HEARINGS

HELD BEFORE THE

COMMITTEE ON THE PUBLIC LANDS

OF THE

HOUSE OF REPRESENTATIVES

MAY 18, 20, 21, 23, 24, 1910

ON

H. R. 20683

"TO ABOLISH THE OZARK NATIONAL FOREST"

AND

H. R. 21894

"TO EXCLUDE FROM ARKANSAS NATIONAL FOREST ALL LANDS WITHIN THE COUNTY OF MONTGOMERY AND RESTORE SAME TO PUBLIC DOMAIN"

WASHINGTON
GOVERNMENT PRINTING OFFICE
1910

Also the total cost, as entered in my deposition of December 24, 1908, should have been $36 instead of $42, as I received post-office money order for $6, returned from Camden land office, with letter from the register and receiver, dated January 8, 1908.

As I was unable to file on SE. ¼ SE. ¼ sec. 13, I relinquished my filing on N. ½ NE. ¼, NE. ¼ NW. ¼, sec. 24, T. 3 S., R. 25 W., and such relinquishment was entirely intentional and voluntary on may part. By my endeavor to secure entry on the whole 160 acres and my failure so to do, owing to not being able to enter SE. ¼ SE. ¼, sec. 13, I am at a loss of a considerable expense and a season's work. With my uncle, C. H. Jones, I built 4 miles of road and upon which for a month five men and two teams were employed. The purpose of this road was solely to make the claims of my uncle and myself accessible from the town of Womble.

In my affidavit of December 2, 1909, as published in issue of December 24, 1909, of the Montgomery Times, the improvements referred to were on SE. ¼ SE. ¼ sec 13, upon which I had not been allowed to file, and Mr. Wright's reply referred to the 40 acres, the SE. SE. sec. 13, which I had applied to be examined for listing under the forest homestead act of June 11, 1906, and not to the other three forties which I had already filed upon.

I have read a copy of S. J. Record's (forest supervisor) letter to the editor of the Montgomery Times of January 3, 1910, and it is correct in regard to statements about my entry of N. ½ NE. ¼ NE. ¼ NW. ¼ sec. 24, and my application for SE. ¼ SE. ¼ sec. 13.

ALBERT C. JONES.

Subscribed and sworn to before me this 17th day of February, 1910.

D. D. BRONSON, *Inspector.*

COMMITTEE ON THE PUBLIC LANDS,
Saturday, May 21, 1910.

The committee was called to order at 10.35 a. m., Hon. Frank W. Mondell (chairman) presiding.

The CHAIRMAN. The committee will hear this morning Mr. Potter, of the Forest Service of the Agricultural Department, in regard to the Ozark National Forest.

STATEMENT OF MR. ALBERT F. POTTER, ASSOCIATE FORESTER, DEPARTMENT OF AGRICULTURE.

Mr. POTTER. Mr. Chairman and gentlemen, in summing up the very complete statement by Mr. Floyd, it strikes me that the question of first importance is to determine the true character of the public lands within the Ozark National Forest, as to whether or not if the lands were eliminated from the national forest, or the forest abolished, they would go into the hands of men who would establish and maintain their homes upon them. I want to say right at the start that it is the intention and desire of the Forest Service to encourage the establishment of homes on lands within the national forests which are best suited to agriculture, but we must guard against offering lands containing sufficient timber to encourage its being taken for the timber value rather than the agricultural value, because if that is done the land will be sold to timber speculators instead of being kept by the settlers.

Now, I want to review, first, what the policy was in reference to homestead settlements in the first legislation authorizing the establishment of national forests. The first laws did not allow homestead entry within the forest reservations, and included what was known as the lieu-land provision, in order that settlers within the forests, inasmuch as further homestead settlement was not going to be allowed, might, if they desired to do so, relinquish their land to the Govern-

ment and select homesteads elsewhere. The policy at that time undoubtedly was that these lands would be in a sense reserved from the public, but as time went on experience showed that probably this was not the wisest way to proceed, and consequently in 1905 the lieu land selection clause of the law was repealed. Prior to the repeal of that provision of the act the Forest Service had been very cautious in its recommendations regarding the establishment of reserves, including areas which were largely alienated, because of the fact that it would give the opportunity of exchange for other lands. Unfortunately some of the forests that were created did contain large areas of land which were exchanged and valuable timber lands taken in the place of cut-over lands, and grazing lands located in these national forests at that time. I was in charge of the forest boundary work in California during the season of 1903, and in making our recommendations for the creation of forests there we did not look with favor on anything which contained more than 25 per cent of alienated lands. Under the repeal of the lieu law, however, the condition was changed. There was not then the danger that the land might be surrendered and valuable timber land selected in its place, and consequently the policy changed with reference to the alienated land which would be included within forests, particularly where the land was timbered in character, so that there might be some possibility of its passing into the government ownership, or of the Government being able to acquire it by some method of exchange after it had been cut over. In cases where the alienated land was largely timber land in character the forests created did contain much larger proportions of alienated land, and some of them as high as 70 per cent. I call to mind a portion of the Pend d'Oreille Forest in Idaho, where the proportion of government land is only about 30 per cent. The Shasta and Tahoe forests in California are both about the same, and only about 30 per cent government land. The last two are within the limits of railroad land grants, so that the alternate sections belong to the railroad companies.

We have entered into cooperative agreements in some of these cases with the owners of the private land to protect and care for the land in cooperation with them, they furnishing a certain number of rangers to work under our direction, and we giving them the benefit of our trained men and our advice as to the manner in which they should pursue the work.

Mr. PARSONS. Are those rangers their own, or paid for by them?

Mr. POTTER. Their own rangers. In some cases we have appointed them as forest guards at a salary of $1 a month, a mere nominal salary, in order that they might have the authority to enforce the regulations, but they are practically their men.

Following the repeal of the lieu selection law, Congress passed the act of June 11, 1906, providing for homestead settlement in forest reserves, and that brought about an entire change in the attitude regarding homestead settlement in the national forests. Since that time we have tried to establish regulations which would encourage homestead settlement upon lands that are chiefly valuable for agriculture. We have had a great many requests for the elimination of timber lands in order that they might be taken up for homestead settlement, and I want to read to you a summary of what happened on an area which was eliminated from the Olympic National Forest.

Mr. ROBINSON. Where is that situated?

Mr. POTTER. In the State of Washington. In 1900 and 1901 a total of 705,600 acres was eliminated from the Olympic National Forest Reserve on the grounds that the lands were chiefly valuable for agriculture, that further development of that section of the State would be prevented, and that the financial condition of the county in which the land was located would be greatly injured through loss of taxes from the 705,600 acres eliminated; 26,480 acres of this area reverted to the Government, and was later included in the national forest. Of the remainder the State fortunately secured 152,600 acres, which they are holding until they can dispose of the timber at a fair value.

Mr. PARSONS. Were those timber lands?

Mr. POTTER. Oh, yes; timber lands, but a good portion of them cultivable after the timber is cut off. At the present time these state lands are lying idle. Five hundred and twenty-six thousand five hundred and twenty acres passed from the title of the Government to private owners; of this, 31 individuals and corporations now own 318,640 acres, while 205,080 acres are held by small owners and original locators purely as a timber investment. These lands, amounting to a total of 523,720 acres, are now lying absolutely idle, the only benefit derived from them being the taxes which the owners are required to pay upon them. The largest holdings in private ownership are as follows: Milwaukee Land Company, 81,630 acres; James D. Lacey & Co., 48,370 acres; Edward Bradley, 16,360 acres; James W. Bradley, 16,360 acres; Weyerhauser Timber Company, 15,560 acres.

On timber claims held by 100 settlers the total area under cultivation is only 570 acres, or 5.7 acres to each. That is the average.

