

University of Montana

ScholarWorks at University of Montana

Graduate Student Theses, Dissertations, &
Professional Papers

Graduate School

1967

Analysis of timber depredations in Montana to 1900

Edward Bernie Butcher
The University of Montana

Follow this and additional works at: <https://scholarworks.umt.edu/etd>

Let us know how access to this document benefits you.

Recommended Citation

Butcher, Edward Bernie, "Analysis of timber depredations in Montana to 1900" (1967). *Graduate Student Theses, Dissertations, & Professional Papers*. 4709.
<https://scholarworks.umt.edu/etd/4709>

This Thesis is brought to you for free and open access by the Graduate School at ScholarWorks at University of Montana. It has been accepted for inclusion in Graduate Student Theses, Dissertations, & Professional Papers by an authorized administrator of ScholarWorks at University of Montana. For more information, please contact scholarworks@mso.umt.edu.

AN ANALYSIS OF TIMBER DEPREDATIONS
IN MONTANA TO 1900

by

Edward Bernie Butcher

B. S. Eastern Montana College, 1965

Presented in partial fulfillment of the
requirements for the degree of

Master of Arts

UNIVERSITY OF MONTANA

1967

Approved by:

K. Ross Toole

Chairman, Board of Examiners

Fred S. Honbelle

Dean, Graduate School

JUN 19 1967

Date

UMI Number: EP40173

All rights reserved

INFORMATION TO ALL USERS

The quality of this reproduction is dependent upon the quality of the copy submitted.

In the unlikely event that the author did not send a complete manuscript and there are missing pages, these will be noted. Also, if material had to be removed, a note will indicate the deletion.



UMI EP40173

Published by ProQuest LLC (2014). Copyright in the Dissertation held by the Author.

Microform Edition © ProQuest LLC.

All rights reserved. This work is protected against
unauthorized copying under Title 17, United States Code



ProQuest LLC.
789 East Eisenhower Parkway
P.O. Box 1346
Ann Arbor, MI 48106 - 1346

244-11

TABLE OF CONTENTS

PREFACE	iii
-------------------	-----

Chapter

I. PUBLIC TIMBER POLICY IN THE UNITED STATES 1800-1880	1
II. EMERGENCE OF LARGE SCALE TIMBER OPERATIONS IN MONTANA	20
III. THE FIRST TIMBER SUITS	40
IV. THE FEDERAL GOVERNMENT AND THE MONTANA DEPREDATIONS IN THE 1890s	62
V. TRIALS OF THE DEPREDATORS	89
CONCLUSION	108
BIBLIOGRAPHY	112

PREFACE

Timber depredations in Montana are important both on the local scene and as a "core example" of a national controversy. Competent historians have made numerous general studies of the public domain. Many of these studies have mentioned the difficulties of the residents in the public land regions legally acquiring the timber they needed. Yet, there has never been a significant isolated study of the controversy over the use of public timber such as is attempted in this work.

The study of depredations in Montana is important in analyzing the national controversy between the conservationists and the residents of the public land regions. All but a very small percentage of Montana's timber was located on public land. Montana was also the last frontier for the timbermen. Since there was very little settlement in Montana until the 1860s, public timber was not used to any degree before then. With the advent of the mining industry in Montana, progressively more timber was required. The placer gold mining period required very little timber and a few small sawmills provided the region's needs. This changed with the commencement of the quartz mining industry in the 1870s. Although the population declined during this period, the requirements for wood continued to increase with the

additional requirements of tunnel bracing, fuel for the steam powered stamp mills, and the better quality building materials of the permanent residents.

The 1880s is the significant decade in studying the lumber industry in Montana. The advent of railroad building in the Territory required extensive lumber operations to supply its needs. It also aided the development of the large scale commercial lumber industry by providing a means for transporting the lumber products from their remote growing areas. Concurrently, copper mining emerged as the Territory's most important single industry. The copper industry required enormous quantities of wood for its extensive mine shafts and drifts as well as for the large smelter and reduction works. As a result of the railroads and the mining industry, the commercial lumber industry rapidly developed on an immense scale. Because of the reliance of the Territory's economy on lumber, the political leaders united in their demands for the use of the timber on public land.

The controversy over public timber had begun nationally in the early part of the 19th century, but did not become an important national issue until the last two decades of the century. The timber question had a significant effect on Montana politics from 1880 to 1900. It was the basic cause for the feud between William A. Clark and Marcus Daly which is popularly known as the "War of the Copper Kings." It also resulted in scandalous bribery and political manipulation. Montana's corrupt political system received

From role
of timber v
politicians

v

national attention in the first election of William A. Clark to the Senate where his colleagues refused to allow him a seat because of the alleged bribery in his election. These and many other local problems were attributable to the timber situation in the Territory.

The emergence of the lumber industry probably would not have become such a controversial issue in 1885 if it had not been for the appointment of William Andrew Jackson Sparks as Land Commissioner. Sparks was the outspoken crusader against commercial exploitation of the public land. While serving in the United States House of Representatives, he had bitterly assailed the practice of granting large tracts of public land to railroad companies. Sparks was the major governmental spokesman for protection of public timber from commercial exploitation by lumbermen. Previously the federal officials had yielded to the demands of the public land regions for use of the public timber and ignored all but the most flagrant violations of the poorly constructed timber laws.

This is a limited study of the controversy which began nationally early in the nineteenth century and finally reached a settlement at the beginning of the twentieth century. Montana, being one of the last important public land regions to be settled, provides an ideal situation in which the controversy can be examined during its most critical period.

Because of the nature of the study, this work does not delve into any other aspects of the lumber industry such as

descriptions of the operations or of the merchandising of the products. The political overtones of this controversy affected almost every aspect of the State's economy during the period of this study and are extensive separate studies within themselves.

CHAPTER I

PUBLIC TIMBER POLICY IN THE UNITED STATES: 1800-1880

Timber was abundant on the unclaimed land of the North American Continent when the first Europeans established settlements. Until organized lumbermen began to commercially exploit public timber, Americans expressed little concern over its use. The timber was used by whomever claimed it. Then, as the supply diminished in certain localities, various individuals started advocating that the public timber lands be protected from the commercial lumberman. This belief became more widely advanced during the 19th century with the increasing amount of depredation. The Federal government subsequently attempted to pass and enforce legislation in regard to public timber lands which satisfied neither the commercial timber interests nor the protectionists.

The shipbuilding industry was the first group to become concerned about the diminishing supply of construction materials. On February 25, 1799, Congress granted the President of the United States the authority to spend not more than \$200,000.00 to purchase lands containing timber suitable for naval uses. This legislation authorized the President to take proper measures to preserve the timber for future naval requirements although neither President Washington nor

his successors utilized their prerogative except to a limited extent.¹

Because of the inadequacy of the 1799 legislation, Congress passed additional measures on March 1, 1817, to guarantee a future supply of wood for the shipbuilding interests. This legislation authorized the Secretary of the Navy to select tracts of unappropriated land containing a sufficient supply of live oak and red cedar timber to supply the naval requirements. The penalty for cutting live oak and red cedar timber from reserved land was a fine not exceeding \$500 and imprisonment not exceeding six months. The commercial exploitation of timber was sufficient to warrant the specific penalty of government confiscation of any ship exporting the reserved timber and \$1,000 fine against the ship's captain.²

Because of the ineffectiveness of the 1817 law, guaranteeing a supply of timber for naval requirements became an issue in 1827. On January 12, 1827, the House of Representatives passed a resolution instructing the Committee on Naval Affairs to provide Congress with an effective proposal for preserving live oak timber on the public lands. It also requested an inquiry into the expediency of establishing plantations to raise live oak trees. During the House debate

¹ U.S., Annals of Congress, 5th. Cong., 1797-1799, III, 3805. Only a few sections in Georgia were reserved.

² U.S., Annals of Congress, 14th Cong., 2nd sess., 1817, 1281.

over the resolution, Representative Joseph M. White of Florida, who was interested in protecting the naval timber reserves near Pensacola, Florida, summarized the problem:

As the country is now situated, with unadjusted titles covering large bodies of land, . . . those who wish to cut the timber can do so, and plead a pretended title, which shields them from punishment, because it is filed for decision either before the commissions, or is referred by them to Congress, where experience . . . proves, they are laid up for years. Honest and dishonest claims all rejected, not by any decision, but by delay and a failure to examine them.³

In 1831 Congress passed more stringent legislation against the illegal appropriation of timber from public land which had been reserved for naval uses. The 1831 legislation stipulated that any unauthorized person, or employer, who illegally appropriated timber reserved for naval construction, would be fined not less than triple the value of the trees cut, destroyed, or removed and imprisoned for a period not exceeding twelve months.⁴

By the 1840s the Mississippi Valley was becoming rapidly settled. The entrepreneurs, who were seeking their fortunes from the unclaimed public forests, were exploiting the prime timber regions of the upper Mississippi Valley. In the 1847 decision in the case of the United States v. Ephraim

³ U.S., Debates in Congress, 19th Cong., 2nd sess., 1827, III, 671.

