage of a lightly-loaded wagon. In fact they did not build a bridge from Canyon Creek where

it empties into the Santiam River to the State line with the exception of bridges over two small streams, some sixty-eight or seventy miles east of Albany. From Canyon Creek to the State line is over four hundred miles. There are some three or four culverts made of poles, which should perhaps be mentioned, but all the larger streams, creeks, gullies, rivers, and water channels from Canyon Creek eastward were left without bridges, except the few mentioned for that entire distance. In regard to grading, it is safe to say that from Cache Creek as above mentioned to the Idaho line the company did not do to exceed \$500 worth in that entire distance of over three hundred and fifty miles. An average of \$5 per mile would cover the cost of locating the line and constructing, as far as any constructing was done, the road in its entire length east of the Cascade Mountains. The country was then unsettled, and almost entirely occupied by Indians, many of whom were hostile. A road having been constructed across the mountains the object of the stockholders generally was accomplished, and it was difficult to raise money for any expenditure beyond the mountain. The location of this 350 miles east of the mountains was chiefly made and its acceptance secured in 1869 and 1870. In 1871 the limitation of time made by the act of Congress expired. In 1872 the present owners of the road purchased, at a large advance upon the original cost, all the stock of the original stockholders, and they are now, and have since that time been, in possession of the property. They seem to have made the purchase without investigating closely either the character of the lands, the condition of the road, or the terms upon which these lands were obtained. It is claimed by Mr. Wheeler, above mentioned, that about \$75,000 were expended upon the entire line of the road by the original company; others state the amount at much less. Milton Hale, also above mentioned, states that from \$40,000 to \$60,000 were so expended—he thinks possibly \$45,000. This amount, or whatever sum was actually expended, was almost entirely used in the construction of the road from or between the toll-gate, two miles east of Sweet Home and Cache Creek—the point above mentioned, about 14 miles west of Camp Polk. I am told by the attorney for the present company, Mr. Feehheimer, of Portland, that the present owners of the road paid \$160,000 for the stock of the original owners in 1872. For a majority of this stock they paid \$400 per share, the par value being \$100; part of the original stock was paid up in services along the line of the road as guards, guides, hunters, laborers, teamsters, &c., by the stockholders. The present company claim to have expended much more than the amount of the tolls collected in repairing and improving the road. The tolls taken in at the toll-gate above mentioned, range, I am informed, from \$1,800 to \$3,000 per annum. They have built a bridge within the past three years across the Des Schuttes River. This is a toll-bridge; but since its erection it has been in charge of a dissipated man, who could give no information as to the amount of travel or toll collected, and who has never made any settlement or accounted in any way for moneys collected to the road company. He was the former owner of the ferry at this point, and also of some land on the east side of the river where the bridge is located. A controversy has been going on ever since its construction between the keeper of the bridge and the company. The repairs and improvements made by this company are almost entirely confined to that part of the road which passes through the mountains and west of the Des Schuttes River. No work has been done by the present owners since 1872, between Smith's Rocks, the point where the road strikes Crooked River, and the eastern boundary of the State. No attention whatever has been paid to that part of the road. A little work has been done, but it is scarcely worth mentioning, between the Des Schuttes and Crooked River.

CHARACTER OF THE COUNTRY THROUGH WHICH THE ROAD PASSES.

From Albany eastward for 32½ miles the road runs through the Willamette Valley. From thence to Cache Creek, a distance of about 60 miles, the road runs through and over the Cascade Mountains. Much of this section of the country is heavily timbered, principally with fir; the road follows up the Santiam River about 28 miles; thence up a long ridge and over a divide; thence down a small stream to Fish Lake. It is upon this part of the road that most of the work has been done; that is, between the toll-gate and Fish Lake, a distance of about 44 miles. The grading most of the way, however, has not been difficult. It has been done at about \$2 or \$3 per rod. A bridge over Willie Creek, a small bridge at Lower Soda Springs, a bridge over Canyon Creek, and two small bridges over little mountain streams are all the bridges worth mentioning. There were formerly seven fords of the Santiam River, but these by grading the road on the south side of the river have been reduced to three. Bridges are needed over these badly. Also over Soda Fork, Elk Creek, Rocky Creek near the last crossing of the Santiam, over Snow Creek, and over a large number of small mountain streams without name. From Fish Lake to Cache Creek, 16 miles, the road passes over a dividing ridge by following a long slope from the lake eastward; thence from the top of the divide by a gentle descent to Cache Creek. From this point to the eastern boundary of the State the country is made up of a succession of high table-lands,

varied with ridges, peaks, and backbones, between which are deep river beds, cañons, long ravines, and water channels and courses, many of which are dry during the greater part of the year. This entire country is one of great altitude and dryness, and is generally covered with sage-brush and bunch-grass with a sparse growth of juniper. There are occasionally valleys of rich arable land covered with a luxuriant growth of wild meadow and other grasses. The only timber through which the road passes is a strip about 14 miles wide between Cache Creek and Camp Polk, another 10 or 12 miles wide between the Upper Ochoco and the North Fork of Crooked River, and still another of about the same extent between Buck Creek and Silver Creek. This timber is usually a species of yellow pine, without any undergrowth to speak of, and grows so sparsely that a wagon can usually be driven anywhere through it. Men on horseback travel in any and all directions, and cattle range over this entire country. By the exercise of a little discretion a wagon can be driven almost anywhere; also usually or often the sage-brush is not too high to be driven over, or if occasionally too high, by breaking the topmost branches the wagon may be driven over the remainder. By choosing a suitable place for descending into the valleys, or in seasons of low water for fording the streams, a wagon may be driven in almost any direction, and if more wagons follow in the same track, a road is soon tramped out. Such is the character of the country through which the line of this road passes for about 350 miles.

MODE OF CONSTRUCTION.

As before stated, from Albany to Sweet Home, and for about four miles beyond, a county road had already been made before this enterprise was commenced. It is claimed by the directors of the original company that they were authorized or permitted by the county authorities to "lay" their road and grant upon the county road. A toll-gate was erected about 2 miles east of Sweet Home, because the location was a favorable one to control all travel going over the mountains. 2 miles east of the toll-gate the actual work of beginning the new road was commenced. This work consisted in grading a track sufficiently wide for a single wagon to pass with occasional turnouts where the ground was favorable. Where it passes through timber the trees are cut out usually with only sufficient width for a single wagon track. With the exception of the bridges already mentioned, there are no bridges on the entire line. The result is that the road is only passable for a few months in the year. During the present season of 1880, the first wagons passed over the road on the 18th of July. Usually the road is closed for the winter between the 1st and 5th of November. Last year the road was closed about the 12th of November. It is claimed that the snow on the mountains kept the road closed until the 18th of July, but the melting of the snow kept up the streams and made them impassable as long as there was a supply of snow in the mountains. The consequence of this was that many people had to take a long and circuitous route, by way of the Dalles, to reach their destination east of the mountains on the line of this road. The settlers in Harney Lake Valley and Silver Creek Valley informed me that Silvies River and Silver Creek were both impassable until the first of August, for the same reason; and therefore they were obliged to take other and troublesome routes to reach their depots of supplies. From Cache Creek to the eastern boundary of the State, the process of construction was very simple. It consisted simply of a party of men, most of whom were on horseback, going through the country with a wagon at the rate of 10 or 15 miles per day, blazing trees when passing through the open timber, doing a little grading in difficult spots, breaking down the sage-brush where it was too high for a wagon to pass over, finding fordable places in the streams, and putting stakes in the ground, which were supposed to be one mile apart. In order to avoid bridging streams and grading hillsides, long detours were frequently made, which lengthen the line of the road very materially and increase the cost and labor of travel. For example, as may be seen by the map, in going from Cache Creek to Camp Polk, a long detour is made to avoid bridging Half-Ration Creek, which seems to be the only object in passing around the head of that stream. A short distance below the point marked Cache Creek on the accompanying map, a new road, called a county road, has been laid out, which is traveled considerably, and which is said to be 7 miles nearer to the point where both roads strike Crooked River. This road crosses the Des Schuttes by a ferry a short distance—a few miles—above the bridge of the Willamette Valley and Cascade Mountain Road. There are many other places similar detours are made, apparently to avoid bridging or a small amount of grading. In rocky spots of ground the more troublesome of the loose stones were thrown aside. In this way a track was made barely passable for an empty or lightly-loaded wagon from Cache Creek to Camp Harney, a distance of about 200 miles. At Camp Harney the parties locating the line of this road from that point to the State line, under the directions of Milton Hale, above mentioned, simply followed an old military road leading from Camp Harney to Winnemucca, which had been before, and is yet, traveled considerably between those points, and, without doing any work on it to speak of, traveled over it until they reached the point near the mouth of Crané Creek, where this old road turns south in

the direction of Juniper Lake. Here they left that road, turned off, or rather, as will be seen by the map, continued on in an easterly direction, through the sage-brush and over the table-lands lying between the Malheur and Owyhee rivers, and having, as they claim, taken a wagon through to the mouth of the Malheur River, they returned to Albany. I am informed that no leveling instruments or scientific methods have ever been used in the construction of any part of the road. Usually the location of the line was determined by men on horseback, who went before the wagon from one prominent point to another. The location appears to have been made with two objects in view: First, to get through as speedy as possible with the least amount of work. Second, to secure as much good land as possible between the terminal points. Mr. Milton Hale, of Albany, who at first agreed to go with me, but subsequently declined, was the man who superintended the location of the line between Fort Harney and the State line. This portion of the line has never, I am told, been visited by any member or representative of the company which now owns the road, nor has any work been done on it since they purchased it in 1872.

PRESENT CONDITION OF THE ROAD.

As before stated, I left Albany on the 24th of September, in company with Jason Wheeler. We traveled in a two-horse hack, with camp equipage, a supply of provisions for use in places where no houses could be reached. Our load on starting was about 600 pounds. We averaged about 25 miles a day and 3 miles an hour on going eastward; something more on our return. The road from Albany to the toll-gate, $\frac{1}{2}$ miles east of Sweet Home, is a fair country road and is kept up by Linn County. From that point to Cache Creek it is in fair condition for a mountain road, excepting the lack of bridges and the cutting of timber before mentioned. There are places, too, where drainage is much needed. There is no drainage of any consequence, a few spots excepted, on the entire line of road. Along the Santiam River there are in the aggregate some five or six miles where the road passes through heavy timber and where there are many mud holes needing to be filled and drains cut on the upper side of the road, in addition to the timber which should be cut on each side. The fords of the Santiam and the other streams mentioned are troublesome, and in seasons of high water are dangerous. The descent on the east side of the Cascade Mountains is much less than on the western. But little grading has been done between the summit of the mountains and Cache Creek; from Cache Creek to Camp Polk; still less from Camp Polk to Crooked River. The road runs through a sage-brush country with occasional spots of rocky ground, and here the worst of the loose rocks have simply been thrown aside. In two or three places a little grading has been done, not exceeding \$100 worth in 30 miles. The line of the road originally followed up the valleys of Crooked River and Ochoco Creek for about 25 miles, but since that location was made the country has been settled, the valleys have been fenced up, and the road, made by the citizens and kept up by the county, now follows along the base of the hills generally, and the citizens of Prineville and the vicinity have built bridges over Crooked River and Ochoco Creek near the town. The road follows up the Ochoco, but after it leaves the main valley and turns to the southeast it is much of the way to the North Fork of Crooked River very bad indeed. There are twenty-five small bridges or culverts needed within about 4 miles on the Upper Ochoco. A little grading has been done there and on other streams followed and crossed before the North Fork is reached, but in many places it is still almost impassable for loaded wagons, and it is said that the citizens have done, as a matter of necessity, the little work which has been done on that part of the road. There was not done by the original company to exceed \$50 worth of work on this 30 miles. Going up the hill from the crossing of the North Fork of Crooked River there has been done, probably, \$100 worth of grading, but this part of the road is still in very bad condition. The slopes are so steep from the upper side of the road to the lower that it is almost impossible to keep a wagon from turning over or sliding down into the gulch below. Much of the little grading which has been done here has also been done by the citizens, in order to make the road passable, even for light loads. After the top of the hill is reached there is no more grading or work of any kind to be noticed, with the exception of the removal of some loose stones in stony places, for about 50 miles. I should mention that because the crossing of Beaver Creek was dangerous, and there being no bridge there, the settlers were obliged to change the line of the road for a distance of about fifteen miles, and a portion of this distance is very rough and rocky, though these citizens have done some work on it which makes it barely passable. At Buck Creek there is also a piece of grading, about 60 rods, costing, possibly, \$100; thence to Silver Creek much of the road is rocky, rough, in occasional places steep, almost perpendicular, and it seems to be almost an outrage that people should be compelled to go over such a road even with empty wagons. Between Buck Creek and Silver Creek the road passes through a skirt of timber for some 10 or 12 miles. Within a few miles in this timber I counted twenty-nine trees which had fallen into the road, or across it, since

it was first located, and which still lie on the ground where they fell. The travelers or wagons are compelled to make their way around them or remove them themselves. Silver Creek and Silvies River are both streams having narrow channels and steep banks, and in seasons of high water the fords are impassable. The fords are bad in low water, on account of the steep banks. From Silver Creek, at Camp Curry, to Camp Harney the road is fairly good in the valleys, were it not for the numberless gullies that need bridging or filling. Long detours are often made to avoid places where bridges or grading is needed. The citizens have built a bridge across Silvies River, about a mile above the ford where this line of road crosses that stream. A bridge is much needed over Silver Creek and over Harney Creek, or the stream which runs down by Fort Harney. In going from the latter place to Crane Creek, the settlers have been obliged to go up Cow Creek some three-quarters of a mile above the old ford and build a bridge. They have also been obliged to bridge Crane Creek. Portions of the road between Camp Harney and Crane Creek are also very rocky. When I reached Crane Creek I stopped for a night, going and returning, with Mr. J. F. Burns, a stock raiser, who has about 6,000 head of cattle ranging between the headwaters of Crane Creek and the Owyhee River, in the identical section of country through which this road is supposed to run. He has been riding over it constantly for the past six years, and never saw, discovered, or suspected the existence of a road between the South Fork of the Malheur and the Owyhee River, or the Cottonwood Branch of the Malheur. He only heard, a few months ago, for the first time that such a road had ever been projected. Hiring horses from him in order that our own team might rest for a day, and engaging him to accompany us, we rode down Crane Creek to the point where the road turns south to Winnemucca, and here all traces of our line of road disappeared. No appearance of a road was to be perceived, but after making a careful examination on foot of the places where a wagon might cross, we discovered some evidences, such as the removal of loose stones, &c., which led us to believe—comparing them with the map and following the general direction indicated on it—that we had found the place where the locating party, with their wagon, had crossed the South Fork of the Malheur River. Continuing our search and following through the sage-brush the direction they were most likely to take, and the most available opening, through a long hollow or ravine, which led to the high tablelands to the eastward, we came upon a little grading about a mile east of the stream last mentioned, which was the last trace we could or did discover of the line of the road we were in search of. This grading was not more than two days' work for one man. Mr. Burns had never before seen this. As it was impossible to follow any remaining traces which might have been left by this locating party, ten or eleven years ago, in the bunch-grass and sage-brush, we reluctantly turned back and retraced our steps by the way of Fort Harney and Prineville to Albany. It is perhaps proper to mention in this place that I did not find any one at work on the road going out, repairing or otherwise improving it, along its entire length, or as far as I traveled it. On my return I found some three or four men at work on the Santiam River. I should also mention that the mail is carried from Eugene City to Camp Polk by another road which has been constructed up the McKenzie River, and much of the travel from the Willamette Valley to Eastern Oregon goes that way. The mail has never been carried by the Willamette Valley and Cascade Mountain wagon-road since its first construction over the mountains.