Mr. PARSONS. How were those lands taken up and passed into the hands of the timber corporations?

Mr. POTTER. By lieu-land selection, under the timber and stone act, and under the homestead laws principally.

Mr. TAYLOR. How much under the homestead laws?

Mr. POTTER. I could not say, Mr. Taylor, what percentage, but quite a large percentage, I should judge, because there was, as this statement shows, a great many of the original locators who are still holding lands as an investment and not cultivating them.

Now, the elimination of timber lands for homestead entry does not bring settlement of the lands if the timber value of the land is greater than its agricultural value, because where the timber value is the greatest, as soon as the land passes to patent the homestead entryman can sell his place for a much greater price to the timberman than it is worth for agricultural purposes, and consequently the natural thing that happens is that it passes into the hands of timbermen to a very large degree.

The CHAIRMAN. What would you do in a case of that kind, Mr. Potter, where there is a large area of land that is cultivatable and is rich, and therefore, I assume, ought to be cultivated? Would you retain it permanently as a forest in spite of the fact that it was valuable as agricultural land, or would you have the Government cut it and secure return from the timber and then open it to settlement?

Mr. POTTER. That, Mr. Mondell, brings out a very important point. I think we will all agree that the highest possible use of cultivatable

lands is to enable the successful homestead entryman to secure and maintain his home.

The CHAIRMAN. The highest possible use of land that can be cultivated is to cultivate it.

Mr. POTTER. Yes, sure; and to maintain a successful home.

The CHAIRMAN. There is very little land that will produce good crops continuously that any civilized people should not be permitted to have.

Mr. POTTER. But, unfortunately, experience shows us that when we do allow valuable timber land to be taken under homestead entry it does not result in cultivation of the land by homestead settlers, but that the land passes temporarily into the hands of timber speculators.

The CHAIRMAN. Of course you are quoting a case that I know nothing of. I never knew that the department did actually open bodies of very valuable timber land or exclude from the reserves great bodies of very valuable timber land. The complaints that I have had with respect to the department had reference to including in the reserves lands that were not timber lands. But in a country like this, where there is some timber, is not the question to be considered whether or not it ought to be given up permanently to timber or whether it is of such a character that it can be largely cultivated and will be largely cultivated, not next year alone or the year after, but permanently?

Mr. POTTER. I understand; but, on the other hand, in giving it up ought we not to have some assurance that it will be used for the purpose which we contemplate—that it will be actually used for cultivation?

Mr. CRAIG. Isn't that the only way you can attain that end?

Mr. POTTER. If it goes into the hands of the timber speculator and he cuts the timber off and then offers the stump land to the settler, the settler is not any better off than if he got the ordinary open land.

Mr. CRAIG. I have heard of an instance in Alabama where the timber was cut off in Baldwin County by large timber companies, and that land is now worth more for agricultural purposes than it ever would be sold for with the timber on it, and it had good timber on it, too. So it seems to me that in that case the fact that the timber man got hold of it was really an advantage to that part of the State.

Mr. POTTER. Well, in that case, too, if the cleared land was worth more than the timber it would result in the settler keeping the land.

Mr. CRAIG. But nobody thought so at the time. The same argument was made then, that the timber was being taken off the land and that it was absolutely worthless, whereas now great bodies of people have come in there from the North who are running truck farms and other kinds of agricultural development which is making that country very valuable and very rich.

Mr. PARSONS. As to this restoration of the lands in the Olympic National Forest, was that made after the act of 1906?

Mr. POTTER. Oh, no; that was made in 1901. The lands could not be taken within the forest, so they were eliminated on account of the strong protest that was made against retaining the lands in the forest, and the strong demand of the need for homestead settlement. But then, what resulted?

Mr. PARSONS. How did you determine what was chiefly valuable for agriculture and what was not? How much timber, on the average, to the acre did the land have to have in order not to be chiefly valuable for agriculture?

Mr. POTTER. In this particular case they simply cut out the timber lands that were cultivatable without regard to the amount of timber.

Mr. PARSONS. You mean that they were cultivatable after the timber had been cut off?

Mr. POTTER. Yes; that is the idea.

The CHAIRMAN. Without regard to the amount of timber?

Mr. POTTER. Yes, sir. In the Kaniksu National Forest, in the Priest River country of northern Idaho, we have had many complaints that we were not opening cultivatable lands to homestead settlement. We had a careful examination made of the homestead entries which were made prior to the location of the forest under the regular public-land laws, to ascertain what the condition was. I have the report of the supervisor here, and I would like to read a few of the cases to you, taking them as they run.

No. 1. Bessie Pritchard. Character of land, timber; residence, pretense; no cultivation. Abandoned on proof. Timber sold and logged off.

No. 2. J. J. Prater. Character of land, timber. Residence fair, no cultivation. Timber sold and logged off. No cultivation, but residence maintained running road house.

No. 3. W. N. Bleedhorn. Character of land, timber. Residence pretense, no cultivation. Abandoned on proof, and timber sold to lumber company.

No. 4. Peter Kendall. Character of land, timber. Residence pretense, no cultivation. Abandoned on proof, and timber sold to lumber company.

No. 5. Lydia Osterbrink. Character of land, timber. Residence pretense, no cultivation. Abandoned on proof, and timber sold to lumber company.

And so they run. There are about 75 more of cases running like the above. These are homestead entries on timber lands that were made before the creation of the forest, and what resulted? Fully 80 per cent of them were sold to the timber companies.

The CHAIRMAN. You are speaking now of a country containing very valuable timber and heavy timber growth, much heavier than anything in the Arkansas territory.

Mr. ROBINSON. Were you mentioning cases which arose under the Arkansas National Forest, or were you merely giving illustrations?

Mr. POTTER. No, these cases were in Idaho and in Washington, and while you might say the conditions there are entirely different from what they are in Arkansas, yet I am very glad that I happen to have here a copy of the Montgomery Times, published at Mount Ida, in Montgomery County, Ark., which I don't think any one would conclude was favorable to the Forest Service. It contains a scare head on the front page of this issue of Friday, January 14, 1910, to the effect that Chief Forester Pinchot is fired.

The CHAIRMAN. Was that simply as a matter of news or a note rejoicing from their standpoint?

Mr. ROBINSON. It might have been a matter of rejoicing.

Mr. POTTER. In this issue it says that Mount Ida and Montgomery County offer splendid opportunities to the investor. And then it goes on to say [reads]:

Our belief in the building of a railroad to Mount Ida in the near future is strengthened by the fact that the best-informed capitalists of the county have already invested large sums of money in immense tracts of timber lands, comprising thousands of acres. These holdings begin due east of Mount Ida and continue west to the Polk County

line and north to the boundaries of Yell and Scott counties. A few of the companies and the amount of their investments are: The Graham Lumber Company, 30,000 acres; Logan H. Root, 2,700 acres; Fourch River Lumber Company, 4,000 acres; Aztec Land and Cattle Company, about 10,000 acres; Marshall, Fessenden & Co., 5,000 acres; Lester Mill Company, 5,000 acres.

Now, that would indicate that at least a portion of the lands in the Arkansas forests have sufficient timber on them to induce investments of timber companies, and I take it for granted that there would be a danger there the same as there is in these other places, that if land was open to homestead settlement which was of greater value for its timber than for cultivation that there would be the danger of its going into the hands of timber companies rather than being used for bona fide homestead settlement.

Mr. FLOYD. Mr. Chairman, may I ask Mr. Potter a question there?

The CHAIRMAN. Certainly.

Mr. FLOYD. Can you cite an instance in the Ozark National Forest where large areas have been acquired for timber purposes?

Mr. POTTER. No, sir; the only information or data that I have is what I happened to notice in this paper.

Mr. FLOYD. I want to state in that connection that I do not think you will find those conditions in any of the Arkansas forests.