⁴ U.S., Debates in Congress, 21st Cong., 2nd sess., 1831, VII, appendix, 46.

Briggs, the Supreme Court established a precedent with which the lumber industry had to contend for half a century. The Court interpreted the Congressional Act of March 2, 1831, as including not only the timber reserved for naval requirements but also all other public timber. This decision made the removal of all timber from public land equally indictable.⁵

On March 3, 1849, Congress established the Department of the Interior. The General Land Office was transferred from the Treasury Department to the Interior Department. In 1850 the Secretary of the Interior, Thomas Ewing, appointed the first federal timber agents in an attempt to curtail depredations of timber on public domain. However, the lack of funds, which continued to harrass the operations of the General Land Office until the 1890s, forced the Department to discontinue using the agents in 1855. Thus, in the first circular of instructions issued by the General Land Office in 1855, the officials of the local land offices were instructed to assume the additional duties of protecting the timber on the public domain. It further stated that under no circumstances were the agents to compromise with the depredators, receive any money, or give permission to cut public timber. Offenders were to be tried in Federal and not state courts.⁶

⁵ United States v. Ephraim Briggs, 9 Howard 351 (1847).

⁶ U.S., Interior Department, Annual Report of the Commissioner of the General Land Office, 1877, 16.

After the inability to enforce the regulations and the small monetary returns from depredators who were indicted became apparent to the Land Office officials, the strict regulations of the 1855 circular were relaxed. In 1860 Secretary of the Interior Jacob Thompson authorized compromises with the depredators on the following terms: First, application for title to the land upon which the timber was cut; and second, payment to the federal government of fifty cents per 1,000 feet of timber cut from the land in addition to payment for the expenses the government incurred from seizing the illegally cut timber.⁷ The philosophy of the Interior Department during the 1860s concerning commercial exploitation of public timber was illustrated by a letter from Secretary Caleb B. Smith on January 16, 1862. It was written in reply to a Minnesota District Attorney who believed that all illegal depredations of public timber should be prosecuted instead of compromising for the value of the timber. Secretary Smith believed the main object was to make certain that the timber produced revenue for the government equal to the value of the land upon which it grew. This concept, which allowed timber to be acquired through compromise for a fraction of its commercial value, ignored the fact that the land which was worth very little for agriculture might be extremely valuable for its timber

⁷ U.S., Interior Department, Annual Report of the Commissioner of the General Land Office, 1877, 17.

content.

In the 1864 Annual Report by Land Commissioner George F. Edmonds, his concern for the loss of the revenue from timber on the public domain was evident. He observed that:

persons who have invested in saw mills, and are reaping large profits from the necessities of the settlers, must pay a reasonable tariff per thousand feet of timber sawed [This would be] consistent with honest principles, that a compensatory return should be made for the timber⁸

The Commissioner further stated that if the mill owners refused to abide by the order, the register and receiver should individually advise them that the lumber was public property and was liable for seizure. If the mill owners still refused to comply with the orders, the local officials were then to seize all of the timber taken from public land and the government would sell it.

The Land Office officials were pleased with the effectiveness of this approach "not only without any cost to the government, but leaving the avails of seizure in the Treasury of over ten thousand dollars."⁹

Prior to 1872, collections made by the government for illegally cutting public timber were placed in a fund used to defray the expenses of investigating depredations of

⁸ U.S., Congress, House, Executive Documents, 38th Cong., 2nd sess., 1865, V, No. 1, 37-38, Serial 1220.

⁹ U.S., Interior Department, Annual Report of the Commissioner of the General Land Office, 1877, 19.

timber. On June 10, 1872, Congress declared that this fund could no longer be used for investigating timber depredations and made the first congressional appropriation of \$10,000 for this purpose.¹⁰

At the conclusion of the President U. S. Grant administration, the Department of the Interior conscientiously attempted to curtail wholesale depredations of public timber. On July 19, 1876, the Interior Department, under the direction of Secretary Zachariah Chandler, notified the Land Office that approval for compromising future timber depredation cases must be obtained from the Interior Department.¹¹ The compromise concept of dealing with timber depredations was extremely conducive to graft between the local officials and the timbermen operating illegally on public land. This was the Department of the Interior's first earnest attempt to stop the fraternizing between the local officials and the timbermen. On August 22, 1876, The Surveyor General for Minnesota analyzed the compromise policy in his annual report to the Land Office. He did not believe that compromise legally could be made with individuals who were illegally removing timber from public land. However, he admitted that generally it was difficult to catch the parties involved in the actual removal of the timber. When then logs were located

¹⁰ U.S., Interior Department, Annual Report of the Commissioner of the General Land Office, 1877, 19.

¹¹ Ibid.

it was usually via purchasers who were believed to be innocent of the actual removal or of the knowledge that the logs were procured from public land. He emphasized that the only reason that the government officials in those situations settled for payment of the stumpage value (estimated value of the standing timber) was to save absolute loss for the timber.¹²

On January 24, 1877, the Interior Department discontinued using the local registers and receivers to combat timber depredations. The total revenue that the government derived from timber trespass between January 1, 1856, and January 24, 1877, was \$199,998.50. The government's expenditure in securing the revenue was \$45,624.76 which gave the government a net return of \$154,373.74 for the depredations which had been reported. However, when the estimated value of the timber was considered, the revenue netted by the government from the timber cut on public land was actually equal to the average value of timber on 5,000 acres of good pine timber land.¹³

The Department of the Interior planned to utilize special timber agents in an effort to curb the increasing number of large lumbering operations on public land. The Land Commissioner stated that the new object of the Interior Department was

¹² U.S., Interior Department, Annual Report of the Commissioner of the General Land Office, 1877, 19.

¹³ Ibid., 20.

not only to bring money into the public treasury, but to put an end to timber depredations on the public land. To this end it is above all things necessary that the depredators be effectively deprived of every possibility of deriving any benefit from wrongful acts they have committed.¹⁴

The large timber operations were too well entrenched for the small force of agents to supervise. Commissioner James A. Williamson complained that, if Congress did not appropriate more than \$5,000 for combating timber depredations, the small force of agents employed in 1877 would have to be withdrawn. In 1878 Congress complied with the demands of the Land Office and increased the appropriation for timber agents from \$5,00 to \$25,000. This was subsequently increased in 1879 to \$40,000; in 1882 to \$75,000; and finally in 1890 the appropriation for timber agents reached \$100,000.¹⁵ The number of special timber agents increased proportionately from fifteen in 1879 to fifty-five in 1890.¹⁶ However, the Department of the Interior had difficulty securing competent agents. Secretary Henry M. Teller reported in 1882 that

during the past fiscal year there have . . .

¹⁴ U.S., Interior Department, Annual Report of the Commissioner of the General Land Office, 1877, 23.

¹⁵ John Ise, The United States Forest Policy (New Haven, 1920), 107. Hereafter cited as Ise, Forest Policy.

¹⁶ U.S. Interior Department, Report of the Secretary of the Interior, 1879, Vol. I, 26; Ibid., 1890, Vol. I, 342.

thirty-one agents, of whom . . . seven have been in continuous service and remain on duty at the present date.¹⁷

In the Land Office Report of 1877, Land Commissioner James Williamson requested special legislation for timber land separate from homestead land, desert land, and the other types of public land for which legislation had been passed. In considering the administration problem involved in the public timber controversy, Commissioner Williamson mentioned that the residents of the timber regions advocated selling the timber land at as little as \$1.25 per acre.¹⁸ The advocates of private ownership of the timber land argued that this would eliminate much of the waste while also protecting the timber from fire.¹⁹

Private ownership of public timber land was not a new proposal. Government officials had been advocating the sale of public timber land for several years. In 1870 the Commissioner of Mining Statistics, Rossiter W. Raymond, stated in a complaint against timber depredations that he did not believe the entire United States Army could enforce the regulations and the only remedy was to sell the land. In 1874 the

¹⁷ U.S., Interior Department, Annual Report of the Secretary of the Interior, 1882, Vol. I, 249-250.

¹⁸ A personal estimate of the appraised value of timber at this time places the value of average timber land at approximately \$30.00 per acre for its timber production.

¹⁹ U.S., Interior Department, Annual Report of the Commissioner of the General Land Office, 1877, 19.