CONCLUSIONS.

As before stated, almost all the labor and money expended upon this road, either by the original builders or by the present company, have been devoted to the construction and improvement of that part of it which lies between the toll-gate, 2 miles east of Sweet Home on the western side of the mountains, and Cache Creek on the eastern, a distance of about 60 miles. Even here, as a matter of law and fact, they cannot be said to have complied with the act of Congress making the grant of land. The want of bridges across the streams already referred to is a serious inconvenience to those who are obliged to travel this road. Aside from this the road is a fair one, for a mountainous region, and in the dry season of the year teams of four horses can draw from 2,500 to 3,000 pounds by careful driving in the day-time when obstacles, short turns, &c., may be guarded against. There are grades, however, which should be reduced, places where the road should be widened, more turnouts made, and timber cut away on both sides. There are several miles of the road, near Big Lake especially, where there is much dead timber standing in immediate proximity to the road, to the imminent danger of passing travelers. It would require an expenditure of probably \$20,000, including bridges, to put this part of the road in good condition. Upon this division of the road I am not able to see where or how more than \$40,000 were expended by the company which originally built the road and received the grant of land upon the entire line of road from Albany to the State line. I cannot see where \$50,000 were expended, probably not more than \$45,000. The part of the road lying

between Albany and the toll-gate, about 34 miles having been built and kept up by the county of Linn, cannot properly be claimed by the company, nor the lands for that division honestly earned. From Cache Creek eastward to the State line it is very manifest that the terms of the grant have not been complied with; no road has been made worthy of the name, and therefore neither the original company nor the present owners are entitled to hold any land whatever for that portion of the line. A liberal construction of the act of Congress might give them the lands adjoining the road between Albany and Cache Creek, provided the improvements herein suggested were made, but neither in law nor in equity can they be considered to have earned any land whatever east of the last-named point. Possibly, in view of all the facts and circumstances herein detailed, or connected therewith, they might be allowed the land they claimed between Albany and Camp Polk, or even by a stretch of liberality between Albany and the Des Schuttles River, but certainly I can see no possible claim that can be just to anything beyond or east of that river. It is one of the chief causes of complaint amongst the settlers in all the region east of the mountains that they are unable to purchase the lands of the Road Company or to make any contracts with reference thereto, in all that wide extent of territory lying between the Cascade Mountains and the Idaho line. To this the company replies, first, that they have a right to do as they please with their own property; secondly, that the reason they have not sold any land hitherto was because they had bonded their entire property for sale until the 1st of January next, when if it is not sold they will thereafter be prepared to sell, in any desired quantity, and at a reasonable price. All this might be plausible enough if the road had been built according to law, but when it is considered that there is no such road provided for the convenience of settlers, and the land is nevertheless withdrawn from the market, settlers having still to make roads for themselves, &c., it will be seen very readily that they have some reason to complain. These complaints would be more numerous and pressing but for the fact that this region is essentially a stock country, and the teaming required is only or chiefly the supplies of provisions obtained once or twice a year. Most of the citizens east of the mountains complain bitterly of the road, its construction and management. West of the mountains, in Albany and its vicinity, the leading citizens were stockholders in the original company. These men secured their primary object, which was a road across the mountains, and subsequently sold their stock at a large advance upon its original cost. They are therefore naturally unwilling that the matter should be disturbed. The present company claim to be innocent purchasers; that the contract for the land was finally closed by the government in 1874, when the act of Congress was passed relating to patents therefor, and that those who now complain are without a remedy. Believing, however, as I do, after a careful examination of the subject that the act of Congress making the grant has not been complied with, that the road has not been constructed as it should have been, at least from Cache Creek to the Idaho line, a distance of about 350 miles, I deem it is my duty to recommend that such legal measures be taken as will determine the rights of all concerned, and when that is done I believe that the lands now held by the company east of Cache Creek, or at least of Camp Polk, will be restored, as I believe they should be, to the public domain. Such a course might result in hardships to the present company as innocent purchasers, but justice to the government, to the settlers along the line of the road, and to future beneficiaries of a similar character demands that such a fraud as that which has been perpetrated in this case should be severely punished, and with as much promptness as is possible under the circumstances. Attention is invited to the accompanying affidavits of old and respectable citizens on or near the line of the road, east of the mountains. More of the same character were not deemed necessary.

I have the honor to be, very respectfully, your obedient servant,

WM. F. PROSSER,
Special Agent, General Land Office.

General JAMES A. WILLIAMSON,
Commissioner of the General Land Office, Washington, D. C.

Upon the foregoing report the Commissioner of the General Land Office submitted the following statement, with accompanying papers and affidavits, viz:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., December 4, 1880.

SIR: By letter dated April 27 last, I had the honor to report to you the status of the grant by act of Congress approved July 5, 1866 (14 Stat., 89), to the State of Oregon, of lands to aid in the construction of a military road from Albany to the eastern boundary of the State; and I submitted the question whether or not, in view of stated allegations of want of good faith and failure to comply with the terms of the grant, an investigation was desirable before taking action looking to the certification and

patenting of a large quantity of land, embraced in pending lists of selections duly presented by the Willamette Valley and Cascade Mountain Military Wagon Road Company, now the beneficiary under the grant.

By reference to the report referred to, it will be seen that there is on file in this office the full and complete written evidence that the laws had been fully complied with, upon which, in the absence of any allegations to the contrary, the lands claimed would have been certified and patented, as a matter of course.

I have received no written reply to my communication to you, above referred to, but after consultation and full consideration I deemed it my duty to order an investigation.

Accordingly, by letter of August 16, 1880, to Mr. W. F. Prosser, special agent, then on duty in Washington Territory, I directed him to make an examination of the road in the field and a full investigation of the whole matter, and report the result. A copy of my instructions to him is herewith.

Under date of the 9th ultimo, the special agent transmitted his report, the duplicate of which is herewith submitted, together with the accompanying depositions.

It will not be necessary to recapitulate in this letter the history, pretended construction, and present condition of the road, as stated in the report and depositions. It would seem that the so-called road, for much the greater portion of its line of route, has been from the beginning the merest pretense, without graduations or bridges, and practically unfit for use, except under the most favorable circumstances and in certain localities; that there was no actual "construction" of a road, but merely the marking out of a trail, the cutting of a little timber, and the removal of a few loose stones.

The act of July 5, 1866, making the grant, in section 3, provided "that said road shall be constructed with such width, graduation, and bridges, as to permit of its regular use as a wagon road," &c. And section 4 provided, "And if said road is not completed within five years, no further sales shall be made, and the land remaining unsold shall revert to the United States."

It is true that the entire line of road was accepted by the State, and by the State authorities formally certified to the department as fully completed in accordance with law; and that the proofs were accepted by the department and the lands withdrawn for the benefit of the grant; also, that there have been already patented to the State for the benefit of the grant, more than 100,000 acres of land; all based upon said proofs and in the absence of any evidence of a want of good faith.

But in view of the report herewith presented, I do not see how it could be maintained that the government is bound, in the face of apparent fraud, by its acceptance of the stated proofs; at any rate so far as the lands remaining unpatented are concerned.

I am fully convinced that the pending lists of selections to the amount of more than 446,000 acres should not be certified or patented without further legislation. In my opinion the attention of Congress should be called to the matter with a view to the forfeiture of the grant, or the enforcement of a full compliance with its terms.

I submit the question for your consideration and for such action as you may deem proper. In the mean time the lists mentioned will remain suspended.

The papers submitted are as follows:

- A. Copy of instructions to W. F. Prosser.
- B. Report of special Agent Prosser.
- C. Copy of act of Congress making the grant.
- D. Copy of act of Oregon legislature conferring the grant.
- E. Affidavit of L. Vanderpool.
- F. Affidavit of William Smith.
- G. Affidavit of James E. Dundan.
- H. Affidavit of P. P. Davis.
- K. Affidavit of P. H. Snodderly.
- L. Affidavit of A. B. Wabdell.
- M. Affidavit of A. Hodges.
- N. Affidavit of T. B. James.
- O. Affidavit of E. G. Conant.
- P. Map of Oregon showing the line of the road.

Very respectfully, your obedient servant,
(Signed)

J. A. WILLIAMSON,
Commissioner.

Hon. CARL SCHURZ,
Secretary of the Interior.

E.

STATE OF OREGON,
County of Wasco, ss:

I, L. Vanderpool, being first duly sworn, do depose and say: I am a resident of Wasco County, Oregon; post-office, Prineville; by occupation, a practicing physician,

and of the age of forty-nine years; that I have resided in Wasco County, and close along the line of survey of what is known as Willamette Valley and Cascade Mountain Military Wagon Road, ever since April, 1869, and during said time I have been intimately acquainted, owing to my business, with line of said survey for a distance of two hundred miles, and I know that the western end of said road for sixty miles is a tolerable country road for a new country; this said section of the road was claimed to have been finished by said road company, and toll collected thereon in 1866 or 1867, and, to my knowledge, for ten years afterwards said road was hardly passable with a light middle track two-horse wagon and drawn by two good 1,400-pound horses, with a load of 1,000 pounds, without adding extra team, or unloading a part of said load; many places along said road the hills were so steep—I think they would be from 30° to 45° up—and so filled with stumps of trees and rocks, many of the stumps measuring from 8 inches to 2 feet high, and from 4 to 36 inches in diameter; many of the rocks that lay in the track where the wagon wheels had to run would weigh two hundred pounds and of a rounded shape, which made it impossible for the most expert teamster, where he was used to bad roads all the time, for to drive at any place along line of said section of said road for a distance of three hundred yards without coming in contact with from fifty to three hundred yards of said road filled with stumps and boulders, as aforesaid, and at the same time in many places the water being allowed to run along said road without any culverts, so as to cause it to become worked up with mud among the roots of the stumps to such a depth that the traveler is compelled to fill up with wood-bark and rocks to raise the track where the wheel runs to a considerable height, until the axle of the wagon will pass over the stump, before he can pass. Up to about three years ago the road passed up the Santiam River, and, until lately, it crossed the river seven times. The Santiam is a stream of from seventy-five to one hundred and twenty-five feet wide at the crossings, and a swift mountain stream, the bottom covered with large boulders from the size of a man's head to that of a whisky barrel, and the latter size so numerous as to resist the efforts of the strength of the stoutest teams.

Sometimes one would drive across one of these crossings all right, but if you got through without breaking the wagon or one of the teams' legs you would congratulate yourself as being in luck. At most of these crossings was only dug down a very little wider than the wagons, and so steep that the driver would not want to stay on the wagon to pull up, but could not walk beside the wagon by reason of the narrow grades. These crossings remained in this condition for over eight years, and some of them are so yet. From Fisk Lake to the eastern boundary of the State, a distance of miles, on none of the streams is there a bridge, though the line of survey crosses quite a number that are frequently impassable during each year by reason of high water, and are at all times difficult and dangerous to cross with stock, though it is my understanding that the charter granted to the said road company requires that all the streams shall be bridged in a good and substantial manner. This is not done, yet toll is collected for traveling the same.

In many places the timber is not cleared out wide enough for the wagon and driver to travel side by side. Once in traveling the road I came very nigh losing my life by being caught between my wagon and some trees standing beside the road which ought to have been cut. The hill was so steep that I had to walk and drive. I had a team of four good horses and a load of 1,600 pounds on a small wagon, and it was all I could do to get along. It was a good natural place to build a road, but none was made. This was in the Cascade Mountains on the western section of the road. East of the Deschutes River all the work I know of being done consisted of throwing out some rocks on the line of survey for a distance of ten miles, and again on Veasey Creek, some twenty-five miles farther along, a tree was cut down and some dirt thrown against it. At the crossing of Crooked River there was done work to the amount of one dollar. The line of survey crosses numberless hills and streams that should be graded, but from personal inspection I know they never was worked in any manner by the road company, or by any person or persons in their employ. The country along *the said line of survey has been settled by settlers, and they have for their own convenience and wants have built and now travel roads from one point to another; and in many places these roads run along or near to the line of the road company's survey, and these are the only roads that ever was built along the said line, and none of the work necessary to open them was ever contributed or done by the road company, or by any person or persons in their employ.*

The actual cost of the road as built by the road company for the first ten miles east of Cash Creek did not exceed ten dollars per mile. East of that from three to four—not over four dollars per mile, and most of this went for expenses of surveying, in fact this being all the work that was ever done. Often when the streams were up, I have been unable to visit patients that live along the line of survey of the road because the streams were not bridged and so was impassable. The country through which this road survey passes is covered with sage brush and rocks. This sage is a stubby bush growing from one to six feet high, and is from one to six inches in diameter; but along

the streams and wet places none of the bush grows, and the road company in surveying and laying out their road wound around the edge of these wet places where there was no brush, but when they were compelled to leave these open places they never cut any brush, and from the nature of and growth of these brush a wagon cannot be driven over them. In numberless places the line of survey crosses wet or marshy places that during certain seasons of the year are impassable, and as none of these places was ever drained or bridged, the travel have been compelled to leave the line of survey sometimes as far as a quarter of a mile to get around such places.

DR. L. VANDERPOOL.

Subscribed and sworn to before me this 23d day of October, 1880.

[SEAL.]

GEO. W. BARNES,
Notary Public.

F.

STATE OF OREGON,
County of Wasco, ss :

I, William Smith, being first duly sworn, do depose and say: I have been a resident of Wasco County, Oregon, for twelve years last past; that during that time I have lived in the vicinity and near to the line of survey of what is known as the "Willamette Valley and Cascade Mountain Road"; that I have been acquainted by personal inspection with the said road from Albany, Linn County, Oregon, to James Miller's place on the Ochoco, in Wasco County, a distance of something near one hundred and fifty miles, for the last fifteen years. My first acquaintance was as a work hand. I worked on the road in the Cascade Mountain. We just made a road-bed through the mountain; we never cut any trees outside of the road-bed; the road-bed averaged, as we built it, from five to seven feet; as to turnout, we didn't make no great sight of them. When we came to a good, convenient place, easy to build, we built one; when we didn't, we let them go. I consider the road where I worked a very good passway, but all kinds of wagons could not travel it, though I once drove a team of oxen over it. All the work done east of the Deschutes River that I know of, or have heard of, consists of the work we done by surveying the road from Deschutes to Bridge Creek; we measured the road with a rope, and did not stake it. We had no surveyor, and consequently no field-notes was taken of the survey. I know that no road was ever built east of the Deschutes. I know the road as surveyed along the Crooked River and Ochoco Creeks, a distance of twenty-four miles, has been fenced up for the last ten years, and during that time has not been traveled, or in a condition to be traveled, that distance.