Mr. PARSONS. Where does the Williams Cooperage Company get its lumber?

Mr. FLOYD. I understand that it bought its timber from the settlers; that is, that they made a contract for the timber, leaving the settlers in possession of the land principally. If they bought any large bodies of timber land I have no information to that effect, but I do have information to the effect that they went among the settlers and contracted for the timber on their land, leaving the fee of the land in the settlers. But I will state in connection with the Williams Cooperage Company that, while I mentioned that company, there are dozens of other companies all up and down the line of that railroad in the lumber business.

Mr. PARSONS. Are you referring to a private line of railroad?

Mr. FLOYD. No, sir; the main railroad, the Missouri and North Arkansas. This private railroad referred to simply starts from a point on the main line at Leslie and extends back into the Ozark forest; and if they have ever bought any of the public land or timber off the public lands I have no knowledge of it. But my information is that they went among the settlers and made contracts for the timber on their land, leaving the title in them.

Mr. PARSONS. Can you give us any idea what the difference in assessment or taxation is of the land before the timber is cut off and the land after the timber is cut off?

Mr. FLOYD. I could not answer that question directly, but the assessment on timber lands in that country is very low. The lowest grade of lands for assessment, in my judgment, is of the timber-land value, and usually about $1.25 an acre. The settled land of course is much higher.

Mr. POTTER. Mr. Record has just handed me a letter from Mr. Huey, the acting forest supervisor, in which he says that within the last five years within this region—this is in the Ozark Forest—a large number of homesteads which have been patented have been immediately sold to timber companies, and, notwithstanding the better facilities for shipping, the abandoned farms throughout the

region bear ample testimony to the fact that the land is not desired for fruit growing. Such land is now frequently quoted at a lower price than in former years, and the land from which the timber has been removed is a drug on the market, selling at from $1.50 to $3 an acre.

Mr. FLOYD. That does not show that any large collective bodies of land have been taken.

Mr. POTTER. That is true.

Mr. SMITH. I would like to ask Mr. Floyd a question. As a matter of truth, when they sell the timber to the Cooperage Company do they then grub out the stumps and make farms of the land or do they let it grow up to brush again?

Mr. FLOYD. In that country they let the stump decay and rot out. They cultivate the lands before the stumps are removed or decay.

Mr. SMITH. Do they proceed to cultivate it, or do they let the underbrush come up, make a thicket upon it, and let nature take its course?

Mr. FLOYD. I could not tell you as to that. Of course I have not been over these lands in detail.

Mr. SMITH. That goes to the question as to whether they merely want it as a farm or to cut wood on it.

Mr. FLOYD. There is no question but that they want it for farming. They were in there fifty years before the Williams Cooperage Company and other manufacturing companies ever came into that country. These homesteaders with their land in cultivation have forests of timber, and they contracted the merchantable timber to the cooperage companies, retaining their title. That is an old settled country.

Mr. SMITH. I was wondering whether they then proceeded to bring it under cultivation and make it a farm or not.

Mr. FLOYD. Some of this timber land, of course, could not be cultivated.

Mr. POTTER. Owing to the opposition to the national forest, which was first called to my attention through seeing a copy of the Montgomery Times, and afterwards through letters, upon the request of Senator Davis the Secretary of Agriculture sent Mr. D. D. Bronson, our general inspector, down there to attend a public meeting which was held in Mount Ida on March 5, I believe, and to make a thorough investigation of all complaints which were presented to him at that time, in order that we might find out what the trouble was, and if possible correct it. You have Mr. Bronson's report before you in pamphlet form, but I want to read just two or three little extracts. As to the probable reasons for the enactment of the bill eliminating Montgomery County from the national forest, he says:

> As the result of my investigation I believe that the reasons for the request of the constituents of Congressman Cravens to introduce H. R. 21894 were not based upon the opinion that the vacant government land within the portion of Montgomery County in the Arkansas National Forest should be eliminated on account of its nonforest character, but on account of certain complaints against the administration of the forests and alleged irregularities by certain local forest officers.

He then further along says [reads]:

> In making the investigations, my relations with the editor and other leaders in the movement against the Forest Service administration were very friendly and frank, and I am sure that some of the discussions resulted in clearing up certain points about which there seemed to have been some misunderstanding.

He further says [reads]:

I believe that the present situation which resulted in the present antiforest agitation of the Montgomery Times and the homesteaders' meeting was caused by a diversity of reasons, many of which were without real foundation and can be classed as follows: Erroneous allowance of entries, relinquishments, false and exaggerated rumors—

And so on, giving about ten different reasons.

Now I want to make it clear to you that we are required to report upon each and every one of these claims before they go to patent. I fear that you may have the impression that it is discretionary on the part of the forest officers as to whether or not they report on a claim, but it is not. It is done in accordance with the presidential order, and I have here a copy of the order, which I wish to file in the record, and I want to read it so that we may make the point clear. I think it is important that you should understand exactly our position [reads:]

MAY 17, 1905.

The honorable the SECRETARY OF AGRICULTURE.

DEAR MR. SECRETARY: I have just written to the Secretary of the Interior as follows:

"In deciding any question relating to rights of way within forest reserves, I want to have you refer to the Secretary of Agriculture all questions of fact, and accept his findings with regard to such facts. The Secretary of Agriculture has special facilities for getting at the real situation on the ground, as to settlement, etc., in the forest reserves. Therefore I want you also to require local land officers to refer all claims, applications for mineral entry, and final proofs for land within forest reserves to you before taking any action which could give the applicant a disposable title to the land, in order that the Secretary of Agriculture may have an opportunity of presenting to you any facts or arguments bearing on the claim. All valid claims affecting forest reserve land must of course be allowed when properly proven, but full force should be given to the testimony and arguments of the Secretary of Agriculture, who, as the direct administrative officer of the reserves, will be seriously affected by your decision.

"I would like to have you use special care to report to the Secretary of Agriculture any action taken in your department affecting him in the administration of the forest reserves. The situation calls for the fullest cooperation between your departments in your respective powers and duties over forest reserves and forest reserve lands."

I would like to have you return findings of fact without delay in all cases referred to you by the Secretary of the Interior, and take prompt action in all cases of claims or contests with regard to land within forest reserves. Please do not fail to report to the Secretary of the Interior every action taken in your department which affects him in the administration of the public lands. The situation calls for the fullest cooperation between your departments in your respective powers and duties over forest reserves and forest reserve lands.

Sincerely,

THEODORE ROOSEVELT,
President.

That order has never been revoked and is still in force, and it requires the forest officers to make a report on every claim before it goes to patent.

Mr. FERRIS. How much delay is there about that?

Mr. POTTER. That is controlled, of course, by the number of men that we are able to employ under our appropriation. There has not been very serious delay in many cases, and most of them are handled promptly. Of course in high mountain countries in the winter time it is often impossible to examine claims. If a country is covered with snow, you could not tell anything about it, and some of the claims of that kind can only be examined in the summer season.

Mr. FERRIS. Let me inquire right there. The question of delay is a very important matter to the homesteader?

Mr. POTTER. Yes; it is.

Mr. FERRIS. And they suffer very severely, to my own knowledge, for I live in a homestead country. Now, what would you say was the

average time from the date of submission of the final proof to the local land office, after wandering through the Interior Department and the Department of Agriculture, until the patent is issued and goes out to the homesteader?

Mr. POTTER. I will refer that to Mr. Record, as he can probably tell better than I can.

Mr. RECORD. There is considerable delay, but that delay is not due to inaction of the Forest Service, because in almost all cases we make the reports upon these entries before they make proof, and in a few cases a few months afterwards, though rarely more than six months after he has made proof. Of course there have been a number of cases where the proof has been made prior to the creation of the forest, and so in that case a year or two may have elapsed before the patent is issued.