Commissioner of the Land Office, S. S. Burdett, also recommended that the lands should be sold--a recommendation with which Secretary of the Interior Columbus Delano concurred.²⁰

The individuals who advocated protecting the public timber from the commercial lumbermen did not consider the solution of the administration of public timber land that simple. Because only a few individuals had any interest in the timber land in most areas, it would not have been too difficult for a few interested individuals to establish price agreements and purchase the land for a fraction of its actual value for speculative purposes.

The residents in the timber regions were in a difficult position. The need for lumber made it difficult to settle and develop the public domain regions without illegally using the available timber. The western inhabitants needed lumber to build homes, stores, churches, bars and the other necessary establishments for a thriving community. The residents could not profitably supply these needs from the timber located on a few homestead or preemption claims.

In 1869 Representative James A. Johnson of California introduced a bill in Congress for the relief of persons taking timber from public lands for their individual requirements.²¹

²⁰ U.S., Congress, House, Executive Documents, 41st Cong., 2nd sess., 1874, V, No. 1, Serial 1639, p. XVII.

²¹ U.S., Congressional Globe, 41st Cong., 2nd sess., 1869, 98.

Although this measure was not passed, it publicized the problems that the westerners faced because of the government's attempts to curtail the illegal removal of timber from public land.

After the defeat of the 1869 measure, the western residents continued to seek legislation which would legalize timber cutting for domestic use in the western regions. The mining interests' concern in the timber controversy was evident from the legislation Jerome B. Chaffee of Colorado introduced in 1876. Chaffee's bill provided for "authorizing citizens of Colorado, Nevada, and the Territories to fell and remove timber on the public domain for mining and domestic purposes."²² However, the timber interests were not able to secure enough support in Congress to pass the measure.

The individuals advocating free use of the millions of acres of public timber had four basic arguments for "free timber" legislation: First, they emphasized the vast acreage of the public forests--some ripe and rotting--with no evidence that the government would then or in the future make use of the timber. Secondly, in some areas there was timber in abundance but no coal being mined. The transportation of coal was often expensive and the settlers and miners who lived in the forests saw little justice in being prevented

²² U.S., Congressional Globe, 44th Cong., 2nd sess., Senate Bill 1078, 211.

from utilizing the wood which was near them. Thirdly, the westerners considered that the early residents of the Eastern seaboard had established a precedent by their free use of the timber growing on public land. The westerners believed that Congress did not have the right to curtail the development of the western public domain regions after the early inhabitants of the East had used the same means to develop their own areas. The fourth argument which the western interests emphasized was that forest fires annually destroyed more timber than was being cut. The inhabitants of the public domain regions could see no justification for the timber burning rather than being used in the development of their regions. During the last few years of the 1870s, the Land Office officials did not recognize the valid significance of this last argument or ignored it since the fire destruction in the public forests were seldom mentioned in their reports. However, during the 1880s the extent of the annual loss of timber on the public domain became more frequently mentioned in the Land Office Reports.

Timber depredations are by no means the most serious danger that threatens the . . . forests . . . of our public lands The forest fires in the timber regions of Montana, Wyoming, and the other Western Territories have destroyed more trees the past summer than have been lost by all the depredations from the beginning of the first settlement until the present date [1889].²³

²³ U.S., Interior Department, Annual Report of the Secretary of the Interior, 1889, Vol. I, XXXVI.

After the 1877 appointment of the ardent protectionist, Carl Schurtz, as Secretary of the Interior, the timber interests were forced to increase their lobbying in Congress. The Secretary of the Interior "devoted considerable attention to the proper method of handling public timberlands and is credited with inaugurating a movement for conservation."²⁴

In 1878 Senator Chaffee introduced another measure to grant free timber to his constituents. With the help of Senator Aaron A. Sargent of California, he was able to secure Senate approval of the legislation. In the House of Representatives his western colleagues: Thomas M. Patterson of Colorado, Horace F. Page of California, and Territorial Delegate Martin Maginnis of Montana, secured House approval of the legislation. The measure authorized the residents of

Colorado, . . . Nevada . . . Territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States, shall be . . . authorized . . . to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees . . . on the public lands, said lands being mineral, [*Italics mine*] and not subject to entry under existing laws . . . except for mineral entry . . . subject to such rules or regulations as the Secretary of the Interior may prescribe for the protection of the timber . . . growing upon such lands.²⁵

In order to gain passage of the measure, the western interests

²⁴ Harold H. Dunham, "Some Crucial Years of the General Land Office, 1875-1890," The Public Lands: Studies in the History of the Public Domain, ed. Vernon Carstensen (Madison, 1963), 192.

²⁵ U.S., Statutes at Large, XX, 88.

were forced to consent to the amendment granting the Secretary of the Interior control of the timber land acquisition.

Because of the emphasis on mineral land, the legislation in reality allowed very little timber to be cut. Of the millions of acres of public timber land, only a small portion actually contained mineral deposits and only a fraction of this had been discovered and filed upon. The United States Supreme Court added to the problem by its narrow definition of "mineral land" in the case of Davis v. Weibold. The Court ruled that in order to be classified as mineral land "the mineral must be in sufficient quantity to add to their richness [the lands] and to justify expenditure for its extraction, and known to be so."²⁶

In 1878 Secretary of the Interior Schurtz stated that the "Free Timber Act" would be enforced "against persons trespassing upon any other than lands which are in fact mineral or have been withdrawn as such" ²⁷ He was not only determined to interpret "mineral" strictly, but he also stipulated that trees of less than eight inches in

²⁶ U. S. Davis! Administrator v. Weibold, 139 U.S. Reports 570 (1891). For a general discussion see: Ise, Forest Policy, 63; and Benjamin Horace Hibbard, A History of the Public Land Policies (Madison; 1924), 464. Hereafter cited as Hibbard, Public Land Policies.

²⁷ U.S., Interior Department, Annual Report of the General Land Office, 1878, 119.

diameter should not be cut. Schurtz's determination exceeded his ability to counter-act the actual depredations. This inability resulted mostly from insufficient finances for enforcing the stringent regulations he imposed in an attempt to comply with the law.

The Timber and Stone Act also was passed on June 3, 1878, and provided another method for acquiring timber from the public domain.²⁸ Nevada was the only state which was specifically included in both laws. The Timber and Stone Act initially referred only to the region along the Pacific Coast. However, it was amended in 1892 to include Montana.²⁹ According to its provisions, the only public land which could be procured under this Act was land which was unfit for cultivation and valuable chiefly for timber or stone.. The restriction on each individual filing under the Timber and Stone Act to 160 acres reflected the protectionist's lack of understanding of the timber needs in the West. Even a small lumbering operation could not operate profitably on 160 acres for any realistic period of time and the residents of the regions could not individually supply their lumber requirements. The stipulation in the vague law that the land could not be sold for less than \$2.50 per acre also provided the lumber interests with a means of acquiring valuable timber

²⁸ U.S., Statutes at Large, XX, 89.

²⁹ See chapters IV and V for the relevance of the Timber and Stone Act to the lumber operations in Montana.

land for a nominal fee. Although the conservationists had intended that the land be sold according to its appraised value, the common practice became to sell all of the public timber land for the minimum price.³⁰

In an attempt to curtail the use of "dummy entrymen," the Act also stipulated that an individual who filed for land had to swear under oath that it was for his exclusive use and that he had no prior agreement which would benefit another party. However, in actual practice, perjury was extensive and the timber interests often paid the required two witnesses to swear to the validity of a claim which the witness often never had seen.

In addition the penalty of \$2.50 per acre for individuals apprehended illegally removing the timber did not curtail depredations. When an individual was caught, he could pay the \$2.50 per acre according to the provisions of the Timber and Stone Act for the land and still sell the timber for a profit.

In observing the subsequent effect of the Timber and Stone Act on public timber, Commissioner N. C. McFarland stated that:

the result . . . is the transfer . . . in bulk, to a few large operators. The preventive measures at the command of this office have proven wholly inadequate to counteract this result. The requirements of the law are slight and easily evaded, and evidence

³⁰ For a more detailed discussion see: Ise, Forest Policy, 70-78; and Hibbard, Public Land Policies, 465-470.

of fraudulent proceedings rest so much within the knowledge of interested parties that specific testimony can rarely be obtained.³¹

The Land Office also had to contend with speculators interested in controlling timber lands for future sale at a sizable profit as a result of the increasing value of timber. The Officials in the Department of the Interior complained that "The facility with which the restrictions of public land laws are evaded is a temptation to the illegal acquirement of title for the purpose of such investment."³²

Until the 1880s the Land Office personnel were mostly concerned with timber depredations in the Midwest and South. In the western regions, extensive amounts of timber were not required except in the vicinity of large mining operations. Montana and the other Rocky Mountain areas were isolated from markets because of a lack of inexpensive transportation. This area did not develop extensive commercial lumbering industries until the last two decades of the century. In the regions around the Great Lakes, the upper Mississippi Valley, and sections of the South, water transportation was accessible to the source of the timber in addition to the early development of railroad lines which were conducive to the development of a large commercial lumber industry. The

³¹ U.S., Interior Department, Annual Report of the Secretary of the Interior, 1884, Vol. I, 8.