WILLIAM SMITH.

Subscribed and sworn to before me this 5 day of October, 1880; and I further certify that I am personally acquainted with the above-named deponent, and that he is a person to whose affidavit full faith and credit should be given.

[L. s.]

GEO. W. BARNES,
Notary Public.

G.

STATE OF OREGON,
County of Wasco, ss :

I, Joseph E. Dundan, being first duly sworn, do depose and say: I am a resident of Wasco County, Oregon; that I have been acquainted with the road known as the Willamette Valley and Cascade Mountain Road for the last nine years. My first acquaintance was as chain-bearer on the section of road from Camp Harney east; there was ten of us in the crowd. James Warner was the surveyor. We started in at Harney and went east to the further edge of Harney Valley and then went east to Crain Creek. The road we surveyed has never been traveled, and, with the exception of a small portion, can't be traveled. All the work that was done was done by us, on a place we got into and couldn't get out. The travel now goes on an old government road; this was received by the governor's agent as the company's road. The survey we made was very careless; we sometimes staked it and sometimes did not. I have traveled the line of survey from Albany to Camp Harney twice or three times, and I know from personal inspection that no work has been done from the Deschutes River to Camp Harney by the road company since I first worked as mentioned above. I know that when the road was received that the road would not permit all kinds of wagons to pass over it; perhaps a light wagon with no load could have—by some help on bad places—went over. I further know that no bridges have ever been made by the company on any of the streams east of the Deschutes River at the line of survey crosses several streams that are frequently impassable during each year by reason of high water.

JOSEPH E. DUNDAN.

Subscribed and sworn to before me this 4th day of October, 1880, and I further certify that the above-named deponent is a person to whose affidavit full faith and credit should be given.

[L. s.]

GEO. W. BARNES,
Notary Public.

H.

STATE OF OREGON,

County of Wasco, ss:

I, P. P. Davis, being first duly sworn, do depose and say that I have been a resident of Wasco County, Oregon, for nine years last past; that during that time I have resided in the vicinity and near to the line of survey of what is known as the "Willamette Valley and Cascade Mountain Road," and that from a personal knowledge of the country and a frequent personal examination of the line of survey of said supposed road, I know that no road whatever has ever been built or constructed, or even attempted to be built or constructed, by the Willamette Valley and Cascade Mountain Road Company, or by any person or persons in their behalf, from the Deschutttes River east to Lost Creek, a distance of seventy miles, this being all of said line of survey that I am personally acquainted with; and, further, I know that none of the streams along said line of survey east of the Deschutttes River have ever been bridged by said company or by any person or persons in their behalf or at all, though said line crosses several streams that are frequently impassible during each year by reason of high waters; and, further, I know that none of the hills along said line have ever been graded or worked at all, and that they at all times are impassible for teams with heavy loads, and that the only work ever done on said line has been done by travelers who attempted to travel said line and were compelled to work to get along.

F. P. DAVIS.

Subscribed and sworn to before me this 2nd day of October, 1880; and I further certify that I am personally acquainted with the above-named affiant, and that he is over the age of twenty-one, and a person to whose affidavit full faith and credit should be given.

[SEAL.]

GEO. W. BARNES,
Notary Public.

K.

STATE OF OREGON,

County of Wasco, ss:

I, J. H. Snoderly, being first duly sworn according to law, do depose and say I have been a resident of Wasco County, Or'g'n, for eleven years last past; that during that time I have resided near to the line of survey of what is known as the "Willamette Valley and Cascade Mountain Road"; that from a personal knowledge of the country and a frequent personal examination of the line of survey of said supposed road, I know that no road whatever has ever been built or constructed or attempted to be built or constructed by the Willamette Valley and Cascade Mountain Road Company or their successors, or by any person or persons in their behalf, from Carmichel's Ranch, on Crooked River, to Lost Creek, a distance of some sixty miles, this being all of said line of survey that I am personally acquainted with; and, further, I know that none of the streams along said line of survey have ever been bridged by said company or by any person or persons in their behalf, or at all east of the Deschutttes River, though said line crosses several streams that are frequently impassable during each year; and, further, that from the said Carmichel Ranch to James Miller's, a distance of forty-five miles, the said line of survey has been fenced up for the last ten years and has not been traveled at all for that period.

J. H. SNODERLY.

Subscribed and sworn to before me this 2nd day of October, A. D. 1880; and I hereby certify that I am personally acquainted with the above-named affiant, and know him to be a man to whose affidavit full faith and credit should be given.

[SEAL.]

GEO. W. BARNES,
Notary Public.

L.

STATE OF OREGON,

County of Wasco, ss:

I, A. B. Webdell, being first duly sworn, do depose and say I am a resident of Wasco County, Oregon; that I have lived in the vicinity and near to the line of survey of what is known as the "Willamette Valley and Cascade Mountain Road" for the last eleven years; that during that time I have been acquainted, by frequent personal inspection, with the said road from Albany, Linn County, to the divide at the head of Buck Creek, in Grant County, a distance of about two hundred and twenty-five miles, and I know that no road has ever been built by the Willamette Valley and Cascade Mountain Road Company from Carmichels, on Crooked River east, or even pretended to be built; that the only work ever done by the said company or by any person or persons in their employ east of Carmichels was done on Johnny Tom's Creek, which consisted of cutting down a tree and scraping a few rock against on a steep point at that place; this all the work I ever saw done, and I have traveled the said

line of survey frequently every year since 1869. I further know that since the said road was received by the governor the said road company has never done any work east of the said Carmichels, but that since that time the country through which the line of survey passes has been settled up by settlers, and that these settlers for their own convenience have been compelled to build a road to enable them to go from one settlement to another for supplies, and so forth; that this road, so built, has in some places followed the line of survey of the company's road, but in many and most of places does not, and that this is all the road that ever has been built by any person or persons, and that the W. V. and C. M. R. Company never aided or built this road in any particular. And, further, I was once informed by some soldiers who were conveying government supplies, that they attempted to travel this W. V. and C. M. Company's road after it had been received accepted by the governor as completed; that they had to dig trenches along the side of the hills for the upper wheels of their wagons to run into to enable them to get along at all.

A. B. WEBDELL.

Subscribed and sworn to before me this 6 day of October, 1880.

GEO. W. BARNES,
Notary Public.

M.

STATE OF OREGON,
County of Wasco, ss:

I, Alexander Hodges, being first duly sworn, do depose and say: I am a resident of Prineville, Wasco County, Oregon; occupation, a farmer and stock-raiser; age, fifty-nine years; that I have lived in the neighborhood and near to the line of survey of what is known as the "Willamette Valley and Cascade Mountain Wagon-Road" since April, 1869; that from a frequent personal examination of said line of survey, and a thorough knowledge of the surrounding country, I know that no road was ever built, or ever attempted to be built, by the Willamette Valley and Cascade Mountain Road Company, or by any person or persons in their employ, east of the Deschutes River to Harney Lake, that being as far as I have traveled the same.

That west of the said Deschutes River the said company have worked some and built a road, but that since said road was claimed to have been completed and received by the governor, and for ten years afterwards, the said road could not at no time be traveled by heavy wagons with a load; that for said time the road was so filled up with rocks and stumps that passing wagons would strike them, and travelers would have to build up on each side of the obstructions, so as to enable the wagons to pass over; that no trees was ever cut outside of the road through the said Cascade Mountains, and that said road was so narrow that wagons could barely travel over it, and would very often strike trees standing beside the road-bed; that none of the streams along the said line has ever been bridged by said company, or by any person or persons in their employ, with the single exception of Canyon Creek, in the Cascade Mountains, though said line crosses quite a number of streams that are frequently, during each year, impassable by reason of high water, and are at all times unhandy and unsafe to cross with stock; that east of the Deschutes River the said company has never done any work beyond surveying and staking the said line; that no grades was ever built on any of the hills, and that in many places for miles the said lines of survey have been fenced up for the last ten years, and during that time has not and could not have been traveled; that the country along the said line has been settled up, and the settlers, for their own convenience and necessities, have been compelled to build roads; that in many places the roads so built have followed along or near to the line of the said company's survey, and that these roads are the only ones ever built thereon, and that none of the work done in building the same was ever done by the said road company, or by any person or persons in their employ; that the line of survey of said road from the Deschutes River east has never been opened, and no road has ever been built thereon, and that the same could now or ever could have been traveled.

A. HODGES.

Subscribed and sworn to before me, this 24 day of October, 1880.

[L. s.]

GEO. W. BARNES,
Notary Public.

N.

STATE OF OREGON,
Wasco County, ss:

I, T. B. James, being first duly sworn, do depose and say: I am a resident of Wasco County, Oregon. Post-office address, Prineville; occupation, a farmer and stock-raiser; age, forty-three; that I have lived in the neighborhood, and near to the line of survey of what is known as the "Willamette Valley and Cascade Mountain Road"

since 1869; that from a frequent personal examination of said line of supposed road, I know that no road was ever built by the Willamette Valley and Cascade Mountain Road Company, or by any person or persons in their employ, east of the Deschutes River, in Wasco County. That on the line of said survey west of the said Deschutes River the said company has done some work and built a road through the Cascade Mountains; but that at no time for ten years after the said road was claimed to have been finished and received by the governor, could all kinds of teams or wagons travel said road with a load; that the said road was full of stumps and rocks so high that the axles of wagons would catch on them, and travelers would have to build up on each side with logs to enable the wagons to pass over such obstructions; that the road bed built through the said mountains was so narrow that wagons could barely travel it, and that outside this narrow bed no trees was ever cut or cleared out, and frequently passing wagons would strike trees standing beside the road; that none of the streams on said road was ever bridged by the said company with the single exception of Canyon Creek in the Cascade Mountains, though the said line crosses several streams that are frequently impassable during each year by reason of high water, and at all times unhandy to cross with stock. That no work ever was done through the Ochoco Valley on the said road, and that in many places the said line has been fenced up and utterly impassable for the last ten years.

T. B. JAMES.

Subscribed and sworn to before me, this 23 day of October, 1880.

[L. s.]

GEO. W. BARNES,
Notary Public.

O.

STATE OF OREGON,

County of Wasco, ss:

I, E. G. Conant, being first duly sworn, do depose and say, I am a resident of Wasco County, Oregon, post-office Prineville, by occupation a stock raiser, and of the age forty-eight years, and that I have resided in Wasco County, and near to the line of survey of what is known as Willamette Valley and Cascade Mountain Road ever since November, 1869; that during said time I have frequently examined the said line of survey and country. I know that no road has ever been built or attempted to be built by the Willamette Valley and Cascade Mountain Road Company, or by any person or persons in their employ, east of the Deschutes River; that the line of survey of said road running through what is known as the Ochoco Valley has been fenced ever since 1870, and that at no time was it possible for travelers with any kind of wagons to travel the said line of the supposed road; and, further, I know that at no time since my first acquaintance with the said line of survey has any of the streams been bridged, though the said line of survey crosses several that are frequently, during each year, impassable by reason of high water; and, further, that no grading has ever been done by the said company on any hills that the line crosses; that the country through which the said line passes has been settled up, and that the settlers have built and now travel a road from point to point for their own convenience, and that in some places this road, so built, follows the line of survey of the said company, and that this road is the only one that now is or ever was along said line of survey, and that no part of it was ever built by work done by the road co. or by persons in their employ.

E. G. CONANT.

Subscribed and sworn to before me this 21 day of October, 1880.

[L. s.]

GEO. W. BARNES,
Notary Public.

Under date of January 6, 1881, the Secretary of the Interior submitted to Congress the following statement, wherein he recommends the resumption by the United States Government of the said lands, so far, at least, as the same have not been patented, or for such legislation as will assure a compliance with the terms of the grant, &c., viz:

DEPARTMENT OF THE INTERIOR,
Washington, January 6, 1881.

SIR: I have the honor to lay before you, for the use of the body over which you preside, copies of certain papers and correspondence relating to the lands granted to the State of Oregon by act of Congress approved July 5, 1866 (14 Stat., 89), "to aid in the construction of a military road from Albany, Oregon, to the eastern boundary of said State"; which grant was, by act of the State legislature approved October 24, 1866, conferred upon the Willamette Valley and Cascade Mountain Military Wagon Road Company.

The records and files of the General Land Office show that four duly executed maps, purporting to show the line of survey, location, and construction of portions of said

road, have been placed on file in this department, each of which bears the certificate of the executive of the State, to the effect that the portion of the road so represented has been completed, examined, and accepted in accordance with the terms of the granting acts of the Congress and State legislative assembly.

The first map shows the route from Albany to the one hundred and fifty-third mile, and was certified by the secretary of state, as acting governor, February 20 and April 11, 1868.

The second extends from the one hundred and fifty-third to the two hundred and ninetyeth mile, and was certified by the governor September 8, 1870.

The third runs from the two hundred and ninetyeth to the three hundred and sixty-eighth mile, and was certified by the governor January 9, 1871.

The fourth reaches from the three hundred and sixty-eighth to the 448.7th mile on the eastern boundary of the State, and was certified by the governor June 24, 1871.

The maps are all in the usual form, verified by the surveyors and officers of the company, and exhibit, as cited, a total length of 448.7 miles of constructed road, entitling the company to an aggregate of 1,346 sections, or 861,440 acres of land.

On the 17th of March, 1878, a letter was addressed to this department by Elisha Barnes and others, of Prineville, Wasco County, Oregon, alleging a total failure on the part of the company to comply with the act of Congress by the construction of any road whatever over the greater portion of the route, and a very limited and partial compliance with the remaining distance. This was replied to by the Commissioner on the 17th of October, 1879, to the effect that the evidence of construction called for by the granting act appeared to be complete, and the writer was referred to the State authorities for investigation into any alleged want of good faith on the part of the company.

Prior to this, June 19, 1876, 107,893.01 acres had been patented to the company upon due selection, under the act of Congress approved June 18, 1874 (18 Stat., 80), and other selections, to the amount of about 446,600 acres, are now pending, for which the company demand patents.

Preparatory to taking final action upon these pending selections, the Commissioner, on the 27th of April last, made full report of the facts and allegations as hereinbefore recited, and suggested an investigation into the truthfulness of the charge of bad faith by a personal inspection of the route by some authorized agent of the department.

Subsequently, on the 16th of August, by my full sanction and verbal direction, he instructed Mr. W. F. Prosser, then a special agent of his office at Seattle, Wash., to make the proper investigation, and report the facts for such further action as might be deemed necessary.