Mr. FERRIS. Of course the final receipt is good so far as it goes, but if it is not followed up by approval that final receipt amounts to nothing.

Mr. RECORD. We make our reports, they are sent to the district officer, approved, and sent to the officials here. The proof is also sent to the Interior Department, and all the adverse reports are considered in the Department of the Interior.

Mr. FERRIS. Do they forward you duplicate proofs?

Mr. RECORD. No, sir.

Mr. FERRIS. Where does the proof go when it is submitted to the Land Office, the Secretary of Agriculture or the Secretary of the Interior first?

Mr. RECORD. The proof is submitted to the local land office and before it goes to the General Land Office they review it and transmit it to the Commissioner of the General Land Office in Washington.

Mr. FERRIS. Does the homesteader in the forest reserve submit proof to the representative of the Forest Service first, or does it go to the land office in the usual way?

Mr. RECORD. In the usual way, either before the land office or the county clerk.

Mr. FERRIS. And not before a special commissioner?

Mr. RECORD. We have nothing to do with those proofs excepting that we may submit a list of questions.

Mr. FERRIS. And do you submit those to the receiver?

Mr. RECORD. Or the clerk.

Mr. FERRIS. And then that proof is sent to the Commissioner of the General Land Office in the usual way. Sometimes the proof would relate to lands outside of the forests.

Mr. RECORD. Exactly; and then there is the same procedure.

Mr. FERRIS. Then if it is approved by the Commissioner of the General Land Office, where does it go?

Mr. RECORD. They handle those things exclusively unless there is a report from our office.

Mr. FERRIS. I thought that Mr. Potter, in presenting the matter, said that in each case under that order of President Roosevelt——

Mr. POTTER. We make report to the Land Office.

Mr. FERRIS. To the General Land Office?

Mr. POTTER. Yes, sir; and they consider the report before final action in the case is had.

Mr. FERRIS. What I am trying to get at is the proof; where it is made in the forest reserve, or does it go to the Commissioner of the General Land Office from the local office in the usual way?

Mr. POTTER. Yes, sir; it goes to the Land Office.

Mr. FERRIS. Then the proof is not sent by the Commissioner of the General Land Office over to your department for examination?

Mr. POTTER. No, sir.

Mr. FERRIS. But you make a report?

Mr. POTTER. Yes, sir.

Mr. FERRIS. How can you make a report without the proofs before you?

Mr. RECORD. We simply report the facts and findings in the field.

Mr. FERRIS. What is it based upon?

Mr. RECORD. Examinations.

Mr. FERRIS. A forest officer makes an examination. Then your information comes not from the proof submitted to the General Land Office?

Mr. POTTER. We know nothing about the proofs made at the General Land Office.

Mr. FERRIS. Now, the complaint, as you know—and I have a good deal of sympathy for the Forest Service so far as that is concerned—but the complaint usually comes for the fact that your field men are not always competent. Do you get them from the Civil Service Commission?

Mr. POTTER. Yes; from the Civil Service Commission. Of course, we are trying to get the very best men that we can, the best men that we can get for the salaries that we are able to offer.

Mr. FERRIS. Don't you think it would be a good idea, in addition to the report of your local man, for your department as well as the Commissioner of the General Land Office to go carefully into the proof after it is submitted under oath?

Mr. POTTER. I don't know that we care to do that, because it is the function of the Interior Department to pass upon the evidence and to determine whether or not the title should pass. The only object in asking the Forest Service to make these reports is that the Interior Department are short handed on special agents, and it is hard for them to keep up with their work; and in this case they thought we could cooperate with them and facilitate the patenting of the claims. We simply report the facts, making a favorable report in all cases where there is not apparently some plain violation or evasion of the law. Where it is evident that the claim is taken up in good faith for the purpose contemplated by the law, and that the law has been complied with, we simply report favorably and recommend that it pass to patent, making no comment whatever.

Mr. TAYLOR. This report which you make, as brought out by Mr. Ferris, is entirely an ex parte proceeding, is it not? Your forest ranger goes out there and inquires around, looks for the man's enemies, and his friends, possibly, and then makes a report, does he not, to the Land Office, as to whether or not he thinks he is acting in good faith?

Mr. POTTER. Yes, sir.

Mr. TAYLOR. Now, is that report before the man when he makes his final proof; does he see it?

Mr. POTTER. Oh, yes; that is considered with the other facts when the final proof is made.

Mr. TAYLOR. The complaint brought to my attention is this: The register of the land office at Glenwood Springs, my home town, told me some time ago that 65 per cent of all the applications for entry at that land office, which is one of the largest in the State, were protested by either the government agent, if it was outside of the forest reserve, or the forest rangers if it was inside the forest reserve, that they stamp the word "protested" on the man's application for entry, and when he comes to offer his final proofs he does not know what he is charged with, and he does not know when he is going to get a hearing, either. But a contest is made against him, and he has no means of knowing the details of it, nor what he must prepare for, or when he is going to be called upon to present it; in other words, he is held up by the gills indefinitely, month after month, waiting the pleasure of the agents of the Government to get around and present their proofs against him; and also he very often has to bring his witnesses a hundred miles, and it is, as intimated by Mr. Ferris, a very great hardship upon a poor man. Is that true, and is there not some way of alleviating that situation if it is true?

Mr. POTTER. I don't think that it is correct, so far as protesting is concerned, Mr. Taylor. Probably the Land Office, because of this order that the report must be made by the forest officer, simply takes that way of indicating that it must be held until the report from the forest officer is received, and when that report is received it becomes a part of the record in the case. But so far as we are concerned, there is no objection whatever to the applicant being furnished with a copy of the report, or to his having access to it.

Mr. TAYLOR. I have been urged repeatedly to introduce a bill in Congress compelling these agents to come out in the open and state in writing what their protest was, so that the man, when he came to offer his proofs, might know what he is up against; what he is charged with. And then, also, that they would designate some definite time so that he would not have to make two or three trips or wait indefinitely for his proof; and that they would be limited to thirty or sixty days, or some reasonable time, within which to present the case against the man.

Mr. POTTER. Of course, it ought not to be necessary to have legislation to bring that about.

Mr. TAYLOR. Of course, if the department was really acting in half-way good faith, they ought to treat the settler better than that.

Mr. POTTER. Certainly they should, and I will be very glad to go into that phase of the matter in detail with you when we can get the papers before us.

Mr. TAYLOR. I want to ask you if these complaints come to you the way they do to me?

Mr. POTTER. Not in that way.

Mr. FLOYD. Now, this report of the forestry department is made to the Land Office at Washington?

Mr. POTTER. No; the unfavorable reports are sent to the chiefs of the Field Division of the General Land Office, who are located at various points throughout the public-land States. Favorable reports are not sent to the Land Office at all. A letter informing the Secretary

of the Interior that the report of the forest officer is favorable is sent instead of the report.

Mr. FLOYD. In actual practice, is his report transmitted to the local land office where the homesteader, when he goes to make his proof, will have an opportunity of seeing it and controverting the facts set forth if he desires?

Mr. POTTER. No; neither the homesteader nor his attorney has the right to see an unfavorable report of the forest officer or of the special agent. The reports are handled by that branch of the Land Office which represents the Government as attorneys in the prosecution of cases. These reports form the basis of the evidence used in the contest against the claimant, and it would therefore be like showing the Government's evidence to an opposite party in advance of a suit in which the Government is interested, and permit that party to prepare his defense in advance of the actual hearing.

Mr. CRAVENS. Isn't that report made after his final proof?