³² Ibid., 1883, Vol. I, 9.

markets for these areas were large and in close proximity to the timber sources.

Because of the extensive depredation in other regions of the nation, the under-staffed Land Office generally ignored the early development of the lumber industry in Montana.

CHAPTER II

EMERGENCE OF LARGE SCALE TIMBER OPERATIONS IN MONTANA

Western Montana was one of the last timber regions in American to be settled. The settlement in Montana followed the same pattern as other areas of the nation in its development from a frontier society to a settled agricultural and mining region. Its only deviation from many other areas of the nation was that it continued to maintain a colonial economy after it was settled.

The white man came to the Montana region to exploit its natural resources. The trappers were the first group although they seldom acquired personal fortunes because of the cost of supplies. However, the companies and individuals who invested in the industry by furnishing the trappers with supplies and purchasing the subsequent furs made substantial fortunes from the fur resources of the region, i. e., Jacob Astor and others. (The investment of "foreign" capital to exploit the regions natural resources was duplicated eighty years later by the silver and copper mining industry and the cattle and sheep industries.) During the forty year period that the fur-bearing animals enhanced a few eastern fortunes, the use of timber was slight. Permanent settlement was required before lumber was needed.

During the 1840s, the Catholic Church sent missionaries

into the Montana region to convert the "heathen" Indians to Christianity. With this early settlement, the first lumbering commenced in the region. The first sawmill in Montana was a hand-powered pitmill built at St. Mary's Mission in 1845. The saw blade was fashioned from a wagon tire which was flattened. The saw teeth were laboriously cut with a cold chisel.¹

The lumber requirements of the Montana residents prior to 1863 were generally supplied by whipsaws or pitmills. These requirements were not extensive until the commencement of the mining industry in the region which began in the 1850s. The exact date has not been established.² The gold discoveries in the region did not become publicized to any extent until Granville Stuart's party discovered gold on Gbld Creek in 1858. John White's discovery of gold on Grasshopper Creek was the beginning of the "gold rush" and subsequent rapid settlement of Montana.

With the emergence of placer mining, there was an immediate demand for sawed lumber in the newly established

¹ L. B. Palladino, Indian and White in the Northwest: A History of Catholicity in Montana, 1831 to 1891 (Landcaster, Pennsylvania; 1922), 60; Albert J. Partoll (ed.), "Mengarinis Narative of the Rockies," Frontier Omnibus, ed. John W. Hakola (Missoula, Montana; 1962), 154. Hereafter cited as Frontier Omnibus.

² For a discussion of the first discovery of gold in the region see: George F. Weisel, "The Mystery of John W. Silverthorne," Historical Essays on Montana and the Northwest, ed. J.W. Smurr and K. Ross Toole (Helena, Montana; 1957), 61-78.

mining centers such as Bannack, Virginia City, and the numerous other communities which developed near each new gold discovery. The early miners were paying as much as twenty-five cents per foot for the hand whipsawed planks which they needed to construct their sluice boxes.³

In 1863 Anton M. Holter brought the first sawmill into the region.⁴ Holter formed a partnership with [?] Evenson and purchased the second-hand sawmill in Denver. They brought their mill to Montana and erected it near Virginia City on a divide between Bevin's and Ramshorn Gulches on December 7, 1863. As they began assembling the mill, the two men discovered that there were numerous parts which were missing and they had to improvise extensively. After assembling their portable mill, the partners cut 5,000 feet of lumber the first year. The advent of the sawmill in the mining district reduced the price of sluice and flume lumber from the \$750 per 1,000 feet of whip-sawed lumber to \$140 per 1,000 feet of lumber cut by the new mill. The demand for lumber was so extensive that Holter's lumber yard in Nevada City was unable to supply all of the orders.

In 1864 a steam sawmill on Granite Gulch began to compete with Holter's mill. Both of the mills established lumber

³ Robert G. Raymer, Montana: The Land and the People, I (Chicago, 1930). 410. Hereafter cited as Raymer, Montana.

⁴ Anton M. Holter, "Pioneer Lumbering," Montana Margins: A State Anthology, ed. Joseph Kinsey Howard (New Haven, 1946), 285-302.

yards in Virginia City and priced their lumber similarly. In 1865 Holter purchased a boiler and engine from the owner of a bankrupt quartz mill at Bannack to power his saw-mill. In 1865, following the discovery of gold at Helena, Holter constructed another water powered mill eight miles west of the town. Another man, named Van, also had a saw-mill at Helena. By the end of the 1860s, there was generally some type of mill located near each settlement. In 1868 Holter built the first sash and door factory in Montana. This illustrated the developing demands of the residents who had become well established in the region and demanded better materials for their homes and businesses.

By 1870 the population in the Territory declined and did not begin to increase until the end of the 1870s. The population of Montana in 1868 was estimated at 38,878; two years later the population was 20,580.⁵ The major reason for this decline was the replacement of placer mining by the quartz mining method. Quartz mining required extensive capital investment and companies replaced the numerous individual placer claims. The lumber requirements did not decline with the population since the quartz industry needed large quantities of wood for fuel and tunnel supports.

Twenty years later, Senator W. F. Sanders described the needs of the region for wood to:

⁵ U.S., Interior Department, Annual Report of the Secretary of the Interior, 1868, 44; Ibid., 1870, 133.

make into cradles to rock the children, shingles and roofs to cover the heads of the citizens, coffins in which to bury the dead and lumber in various forms which . . . civilized man . . . designated as wise and useful⁶

The early residents of Montana considered the timber in the Territory, which was generally located on public land, inexhaustible. However, during this same period an increasing minority of eastern protectionists were expressing concern in Congress over the increasing removal of timber from the public domain. The settlers in the new Territory ignored the protectionists. Historically, the residents of a new region had always used the natural resources to solve the problems incurred in settling and developing their region. In 1865 Granville Stuart expressed the opinion of the western pioneers that "it is enough to make a man from the prairies of Iowa or Illinois cry to see the good pine timber that is going to waste here."⁷ The most important concern of the residents was using the timber in the Montana Territory for their immediate needs.

It soon became evident to the residents that the most important problem in developing the Territory was the need

⁶ U.S., Congressional Record, 51st Cong., 1st sess., 1890, XVI, Pt. V, 10087.

⁷ Granville Stuart, "Montana as It Is," Hakola, Frontier Omnibus, 271.

for inexpensive and rapid transportation to connect the region more effectively with different areas of the Territory and nation. The steam boats on the Missouri River were the major means of transportation into the Territory, but they only could operate seasonally. They began operation following the spring ice break-up and continued until the water became too shallow in July to navigate the river safely. The wagon roads either connected with the transportation facilities on the Missouri River or offered a slow and expensive overland route out of the Territory.⁸ An example of the speed and efficiency of the overland transportation system was the important Corinne, Utah to Virginia City and Butte road. Although the bull teams generally required a month to travel from Butte, Montana to Corinne, the fast freight covered the distance in six and half days and the Concord stage made it in four days. In 1876 freight rates from Butte to Corinne averaged \$51.00 per ton.⁹ By the 1870s, there was increasing interest in the construction of a railroad into the Territory. Because of the extensive

⁸ Principal roads in the Territory were: The Mullan Road, the Powder River Road, the Minnesota-Montana Road, the Yellowstone Wagon Road, the Salmon River Trail, Graham's Wagon Road, the Corinne-Virginia City Road, the Whoop-up Trail, and numerous toll roads within the Territory which were authorized by the Territorial Legislature. The toll roads existed for only a few years.

⁹ Dan Cushman, The Great North Trail: America's Route of the Ages, (New York, 1960), 169.

transportation costs, the mining interests were especially interested in the construction of a railroad into the Territory.