His report, dated the 30th of October, was laid before me by the Commissioner's letter of the 4th ultimo, and is very full and complete in all essential particulars. It appears therefrom that from Albany eastward for a distance of nearly 36 miles the road was built by Linn County, and is kept in repair by the county funds; that from this point, where it enters the mountains, work was done by the company, consisting of grading, cutting of timber, &c., for a distance of about 45 miles, involving a probable expenditure of some \$45,000; that this construction made a very imperfect and defective road for that distance, with lack of proper drainage, bridges, culverts, and the like, as specified in detail, and with barely sufficient width of track to admit of the passage of wagons and teams, without room for drivers to walk beside them; that from the eastern side of the mountains to the State line, a distance of more than 350 miles, no grading was done except in one or two places, the streams were not bridged, long detours were made from a direct line to avoid the construction of proper crossings, and the whole line was so imperfectly marked that at a distance of 340 miles from Albany all trace of it was lost by an agent, and he was obliged to return, leaving some 108 miles without examination.

The road through the mountains is only passable for lightly loaded wagons, for a few months in the summer season, on account of the many defects in construction specified by Mr. Prosser, to whose report in full I respectfully invite attention.

In view of all the facts presented, and of the magnitude of the grant, and manifest want of the most ordinary good faith on the part of the grantee in securing and presenting the evidence for its appropriation, both the agent and the Commissioner of the General Land Office recommend the resumption of the lands, so far, at least, as the same have not been patented, or provision for such other measures of compliance with the terms of the granting act as shall assure the good faith of the beneficiary, before authorizing the further patenting of the granted lands.

Fully concurring in the same views, I submit the matter for the action of Congress, and until that is determined upon, shall hold further proceedings suspended.

Copies of all the papers referred to in this communication and in the schedule of the Commissioner's report of 4th ultimo are herewith transmitted.

Very respectfully,

C. SCHURZ,
Secretary.

The following is the original act of Congress under which the aforesaid grant of land was made to the State of Oregon, viz :

CHAP. CLXXIV.—AN ACT granting lands to the State of Oregon to aid in the construction of a military road from Albany, Oregon, to the eastern boundary of said State.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, granted to the State of Oregon to aid in the construction of a military wagon road from Albany, Oregon, by way of Canyon City and the most feasible pass in Cascade range of mountains to the eastern boundary of the State alternate sections of public lands, designated by odd numbers, three sections per mile, to be selected within six miles of said road : *Provided,* That the lands hereby granted shall be exclusively applied in the construction of said road, and shall be disposed of only as the work progresses ; and the same shall be applied to no other purpose whatever : *And provided further,* That any and all lands heretofore reserved to the United States by act of Congress or other competent authority be, and the same are, reserved from the operation of this act, except so far as it may be necessary to locate the route of said road through the same, in which case the right of way is granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted,* That the said lands hereby granted to said State shall be disposed of by the legislature thereof for the purpose aforesaid and for no other ; and the said road shall be and remain a public highway for the use of the Government of the United States, free from tolls or other charge upon the transportation of any property, troops, or mails of the United States.

SEC. 3. *And be it further enacted,* That said road shall be constructed with such width, graduation, and bridges, as to permit of its regular use as a wagon road, and in such other special manner as the State of Oregon may prescribe.

SEC. 4. *And be it further enacted,* That the lands hereby granted to said State shall be disposed of only in the following manner, that is to say : That when ten miles of said road shall be completed, a quantity of land, not exceeding thirty sections for said road, may be sold coterminous to said completed portion of said road ; and when the governor of said State shall certify to the Secretary of the Interior that any ten continuous miles of said road are completed, then another quantity of land hereby granted, not to exceed thirty sections, may be sold coterminous to said completed portion of said road, and so from time to time until said road is completed ; and if said road is not completed within five years no further sales shall be made, and the land remaining unsold shall revert to the United States.

Approved July 5, 1866.

The following is the act of the legislature of the State of Oregon, granting said land to the Willamette Valley and Cascade Mountain Wagon-Road Company, viz :

AN ACT donating certain lands to the Willamette Valley and Cascade Mountain Wagon-Road Company.

Whereas the last session of the Congress of the United States passed a certain act donating land to the State of Oregon, which act is hereby set forth, to wit : "An act granting lands to the State of Oregon, to aid in the construction of a military road from Albany, Oregon, to the eastern boundary of said State."

(Here follows the act of Congress.)

SECTION 1. Be it enacted by the legislative assembly of the State of Oregon, that there is hereby granted to the Willamette Valley and Cascade Mountain Wagon-Road Company, all lands, right of way, rights, privileges, and immunities heretofore granted or pledged to this State by the act of Congress, in this act heretofore recited, for the purpose of aiding said company in constructing the road mentioned and described in said act of Congress, upon the conditions and limitations therein prescribed.

SECTION 2. There is also granted and pledged to said company all moneys, lands, rights, privileges, and immunities which may be hereafter granted to this State, to aid in the construction of such road, for the purposes and upon the conditions and limitations mentioned in said act of Congress, or which may be mentioned in any further grants of money or lands to aid in constructing such road.

SECTION 3. Inasmuch as there is no law upon this subject at the present time, this act shall be in force from and after its passage.

Approved October 24, 1866.

The original act not having provided for the issuance of patents for the land, the following act was passed :

CHAP. 305.—AN ACT to authorize the issuance of patents for lands granted to the State of Oregon in certain cases.

Whereas certain lands have heretofore, by acts of Congress, been granted to the State of Oregon, to aid in the construction of certain military wagon roads in said State, and there exists no law providing for the issuing of formal patents for said lands: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases when the roads in aid of the construction of which said lands were granted are shown by the certificate of the governor of the State of Oregon, as in said acts provided, to have been constructed and completed, patents for said lands shall issue in due form to the State of Oregon as fast as the same shall, under said grants, be selected and certified, unless the State of Oregon shall by public act have transferred its interests in said lands to any corporation or corporations, in which case the patents shall issue from the General Land Office to such corporation or corporations upon their payment of the necessary expenses thereof: *Provided,* That this shall not be construed to revive any land grant already expired, nor to create any new rights of any kind except to provide for issuing patents for lands to which the State is already entitled.

Approved June 18, 1874.

In answer to, and in denial of, the statements set forth in the foregoing report of the agent, W. F. Prosser, and of the foregoing affidavits, the present claimant of the lands has submitted to your committee the following affidavits, nineteen in number, viz :

STATE OF OREGON,
County of Linn, ss :

I, Jason Wheeler, being first duly sworn, on oath say that I now am and for the thirty-three years immediately last past have been a resident of Linn County, State of Oregon. I further say that I am fully and thoroughly acquainted with the Willamette Valley and Cascade Mountain military wagon road, hereinafter called the "wagon road." I further say that the wagon road is four hundred and forty-eight (448) miles long. I was in charge of working parties on the wagon road from the year 1864 to 1871, when the road was built, and I had myself a contract for the construction of two miles in the mountains, for which contract I received from the company the sum of thirteen hundred and fifty (\$1,350.00) dollars. The road commences from the city of Albany, in Linn County, State of Oregon, and runs through Baker, Wasco, Linn, Union, and Grant counties, to the eastern boundary to the State of Oregon, on Snake River, and within eighteen miles of Boise City, Idaho Territory. After leaving Albany the road traverses through the Willamette Valley for a distance of thirty-two miles till it reaches a valley called "Sweet Home" Valley, among the foot-hills of the Cascade Mountains. Over this section of the country the work of the company was confined to the enlarging, improving, and widening the previously existing county road. One bridge was built at a cost of about five hundred dollars. In the next section the road crosses the Cascade Mountains, the distance from Sweet Home Valley to Cache Creek being fifty-one miles. The summit crossed represents a height of three thousand four hundred feet, or thereabouts, above the level of the sea. The road attains this height by a succession of grades following generally the course of the Santiam River. The country is exceedingly rocky, and covered with heavy timber; the construction of these upward grades being a matter of grave difficulty and very great cost. A number of large rock and rocky cliffs had to be removed by blasting or cut through, and a great amount of fallen timber had to be got rid of, and many living trees, of from five to seven feet in diameter, had to be grubbed up in order to provide space for the road bed. Amongst others a seven-mile hill had to be surmounted by a succession of grades running nearly the entire length, and Sand Mountain, for a distance of nearly five miles, had also to be graded. Before reaching Sand Mountain two miles of lava bed had to be crossed, involving an enormous amount of expensive work in filling up deep cavities and breaking down projections with sledge hammers. After surmounting Sand Mountain the eastward downward descent was reached, passing through twenty miles of pine-timber country, more or less thick. To construct the road through this country numberless pine trees had to be grubbed up by the roots. In reaching this distance not less than forty-six bridges, great and small, were constructed by the company. Many of these bridges still remain standing, but others were destroyed by flood or fire, and fords were substituted as being more convenient and less liable to accident. The next section of road is fifteen miles in length, and finishes at Camp Polk, Wasco

County, Oregon. This section involved less labor as the country became more open in character and required only about four bridges. The next section of eighteen miles extends to the Des Chutes River, the first eight miles passing through a very rocky country. The Des Chutes River at that point is about three hundred feet wide. The bridge now across the Des Chutes River has been constructed by the present owners of the road and grant at a very heavy cost. In crossing the next thirteen miles, to where the road strikes Crooked River, an almost continuous lava bed has to be passed, involving a corresponding amount of labor and expense. The road then runs for fourteen miles along the main stream of Crooked River till Prineville, at the mouth of Ochoco Creek, is reached. This section was over level bottom land. On leaving Prineville the country alternates between level bottoms and rocky hills till Camp Harney, Grant County, Oregon, is reached, a distance from Prineville of about one hundred and twenty miles. Only about three streams of any consequence have to be crossed. I have thus described a distance of two hundred and ninety-three miles. My own knowledge of the road from actual experience ceases at a point about seventy-five miles east of Camp Harney, and therefore three hundred and sixty-eight miles east of Albany. In these last seventy-five miles four streams had to be crossed by the road company, which said streams are called "Cow Creek," "Crow Creek," "Crane Creek," and "South Malheur River." All these streams during 6 months of the year are mere brooks, giving only sufficient water for the watering of stock. It was entirely unnecessary to build bridges across either of these streams. In this section of road the general character of the country is level and monotonous, very little grading had to be done, but here and there patches of rock were required to be removed and occasionally a little grading to be done. I further say that the object in taking the road so far south was to avoid the southern spurs of the Blue Mountains, which end on the northern boundary of the "Harney Lake Valley," and thus to attain the opening through which the Malheur River runs to the eastern boundary of the State.

I further say that before this road was built there was not a settler in the whole section of the country between Cache Creek, which is about one hundred miles from Albany, and the eastern boundary of the State, a distance by the road of three hundred and forty-eight miles, except at Camp Harney, where there was a military post. The settlers were waiting with their wagons for the removal of the last log in crossing the Cascade Mountains that they might pour into the open country beyond, and in less than two years from the opening of the road, there were at least two hundred and fifty families had settled on the east of the mountains, along the line of the road entering the country by this wagon road, which was the only means of entry. This settlement related to the land as far as Upper Ochoco; from that point a settlement was very gradually effected little by little, for fear of the Indians, who were apt to resent what they then considered an intrusion into their country. It naturally followed that the travel along the road was mainly confined to that section, terminating eastward at Camp Harney, and when settlement did come it was affected by cattle herders whose ranches were situated many miles apart, and who traversed the whole face of the country with their stock rather than to be confined to the line of any road. I have been informed, and fully believe, that upward of five thousand wagons have passed along the road since its opening, and I know that I have repeatedly passed along the line of this road at all seasons at which it was open for travel by reason of snow in the Cascade Mountains, and I have never failed to meet from ten to thirty loaded wagons on the distance between Sweet Home Valley and Ochoco; the loads carried by these wagons varied from fifteen hundred to three thousand pounds. In traveling over the road in September and October of 1880, in company with Land Agent Prosser, in a carriage drawn by one pair of horses, we averaged about twenty-seven miles a day. On making this trip with Prosser we repeatedly passed loaded wagons carrying loads up to thirty two hundred weight, and Mr. Prosser questioned the drivers on many occasions, and was told by each in my hearing that they were getting along very well and had no difficulty in traveling. I further say that at no time have I experienced any difficulty or trouble in traveling the road after its completion, and have heard of no accident happening on the road save and except of the drowning of one span of mules, which accident happened about five years ago and was owing entirely to the negligence of the driver. Mr. Prosser and myself traveled over the road in a two-seated carriage, with two horses, and returned at the end of twenty-six days, with the team none the worse. During that time we staid at Prineville the greater part of one day, and we then reached a point three hundred and thirty-eight miles east of Albany. We then returned, not from any impossibility of going further, but mainly because the weather had turned very cold, the season being far advanced. In crossing the Cascade Mountains Mr. Prosser commented many times on the heavy grading that had been done, and often spoke of the great quantity of timber that had been moved and grubbed. He, Mr. Prosser, said to me that the company deserved great credit for the enterprise they had shown in constructing so expensive a road to open up a connection between the Willamette Valley and the country east of the Cascade Mountains. Mr. Prosser made no ob-

jection to the road until we neared Camp Harney, which is two hundred and ninety-three miles east of Albany. Mr. Prosser then observed that the company ought to have done more work in keeping the road up in this section. I then informed Mr. Prosser that this was the section of the road over which large droves of from 8,000 to 10,000 cattle were driven over at intervals all the time, and that this fact injured the road a great deal by crowding it with stones; and I also informed him that this same section of road was built with our rifles continually by us for fear of Indians. We, Mr. Prosser and myself, returned by the road to Albany at his desire, instead of turning north to the Dalles either from Canyon City, Grant County, Oregon, or Prineville. When Mr. Prosser had seen the road he said to me that those men who had written on to Washington to say that there was no road had lied; and also that he knew that the complaints had been made by squatters who had settled down without any title on the road company's sections, and were attacking the company on the chance of so getting a title to the land. I further say that the road is used for heavy wagon loads all the time. The stockmen along the eastern section, all the way from Harney and beyond, use the road in coming to Prineville for supplies, and that is one hundred and forty miles east of Albany, and it is a common thing to see them starting out on the road eastwards from Prineville with from 1,500 to 2,000 pounds on their wagons. I further say that I have been informed that Mr. Prosser has stated that the grading on the road did not cost five hundred dollars, and has also stated that five dollars a mile would cover the entire cost of location and construction for the entire distance east of the Cascade Mountains. Such statements are to my knowledge absolutely and unqualifiedly false. I further say that it is equally and notoriously false to say that hardly a trace of the road can be found except sixty miles at the western end. I further say that I know that all assertions made that much or any of this road was built by counties and not by the road company is absolutely false and untrue; and I further say that the entire road was made and opened by the company alone and without assistance of any nature either from counties, except as above stated, or any one else. I further say that it is equally false and untrue that the greater or any portion of the line of road has been from the beginning, or ever has been, the merest pretense or any pretense without bridges or grading, and practically unfit for use except under the most favorable circumstances. I further say, as hereinbefore stated, that the road is traveled at all seasons, and that all necessary bridges have been built and all necessary grading done; and I further say that not only is the road in constant use by the public, but the United States mail-carriers have used and still use different portions of it for many miles in the regular conveyance of the United States mails. I further say that I am informed and believe, and a petition has been signed by eighty-nine settlers on the road, asking for the establishment of a regular mail line over this wagon road from Albany to Camp Harney; and I further say that I am informed and believe that said petition has been regularly forwarded to the authorities at Washington, D. C. I further say that I am not now a stockholder in said company, nor am I in any way interested in its property, having disposed of all interest which I had in the company or its affairs in the year 1872.