Mr. POTTER. Reports upon claims are made by the forest officer as soon as practicable after the receipt of the notice that a claimant is about to make final proof. The report may actually be made before, but probably in the majority of cases it is not made and submitted until after final proof. Reports are also made upon a special request of the General Land Office in certain cases where it desires additional evidence, or in cases in which the forest is created after final proof has been made but before patent has been issued. A special agent or an officer of the Forest Service may make a report upon a claim which will initiate the contest before final proof is offered, either upon a homestead or upon a mere mineral location. This is not done by the Forest Service except where a claim or location is actually and illegally interfering with the administration of the forest.

Mr. CRAVENS. I will ask you if these patents are not withheld for more than a year at the request of the Forest Service?

Mr. POTTER. Claims are not withheld from patent for any definite period at the request of the Forest Service in any case, except where there is clear indication of fraud. The Forest Service has in some cases delayed issuing reports because of adverse weather conditions, since it is impossible or impracticable to make an accurate field examination during the winter. Long delays of several months have necessarily occurred on this account. There have been cases also where through lack of men certain reports have been delayed, but usually the Forest Service reports are made with reasonable promptness. I might say that this delay is not caused through two departments acting upon a case, because the supervisor receives notice of intention to make proof directly from the local land office, and he can immediately direct the district ranger to make the report. This is as much of a short cut as would be possible under any possible organization, even if it were under the same department. In other words, long before the time expires in which the claimant is permitted to make proof the notice of his intention is in the hands of the forest officer designated to make the report upon the ground.

Mr. CRAVENS. And also if, in many instances, the Forest Service has not reported adversely against lands going to patent and upon the special examination of the examiner of the Land Office they have reversed the finding of the Forestry Bureau?

Mr. POTTER. Possibly there are cases of that kind, but not many.

Mr. TAYLOR. What is the reason for these patents being held up, and that they do not get them? Just this morning, before I came up here, I directed a letter to the Commissioner of the Land Office to know why some patents were not issued upon land upon which they were ordered in 1906, four years ago; and I get such complaints in very nearly every mail.

Mr. POTTER. I think because of the enormous amount of work that they have to handle in the Land Office with the clerical force they have.

Mr. CRAVENS. They claim that the delay is in the Forestry Bureau.

Mr. POTTER. But it is not.

Mr. SMITH. I might say that as long ago as I can remember, and I had something to do with public-land matters twenty-five years ago, the delay was very great, running into years, and we sometimes forgot all about the case before we got the patent.

Mr. TAYLOR. But that does not make it right, and it is still a hardship upon the people.

Mr. POTTER. I agree with that, Mr. Taylor; we ought to facilitate it in every manner possible, and we are anxious to do that.

Mr. FERRIS. I want to make a suggestion in response to Mr. Smith's remark as to the injury and hardship to the homesteader. It becomes more acute now than it was twenty-five years ago from the fact that it has to go by two departments now instead of one.

Mr. SMITH. If the additional work done by the Forest Service lengthens it out, then of course there is more delay.

Mr. FERRIS. But fifteen years ago when the homesteader got his final receipt the trouble was ended.

Mr. TAYLOR. Yes; and it was as good as the patent. Upon the final receipt he could really give a warranty deed, and he can not give a warranty deed upon a receiver's receipt now.

Mr. SMITH. That is probably true, but it is not true entirely out in our country. They do trade and traffic a great deal upon those receipts still.

Mr. GRONNA. I do not want to ask Mr. Potter any questions about this matter that I wish to speak of, because it would not be fair, but I come from a State where we have no forests, I am sorry to say, but if the practice can be any worse in the Forest Service than outside, I feel very sorry for the homesteader in the forest-reserve States. I want to say to you gentlemen who have forest reserves that I know of my own knowledge that there are hundreds and thousands of cases in my State alone where the patents have been held up all the way from one to four years, as was said here a few moments ago.

Mr. CRAIG. Were those cases where contests were pending?

Mr. GRONNA. The examiner goes to the land office and puts his stamp on it "Protested."

Mr. CRAIG. Without any specification whatever?

Mr. GRONNA. Without the Forest Service having anything to do with it. The special agent puts his stamp "Protested" upon it, and the homesteader and the local officers know nothing about it; in fact the special agent knows nothing about it himself only that he has a rubber stamp.

Mr. CRAIG. Does he use that rubber stamp upon everybody?

Mr. GRONNA. Just about everybody. Now, what does it mean to the homesteader? He can not mortgage—in our country most of the people are poor—and no man, a poor man, will go out in the wilderness and take a homestead and live there and be contented with what he can raise on 160 acres of land, for he has got to have money to continue his farming operations. For the last four or five years no one could borrow money on the receiver's receipt; no one could borrow money until he receives the patent from the Government, and in many instances the patents have been canceled after they have been received; that is, held up and canceled. Now, that is a great hardship to the homesteader, and the Government should either have a sufficient number of men to notify these people that they have got to comply with the law, and what it is; that they are either violating or obeying the law; and they should not be permitted to, in a wholesale way, hold up every proof in the country; and I believe what is true of North Dakota is true of other States.

Mr. CRAIG. As to these protests that are stamped, are they followed up by contests, or is the action just simply arbitrary?

Mr. GRONNA. You will find in many land offices that there is always a land shark laying around. They find out the land that is protested and that it will be followed up by a contest. Sometimes the contest will hold, but in most cases it will not.

Mr. MORGAN. I suppose they stamp that upon there with the rubber stamp for the purpose of notifying the department that they are preparing a protest.

Mr. TAYLOR. Isn't it true where a man has money enough to hire a good lawyer to fight these fellows, that 95 per cent of them wince, and that where a fellow hasn't any money to hire a lawyer, he becomes thoroughly discouraged, and finally gives up?

Mr. GRONNA. In our State that is true.

Mr. POTTER. Now, to continue, another source of complaint was in regard to the relinquishments, it being charged that the forest officers had not only encouraged relinquishments, but in many cases had demanded them.

Now, if any such action as that has been taken by any forest officer it is entirely unauthorized, because instructions have never been issued which would warrant the forest officers demanding relinquishments; but merely as a convenience to the people they were allowed to accept them. But owing to these complaints, and for fear that possibly there might be a case in which this would be abused, one of the first things I did after taking charge temporarily in the Forest Service—I know one of the first things I did in reference to straightening out these complaints—was to prepare an order known as Service Order No. 40 for issuance by the Forester, which reads as follows [reads]:

Hereafter no forest officer shall under any circumstances request a homestead entryman to relinquish his claim or suggest for any reason whatsoever that such a course is desirable. If any homestead entryman voluntarily offers to relinquish his claim, the forest officer may suggest that the relinquishment be transmitted to the local land office, but should not encourage this to be done. Forest officers who receive by mail relinquishments from claimants must return the relinquishments with the suggestion that if the entryman desires to relinquish he should send it to the local land office. No forest officer should be a party to a compromise whereby any claims or trespass case is settled by requiring the claimant to relinquish to the Government.

Now, in this report you will find very complete information with reference to the first instructions which were issued.

Mr. FLOYD. Right in that connection will you permit me to make a statement? I have received very, very many complaints of that very thing, that forest rangers would go to a homesteader and tell him that he could not prove up, and the best thing he could do would be to relinquish; and just the other day, not two weeks ago, I received an inquiry from a homesteader to know why his patent had not been issued. I went to the Land Office and they informed me that it had been relinquished before the forest officer two years ago.

Mr. POTTER. Now, I want to make it clear that if there are any cases where that has been done, it was unauthorized by the Forest Service.

Mr. ROBINSON. When was that order issued, and when did it become effective?

Mr. POTTER. This order was issued on March 14 of this year, and it became effective immediately.

Now, I want to read some letters issued by Mr. Record, the forest supervisor, which are printed in this report.

Mr. PARSONS. What forest are you referring to?

Mr. POTTER. These letters were issued by the supervisor of the Ozark as well as the Arkansas forest.