The concept of constructing a transcontinental railroad through Montana had been considered for a number of years. In 1853 Isaac I. Stevens surveyed the first possible railroad route through Montana. However, nothing materialized until 1864. On July 2, 1864, Congress passed a bill providing for a transcontinental railroad to traverse the northern section of the nation. Congress granted "Lands to aid in the Construction of a Railroad and Telegraph Line from Lake Superior to Puget Sound" ¹⁰ This legislation granted the Railroad Company a forty mile wide swath of alternate sections of land in Montana Territory. Almost all of the land included in this grant was unsettled. Thus, the grant made the government's alternate sections of public domain potentially very valuable because of the transportation facilities it could provide to the isolated region. The Act stipulated that the railroad could not claim any sections included within this grant which were previously settled or classified as mineral land (except coal or iron). To compensate for a possible loss of land caused by this stipulation, Congress granted the railroad indemnity rights to alternate surveyed sections of public domain for an additional

¹⁰ U.S., Statutes at Large, XIII, 365.

ten miles past the original grant. Until 1868, when the Northern Pacific Railroad Company was formed, the northern transcontinental railroad project had a number of internal problems which prevented them from organizing and financing the construction. On July 1, 1868, Congress granted the company a time extension for commencing construction. The date was changed from July 2, 1866, to July 2, 1870. Congress also extended the completion date for one year--until July 2, 1877.¹¹

After the Northern Pacific Railroad Company officials unsuccessfully tried to secure a cash subsidy from Congress, they convinced the Civil War Financier, Jay Cooke, to supervise the financing of the Company.¹² In 1870 construction began on the line. Jay Cooke was forced to declare bankruptcy during the financial recession of 1873. Because of Cooke's dominance in the financing of the Northern Pacific, it also went into receivership until Frederick Billings reorganized the Company in 1875.¹³

When the completion date of July 2, 1877, expired, the Northern Pacific officials became concerned. They focused their efforts on defending the Company's rights to the land

¹¹ U.S., Statutes at Large, XV, 255.

¹² Ellis P. Oberholtzer, Jay Cooke: Financier of the Civil War, II, (Philadelphia, 1907), 158.

¹³ For the reorganization plan see: Eugene V. Smalley, History of the Northern Pacific Railroad (New York, 1883), 206-207. Hereafter cited as Smalley, Northern Pacific.

grant and right-of-way through the public domain. In 1879 Attorney General Charles Devins ruled that the grant would remain in effect until Congress specifically forfeited it. By June 30, 1880, the Northern Pacific had 1,000 miles of road to construct. The Northern Pacific Officials were confident, that as long as they continued rapidly building the road, Congress would not forfeit the land grant.¹⁴

During the 1870s, the political leaders in Montana were expending every effort to induce the construction of a railroad into the Territory. In 1871-1872 Territorial Delegate to Congress, William Claggett, sought passage of legislation granting a right-of-way through the public domain in the United States territories for railroad companies. The attempt failed. Thus, the Northern Pacific, which was in financial distress for two years following the Panic of 1873, had the only right-of-way through the public domain in Montana. However, the Territorial political leaders were not content to wait for the Northern Pacific to rectify its financial problems and resume construction of its proposed road through Montana.

In the 1873 Territorial Legislature, Wilbur F. Sanders proposed a plan of county subscription for a total of \$2,300,000 to aid in the construction of an inter-state railroad. In return the counties would receive thirty year

¹⁴ Smalley, Northern Pacific, 224-225.

bonds at seven per cent interest.¹⁵ In March the legislature passed a compromise bill. It granted the county commissioners the right to offer any incorporated company a county subscription for the building of a railroad into the Territory. The bill required that the railroad connect with the Union Pacific, the Central Pacific, or the Utah Northern. The bill also stipulated that the subscription could not exceed twenty per cent of the taxable property of the county. None of the counties took advantage of the legislation since Congress had not passed general right-of-way legislation and the county taxes would have been increased.¹⁶

During the remainder of the 1870s, there were continued efforts to establish Territorial subsidies for obtaining railroad transportation. However, the promoters were never able to secure sufficient support.¹⁷

By 1879 the residents of Montana were confident of receiving railroad service. Two competing railroad companies were building lines toward the Territory. The Utah Northern, promoted by Brigham Young's son John, reached Montana Territory in 1879. With the Northern Pacific rapidly building a line toward Montana, the Utah Northern directors discontinued

¹⁵ The Missoulian (Missoula, Mont.), May 16, 1873. Source cited in The Works of Hubert Howe Bancroft: History of Washington, Idaho, and Montana, 1845-1889 (San Francisco, 1890), XXXI, 682. Hereafter cited as Works of Bancroft.

¹⁶ Works of Bancroft, XXXI, 682.

¹⁷ For a general discussion see Ibid., 682-685.

further attempts to secure Territorial subsidies. They finished constructing the line to Helena in 1881 when the Northern Pacific reached the Territory.

According to the terms of its land grant, the Northern Pacific had been authorized to remove building materials from the land adjacent to the right-of-way. This included the sections which the government reserved for public domain. The Northern Pacific had received 14,740,000 acres or sixteen per cent of the total land area of Montana.¹⁸ Of this total grant, the Northern Pacific Railroad Company acquired 1,507,130.53 acres of Montana forest land.¹⁹ However, the Company was in a difficult position. Most of its timber land was located in the western section of the Territory and was unsurveyed which made it difficult to distinguish between government and railroad land. Also, since the completion date specified by Congress had expired, Congress could legally revoke the unpatented areas of the grant at any time. In order for the railroad to patent the land designated in the grant, the land had to be surveyed and the railroad sections distinguished from public domain. By December, 1883, the Government had surveyed only 5,700,000 acres of the

¹⁸ William C. Peters and Maxine C. Johnson, Public Lands in Montana: Their Historic and Current Significance (Missoula, Montana; April, 1959), 8.

¹⁹ Howard Elliott [President of the N. P.], "Dependence of Business Interests Upon the Forests," Proceedings of the American Forest Congress--Washington D.C., January 2-6, 1905 (Washington, 1905), 51.

20,500,000 acres that the company claimed at that time within the Territory.²⁰ To protect the grant, the Northern Pacific had to complete the road as quickly as possible. A constant and reliable supply of large quantities of timber was necessary for rapid completion of the railroad.

It has been estimated that in 1879 forty-two mills, cutting about 6,000,000 feet of lumber annually, were operating in the Territory.²¹ Because previously there had not been an inexpensive means for exporting lumber, the numerous small individual lumbering operations had been established to fulfill local requirements. Mills often operated for only a few months. Some were established to cut timber from a specific area and then were moved to another location or discontinued their operations because of faulty management.

The Northern Pacific needed a lumbering operation under a single management with sufficient financial backing to guarantee the railroad sufficient lumber for undelayed construction of its line. To comply with this need, the Northern Pacific Railroad Company granted the Missoula firm of E. L. Bonner & Company the contract to supply its

²⁰ Leeson, M. A. (ed), History of Montana, 1739-1885 (Chicago, 1885), 465. Hereafter cited as Leeson, History of Montana.

²¹ Raymer, Montana, I, 411. This is a good estimate of the mills operating within the Territory. The exact number of mills in the Territory at this time is difficult to determine because of their small size and their limited commercial marketing outside of their immediate locality.

construction materials.²² The contract granted the Missoula firm the franchise to supply all the timber, lumber, cordwood and other wood materials needed for the construction of its road between Miles City, Montana and Wallula Junction, Washington (Walla Walla, Washington). The estimated distance was 925 miles.²³ Because of the requirements for wood in railroad construction, this was a substantial contract. Railroads averaged more than 3,000 wood cross ties for every mile of track, plus the wood needed for tunnels, bridges, and trestles.²⁴ Although the Northern Pacific Railroad Company used Howe steel truss bridges for crossing rivers, wood was required for the two miles of long pile bridges required to cross the arms of Lake Pend d'Orielle. The company also built the 3,600 foot Bozeman tunnel and the 3,850 foot Mullan tunnel. The Marent Gulch Trestle contained 800,000 feet of lumber and was 866 feet long and 226 feet ten inches high.²⁵

Subsequently, the members of E. L. Bonner & Company organized the Montana Improvement Company and transferred

²² Hammond v. United States, 246 Federal Reporter 42 (1917). Members of the firm were E. L. Bonner, J. H. Robertson, R. A. Eddy, and A. B. Hammond Jr.

²³ U.S., Interior Department, Decisions of the Department of the Interior Relating to Public Lands, IV, July 1885 to June 1886, 65. Hereafter cited as U.S., Interior Department, Decisions.