JASON WHEELER.

Subscribed and sworn to before me this 26th day of January, A. D., 1881.

[SEAL.]

J. K. WEATHERFORD,

Notary Public for Linn County, State of Oregon.

STATE OF OREGON,
County of Marion, ss :

I, M. B. Humphrey, being first duly sworn, on oath say that I am and for the fourteen years immediately last past have been a resident of Albany, Linn County, Oregon. I further say that on the 13th day of April, A. D., 1871, I was appointed by the governor of the State of Oregon to act in his behalf to view and examine the work done on the line of the Willamette Valley and Cascade Mountain military and wagon-road, in the State of Oregon, and make report to the office of the governor of the State of Oregon of the same, and particularly with reference to all requirements of the act of Congress and of the legislature of the State of Oregon, touching the construction of said road. I further say that on the 18th day of April, 1871, in compliance with said appointment I entered upon the discharge of my duty. I completed the examination of said road on the 28th day of May, 1871, by passing over and along the entire line thereof and carefully examining the work done on said road. I began at a point on said road three hundred and sixty-eight miles east of Albany, at a stake on the line of said road, and ended at Washoe Ferry, on Snake River, which is the eastern boundary of the State of Oregon; that said portion so examined by me is a distance of eighty miles and $58 \frac{3}{100}$ chains from the place of beginning. And I hereby further say that the said wagon road is constructed according to the requirements of the act of Congress and of the legislature of the State of Oregon, with such width, graduation, and bridges as to permit of its regular use as a wagon road. I further say that after starting from Albany I continually met and overtook travelers on the road, and many of whom were drawing with them heavily loaded wagons. I further say that in all I traveled on

said road four hundred and forty-eight miles and 58 & $\frac{39}{100}$ chains east of Albany. I further say that the said road is of great and general benefit to the Willamette Valley, the country east of the Cascade Mountains, and to the State of Oregon generally, and the said road is a good mountain wagon road, and of my own knowledge is being continually used as a wagon road. I further say that all necessary bridges were constructed on said road. I further say that I am not now nor have I ever been a stockholder in said company, nor have I now or ever have I had any interest of any nature in its property or effects.

M. B. HUMPHREY.

Subscribed and sworn to before me this the 26th day of January, A. D. 1881.

[SEAL.]

SETH R. HAMMER.

Notary Public for Oregon.

STATE OF OREGON,

County of Linn, ss :

I, John A. Crawford, being first duly sworn, on oath say I am and for the past twenty-nine years have been a resident of the city of Albany, Linn County, State of Oregon. I further say that I am now the president of the Willamette Valley and Cascade Mountain Military Wagon Road Company. I am not one of the original stockholders of the company. I am one of the parties who purchased in the year 1871. The original articles of incorporation were filed by the company in the year 1864, on the 20th day of May, and I know that a large amount of work was done by the company on the road before the act of Congress granting the lands was passed in 1866. The object of the company was to open up communication between the Willamette Valley and the country east of the Cascade Mountains. I further say that I am acquainted with Land Agent Prosser. Mr. Prosser was introduced to me at Albany, Linn County, Oregon, about the 21st of September, 1880, and he at that time told me he was a government official deputed to go over and examine the company's road, owing to the fact that complaints had been made at the Land Office that there was no road, and that it was a fraud on the government. I asked Mr. Prosser for, and he then showed me, his instructions, which included a letter from a Mr. Barnes, making those statements. He, Mr. Prosser, proposed to buy or hire an Indian pony, stating that there was no road, and he appeared to be greatly amazed to find that a two-horse carriage could go over the road. I then introduced Prosser to Mr. Jason Wheeler, of Albany, and arranged for him to have a two-horse carriage, and Mr. Prosser started with Mr. Wheeler. Before they started Mr. Prosser had a conversation in my presence with Dr. W. F. Alexander, of Albany, who told him that he had weighed on a Fairbanks scale six wagon loads going over the mountains, and that with a single team they took 1,800 and 2,500 pounds, and double teams from 2,500 to 3,500 pounds without any trouble. Mr. Prosser, I am informed, was likewise told by Mr. W. K. Price, of Albany, that his team was but a small one, but that he took 1,800 pounds over the mountains with ease. Messrs. Prosser and Wheeler returned from their trip over the road on the 19th of October, 1880, and I saw Mr. Prosser at his hotel in Albany. He then told me that he was very agreeably disappointed, and further said that the road was the best mountain road he had traveled in this or any country, and also remarked that it must have cost the company an immense amount of money and labor to make such a road through such a rough country. He also said that it would be better for one or two more bridges. In answer to this last remark I told Mr. Prosser that they had been put at the places alluded to by him, but that mountain fires had burned them out, and stopped travel, and that it had been found better for all who traveled the road to grade down to fords instead of rebuilding the bridges, and that it was also better to clear the streams for passage. Mr. Prosser also remarked that between Ochoco and Camp Harney, that is, a distance of from 150 to 293 miles from Albany, where the water in places had washed the dirt from among the rocks it had left it a little rough for wagons, and that it needed some repairs. In answer to this I remarked that I did not think the company was obliged to keep it in repair beyond the part where they took tolls, but that I knew that all the company had received for tolls and more had always been expended on the road. Mr. Prosser also told me that he had seen and talked with many settlers along the road, and that he considered it the greatest enterprise he had seen in all this west country to open up that eastern country to the Willamette Valley. I further say that, except as above stated, Mr. Prosser made no complaint about the road, but on the contrary he expressed to me his admiration of and satisfaction with it. I further say that I traveled the road first in 1871 in company with a party from Albany out to Camp Harney, a distance of 293 miles. The road then was in good fix, and in such a good condition that we were all surprised. We had a four-horse team and a two-horse carriage. We traveled along from 20 to 30 miles a day, and we had no difficulty whatever. We found a good road all the way—bridges wherever necessary—and we had no difficulty in crossing any streams that

were not bridged; and, in fact, in the eastern section, bridges were not necessary or desirable, for the streams are all small and shallow, and if bridges were there a traveler would take the ford in preference, that he might water his stock. I again went over the road in the fall of 1878 for a distance of about 150 miles east of Albany, and I found the road in a great deal better condition than it was in 1871, which was owing to the great amount of labor bestowed thereon by the company, and, with a two-horse team drawing a hack with three persons and their luggage, we averaged about from 35 to 40 miles a day. I further say that I have read the affidavit of Jason Wheeler this day made, and that all facts therein stated concerning the said road, the construction thereof, the bridges, and all matters concerning same are true, so far as that part of the road over which I have traveled is concerned, and by him in said affidavit mentioned. I further say that certain parts of the road between Cache Creek and Ochoco have been diverted by persons who have settled without title on the lands of the company, which diversion was effected without the knowledge or consent of the company. These diversions were by these settlers fencing across the road, thereby compelling the traveler to pass along the hill-sides outside of the inclosures. The Mr. Barnes whose letter Mr. Prosser exhibited to me is one of those squatters on the company's land, and one who has diverted the road. I further say that since the year 1872 upwards of twenty-seven thousand dollars has been expended by the present owners of the road in making repairs and maintaining the road from Albany to the Des Chutes River, which only covers a distance of about one hundred and ten miles from Albany. I further say that one bridge alone which has been put across the Des Chutes River has cost the company over twenty-five hundred dollars. This amount thus expended far exceeded the amount received by the company for all tolls over the road.

JOHN A. CRAWFORD.

Subscribed and sworn to before me this the 26th day of January, A. D. 1881.

[SEAL.]

GEO. E. CHAMBERLAIN,

Notary Public for Oregon.

STATE OF OREGON,
County of Linn, ss:

I, W. F. Alexander, being duly sworn, on oath say that I am, and for the past twenty years have been, a resident of Linn County, Oregon. I further say that during the whole of said time I have been engaged in the practice of medicine in said county, and have also been engaged in the business of stock-raising. I further say that I have traveled the Willamette Valley and Cascade Mountain military wagon-road, hereinafter called the "wagon-road," at all seasons of the year, except when the Cascade Mountains were rendered impassable by snow. My knowledge of the road is confined to a distance of one hundred and fifty-six miles east of Albany, Ore. And I further say that I have read the affidavit of Jason Wheeler, this day made, in respect to said road, and I know all facts therein stated as to said road for the distance of one hundred and fifty-six miles east of Albany to be true in every particular. I further say that during the years 1877 and 1878 I resided at a place along the line of said road, called the Hensley Ranch, the same being about fifty-three miles east of Albany. I kept a feeding stand at that point, providing hay and oats for the use of travelers who encamped on my camping ground there. The condition of the road was frequently discussed by the travelers in my presence and hearing, and the general verdict was that the road was a good mountain wagon-road, and would compare favorably with valley roads, and, further, that the company kept the road in good repair. And I further say that of my own knowledge I know that this was the right verdict. I further say that at all times, while the road was traveled, that the company kept a sufficient force of men along the line of the road for the purpose of making necessary repairs and attending to bridges. In respect to loads of freight hauled across this road, I know of the case of Mr. Hoskins, formerly of Linn County, Oregon, who traveled the road, and over the mountains, which is the worst part of the road, with a load of three thousand five hundred pounds to a four-horse wagon, the load having been weighed at my place. Also the case of Mr. Douthitt, late of Linn County, Oregon, who hauled a wagon loaded, weighing twenty-eight hundred pounds, over the road in the month of November, 1875, from about twelve miles southeast of Lebanon, Linn County, Oregon, to the Ochoco Valley, about sixteen miles above Prineville, Wasco County, Oregon; also of the case of Wayne Claypool, who annually hauled a load of about three thousand pounds from Albany to about ten miles east of Prineville; also of Mr. John Powell, who makes similar trips with as heavy loads. I am not now a stockholder in said wagon-road company, nor have I any interest of any nature in the property or effects of the company.

I further state that I am acquainted with Land Agent Prosser, and that in September of last year, in Albany, Oregon, I had a conversation with him in the presence of

John A. Crawford, during which conversation I informed Mr. Prosser of the fact of my having weighed the wagon and loads going over the mountains, as in this affidavit hereinbefore particularly mentioned.

W. F. ALEXANDER, M. D.

Subscribed and sworn to before me this 26th day of January, 1881.

[SEAL.]

GEO. E. CHAMBERLAIN,
Notary Public for Oregon.

STATE OF OREGON,
County of Linn, ss :

I, W. K. Price, being first duly sworn, on oath say I am, and for the thirty years immediately last past have been, a resident of Linn County, State of Oregon. I further say that I am fully and thoroughly acquainted with the "Willamette Valley and Cascade Mountain military wagon road," hereinafter called the "wagon road," for a distance of two hundred and fifty miles east of Albany, and about one hundred east of Prineville, Wasco County, Oregon. I further say that for the ten years immediately last past, at all seasons, when permitted by the snow on the Cascade Mountains, including early spring and late in autumn, I have traveled the said wagon road carrying with me on wagons loads weighing as much as three thousand pounds. That at no time in traveling of said wagon road have I experienced any difficulty or trouble, and at all times I have met from ten to thirty heavily loaded teams and wagons traveling on said road. That at no time have I heard of any one experiencing any trouble or difficulty in traveling on the road. I have found all streams spanned by bridges wherever the same was necessary, and I further say that at all streams on the road where there are no bridges the company have prepared good, convenient, and safe fords, which I consider preferable to bridges as regards the section of country east of Prineville. I have read the affidavit of Jason Wheeler made this day, and I hereby further say that all facts by him stated as to the country over which the road is built, so far as I have traveled, are true in every particular. I further say that I have traveled the said road with my family from Albany to Prineville, a distance of one hundred and forty miles, in four days, and have made five or six trips in that time. The last forty-five miles of this trip from Camp Polk to Prineville I drive in one day, as is commonly done by others. I further say that in several portions of the road the settlers have fenced up the company's road and have made diversions therefrom without the knowledge or consent of the company so far as I have heard, and that by so doing they have thrown out and lengthened the road. I further say that the construction of this road has been of great and general benefit to both the Willamette Valley, and all counties through which the road passes, as well as to the State of Oregon at large. I further say that I am not, nor have I ever been, a stockholder in said company, nor have I now or have I ever had any interest of any nature in the company's property or its effects. I further say that I have spoken to many persons concerning said wagon road and the company, and at no time have I heard any complaints against either the company or the road, save and except from squatters on the company's land.

W. K. PRICE.

Subscribed and sworn to before me this 25th day of January, A. D. 1881.

[SEAL.]

J. K. WEATHERFORD,
Notary Public for Linn County, State of Oregon.

STATE, CITY, AND COUNTY OF NEW YORK, ss :

Before the undersigned, a notary public of the State, county, and city aforesaid, personally came Alexandre Weill of said city, and on solemn oath says that he is the same person named as grantee in the deeds below named to Alexandre Weill; that for about twenty-five years next before the 15th of April last he resided in San Francisco, California, where he was engaged in business, and that affiant now resides in the city of New York; that after the grant made to the State of Oregon by the act of Congress of 5th of July, 1866, found on page 89 of the 14th volume of the Statutes at Large of the United States, and after the enactment by the legislature of Oregon of the act of 24th Oct., 1866, purporting to carry out the provisions of said act of Congress granting said lands to "The Willamette and Cascade Mountain Wagon-road Company," and after the governor of Oregon had made and delivered, pursuant to the requirements of said act of Congress, the several certificates of the dates respectively of April 11th, 1868, Sept. 11th, 1870, January 9th, 1871, and June 24th, 1871, certifying and taken together, establishing that all and every part of the wagon road provided for by said acts above named had been fully completed according to said laws, to wit, on the 19th day of August, 1871, the said company sold the lands granted to said State and by said State to said company to H. K. W. Clarke for the consideration, as said Clarke informed affiant, of one hundred and sixty thousand six hundred and twenty-eight dollars and eighty nine cents (\$160,628⁸⁹/₁₀₀), and on the same day, by a deed duly recorded, as provided by law, conveyed said land to said Clarke.

Affiant further says that affiant and one T. Edgenton Hogg purchased interests in

said lands from said Clarke, and on the 1st day of September, 1871, the said Clarke conveyed the said lands to one David Cahn in trust for said Clarke, Hogg, and this affiant; and subsequently, to wit, on the 18th day of February, 1879, the said Hogg sold and conveyed to affiant all the interest he held in said lands, for the consideration of twenty-five thousand dollars; and on the 9th day of April, 1879, the widow and heir of the said Clarke, to whom the said interest of said Clarke had then passed by descent, conveyed to affiant the said interest of said Clarke in said lands, of whom affiant had purchased said interest for the consideration of ten thousand dollars in cash, and other considerations, all of which deeds were duly recorded, and by virtue thereof affiant became the full and sole owner of said lands; the entire consideration paid by affiant for said lands and property, covered by said deed, including lawful interest thereon, six per cent., up to this date amounts, as near as affiant can now state, to the sum of three hundred and seventy-five thousand dollars (\$375,000).