Mr. PARSONS. What report is it that you are referring to?

Mr. POTTER. This is the report upon House bill No. 21894, for the elimination of Montgomery County.

I will read these letters:

To all forest officers, Arkansas National Forest.

GENTLEMEN: In securing relinquishments great care should be exercised that there may be no misunderstanding nor ground for complaint. The relinquishments should be given voluntarily, and at no time should there be the slightest appearance of coercion.

Very truly, yours,

SAMUEL J. RECORD,
Forest Supervisor.

On June 6, 1908, another letter was addressed to all forest officers of the Arkansas National Forest, reading as follows [reads]:

Hereafter whenever a relinquishment is obtained, it must be forwarded to the supervisor, accompanied by full and detailed explanation of how and why such relinquishment was given. It is also desirable that a report on Form 655 accompany such relinquishment. Under no circumstances must the forest officer obtain a relinquishment by threats, coercion, or undue persuasion. This order must be strictly obeyed.

On September 3, 1908, in general service order No. 22, signed by the associate forester, appears the following instructions [reads]:

In receiving relinquishments forest officers should carefully avoid making a peremptory demand or using any words which could be construed as a threat of proceedings in the courts. The administration of the laws affecting the relinquishment of lands in national forests remains with the Department of the Interior. (Use Book, p. 218.) The forest officer is only a medium of transmittal.

And then, as I say, because of complaint that these instructions had not been followed, we issued this service order No. 40, which positively prohibits any forest officer from accepting a relinquishment under any consideration.

Mr. ROBINSON. Were those complaints frequent or rare?

Mr. POTTER. The only ones I have heard of were in connection with the Montgomery County proposition.

Mr. CRAVENS. How much acreage has been relinquished since the establishment of the forest reserves in Montgomery County alone?

Mr. POTTER. I could not give you that information.

Mr. CRAVENS. Does not Mr. Bronson's report show that?

Mr. POTTER. It may be in the Secretary of the Interior's report.

Now, another unfortunate thing happened in the Arkansas forest, and that was the local land officers accepted filings from homestead entrymen in a number of cases after the proclamation had been issued creating the forest. That is another one of the serious complaints. Those entries were accepted erroneously in the land office and the Forest Service was in no way responsible for it. But of course it is impossible for these people to go ahead and secure their lands without curative legislation. When this matter was brought to my attention I immediately took it up with the Secretary of the Interior and submitted an outline of a proposed bill to him for approval. I found, also, that this mistake was not confined to the Arkansas forests, but that there were other forests upon which entries had been erroneously allowed; for instance, the Clearwater in Idaho, the Chelan in Washington, the Oregon in Oregon, and the Manzano and Lincoln in New Mexico. In all those forests the local land office had accepted filings erroneously.

Mr. ROBINSON. Was any action taken upon the bill that you have referred to?

Mr. POTTER. The bill has not been presented yet. I handed Mr. Mondell a copy of it the other day, and it has been officially transmitted to Mr. Mondell as chairman of this committee by the Secretary of Agriculture. Now, as I said, I took this matter up in conference with Secretary Ballinger, and I have here a copy of his letter to the Secretary of Agriculture, which I will read the first paragraph of [reads]:

The honorable SECRETARY OF AGRICULTURE.

SIR: I am in receipt of your favor of the 11th instant, with which you transmit copy of a proposed bill for the relief of persons who were erroneously permitted to make homestead entries for lands withdrawn for national forestry purposes, and I heartily concur with you in the advisability of legislation of this kind.

The legislation proposed has been, as I stated, transmitted to Mr. Mondell by the Secretary of Agriculture, and I have here a copy of the form of the bill, which I will read [reads]:

That where registers and receivers have prior to January first, nineteen hundred and ten, erroneously allowed persons to make homestead entries upon lands withdrawn either temporarily or permanently for national forest purposes, and such entries are invalid or have been relinquished or canceled solely because of such erroneous allowance, said entries so made are hereby restored and validated: *Provided*, Applications for the benefits of this act be filed in the local land offices prior to June thirtieth, nineteen hundred and eleven: *And provided further*, That no such entries shall be restored or validated so as to defeat a subsequent entry made in good faith under the provisions of the act of June eleventh, nineteen hundred and six, or otherwise: *And provided further*, That applicants seeking the advantage of this act shall be charged no additional fees over and above the original filing fee.

There isn't any question, gentlemen, but that legislation of this kind ought to be enacted at this session of Congress, if possible.

Mr. TAYLOR. Is that bill broad enough to cover a case where a person has relinquished his filing, and in that condition you might say being put into the attitude of having used his homestead filing?

Does it restore the right to that so that it can be used at some other place?

Mr. POTTER. Of course, I would prefer to leave that to the committee.

Mr. TAYLOR. Why would not that be right? A man ought not to be deprived of his homestead right through error of a government official.

Mr. POTTER. No; surely not.

Mr. CRAVENS. That would not benefit either the Arkansas or the Ozark forest, for that says prior to the year 1901.

Mr. POTTER. Oh, no; January 1, 1910.

Mr. ROBINSON. Has your attention been called to the bill introduced by Mr. Floyd on the same subject?

Mr. POTTER. Yes; but as I understand it that has a different object in view.

Mr. FLOYD. It is broader; it carries other classes of cases.

Mr. POTTER. Yes; and it proposes also to reinstate homestead entrymen where they have not complied with the residence requirements of the law. Isn't that one of the provisions?

Mr. FLOYD. Where on account of some slight technical failure they can not make final proof, but only where they acted in good faith.

Mr. POTTER. I would only say that it is an important matter that should be adjusted by legislation, and I can assure you of the support of both the Secretary of the Interior and the Secretary of Agriculture.

Mr. SMITH. Can not the result be accomplished without legislation by your department certifying those tracts of land to the Interior Department for entry under the act of June 11, 1906?

Mr. POTTER. No, we could not, because in a good many cases they are timber land.

Mr. FLOYD. Then if I understand Mr. Potter, some of them have made relinquishments.

Mr. POTTER. A good many of them have been relinquishments. Some of them are timber lands which it would not be within the authority of the Secretary of Agriculture to list under the act of June 11, 1906. I want to make that point clear to you by analyzing the first paragraph of the act of June 11, 1906. It reads like this [reads]:

> The Secretary of Agriculture may, in his discretion, and he is hereby authorized, upon application or otherwise, to examine and ascertain as to the location and extent of lands within permanent or temporary forest reserves (except the following counties in the State of California: San Luis Obispo and Santa Barbara), which are chiefly valuable for agriculture, and which, in his opinion, may be occupied for agricultural purposes without injury to the forest reserves, and which are not needed for public purposes.

Now, that places the restriction on the Secretary of Agriculture that he must not list anything excepting the lands chiefly valuable for agriculture, consequently if they are more valuable for timber it is not within his authority to list them.

Mr. TAYLOR. Does that mean for timber on the lands now, or for the purpose of growing timber on it?

Mr. POTTER. It probably means either one.

Mr. TAYLOR. We have some complaint about the intention to grow timber. We claim that out in our State it will take four hundred years to grow the timber——

Mr. POTTER. Of course the usual interpretation of this would be the value of merchantable timber now on the land.

Mr. TAYLOR. I haven't any sympathy with anybody trying to get timber land for homestead that is really valuable for timber, and I think the service is justified in those instances.