²⁴ Arthur N. Pack, Our Vanishing Forests (New York, 1923)

²⁵ Leeson, History of Montana, 421.

their railroad contract, mills, and the surplus lumber they had accumulated to the new corporation. The Montana Improvement Company was incorporated on August 1, 1882, for \$2,000,000.²⁶ The basis for the incorporation was a contract with the Northern Pacific Railroad Company which granted the lumber corporation timber cutting rights on the railroad company's land.²⁷ However, the Northern Pacific assumed control of the Montana Improvement Company through its ownership of \$1,000,100 of the stock. The majority of the remaining stock was controlled by the members of Eddy, Hammond and Company.²⁸

Eddy, Hammond and Company had been formed in 1876 by Edward L. Bonner, Richard A. Eddy and Andrew B. Hammond Jr. It was a rapidly expanding mercantile company located in Missoula, Montana. In 1880 the firm contracted an annual business of \$180,000. During 1882 it began furnishing supplies to the railroad camps and the Company's total business increased to \$450,000.²⁹ In 1885 this company was incorporated

²⁶ Articles of Incorporation of the Montana Improvement Company, August 1, 1882, Montana Secretary of State, Helena, Montana.

²⁷ C. H. McLeod to A. B. Hammond, April 16, 1896, McLeod Papers MSS, University of Montana, Missoula. Hereafter cited as McLeod Papers MSS.

²⁸ U.S., Interior Department, Decisions, IV, 65.

²⁹ Shirley Jay Coon, "The Economic Development of Missoula County" (Unpublished Ph.D. dissertation, Dept. of History University of Chicago, 1926), 100. Hereafter cited as Coon, "Economic Development . . ."

as the Missoula Mercantile Company.

Although Bonner and Eddy continued to serve for a number of years as members of the board of directors for the Montana Improvement Company after it was incorporated, Hammond did not serve as a director following its incorporation. However, it was subsequently apparent that Hammond was privy to all decisions of importance regarding the policy of the lumber firm.³⁰

Hammond, who was a superb organizer, was the only incorporator of the Company with practical experience in various aspects of the lumbering business. He was born in Leonards, New Brunswick in 1848, where his father was a lumberman. When Andrew Jr. was sixteen, he worked for a year for a local logging company. He then spent a year each in Maine and the Pennsylvania Allegheny Mountains working in logging camps. In 1869, following a variety of other jobs, Hammond spent a year near Puget Sound also engaged in lumbering. He returned to Missoula, Montana the following year and worked in several retail stores before joining Eddy and Bonner in the retail business.³¹

Washington Dunn was the incorporator who was probably instrumental in organizing the lumbering corporation. Dunn

³⁰ See the McLeod Papers MSS.

³¹ For a more detailed biography of Andrew B. Hammond Jr., see Leeson, History of Montana, 1308; and Joaquin Miller, An Illustrated History of the State of Montana (Chicago, 18 1894), 556. Hereafter cited as Miller, Illustrated History.

was a contractor for the Northern Pacific. He was important both to the lumber and railroad companies because he understood the Northern Pacific's needs and was in a position to see that they were met.

The other incorporators, Micheal J. Connell and Marcus Daly were from Silverbow County and exemplified the increasing need for large quantities of lumber in the mining districts. Daly was in the process of establishing the first operation in the world designated to utilize low grade copper ore. This operation would require an immense amount of lumber and cord-wood. This lumber was needed to shore up the mine shafts and as fuel for the huge smelter at Anaconda which had begun operating in October, 1884.³²

Because of the use of timber from railroad lands, the Montana Improvement Company had the only right to cut timber on a large scale in the Territory. This right could be considered legal because of the railroad's right to use timber from adjacent land for construction.³³ The lumber company established several mills in the Territory in addition to the mills E. L. Bonner & Company had constructed. One, that

³² For a discussion of the beginning of large scale copper mining in Montana see: K. Ross Toole, "The Anaconda Copper Mining Company: A Price War and a Copper Corner," The Pacific Northwest Quarterly, XXXI, 312-329.

³³ The government's later objection was the broad interpretation of the term "adjacent" to include land located as far as several hundred miles from the road. The government also objected to the commercial use of public timber for other than construction of the road.

later became the Company's principal mill, was the dam and mill built in 1883 on the Blackfoot River east of Missoula.

The legal right to cut lumber in the Territory by anyone besides the Northern Pacific Railroad Company was very limited. Although the "Free Timber Act" of 1878 allowed timber to be removed from lands valuable chiefly for minerals, known mineral land in the Territory did not encompass many acres.³⁴ The large silver and copper claims required much more timber than they could possibly contain. The Timber and Stone Act, which Congress also passed in 1878, was the only other law which provided for timber to be harvested from public land. It allowed one filing for 160 acres of land not valuable for agriculture.³⁵

These two laws, established to supply the lumber requirements in the public land regions, were totally inadequate for the operation of a profitable large scale lumbering enterprise. Because of the size of the Montana Improvement Company, it not only could make a sizable profit, but could also control the lumber market in the Territory. Its dominance of the lumber industry in the Territory was based on both mass production and the favorable freight rates it received for lumber shipped on the Northern Pacific Railroad. In 1884 Special Timber Agent William F. Prosser investigated.

³⁴ U.S., Statutes at Large, XXII, 88. See Chapter I.

³⁵ U.S., Statutes at Large, XXII, 89. See Chapter I.

the Northern Pacific freight rates on lumber from Spokane Falls to Endicott in Washington Territory. He reported that the Northern Pacific was charging the Montana Improvement Company \$23 per carload, while all other customers were charged \$47 per carload.³⁶

It also was inevitable that the understaffed United States Land Office would discover the Montana lumber company's operations because of its size. Within two years the government's Special Timber Agent for the Pacific Northwest began to report that the big Montana corporation was cutting timber from unsurveyed public domain. Although the government had allowed timber removed from adjacent public lands, this right was granted only during the construction of the railroad. The Montana Improvement Company continued to cut timber from public land located miles from the railroad right-of-way.

A business as large as the Montana Improvement Company also induced the enmity of others operating on a smaller scale in the same business. On June 18, 1884, S. H. Williams of Noxon, Montana Territory, sent a letter to the Secretary of the Interior which illustrated the local animosity toward the Montana Improvement Company. Williams reported that the Montana Improvement Company had hired two to three thousand men to cut timber from the Flathead Indian Reservation. He stated that they were steadily sawing it into lumber and

³⁶ U.S., Interior Department, Decisions, IV, 66.

shingles. He complained that the lumber company would not allow anyone else to cut wood for fencing or fire-wood in the area and the company personnel threatened to send anyone who did to the state prison. "If I can read right I don't think the law allows them to destroy public timber as those men are doing . . . and they charge an outrageous price for their lumber too."³⁷

The investigation of the Montana Improvement Company's operations inaugurated federal supervision of public timber in Montana. The demand of the railroad companies for large quantities of timber during the 1880s forced the Land Office to protect the public timber in compliance with unrealistic laws. The beginning of the copper mining industry in Montana which coincided with the construction of the railroads into the Territory, imposed additional demands for large quantities of lumber. The demands of the mining interests increased most rapidly in the years following the completion of the Utah Northern Railroad and the Northern Pacific Railroad as well as subsequent branch lines which opened a relatively inexpensive means of access to the formerly isolated forests. With the new transportation facilities and the increasing demand for lumber, an organized timber enterprise could operate on a large scale in the Territory. The residents of the Territory were able to utilize large quantities

³⁷ U.S., Interior Department, Decisions, IV, 66.

of the timber resources for developing more extensive industry in the region. However, the timber was located on public land and the government maintained that it was illegal to cut public timber.

CHAPTER III

THE FIRST TIMBER SUITS

The rapid increase in lumbering operations in the Rocky Mountain and Pacific Northwest region resulted in additional problems for the understaffed federal Land Office. Secretary of the Interior Schurtz devoted much of his time during the latter part of the 1870s attempting to curtail the illegal removal of timber from federal land. However, in 1882, President Chester Arthur appointed William Teller as Secretary of the Interior. This appointment was beneficial for the Montana lumber interests. It provided three years to develop their operations unhampered by federal authorities.

Teller was a mine owner in Colorado and had also served as a railroad company lawyer. He was sympathetic toward the lumber needs of the railroads and mining interests in the West. He interpreted the statutes concerning the cutting of timber on the public domain loosely and did little to curtail the western timber operations. Teller's later defense of the timber interests best illustrated his philosophy concerning the use of public timber by residents of a public land region. He believed that timber lands should not be publically owned. Teller did not consider that individuals who cut timber from the public domain for mining or other requirements in their region were committing crimes against the national welfare as the

protectionists charged.¹ Because of Secretary Teller's philosophy, the Montana Improvement Company officials ignored the land office complaints regarding their removal of timber from public land.