Affiant further says that, before he made either of said purchases of interest in said lands, affiant caused the titles thereof to be examined by his attorneys, affiant never having up to this date been in the State of Oregon, and received the information from his said attorneys that the title was good, and that the governor of the said State of Oregon had duly certified to the Secretary of the Interior that every part of said road had been fully completed according to law, and affiant purchased each and all of said interests in absolute good faith, and upon the faith of said certificates and other information showing that said road was complete and said title was good.

Affiant further says that at no time prior to the making by W. F. Prossor the report alleging that said road was not completed as required by law did affiant ever know or hear of, or have any reason to suspect, that said road was not fully completed, or that any one claimed that said road was not fully completed, or that either of said certificates were not fully true, or that there was any defect in said title.

A. WEILL.

Subscribed and sworn to before me this 14th day of February, 1881.

[SEAL.]

EDWIN F. COREY,
Notary Public.

Under the state of facts submitted by the Secretary of the Interior, he calls upon Congress to resume titles to the lands in question, so far at least as the same have not been patented, or provide such other measures of compliance with the terms of the granting act as shall assure the good faith of the beneficiary before authorizing the further patenting of the granted lands.

If it were an admitted or an undisputed fact that the military road in question had not been constructed at all, or that there had been a failure to substantially comply with the conditions of the land grant, and no rights to said land had become vested in subsequent purchasers in good faith, unquestionably the United States might by judicial proceedings or legislative authority resume title to said land.

It is provided in the act of July 5, 1866, that "the land remaining unsold shall revert to the United States."

In the case of *Farnsworth et. al. v. Minnesota and Pacific Railroad Company* (2 Otto, 49), where lands were granted to the Territory of Minnesota under an act of Congress, March 3, 1857, similar in its provisions to the act under discussion, the court held that the forfeiture of title may be declared by legislative act without judicial proceedings to ascertain and determine the failure of the grantee.

In the case of *Schulenberg v. Harriman* (21 Wallace), in passing upon a similar grant, the court says:

If the grant be a public one it must be asserted by judicial proceedings authorized by law, the equivalent of an inquest of office at common law, finding the fact of forfeiture and adjudging the restoration of the estate on that ground, or there must be some legislative assertion of ownership of the property for breach of the condition, such as an act directing the possession and appropriation of the property, or that it be offered for sale or settlement.

In each of the above cases referred to, however, it was conceded that the act granting the land had not been complied with, and the question of innocent purchasers does therein arise.

In this case we are met at the very threshold with a controversy as to the facts. Upon the one side it is represented that there has been an utter failure to construct the road in accordance with the act of Congress granting the land, and that its pretended construction is a gross fraud. On the other hand it is insisted, and sustained by strong evidence, that the road was constructed and completed in good faith and in accordance with the provisions of the grant, and, furthermore, that the entire land grant has been lawfully sold and conveyed for a valuable consideration to, and is now held by, an innocent purchaser.

Upon the facts of this case the question arises, Is it within the legislative powers of Congress to declare a forfeiture of the title to these lands, and to revest the title to them in the United States?

In determining this question it may be proper to inquire what title, if any, passed to the State of Oregon, and from the State of Oregon to the Willamette Valley and Cascade Mountain Wagon Road Company, and from that company down to the present claimant, Weill, and what, if any, are his vested rights in the land?

Upon this question we refer to the following authorities directly in point:

The act of February 9, 1853 (10 Stats., 156), in sections 2, 4, and 5, in every respect, as to the question now being considered, *identical* with that of July 5, 1866, grants to Arkansas and Missouri, in the same words as the act of July 5, 1866 employs, certain alternate sections on each side of a certain railroad. It reserves certain lands disposed of by the United States, and gives lands in lieu. It provides that the lands shall be used only to make the road, and shall be disposed of *only* as the work progresses. It provides that the land shall be disposed of as the legislatures of the States may direct, but only to make the road; and the fifth section regulates the right of sale of the lands only as the work progresses, in the same words as the fourth section of the act of July 5, 1866, changing only quantities.

The question whether this act passed to these States the fee-simple for these lands, without any patents, was submitted to the Attorney-General, J. S. Black, and was by him decided in the affirmative on the 7th June, 1857. (See 9 Opins., 41.) He says:

The act of Congress passed February 9, 1853 (10 Stat. at Large, 156), gives and grants to the States of Missouri and Arkansas certain lands, for the purpose of making a railroad from the mouth of Ohio, by way of Little Rock, to Fulton, on the Texas line, with branches. This act vests the *fee-simple title* in the States to which the lands are given. A legislative grant by Congress does, of itself, *proprio vigore*, pass to the grantee all the estate which the United States had in the subject-matter of the grant, except what is expressly excepted. This principle has often been ruled in the courts, as you will see by reference to the following cases: *United States v. Percheman* (7 Peters, 711); *United States v. Brooks* (10 Howard, 442); *Lessieur v. Price* (12 Howard, 59); *Ladiga v. Roland* (2 Howard, 581); *Godfrey v. Beardley* (2 McLean, 412). The point is firmly settled if the highest judicial authority can settle anything; and even if there had been no decision of it, I should think it too plain, on original principles, to admit of a doubt. When Congress says that a certain portion of the public domain of the United States "is hereby granted" to a State, what need can there be of any further assurance in order to give the State a perfect title in fee?

The definite location of the road will locate the grant upon the proper number of even sections on each side, which the United States shall not previously have parted with the title, and the selection of the governor's agent will determine what sections or parts of sections are to be taken instead of those sold or subject to pre-emption. Then the title to each particular parcel will be as complete as if it had been granted by name, number, or description.

In *Ryan et al. vs. Carter et al.* (3 Otto, 78), the question came up as to the effect of the words, "the titles to town lots," &c., "*shall be and the*

same are hereby confirmed," as these words are found in the act of June 13, 1812 (2 Stats., 748). The plaintiffs insisted that the act of confirmation vested only an equitable title, and that the fee did not pass out of the United States until the issuance of the patent. The defendants contended that the fee passed directly by the operation of the act of Congress. The court held that these words passed a *present title without any patent*. The words of the court are (p. 82):

It does not require the production of proofs before any commission or other tribunal established for that special purpose, but confirms, *proprio vigore*, the rights, titles, and claims to the lands embraced by it; and operates as a grant to all intents and purposes. Repeated decisions of this court have declared that such a statute passes the title of the United States as effectually as if it contained, in terms, a grant *de novo*, and that a grant may be made by a law as well as by a patent pursuant to a law.

In *Schulenburg vs. Harriman* (21 Wall., 44), the question came up, under a statute similar to that of July 5, 1866, whether Wisconsin took an immediate and vested title in the lands granted to that State by the act of Congress of June 3, 1856 (11 Stats., 20), by the words, "that there be and hereby is granted to the State of Wisconsin," &c. In that case it was indispensable that the title to the lands should be found to have passed by the operation of said words to the State, in order that the title to the timber, which was the subject of the action, should have belonged to the State, as the court found it did.

In deciding that the title *did* pass to the State, though no part of the road had been constructed, and the time fixed by the act within which it must be completed had expired, the court says (p. 62):

Numerous other decisions might be cited to the same purport. They establish the conclusion that *unless there are other clauses in a statute restraining the operation of words of present grant*, these must be taken in their natural sense to import an *immediate transfer of title*, although subsequent proceedings may be required to give precision to that title and attach it to specific tracts. No individual can call in question the validity of the proceedings by which precision is thus given to the title where the United States is satisfied. * * * A legislative grant operates as a law, as well as a transfer of property, and has such force as the legislative intent requires.

In support of the same principle see *Leavenworth and Galveston Railroad Company vs. United States* (2 Otto, 733); *Missouri and Kansas Pacific Railroad vs. Kansas Pacific Railroad Company* (7 Otto, 491).

From the authorities cited we must conclude that by the act of July 5, 1866, the legal title to these lands vested in the State of Oregon at the date of the act.

The next inquiry is, Were these lands duly and legally sold by the State of Oregon, and, if so, by such sale was a valid title vested in the purchaser?

The second section of the act of July 5, 1866, provides:

That the said lands hereby granted to said State shall be disposed of by the legislature thereof for the purposes aforesaid, and for no other.

The fourth section of the same act provides:

That the lands hereby granted to said State shall be disposed of only in the following manner, that is to say, that when ten miles of said road shall be completed, a quantity of land not exceeding thirty sections for said road may be sold coterminous to said completed portion of said road; and when the governor of said State shall certify to the Secretary of the Interior that any ten continuous miles of said road are completed, then another quantity of land hereby granted, not to exceed thirty sections, may be sold, coterminous to said completed portion of said road, and so from time to time until said road is completed.

By the act October 24, 1866, of the State of Oregon, these lands were granted to the Willamette Valley and Cascade Mountain Wagon Road Company, subject to the provisions of the act of Congress granting the same to said State.

In the act of Congress of June 18, 1874, it is provided :

That in all cases where the roads in aid of the construction of which said lauds were granted are shown by the certificate of the governor of the State of Oregon, as in said act provided, to have been constructed and completed patents for said lands shall issue in due form to the State of Oregon as fast as the same shall, under said grants, be selected and certified, unless the State of Oregon shall, by public act, have transferred its interests in said lands to any corporation or corporations, in which which case the patents shall issue from the General Land Office to such corporation or corporations.

As will appear from the letter of the Commissioner and of the Secretary of the Interior hereinbefore set forth, the governor of Oregon did duly certify to the construction and completion of the road in accordance with the act of Congress, and the lands were duly selected.

Furthermore, the governor of Oregon, under his hand and seal of State, attested by the secretary of the State of Oregon, on the 2d of October, 1871, certifies that said company, in pursuance of the grant by Congress, had constructed said road ; that the same—

Has been duly and formally accepted by the Government of the United States and by the State of Oregon, and in the manner by said acts of donation and grant prescribed, and the lands along the line of said road, to the extent of eight hundred and sixty thousand acres, have under said donation and grant passed to and become the absolute property of said Willamette Valley and Cascade Mountain Wagon Road Company, and are subject to said company's disposition.

The original and amended act of Congress contemplated and authorized a sale of the lands thereby granted, leaving the decision of a performance of the prerequisites to a sale to the governor of Oregon, and the right to sell, or when a sale could be made, to depend on the governor's certificate that the road had been constructed and completed.

It appears that all of the preliminaries and prerequisites to a sale seem to have been regarded as having been complied with, and that the title to the lands had passed to the State of Oregon by the Interior Department as late as October 2, 1879, about six weeks after the conveyance to the present claimant Weill, when the then Acting Commissioner of the General Land Office wrote Elisha Barnes, who had complained of the failure to construct the road, as follows :

In reply I have to state that under date of June 24, 1871, the governor of Oregon formally certified to the completion of said road in the manner prescribed by the granting act of July 5, 1866. Upon that certificate the lands have been conveyed to the State ; and it is not within the power of this department to inquire into the regularity of the governor's act.

In reviewing the cases of *Frisbie v. Whiting* (9 Wall., 187) and *Yosemite Valley* (15 *id.*, 77), the court, in 1 Otto, 338, says :

That the power of regulation and disposition conferred upon Congress by the Constitution only ceased when all the preliminary acts prescribed by law for the acquisition of the title, including the payment of the price of the land, had been performed by the settler. When these prerequisites were complied with, the settler, for the first time, acquired a vested interest in the premises, of which he could not be subsequently deprived. He was then entitled to a certificate of entry from the local land officers, and ultimately to a patent of the United States.

In the case of *Wirth v. Bronson* (8 Otto, 121), the court says :

The rule is well settled by a long course of decisions, that when public lands have been surveyed and placed in the market, or otherwise opened to private acquisition, a person who complies with all the requisites necessary to entitle him to a patent in a particular lot or tract is to be regarded as the equitable owner thereof, and the land is no longer open to location. The public faith has become pledged to him, and any subsequent grant of the same land to another party is void, unless the first location or entry be vacated and set aside.

The United States having clothed the governor of Oregon with the authority to decide and certify to the fact of the construction and com-

pletion of the road, and authorized the land to be sold upon such certificate, can it go behind his acts so far as to destroy or take away the vested rights of an innocent purchaser? On the contrary, is not the government estopped by the acts of its constituted agent?

In answer, we refer to the case of Reichart *vs.* Felps (6 Wallace, 160).

On the 20th June, 1788, Congress enacted that from any general sale of lands in this region there should be a reserve of so much land as should satisfy all the just claims of the ancient settlers; that they should be confirmed in the possession of such lands as they may have had at the beginning of the Revolution; that measures be immediately taken for confirming them in their possessions and titles, and that the governor of the Northwestern Territory be instructed to examine the titles and possessions of the settlers, as above described, in order to determine what quantity of land they may severally claim, which shall be laid off for them at their own expense.

Under this authority Governor St. Clair issued a document, somewhat in the form of a land patent, to one Jarrot, confirming to him in fee a tract described. The land was regularly surveyed. February 12, 1812, Congress passed an act authorizing a board of commissioners to revise and re-examine the confirmation made by the governor. Upon their report the Jarrot claim was rejected by the proper officers of the government, and the land previously confirmed to Jarrot was sold at public sale to Reichart, and two patents, one in 1838 and one in 1853, were issued to Reichart, which were held to be void, and the Jarrot title was confirmed. The court held that Congress had no power to organize a board of revision to nullify titles confirmed many years before by the authorized agent of the government.

In United States *vs.* Speed (8 Wall., 83), the principle here involved came before the Supreme Court in a case where the government officers had decided, under the *implied* (and not as in the case of Governor Grover, under the act of July 5, 1866, *an express*) authority given by the act of March 2, 1861 (12 Stats., 220), that an exigency existed which dispensed with advertising for government supplies. In holding that said decision was *final* and *conclusive*, no odds how erroneous, the court says (p. 83):

It is too well settled to admit of dispute at this day, that where there is a discretion conferred on an officer or board of officers, and a contract is made, in which they have exercised that discretion, the validity of the contract cannot be made to depend on the degree of wisdom or skill which may have accompanied its exercise.

And to this the court cites *R. R. vs. Stimpson* (14 Pet., 448), *Martin vs. Mott* (12 Wht., 19), *Royal British Bk. vs. Turquand* (6 Elles & Blackburn, 327), *Maclae vs. Sutherland* (25 Eng. L. & Eq., 114), *Ross vs. Reed* (1 Wheat., 482).

In the sinking-fund case (9 Otto, 718), Chief Justice Waite says:

The United States cannot, any more than a State, interfere with private rights, except for legitimate governmental purposes. They are not included within the constitutional prohibition, which prevents States from passing laws impairing the obligation of contracts, but equally with the States they are prohibited from depriving persons or corporations of property without due process of law.