Mr. POTTER. In order that we might facilitate the locating of homesteads on agricultural lands within the forest, and overcome so far as possible these complaints which have arisen, I prepared for the approval of the Secretary of Agriculture three or four very important modifications of the instructions. These have already been promulgated and are in force, and I want to read them to you. I think it will clear up your understanding of the situation in reference to homestead settlements on forest reserves. The first one is in reference to the bona fide squatters, reading as follows:

A person who has settled upon and continuously occupied unsurveyed lands within a national forest before its creation, and is at the present time occupying such lands in good faith and is in all respects complying with the homestead law, has the right to include within the lines of his homestead 160 acres after the land is surveyed. Therefore, if the land is occupied for agricultural purposes and is not more valuable for its timber than for such purposes, and there are no circumstances which would in the opinion of the district forester tend to discredit the bona fides of the claimant, he should be allowed to make application for the patenting of such lands under the act of June 11, 1906, and the examination for listing should be made with the view of listing 160 acres of land where possible. The tracts so listed should conform so far as practicable to the form of the public-land surveys. The listing of lands as above should not in any way govern the determination of the total area or amount of noncultivable land listed for applicants under the act of June 11, 1906, who were not residing upon the lands before the creation of the forest.

In cases where less than 160 acres of land have been listed to a person who settled upon the land prior to the creation of the forest, an additional area sufficient to complete the homestead entry may be allowed upon proper application.

The foregoing instruction has been approved by the Secretary of Agriculture, and will govern future action of all forest officers.

Mr. ROBINSON. Has that gone into effect?

Mr. POTTER. That went into effect on the 1st of April. And also this other one as to qualifications of applicants. We had a good deal of complaint that the forest officers were undertaking to determine whether a man could make a living on a certain piece of land. Mr. Taylor no doubt has heard a good deal of complaint along that line. Now, this order reads as follows [reads]:

If an application is made for the listing of lands under the act of June 11, 1906, the Forest Service ordinarily will make no inquiry regarding the qualifications of the applicants, or in case of conflict no decision between applicants. All of the facts, however, will be forwarded to the Interior Department for decision on the question of priority if the lands covered by such applications are listed. The ability of the applicant to make a living from the land applied for should not be gone into. That is a question for the applicant to decide and not for the Forest Service to consider. All questions, such as remoteness, strength, or health of applicant, or his ability or experience in agricultural pursuits are not matters which concern the character of the land, and therefore have no place in an inquiry regarding it. A careful examination should be made, however, to ascertain whether the land is susceptible of producing cultivated crops. In deciding this, the soil, the climate, the altitude, and slope have much to do with the crop-producing character of the land. It is not intended by this notice to authorize the listing of protective forest land or heavily timbered tracts under this heading, but to exclude the personal qualifications of the applicant from consideration by the land examiner or the officer passing upon the application.

Mr. TAYLOR. Do you have any rule similar to that regarding the metalliferous mining? Under the former ruling there was much complaint that inexperienced forest rangers were passing upon the mineral value of mining claims.

Mr. POTTER. That brings out another important matter——

Mr. TAYLOR. Of course, that does not pertain to this matter in any way.

Mr. POTTER. But inasmuch as you have mentioned it, I would like to make a brief statement in regard to it.

I appeared before a meeting of the chamber of commerce at Denver a couple of years ago at which there were a few complaints presented by miners, and it struck me that some of the complaints made by them were well founded, although not all of them, so I suggested to Mr. Pinchot that we ought to immediately do something to try to get together with the miners on a more satisfactory basis regarding the examination of mining claims. So Mr. Pinchot wrote a letter to the president of the American Mining Congress inviting him to appoint a committee of three to meet with a committee of the Forest Service to discuss this matter and see if we could not agree upon some line of procedure which would be more satisfactory both to miners and to the Forest Service. It was my good fortune to be one of the members of that committee representing the Forest Service. It met in Denver, Colo., and we reached an agreement with the miners, about to this effect: That in all cases where the mining claim had apparently been located in good faith for mining purposes, and the general provisions of the mining law were being complied with, the forest officers would make no examination in reference to the amount of mineral, or whether the mineral was in place, but that if the law apparently was not being complied with, and there was evidence that the location was made for the purpose of securing a power site, or valuable timber, or to get the land for purposes other than mining, then we would have an examination made by an expert miner. That proposition was indorsed and agreed upon by the committee representing the American Mining Congress and the Forest Service and has governed action during the last year.

Mr. TAYLOR. Have you promulgated any rules to that effect?

Mr. POTTER. Oh, yes; a long time ago.

Now, there was a good deal said yesterday about surveys by metes and bounds, and I think it was explained in a way that you all understand the object in allowing such surveys under the act of June 11, 1906. It is unfortunate that the present procedure requires a second survey to be made under authority of the surveyor-general for which the applicant must pay. The act of June 11 requires the Secretary of Agriculture to designate the location of the area, consequently he must make a preliminary survey of it.

Mr. FLOYD. Will you allow me to ask you a question there? It is a legal question, and, as I understand the act referred to, the Secretary has the broadest discretion, and I want to ask you why, under that broad discretion given him to designate, he can not designate those lands according to the government surveys? If he should designate them by forties or eighties or hundred-and-twenties or hundred-and-sixties, would not that designation be just as good and binding in law and in as complete compliance with the law as by metes and bounds? I understand that act to permit them to be designated by metes and bounds; but I don't understand that it compels them to survey them that way.

Mr. POTTER. That is true. Still, on the other hand, Mr. Floyd, it would be almost impossible for the surveyor going on unsurveyed

ground, say, 10 or 15 miles away from a survey by townships, and tell just what section that land would fall in when the regular survey was made.

Mr. FLOYD. I am speaking of lands like that in the Ozarks, where it is sectionized.

Mr. POTTER. In the Ozark National Forest, unless I am erroneously informed, all of the entries under the act of June 11 have been surveyed in accordance with the regular surveys. There have not been any surveys by metes and bounds in the Ozarks.

Mr. FLOYD. I understand they cut it up in little squares of 10 acres.

Mr. POTTER. Yes; that is true.

Mr. FLOYD. It is like locating a mineral claim.

Mr. POTTER. They take a forty and divide it into four parts.

Mr. FLOYD. And they do not allow a man the full forty.

Mr. POTTER. That is true. They divide the forties into 10-acre squares. They do that without a survey. It is not a survey by metes and bounds. It is simply a location by 10-acre tracts instead of 40-acre tracts.

Mr. TAYLOR. That is to preserve the timber?

Mr. POTTER. Yes, sir. Now, I want to go on with my statement about the surveys. The Secretary of Agriculture is required to locate these lands, or, rather, designate them, which of course means that they must be surveyed. Now, it appeared to us, if that survey was made by a competent surveyor, it ought to be possible for the Interior Department to cooperate with us so that it would be unnecessary for the settler to have them surveyed a second time by another surveyor.

I had an informal talk with Secretary Ballinger on this point, and he said that if the law would permit it he would be very glad, as it would be a very good opportunity for cooperation that would be beneficial to the people. He said he would have the matter inquired into and inform me just what they could do. I received a letter from him afterwards saying that they found that the fees in the surveyor-general's office must be paid out of the deposit, and therefore he would have to find some other way of meeting those office expenses, which he feared would possibly require a change in the law—that is, the making of some other provision for the payment of those fees. But even if it was necessary for the applicant to pay the fees in the surveyor-general's office, that would be a very small amount compared with the cost of the survey, particularly if it was done under a system such as that described by Mr. Mondell, at $10 per angle; and I believe without doubt that we will be able to reach a satisfactory cooperative agreement between the two departments which will result in our surveyors being appointed as deputy United States surveyors in a way so that they can at least save the homestead settler, where his claim must be surveyed by metes and bounds, the cost of that second survey, and that of course we will certainly be very glad to do if we can.

Now, last summer a very careful survey was made of the boundaries of all of the national forests to ascertain the extent to which cultivable lands which were not suited to forest purposes, and other lands not of the character contemplated by the law, had been included within national forests by former proclamations. A good many of the earlier proclamations did include considerable areas of nontimbered lands, in some cases because of their being on the watersheds of streams

which the Reclamation Service contemplated operations on; in other cases probably too hasty surveys. The result of the careful examination made this summer has been a recommendation of the elimination of about 4,000,000 acres of nontimbered land from the exterior boundaries of the forests, a good portion of which is land which probably can be cultivated under dry farming where they can not get water for irrigation.