It was evident that the Montana Improvement Company had important political connections in Washington. When the Land Office Special Timber Agent, William Prosser, talked with A. B. Hammond about the operations of the Montana Improvement Company, Hammond informed Prosser that Teller had approved the company's operations. Hammond told Prosser that E. L. Bonner--President of the Montana Improvement Company, Martin Maginnis--Territorial Delegate from Montana, and C. B. Sandborn--land agent for the Northern Pacific Railroad Company, had talked with Secretary Teller. According to Hammond, Teller authorized the company to cut all of the timber they needed from the public land which was surveyed.²

This substantiated Attorney General B. H. Brewster's previous report to the Land Office. Brewster reported that "it appears they obtained permission from the Department of the Interior to erect saw mills on the reservation [Flat-head]"³ Brewster stated that permission had evidently been granted until the railroad line was completed to Portland,

¹ U.S., Congressional Record, 60th Cong., 2nd sess., 1909, XLIII, pt. IV, 3224.

² U.S., Interior Department, Decisions, IV, 66.

³ Ibid.

Oregon. The Attorney General observed that although the road had been completed, the Montana Improvement Company continued to operate their mills day and night--at least during the summer and fall. Brewster estimated that they were procuring enough ties to last for years in addition to cutting lumber for their own business.

Even with these reports, the federal government allowed the lumber concerns in Montana, which were cutting public timber, to continue their operations unmolested until the inauguration of President Grover Cleveland. Cleveland replaced William Teller with Lucius Q. C. Lamar, a former Mississippi Representative, as Secretary of the Interior. The appointment of Lamar appeared beneficial to the vested interests because of his previous political activities. While serving in Congress during the 1870s, Lamar exerted his influence in behalf of the Pacific railroad interests. As Chairman of the Pacific Railroad Committee of the House of Representatives, Lamar was recognized as one of Thomas Scott's allies in the attempt to secure subsidies for the Texas Pacific Railroad Company.⁴ However, as Secretary of the Interior, he subsequently proved to be important in protecting public timber even though he tended to approach the situation cautiously.

Although the removal of Teller was important for the

⁴ C. Vann Woodward, Reunion and Reaction: The Compromise of 1877 and the End of Reconstruction, (Boston, 1951), 95-96. Lamar may have supported the Scott forces so a transcontinental railroad would be routed through the South.

protectionists, the appointment of William Andrew Jackson Sparks as Land Commissioner under Lamar was the most important factor in curtailing timber depredations on public land. Sparks had served for three terms as a Congressman from Illinois. He strongly believed that the public domain should be reserved for individual family filings and not exploited by corporations. He bitterly assailed his predecessor's administration of the public lands. After Sparks assumed the position of Commissioner of the General Land Office, he stated:

I found that the magnificent estate of the nation in its public lands had been to a wide extent wasted under defective and improvident laws, and through a laxity of public administration astonishing in a business sense if not culpable in recklessness of official responsibility.⁵

Sparks rapidly exerted his influence as Commissioner to establish a firmer control by the General Land Office over the administration of the public domain. His fervent desire to straighten out the numerous unfilled land grants and conflicting rulings balanced well with the more cautious nature of his superior--Lamar. Sparks' activities became well publicized. The newspapers in Montana were often violently emotional in their condemnation or support of the Commissioner. Although railroad land grants were the principal victims of Sparks' condemnation, he was also greatly concerned with the

⁵ U.S., Interior Department, Annual Report of the Commissioner of the General Land Office, 1885, 3.

large quantities of timber being cut from public land.⁶

Sparks' appointment was confirmed on March 21, 1885, and on October 14, 1885, the first report was made public in Montana that the federal government was filing suits against Montana residents for illegally cutting timber from the public domain in the Territory. The major newspapers in the Territory published a letter Special Timber Agent M. J. Haley sent to the Land Office. He reported that the last of thirty-one indictments against the Montana Improvement Company and the Northern Pacific Railroad Company for cutting timber from the public domain were being filed. The estimated value of the timber removed, which he considered to be below the actual value, was \$613,402.⁷ Haley stated that this did not represent all of the timber cut by the Montana Improvement Company. He claimed that he had a great deal of difficulty obtaining satisfactory information. He reported that it was practically impossible to locate witnesses and individuals who had worked on the railroad construction. The Montana Improvement Company officials had anticipated his investigation and had deployed agents along the line to suppress and destroy evidence of the company's operations in the

⁶ For a detailed discussion of Sparks' attempts to revoke land grants see: John B. Rae, "Commissioner Sparks and the Railroad Land Grants," The Mississippi Valley Historical Review, XXV (June, 1938 to March, 1939), 211-230.

⁷ This included 45,100,000 feet of lumber and bridge timber; 84,744 railroad ties; 15,400,000 shingles; 32,035 cords of wood; and 20,000 cedar posts.

sparsely populated timber region.⁸

The contract between the Northern Pacific Railroad and the Montana Improvement Company which Haley sent to the Department of the Interior was a duplicate of one which he recieved from H. W. Fairweather--an ex-division superintendent of the Northern Pacific.⁹ The terms of the contract were published in the major newspapers in the Territory. The Northern Pacific quickly denied that they had ever owned any part of the Montana Improvement Company or even had a contract with the lumber firm. The Northern Pacific also made certain that the federal government received pressure against continuing their indictment. The pressure was exerted not only by Territorial Delegate Joseph Toole, who at once supported the lumber interests, but also by the Territorial Officials. When Sparks first began issuing timber regulations and gathering evidence for the indictments, the Northern Pacific Officials were angry because Territorial Governor Samuel T. Hauser had not been sufficiently vocal in his opposition. Northern Pacific Vice-President Thomas F. Oakes sent Hauser a copy of the Land Office information on the timber indictments with a threatening letter:

Read this over carefully and let me know if you intend to take this position in reference to our timber inter-

⁸ The Helena Independent Weekly, Oct. 15, 1885; The Butte Semi-Weekly Miner, Oct. 14, 1885.

⁹ The Butte Semi-Weekly Miner, Oct. 14, 1885.

ests. If we have no rights in this property you will respect. [sic] I shall at once withdraw all of our deposits from your bank, put the Wickes Branch [a twenty mile Northern Pacific branch line which served Hauser's mines and smelters near Helena] on a strictly local basis and in every other respect make things so hot for you, you will think the devil is after you. The Northern Pacific Company has not spent \$70,000,000 to be bulldozed by you or any body else. The Northern Pacific Company has the right to demand of you the fullest support in every reasonable effort to protect its interests. It has never asked anything of you thus far but has done a great deal for you and your interests thus far with very little return.¹⁰

When Sparks issued a circular in September of 1885 defining the "Free Timber Act" of 1878, the lumber interests received strong and active support from newspapers in the Territory representing the mining interests and the residents who depended upon the mineral industry.¹¹ The circular stipulated that the timber could be removed only from land valuable for its mineral content. It stipulated that the individuals must personally use the timber which they removed from public land and it could not be sold in any form. It also prohibited the importation of timber from public land in other states or territories. However, the section which completely voided the usefulness of the "Free Timber Act" by the mining interests, prohibited the use of

¹⁰ Thomas F. Oakes to S. T. Hauser, June 2, 1885, Hauser Papers MSS., Montana State Historical Library, Helena. Hereafter cited as Hauser Papers MSS.

¹¹ Reprinted in The Butte Semi-Weekly Miner, Oct. 31, 1885.

timber from mineral land for fuel for quartz mills or reduction works, for conversion into charcoal for smelting purposes or for any other mining purpose not "contemplated by the Act of June 3, 1878."

This new interpretation radically changed the interpretation of a mineral district. Teller had considered a mineral district to encompass the entire mining region; Sparks interpreted it to mean only the "lands being mineral," or the actual land registered as a mineral claim. The new interpretation designed to protect public timber actually threatened the jobs of thousands of miners employed in the Territory and quickly brought an emotional discussion of both the circular and Commissioner Sparks in the mining region newspapers.¹²

Territorial Delegate Toole publically denounced Sparks' strict interpretation of the "Free Timber Act."¹³ He pointed out that it was unrealistic to require each individual or even individual mining company to cut timber individually for their own needs. The mines were often located miles from an adequate source of timber. Since the first settling of the mining districts, wood cutters and lumbermen had always sold their products to the mines. Toole believed that this new

¹² See: The New North-West (Deer Lodge, Montana), Oct. 16, 1885; Helena Weekly Independent, Oct. 29, 1885; Ibid., Nov. 5, 1885; Ibid., Nov. 26, 1885; Ibid., Dec. 17, 1885; The Butte Semi-Weekly Miner, Oct. 31, 1885; Ibid., Nov. 21, 1885; Ibid., Dec. 2, 1885; Ibid., Dec. 16, 1885; Ibid., Dec. 23, 1885.

¹³ The Butte Semi-Weekly Miner, Oct. 28, 1885.

limitation would violate the rights and principles which previously had the dignity of law enforced by the Interior Department. Actually the interpretation in contention was based on an act which had been effective for only seven years. Prior to 1878 the cutting of timber from all public lands for commercial purposes had been illegal since 1847. Because they had been removing only a small quantity the early residents of the mining districts had been able to cut timber for their mining operations, while the under-staffed Land Office was occupied attempting to contain the larger timber depredations in the Eastern United States.