Using the language of Justice Miller in the case of *Moore vs. Robbins* (6 Otto, 533), we say:

If fraud, mistake, error, or wrong has been done, the courts of justice present the only remedy. These courts are open to the United States to sue for the correction of the deed or reconveyance of the land as individuals; and if the government is the party injured, this is the proper course.

In the case quoted from, a patent had issued, but we believe the principle decided applicable to the case under consideration, patents having issued for over one hundred thousand acres of the land, and the equitable, if not the legal, title having passed to a third party who occupies

the position of an innocent purchaser, and all the forms of law to warrant the issuance of patents for the entire grant having been complied with.

Your committee do not feel called upon to investigate the disputed question of fraud arising from the *ex-parte* testimony submitted, or warranted in expressing an opinion in regard to the same, but believe that to be a matter within the province of the judicial and not of the legislative department of the government.

After careful consideration, your committee conclude—

1st. That the act of Congress approved July 5, 1866, vested a present title to the land in question in the State of Oregon.

2d. That by the act of the legislature, and the acts of the governor of Oregon, the title to said land was vested in the Willamette Valley and Cascade Mountain Wagon-Road Company.

3d. That by the deed of said company to Clarke and the subsequent deeds from Clarke and others the title to said land is now lawfully vested in the present claimant, Alex. Weill.

4th. That said title cannot be forfeited or annulled and reinvested in the United States excepting by a judicial proceeding, and that the same has become a vested right which Congress cannot impair or take away.

Wherefore your committee recommend no legislation by Congress in regard to the matter of the said land grant submitted by the Secretary of the Interior for their consideration, and ask to be discharged from further consideration of the same.

Affidavit of M. V. Brown.

STATE OF OREGON, *County of Linn, ss :*

I, M. V. BROWN, being first duly sworn, on oath say that I am, and for the past fifteen years have been, a resident of Albany, Linn County, Oregon, and for the whole of said time I have published a newspaper called the State Rights Democrat, in Albany, aforesaid. I further say that I am acquainted with and have traveled the Willamette Valley and Cascade Mountain Military Wagon-Road for a distance of at least two hundred miles east of Albany. I traveled this distance in the year 1878, in command of State troops, during the Indian outbreak in Eastern Oregon. My command numbered seventy-five men; we had with us two heavily loaded transportation wagons, one drawn by 4-mule team and one by a single span of mules. I was at that time and am now brigadier-general of the Oregon State militia, and the said wagons were loaded by my then quartermaster, W. K. Price, of Albany. We had no trouble whatever in traveling said road either with said wagons or on foot, and during the march we traveled as much as thirty-five miles a day over the mountain road, the teams at all times keeping up with the command. We, during our march, met a great number of loaded wagons traveling on this road, driven by the settlers in the country. These wagons contained at times all the families and household effects of the settlers, who were escaping from the Indians, and this road was the only means of exit and escape which was open to them. The road is an excellent one, and is the best mountain road I have traveled in the State, having traveled others. I have traveled the road over the Cascade Mountains in wagons, buggies, and hacks, and am fully acquainted with its character and its facility for traveling, and have never experienced any trouble whatever in traveling the road or any part thereof. I always found the road in good condition, and all necessary bridges built, and proper and convenient fords graded. I have never heard of any accident on the road. I further say that the traveling public of this country always speak highly of this road, and it is generally regarded as a good and great benefit to the country.

I further say that said road is of great and general benefit to the Willamette Valley, to Eastern Oregon, and to this State generally.

I further say that I have never held any stock in said company, nor have I ever had any interest in its property, nor have I ever been in the employ of said company.

M. V. BROWN.

Subscribed and sworn to before me this the 7th day of February, A. D. 1881.

[SEAL.]

CHAS. H. HEWITT,
Notary Public.

*Affidavit of J. J. Finlayson.*STATE OF OREGON, *County of Linn :*

I, J. J. Finlayson, being first duly sworn, on oath say I am, and for the thirty years last past have been, a resident of Linn County, State of Oregon. I further say that I am acquainted with the Willamette Valley and Cascade Mountain Military Wagon-Road for the entire distance from Albany, Linn County, State of Oregon, to the eastern boundary of the said State. I have been traveling said road as often as two or three times every year for the last ten years, traveling at times only part of the way. I have often met travelers on the road with wagons loaded with loads weighing all the way from one thousand to thirty-five hundred pounds, and I know that at any time during the summer a team of four horses can easily haul a load of thirty-five hundred pounds over the mountainous part of the road, which is the most difficult part of the road. I further say that I have hauled over Seven-Mile Mountain, which is the highest peak crossed, and is seven miles high,* a load of five passengers and their baggage and camping utensils and two or three weeks' provisions in two hours and thirty minutes, and only stopped twice, which was to water my horses. I further say that at the time just alluded to I counted seven wagons that passed me on the mountain going down. Each wagon was coming from Ochoco, Wasco County, Oregon, and each was loaded with a heavy load of wood. I spoke to some of the drivers, and they informed me that they had had no trouble whatever in traveling. I have traveled said road for the whole distance of four hundred and forty-eight miles (448), and experienced no trouble whatever in traveling. I continually met loaded teams and wagons, and always heard them speak in high terms of the road. I further say that all along the line of the road I found all necessary bridges built and all necessary fords made. I have often seen the company's men employed in removing large rocks from fords which had fallen in during the winter, and also in cleaning out the road where there had been a slide, and in disposing of and carrying away timber that had fallen across the road. I have always found the road open and in good condition, and always have met plenty of men working on the road.

The road is built through a very mountainous country for about one hundred and twenty-five miles, having here and there lava beds. The amount of grading done alone must have cost the company an immense amount of money. The road was cut through several dense forests, and an immense amount of grubbing had to be done. After passing through the first one hundred and twenty-five miles, the road is through a rolling, hilly country, through which I have always passed without trouble, and have always found the road in good condition, and have traveled through that portion of the road with a wagon load of one thousand pounds, with two horses, at the rate of forty miles a day.

I further say that when I went through on this road to the eastern boundary of the State, I found there all the original stakes driven by the company on the line of the road. After leaving Camp Harney and going eastward, the country is very thinly settled, and for miles there is no settlement whatever.

I further say I have read Colonel Prosser's communications in the Oregonian, and also what is said to be his report; and I further say that any assertion made that there is no road is unqualifiedly false. I further say that what Colonel Prosser says in respect to bridges on the line of road is not true.

I also say that I regard it as a good thing that bridges are not built across the places where fords are constructed, as all travelers would take the ford in preference to the bridge. And I again say that all necessary and convenient bridges have been built.

The road, I further say, is a very good mountain wagon road, and I regard it, and it is generally regarded by all, as a great benefit to the Willamette Valley, to Eastern Oregon, and to the whole State. I further say that I have traveled nearly every mountain road in this State, and I say that the Willamette Valley and Cascade Mountain Military Wagon Road is the best road I traveled in the State.

I further say that I have never heard of or seen any accident on this road.

I further say that I am not, nor have I ever been, a stockholder in said company, nor have I ever had or have I now any interest in its property, nor have I ever been in the employ of said company.

I further say that I know of thousands of cattle and sheep being driven across this road, and that if this road had not been built there would have been no means of driving the said cattle or sheep either to or from Eastern Oregon.

I further say that I know that no person could have written or spoken of the road, as Colonel Prosser has, after having traveled it, without having a calculation to injure the company, as what I have read in respect to the road, written by Prosser, is far from being true.

J. J. FINLAYSON.

Subscribed and sworn to before me this 8th February, A. D. 1881. Witness my hand and notarial seal.

[SEAL.]

J. W. BALDWIN,
Notary Public for Oregon.

*A distance of seven miles to reach the top.

*Affidavit of Charles Barnes.*STATE OF OREGON, *County of Linn, ss :*

I, Charles Barnes, being first duly sworn, on oath say that I am, and for the past twenty-eight years have been, a resident of Linn County, Oregon. I further say that I am acquainted with the Willamette Valley and Cascade Mountain Military Wagon Road for a distance of about two hundred miles east of Albany, Linn County, Oregon. I further say that I traveled said road in the year 1878 for the whole of said distance, and that I had with me three wagons, one drawn by a four-mule team, and two by a single span. I further say that I carried as a load in one wagon between twenty-six and twenty-eight hundred pounds, and in another about twenty-one hundred pounds. I further say that I had no difficulty whatever in traveling said road or any part thereof. I further say that said road is a good mountain wagon-road. I further say that when I left Albany I expected to be obliged to double teams in order to cross the mountains, but, owing to the good grading done on the road, it was unnecessary, and I crossed without any difficulty whatever. I further say that I found all necessary bridges built and all proper and convenient fords made.

I further say that I made the said distance in four days and one-half.

CHARLES BARNES.

Subscribed and sworn to before me this 8th day of February, A. D. 1881.

Witness my hand and notarial seal.

[SEAL.]

J. W. BALDWIN,
Notary Public for Oregon.*Affidavit of J. H. Foster.*STATE OF OREGON, *County of Linn, ss :*

I, J. H. Foster, being first duly sworn, on oath, say that I am, and for the past twenty-nine years have been, a resident of Albany, Linn County, Oregon. I further say that in the year 1866 I was the president of the Willamette Valley and Cascade Mountain Military Wagon Road Company. I further say that during said time the said road was being constructed, and that during the said year 1866 I traveled said road for a distance of over one hundred miles east of Albany to the Des Chutes River, in Wasco County, Oregon. I further say that a great amount of grading and grubbing was done by said company at an immense cost. I further say that said wagon-road at said time was a good mountain wagon-road. I also say that I am informed, and I believe, that since said time a great amount of work has been done on said road, including the building of bridges, fords, &c. I further say that I traveled said road at said time with a two-horse team carrying a load weighing about sixteen hundred pounds; that no difficulty whatever was experienced either in traveling over the mountains or crossing the streams, or in any way whatever.

I further say that said road is, in my opinion, of great benefit to the Willamette Valley, Eastern Oregon, and to the State generally.

J. H. FOSTER.

Subscribed and sworn to before me this the 5th day of February, A. D. 1881.

[SEAL.]

J. W. BALDWIN,
Notary Public, Albany, Linn Co., Oregon.*Affidavit of J. W. Gilliland.*STATE OF OREGON, *County of Multnomah, ss :*

I, John W. Gilliland, being first duly sworn, on oath say that I am, and for the past twenty-eight years have been, a resident of Sweet Home, Linn County, State of Oregon. I further say that I am acquainted with the Willamette Valley and Cascade Mountain Military Wagon Road Company, and I am and have been in its employ ever since its organization. I am the keeper of the toll-gate at Sweet Home, Linn County, Oregon, and also attend to the road for a distance of ninety-one miles east of Albany, Linn County, Oregon. This part of the road is through the worst part of the whole road, and consists in passing through a very heavily-timbered, rocky, and mountainous country. For the distance of thirty-one miles east of Sweet Home the road is almost one continual road of grading. It is necessary to keep men on the lookout on this portion of the road at all times, and beyond said distance to Fish Lake at least one-third of the road is one of grading. In building and constructing the road through this portion of the country, the company were obliged to do about fifty miles of difficult grading; also were required to do a great amount of blasting; also were obliged to cut through a number of dense forests, and to do a vast amount of grubbing, and in a distance of two miles I took out in one year over two hundred large stumps; and I have so worked on the road that for the whole distance in my charge

there is scarcely a stump to be seen, and there is not a single stump in the road that can in any way hinder or delay travel. In the spring and fall of each year I, together with a gang of from four to eight men, travel over the portion of the road in my charge, and repair, take care of, and improve the road, constantly removing large rocks and timber that fall across the road in the winter, and always look after and clean up the grades; and sometimes as early in the year as January, I have started with a gang of men to clean up and prepare the road for travel, and I have never failed to have the road all cleaned up and ready for travel before the snow on the mountains would admit of travel. All necessary and convenient bridges are built on my portion of the road, and in some places unnecessary bridges are built, and travelers take the fords, the preference. I further say that there is not a county road in this State that runs through hills that is as good a road, or that is kept in as good repair as that portion of the mountain road over which I have control, and I further say that such is the general opinion of all travelers on this road. There has been little or no complaint to me about the road, and all the complaints that I know of having been made were trivial, and I always hastened to amend any trouble, as such were my orders from the company. The only accident that have I ever heard of happening on the road was the drowning of two mules in the Santiane River, about six years ago, and it happened through the great carelessness of the driver. The company, however, paid the owner the price of the mules, which was three hundred dollars. I further say that the company have established four excellent fords on the Santiane River, which is a small stream; and I should regard a bridge across this river as superfluous, and a bridge constructed there would be burnt away nearly every year or two. I further say that the absence of a bridge on this river in no way whatever retards travel. I further say that during the spring of last year teams and wagons passed over the road before it was entirely cleared of fallen timber, which was owing to the fact that the timber was under the snow, and that the snow did not disappear sufficient to either see or remove this fallen timber, which was buried under it. I further say that since the completion of said road myself and others have done fully as much grading on the road as was done to complete the road in the first place. I further say that I am constantly employed by the company to attend to the road, to keep it in good condition, and to open it up as early in the spring as possible, and to accomplish these purposes the company have never limited me as to expenses and the number of men to employ. I further say that one driver told me that he hauled over the road three wagon loads of freight, weighing each four thousand pounds. I further say that, on an average, at least nine hundred wagons pass over the road, each carrying loads weighing from one hundred to thirty-five hundred pounds—the average load carried being between fifteen hundred and twenty-five hundred pounds. I further say that the amounts expended by the company in repairs, &c., on the road, as a rule exceed what is taken in by them for tolls. I further say that during one year about four thousand head of cattle was driven over the road.

As a rule, I further say that I have spoken with and to almost every one traveling the road, and the general opinion is that the entire road is a first-class mountain road. I further say that in two years over ten thousand head of sheep was driven over the road; also, a number of horses are yearly driven over this road to Eastern Oregon.

J. W. GILLILAND.

Subscribed and sworn to before me this the 10th day of February, A. D. 1882.

[SEAL.]

CHARLES F. HYDE,

Notary Public in and for Oregon.

Affidavit of James A. Warner.

STATE OF OREGON, *County of Linn:*

I, James A. Warner, being first duly sworn, on oath say that I am, and for the past 17 years have been, a resident of Linn County, Oregon. I further say that I am a surveyor by profession. I further say that in the year 1864 I was employed by the Willamette Valley and Cascade Mountain Military Wagon-Road Company to survey the line over which they proposed to construct their road over the Cascade Mountains, through for a distance of 368 miles. During 1864, I surveyed the line from Albany to the Des Chutes River, Wasco County, Oregon, which was through a very rough, mountainous country for a distance of 80 miles. In surveying, I found the proposed line very rocky and some lava beds, one about 1 mile and half in length; also, the whole or nearly the whole line of the road for the 80 miles first surveyed was covered with heavy timber. The mountains to be crossed on the line of the road were very high and steep. There were also a number of streams to be crossed by bridging and grading of fords. Subsequent to 1864, I surveyed the rest of the proposed line to the headwaters of the Malheur River, Grant County, Oregon, which is a distance of 376 miles east of Albany. A large portion of the proposed line of road from the Des Chutes River was over a rolling, hilly country, in some places rocky and some lava country to

cross. I received from the company for this survey nearly \$1,000, which only included my services; all other expenses were paid by the company. I do not know the amount. I have traveled over the road since its completion, from Albany for a distance of 290 miles. We had a wagon with us, and carried in the wagon a large load, which consisted of provisions, tools, and general outfit for 21 men, who were working on the road. I further say that the said road for said distance is a good mountain wagon-road, and that all the necessary bridges were constructed, all necessary fords made, and all necessary grading done. I further say that it must have cost the company a large amount of money to remove obstructions and to build the road.