Mr. TAYLOR. In that same connection, how much did they recommend to be added?

Mr. POTTER. That I have not the figures on, Mr. Taylor.

Mr. TAYLOR. Was it more than the 4,000,000 acres, or less?

Mr. POTTER. I am not sure about that. Of course you understand in the six States—Colorado, Wyoming, Idaho, Oregon, Montana and Washington—no additions can be made.

Mr. TAYLOR. Under this withdrawal bill which we passed the other day they could withdraw the whole State. I refer to the bill that the House passed the other day.

Mr. POTTER. Yes.

Mr. TAYLOR. Under that my understanding is that your department recommends the elimination of 500,000 acres in the State of Colorado, and the addition of 750,000 acres.

Mr. POTTER. Possibly so.

Mr. TAYLOR. That is under the bill that went through the other day.

Mr. POTTER. Possibly it is so, that in the examination it has been found that there were 750,000 acres of timber land that was not included in the national forests. That I do not know about.

Mr. TAYLOR. I do not know where they found them, but that is my understanding.

Mr. POTTER. I could not give you the facts about that.

Mr. TAYLOR. I do not want to interrupt your hearing.

Mr. POTTER. Some very large eliminations of that kind have been made, notably in the Gila National Forest in New Mexico, where there were 228,156 acres eliminated of nontimbered grazing lands that were put in there on the theory that it was necessary to be reserved, as it was on the headwaters of the Gila River, and on the Coconino National Forest, where 284,960 acres were eliminated of non-timbered grazing lands. Then also in some cases eliminations have been made where large areas of alienated lands have been included; and I think it is quite probable that when the reports are received of the Arkansas Forest, there will be considerable eliminations. Unfortunately we have not received the reports on the Ozark Forest or on the Arkansas Forest, but I think it is possible when they are received we will find recommendations for the elimination of some of these lands that are very largely alienated. Of course I have not any definite information on those at this time.

With reference to forest fires, unfortunately I have never been in Arkansas, and I will leave the discussion of local conditions there to Mr. Record, if you care to hear from him, but my experience has been and my observation has been, in the countries which I have visited, that continuous burning of the forest has resulted in retarding very seriously a good forest growth. That is certainly true in Arizona, and we have a very good illustration there on what is known as the

Black Mesa. On the rim of Tonto Basin there is a cliff from 1,000 to 2,000 feet high running 60 or 75 miles until it strikes the corner of the White Mountain Apache Indian Reservation, and then this cliff plays out and we have a rolling mesa country. The Indians have been in the habit, when it did not rain to suit them, of making a "big smoke" in order to make it rain, and those fires would run across the mountains and sweep that part of the forest reserve adjacent, but this rim kept the fires from getting on the part immediately north of Tonto Basin; and riding across that country it is immediately noticeable that as soon as you reach the part of the country which has been protected against this continuous burning, there is a splendid, vigorous growth of young pine forest. In California, which is my native State, we find a good many sections that have been cut over and then reforested naturally. After the cutting over, as Mr. Mondell said the other day, there would be a splendid reproduction, and a fine young growth would come up; but if a severe enough forest fire gets into that young growth to kill it out, then the forest is gone, because there are no seed trees left, and in many areas there it has turned into manzanita and chaparral thickets. You find many places there that are chaparral thickets that were formerly forests.

Mr. SMITH, of California. Is such a thicket as you have mentioned considered as of any value in the preservation of water?

Mr. POTTER. Yes, sir; it is better to have the thicket than to have absolutely bare ground, but it is not so good as if the land was covered by a good forest. That has been the general experience—that severe burnings of the forest have been injurious to forest growth.

With reference to the Forest Service requiring a man to get a permit before he could burn on his own private land if he chose to do so, I have no information of the Forest Service ever having done anything more than ask a compliance with the state law, and that is that when a man is going to burn an area in the national forest, or adjacent to it, he shall notify the forest officer in order that he may be there to help protect the government land—to keep fire from getting onto the government land.

A good deal was said yesterday about the requirement of grazing permits, and about the great annoyance that it had caused the settlers. I have brought over a sample of that very objectionable agreement to present to you, and I want to read its terms. It reads as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE.
FOREST SERVICE.

SPECIAL GRAZING PERMIT.

———, 19—.

Mr. ——— ———, of ———, is hereby authorized to graze ——— head of ——— and ——— head of ——— (marked or branded) ——— from ———, 19—, to ——— 19—, upon lands belonging to the United States within the ——— National Forest.

This permit is issued subject to all rules and regulations governing national forests and with the understanding that service equal in value to the grazing fees on the above stock will be rendered in fighting forest fires whenever any forest officer may request it, and that the permittee will use every effort to prevent forest fires upon the range used by his stock.

———, *Forest Supervisor.*

As I said, because of the serious objection that was offered to this permit, although there is no requirement on the applicant to sign any agreement, and because we found in the experience of the first year that we issued 2,600 of these very permits on the Ozark, as against 35 permits that were paid for issued to people having over 25 head of stock, and it was therefore plain to us that it was causing a lot of unnecessary work to the forest officers and probably a great deal of annoyance to the people, therefore we discontinued the use of this blank and allow the people to graze without any permit whatever the 25 head of stock.

Mr. FLOYD. What was the date of the order discontinuing that?

Mr. POTTER. About April 1. Mr. Record informs me that information was given out in November last that it would be done, but the official order of the Secretary was not issued until this spring.

Mr. TAYLOR. How much per head does a permit cost to graze stock on the Ozark Reserve?

Mr. POTTER. I think it is 20 cents per head for the summer season.

Mr. FLOYD. It varies with the kind of animal, does it not? It is so much for cattle, and so much for hogs, and so much for sheep, and so on?

Mr. POTTER. Yes; I mean it is 20 cents per head for cattle.

Mr. TAYLOR. We do not allow hogs to run at large in Colorado at all on the ranches. The hog is an outlaw.

Mr. POTTER. I do not believe I will take any more of your time. I merely want to say, in conclusion, that the reasons why we believe that the Ozark National Forest should not be abolished are that the country is rough and mountainous, and it is covered with a stand of timber averaging between two and three thousand feet of pine and hard wood per acre, making the entire area chiefly valuable for its timber. The land within the forest is not needed for agriculture or horticulture, and by far the most of it is not fitted for that purpose. I am speaking, of course, of the vacant government land. Until the privately owned lands are settled and cultivated there is no reason for throwing open large areas of poorer and rougher lands chiefly valuable for forest purposes. Not 1 homesteader in 25 is able to make a living direct from his homestead during the first three years. This forces him to sell the timber from his claim or to seek outside employment most of the time in order to get money to live on.

Mr. ROBINSON. Is not that true of a homesteader anywhere?

Mr. POTTER. Possibly so, on timbered land.

Mr. ROBINSON. Yes.

Mr. POTTER. My opinion is that it costs from $10 to $15 an acre to clear land, and after being cleared it usually sells for less than $5 per acre. It is cheaper to buy an improved place than to get a free homestead from the Government; that is, it costs more to take timbered land and clear it than it does to buy land equally good already cleared. Arkansas has been open to settlement for the past seventy-five years, and the best land and timber within the national forests has been taken, and yet not more than 20 per cent at most of the original homesteads are now occupied. Opening the lands to indiscriminate settlement means putting it into the hands of speculators and timber companies, as I explained in my opening remarks. The settlers will move out, the timber will be cut, and the country impoverished. Had the forests been created sooner, less land would