JAMES H. WARNER.

Subscribed and sworn to before me this the 7th day of February, A. D. 1881.

[SEAL.]

D. R. N. BLACKBURN,

Notary Public for the State of Oregon.

Affidavit of C. H. Stewart.

STATE OF OREGON, *County of Linn, ss :*

I, C. H. Stewart, being first sworn, on oath say that I am, and ever since the year 1865 have been, a resident of Linn County, State of Oregon. I further say that I am acquainted with the Willamette Valley and Cascade Mountain Military Wagon-Road for a distance of 190 miles east of Albany, Oregon. I have traveled the whole of said distance but once, but have traveled part thereof some six or eight times. I always, with one exception, traveled with a heavy loaded wagon, drawn by two horses. I further say that have never had any trouble whatever in traveling said road, and I always met a number of heavily loaded wagons traveling both east and west on the road. I regard the road, and the same is generally regarded, as a splendid mountain wagon-road. On the east of Prineville the road has been diverted from at several places, which was occasioned by the fact that squatters on the road company's section had attempted to, and in a number of places did, fence in the road. We had no trouble whatever in traveling as early in the year 1877 as the latter part of April. I always found all necessary bridges built, and all necessary and convenient fords made. I further say that there is no bridge on the road across the Santiane River, in Linn County, Oregon, but good fords are constructed there, and no bridge is needed, and no trouble or delay is experienced by high water in this river, as it never remains above its natural bed for over two days in extreme weather. I have always found the road in good condition. The said road, I further say, is built through a mountainous, rocky country, and an immense amount of grading has been done; also, great work has been accomplished in the way of cutting through heavy forests, grubbing, and in removing large rocks and boulders. I further say that the said road is of great benefit to the whole State of Oregon, and that before the road was built there was no settlement in the section of country through which the road runs, and that the same is the cause of the now thickly increasing settlement in that section of the country. I further say that I never have been, nor am I now, a stockholder in said company, nor have I any interest in its property, nor have I ever been in the company's employ.

C. H. STEWART.

Subscribed and sworn to before me this the 9th day of February, A. D. 1881.

[SEAL.]

J. K. WEATHERFORD,

Notary Public for Oregon.

Affidavit of John A. Millard.

STATE OF OREGON, *County of Linn, ss :*

I, John A. Millard, being first duly sworn, on oath say I am, and for the past fifteen years have been, a resident of Linn County, State of Oregon.

I am acquainted with the Willamette Valley and Cascade Mountain Military Wagon-Road for a distance of two hundred miles east of Albany, Oregon.

I further say that the said wagon-road is one that I regard as a good road. In traveling over said road I often met wagons heavily loaded, carrying from one thousand to fifteen hundred pounds weight, in my judgment. These wagons appeared to be traveling along very easily and without trouble. I further say that I found all necessary bridges built and all necessary grading done.

I further say that the work done along the mountainous portion of the road appeared to have been very great, and in my judgment must have cost the company a large amount of money. I further say that all work which appeared necessary east of the mountains appeared to have been attended to and done on the road.

I further say that the said wagon-road is of great benefit to the State of Oregon, and particularly to the Willamette Valley and Eastern Oregon.

I further say that I have heard the road spoken about by a number of persons, and all whom I have heard, with the exception of parties who have had some trouble with the company, have regarded the road as a good one.

I further say that I am not, nor have I ever been, a stockholder in said company; nor have I now, nor have I ever had, any interests in the property of the company. And I further say that I am not, nor have I ever been, in the employ of the company.

JOHN A. MILLARD.

Subscribed and sworn to before me this 5th day of February, A. D. 1881.

[SEAL.]

J. W. BALDWIN,

Notary Public, Linn County, Oregon.

Affidavit of David Froman.

STATE OF OREGON, *County of Linn, ss:*

I, David Froman, being first duly sworn, on oath say that I am, and for the past twenty-nine years have been, a resident of Linn County, State of Oregon. I further say that I am acquainted with the Willamette Valley and Cascade Mountain Military Wagon-Road for a distance of one hundred and sixty miles east of Albany, Linn County, Oregon. I further say that I have traveled said road for said distance often. I always traveled said road with a wagon drawn by two horses, and always had more or less of a load. I further say that said road is a good mountain road, and is so regarded by the public generally. In traveling said road I always met wagons and teams heavily loaded, coming and going. I never experienced any trouble or difficulty whatever in traveling said road. I always found all necessary bridges constructed and all necessary fords made; and considering the country through which the road is made I always have and still do consider the road a remarkably good one. An immense amount of work has been done on the road in the way of grading high mountains, removing large rocks, cutting away large trees, and an immense amount of grubbing. I have always found the road kept up and in good condition.

I further say that the said road is of great and material benefit to the Willamette Valley, to Eastern Oregon, and to the State generally.

I further say that I am not, nor have I ever been, a stockholder in said road company; nor am I now, nor have I ever been, in the company's employ; nor have I had, nor have I now, any interest in the company's property.

I further say that I have traveled two other roads in this State across the Cascade Mountains, and that this road excels all other mountain roads that I have traveled.

DAVID FROMAN.

Subscribed and sworn to before me the 8th day of February, 1881. Witness my hand and notarial seal.

[SEAL.]

J. W. BALDWIN,
Notary Public for Oregon.

Affidavit of John Conner.

STATE OF OREGON, *County of Linn, ss:*

I, John Conner, being first duly sworn, on oath say I am, and for the past twenty-eight years have been, a resident of Linn County, Oregon. I further say that I am, and for the past ten years have been, secretary of the Willamette Valley and Cascade Mountain Military Wagon-Road Company; that during said ten years there has been expended by the said company in repairing and keeping up the wagon-road the sum of \$25,886.19, which said sum has been expended through me.

I further say that I have been engaged in the banking business in Albany, Linn County, Oregon, for the past ten years, and I further say that the wagon-road of said company is of great and material benefit to the Willamette Valley, and Eastern Oregon in particular, and also to the whole State of Oregon. I further say that the company have at all times hands employed in keeping up, repairing, and taking care of said road.

JNO. CONNER.

Subscribed and sworn to before me this 5th day of February, A. D. 1881.

[SEAL.]

GEO. E. CHAMBERLAIN,
Notary Public for Oregon.

Affidavit of James Elkins.

STATE OF OREGON, *County of Linn, ss:*

I, James Elkins, being first duly sworn, on oath say I am, and for the past twenty-five years have been, a resident of Albany and Linn County, State of Oregon. I further say that I was the secretary of the board of directors of the Willamette Valley and Cascade Mountain Military Wagon-Road Company from about the — day of

—, 1869, to about August, 1871. I further say that within my knowledge over \$65,000 was spent in the construction of the road from Albany to the eastern boundary of the State of Oregon, the terminus of the road. This sum so expended was exclusive of the salary of directors. I further say that I have cattle interests in Eastern Oregon near and along the line of this wagon-road, and that my interests are such that I am compelled to be in Eastern Oregon from four to six months of every year; that for the last nine years I have passed at least from four to six months of each year near said road in Eastern Oregon; that in order to reach my place in Eastern Oregon, which is in Grant County, I travel said wagon-road from Albany, Linn County, State of Oregon, to the place of my destination, which is about two hundred miles east of Albany; that I have traveled said road for said distance twice each year for the past six years, and once each year for the preceding three years. I further say that said road is a good mountain wagon-road; that every year I passed over said entire distance with a wagon and load, weighing at least from twelve hundred to fourteen hundred pounds, drawn by one span of horses; that I had no trouble whatever in traveling said entire distance with said wagon and load, and in traveling same I continually met wagons coming and going over the road, some loaded and some going for loads; and in the fall of the year 1879, about October 23, I met one wagon going over the mountains with six horses carrying a load of thirty-five hundred weight. At this time it had rained considerable. I stopped and had a conversation with the driver, and he informed me that, beyond having a balky horse, they had no trouble whatever in traveling with their load. I further say that during the summer of 1880 I hauled in a wagon drawn by four horses about twenty-five hundred pounds from Prineville, Wasco County, Oregon, to Grindstone, Grant County, Oregon, a distance eastward from Prineville on said road of seventy miles.

I further say that this road is constantly used by cattle-dealers and settlers going for supplies to Prineville, between and from Camp Harney, a distance of about one hundred and fifty miles; and I also say that on said road it is a common thing to see cattle-dealers and settlers, on the road between Harney and Prineville, carrying from one thousand to thirty-five hundred pounds. I further say, during the spring and summer months, the road is injured in places by the immense number of cattle that pass over it, and last year, to my knowledge, between eight and ten thousand head of steers and other cattle was driven over the road. This causes, in places, shelly rocks to be thrown on the road and in places injures the grades, but notwithstanding this fact no trouble is experienced in passing over the road and in going around the places injured for the time being; and often severe storms and so-called cloud-bursts injure the road by flooding it, water passing over the road from ravines in immense quantities and throwing gravel across the road, but this is only an occasional trouble and is easily avoided with a wagon by a short turn out of the road around these places, which is always accessible; and owing to these causes the road, in one or two places, at times appears a little rough. I further say that I have never experienced any trouble for want of bridges, and across those streams where there are no bridges good fords have been prepared by the road company; and in most places where no bridges are built, travelers regard it as a convenience in order to water and refresh both horses and droves; and if bridges were built across many of these streams, travelers would prefer to use the fords in crossing for the purpose of watering their stock.

I further say that I regard the road as a great benefit to the whole of the Willamette Valley and Eastern Oregon, as the main outlet from the middle Willamette Valley to the eastern boundary of the State of Oregon. This road is so regarded by all disinterested settlers along the road.

I further say that I am not a stockholder in said company; nor have I now, nor have I had since 1871, any interest whatever in its property.

I further say that, in passing over said road, I have noticed and examined the character of work done by the company, and it consists in great amounts of grading over hills and mountains; also in the removal of large boulders and rocks, and in the grubbing, cutting down, and disposing of immense trees and stumps in the building of bridges and fords. One bridge alone across the Des Chutes River, on this road, is a very good, substantial bridge, and is about three hundred feet long, and must have cost the company between three and four thousand dollars.

JAMES ELKINS.

Subscribed and sworn to before me this 5th day of February, A. D. 1881.

[SEAL.]

J. K. WEATHERFORD,

Notary Public for Oregon.

Affidavit of T. D. Spafford.

STATE OF OREGON, *County of Linn, ss:*

I, T. D. Spafford, being first duly sworn, on oath say that I am, and for the past four years have been, resident of Prineville, Wasco County, State of Oregon. I further say that I am fully acquainted with the Willamette Valley and Cascade Mountain Military Wagon-Road for a distance of from Albany, Linn County, Oregon, to twenty miles east of Prineville. That I have traveled said road for said distance a

number of times with wagons drawn by two horses, carrying loads weighing from twelve to eighteen hundred pounds; that in so traveling said road I continually met teams and wagons on said road carrying loads even greater than those I carried. I further say that said road is a good mountain wagon-road, and I have never experienced any trouble whatever in traveling the same with my loaded wagons, nor did I ever hear of any accidents on said road, or of any one having any trouble in traveling said road. I have found all necessary grading done, and all streams bridged wherever I deemed the same necessary.

I further say that I reside right in Prineville, and for a while was connected with a stable there, and I know that all cattle-men and settlers around that country, and from and beyond Camp Harney, a distance of over one hundred and fifty miles east of Prineville, travel the company's road and come to Prineville for supplies, and carry away with them large wagon-loads, some weighing in my judgment as much as twenty-five hundred pounds. Some of these travelers put up at the stable where I was, and I never heard any of them complain about the road. I further say that said wagon-road I regard, and is generally regarded by all disinterested parties, as a great benefit to all along the line of the road and the surrounding country from Albany, Linn County, Oregon, to the eastern boundary of the State, and also as a great and general benefit to the whole State.

I have noticed the amount of work done on the road, and it consists principally in an immense amount of grading, also in grubbing out immense stumps, cutting through large trees and forests, and removing a large number of large boulders and rocks, and in making all necessary bridges and in building all necessary and good fords. I further say that this road is the road used by almost all persons traveling with wagons, both going east and west from Prineville.

I further say that I have never had, nor have I now, any stock in said company, or any interest whatever in its property, nor am I in any way employed by said company. I further say that I am acquainted with Elisha Barnes, and I further say that it is generally supposed that he is opposed to the road because he is a squatter on the road land.

I further say that about fifty-five miles of said road, from Camp Polk to Upper Ochoco, is continually used three times each week by carriers carrying the United States mail.

T. D. SPAFFORD.

Subscribed and sworn to before me this 5th day of February, A. D. 1881. Witness my hand and notarial seal.

[SEAL.]

J. W. BALDWIN,
Notary Public, Linn County, Oregon.

Affidavit of John W. Althouse.

STATE OF OREGON, County of Linn :

I, John W. Althouse, being first duly sworn, on oath say I now am, and for the past thirty years, off and on, and for the last fifteen years steadily, a resident of Linn County, State of Oregon.

I further say that I am acquainted with the Willamette Valley and Cascade Mountain Military Wagon-Road for a distance of about three hundred miles east of Albany, Linn County, Oregon. I further say that I have traveled said road a number of times with loaded wagons, carrying with a single team from ten to twelve hundred pounds. I have driven large droves of cattle over said road. I never have had a particle of trouble of any kind in traveling said road, or any part of it. In traveling the said road I met a number of wagons loaded, carrying large loads. I found all necessary grading done, and all necessary bridges built. I further say an immense amount of labor was done on said road in the way of grading, grubbing, removing large rocks and boulders by blasting and otherwise, and in cutting through forests. And, in my judgment, I having worked on roads, it must have cost an immense amount of money to place the road in condition.

I further say that all persons with whom I have conversed concerning the road always expressed their opinion that the road was a good one.

I further say that the said road is a great benefit to the Willamette Valley and to Eastern Oregon, and also to the State of Oregon generally.

I further say that I am not now, nor have I ever been, a stockholder in said company, nor have I ever had any interest in the company's property. I further say that the said wagon-road is a good wagon-road.

JOHN W. ALTHOUSE.

Subscribed and sworn to before me this 5th day of February, A. D. 1881.

[SEAL.]

J. K. WEATHERFORD,
Notary Public.