Delegate Toole also pointed out that the stipulation denying the use of timber for fuel in milling, reduction, or smelting would in effect stop all mining of copper and silver in the Territory. Toole further commented that "the timber in Montana is not . . . the kind . . . to be profitably exported, and could never be used so advantageously to the Government as in the development of the mineral resources of the country."¹⁴

Governor Hauser became very vocal in his opposition to the government's timber policy and remarked to a correspondent of the Cincinnati Enquirer that the new ruling would force every man engaged in mining to stop work to find a stick of lumber suitable for his needs.¹⁵

¹⁴ The Butte Semi-Weekly Miner, Oct. 28, 1885.

¹⁵ Ibid., Dec. 16, 1885.

Because of the strong opposition against the circular, the Secretary of the Interior rescinded the circular's provisions. Secretary Lamar claimed that Commissioner Sparks had issued it without his authorization.

The Montana Improvement Company benefited immensely from the controversy over cutting timber from mineral land. Both because of the circular and the suits against the Montana Improvement Company, the newspapers in the Territory continually were commenting on the federal involvement in Montana affairs. The Butte Miner predicted that "hundreds of thousand of honest toilers . . . would be suddenly thrown out of employment."¹⁶ This estimate is highly exaggerated since there were only 39,000 residents in Montana in 1880 and by 1890 the population had increased to 143,000.¹⁷ Governor Hauser's estimate that the suits against the Montana Improvement Company would affect 20,000 men was more realistic.¹⁸ However, E. L. Bonner, manager of the Montana Improvement Company, predicted that "not less than 50,000 people" would be affected by the "crusade against the Montana Improvement Company."¹⁹ Bonner further stated, that if the supply of timber for the mining industry was terminated, 18,000 men would lose

¹⁶ The Butte Semi-Weekly Miner, Oct. 31, 1885

¹⁷ "Population and Vital Statistics," The Montana Almanac: 1959-60 (Missoula, Montana, 1968), 159.

¹⁸ The Butte Semi-Weekly Miner, Dec. 16, 1885.

¹⁹ The New-Northwest (Deer Lodge, Montana), Oct. 23, 1885.

their jobs in Butte alone. Without the wood needed to operate the smelters and reduction works, the \$20,000,000 annual ore production in the Territory would be suspended.

The Montana Improvement Company's officials also attacked special Timber Agent M. J. Haley. E. L. Bonner, President of the firm, established temporary residence in Washington, D. C. to lobby for the company's interests. He denounced Haley's report as malicious and untrue and did not hesitate to classify the agent as a crank.²⁰ A. B. Hammond, who was actually supervising the Montana Improvement Company's operations, worked to maintain political allies in Montana. In a letter which he marked "confidentail," Hammond told Governor Hauser that Haley's report was a "malicious lie" and claimed Haley was trying to get even for the resolutions adopted by the Democratic convention.²¹

Although the western timber interests condemned Agent Haley and the federal government in general, the most intense opposition was employed against Commissioner William A. J. Sparks. The Miner typified Sparks as being "the kind of a man who could tear down Solomon's temple in twelve hours, and who could not build a decent pigpen in twelve years."²² However, even in Montana there was some support for Sparks'

²⁰ The New-Northwest (Deer Lodge, Montana), Oct. 23, 1885.

²¹ A. B. Hammond to S. T. Hauser, Oct. 12, 1886, Hauser Papers MSS.

²² The Butte Semi-Weekly Miner, Dec. 2, 1885.

efforts to protect the public timber. Editorials in the Helena Independent condemned Sparks' opponents as participating in a "conspiracy to break down a man who is fully determined to do his duty, and protect the public domain from all plunders."²³ The editorial further stated that these plunderers consisted of organized companies which often included Congressmen and Cabinet members. Although it admitted that Sparks may have made some mistakes, the article emphasized that "he has done a grand work in protecting the public domain."²⁴

The Montana Improvement Company aided the condemnation of the General Land Office in the mining regions by announcing in December of 1885 that it was going to suspend all of its operations until the suits were settled. The Butte Miner reported that "this is the direct result of commissioner Sparks' idiotic action against the interests of Montana."²⁵ The Miner editorially praised the Montana Improvement Company's operation as vital to the interests of the Territory. According to the article, it had reduced the price of rough lumber by \$5 per 1,000 board feet and seasoned lumber from \$8 to \$11 per 1,000 board feet.

While the other papers were violently condemning the

²³ The Helena Independent Weekly, Nov. 26, 1885.

²⁴ Ibid.

²⁵ The Butte Semi-Weekly Miner, Dec. 23, 1885.

participants in the timber controversy, the Helena Independent proposed that the land be surveyed and sold as a solution to the problem.²⁶ The editorial stated that since the Northern Pacific owned half of the land within the boundaries of its grant, the railroad should know which half it owned. The paper also pointed out that purchasers of the land would be just as interested as the government in preserving the timber once it became private property. Governor Hauser was also in favor of having the land surveyed. He pointed out that as long as the land remained unsurveyed, the Northern Pacific Railroad did not have to pay taxes on it. Hauser believed that if the Railroad Company had to pay taxes on the land, it would be more willing to sell the land to settlers and thus develop the Territory.²⁷

The Surveyor General for the Montana Territory was appointed on April 29, 1867, but because of the size of the Territory, only settled portions of the areas containing minerals were designated to be surveyed.²⁸ As a result of the lack of appropriations and insufficient personnel, by 1877 only 9,646,266.51 acres were surveyed.²⁹ Congress continually

²⁶ The Helena Independent Weekly, Nov. 5, 1885

²⁷ U.S., Congress, House, Executive Documents, 49th Cong., 2nd sess., 1886, Pt. V, No. 1, Serial 2468, 833

²⁸ U.S., Interior Department, Report of the Commissioner of the General Land Office, 1867, 75

²⁹ U.S., Interior Department, Annual Report of the Commissioner of the General Land Office, 1877, 294.

failed to appropriate sufficient funds for financing significant surveys of the public domain. In 1883 Congress made a special appropriation of \$100,000 to prevent fraudulent land entries. The nominal sum of \$50,000 was to be immediately available.³⁰ At the rate of \$13 per linear mile in mountainous or forested terrain, this total appropriation would finance only 7,692 miles of surveyed lines or the exterior lines of 320.5 townships. The insufficiency of this appropriation was readily apparent when the millions of acres of unsurveyed public domain in the United States was considered.

During 1886, while the newspapers featured discussions of the timber controversy, a legal struggle developed between the timber interests and the federal government. The Department of the Interior was under constant pressure from the Montana Improvement Company lobbyists and their political supporters in all levels of government. The greatest difficulty the Interior Department encountered was interpreting the "Free Timber Act" of 1878 after Lamar rescinded the instructions which Commissioner Sparks had issued in the September 1885 curcular. Any interpretation which curtailed the cutting of timber from public land was certain to encounter opposition. Finally, on May 7, 1886, the Land Commissioner issued a modified circular or instructions.³¹ This circular

³⁰ U.S., Statutes at Large, XXII, 623.

³¹ U.S., Interior Department, The Annual Report of the Secretary of the Interior, 1886, II, 451-452.

differed from the September, 1885 circular by not restricting the use of the timber taken from mineral land. However, it still stipulated that the land from which timber was cut must actually contain valuable minerals.

Governor Hauser and Congressional Delegate Toole sought to influence the Interior Department to liberalize their interpretation even more. They submitted a petition signed by lumber dealers in the Helena, Montana area.³² The petitioners claimed that they operated small mills supplied with timber procured from mineral lands. They complained that it was difficult to ascertain which lands actually contained mineral and that there was not a law under which they could obtain timber. Hauser suggested that the circular be amended to allow timber to be cut in any district where mines existed. (Under this interpretation the entire western section of the Territory could be considered a mining districts.) This was the interpretation that former Secretary Teller followed. Also, if there was not sufficient timber available in the area of the mines, Hauser suggested that lumbermen be allowed to remove timber from contiguous counties or districts. The Governor also urged that the rule stipulating that individuals cut their own timber be revised. He suggested that mill owners be allowed to cut timber from mineral land regions and sell the lumber directly to the residents for mining or

³² Hauser was a large mine owner in the Helena area and needed lumber for his mines and smelter works.

domestic purposes.³³

After reviewing the petitions and Hauser and Toole's suggestions, Sparks reported his opinion of the arguments to Secretary Lamar. He pointed out that the interests of the settlers and the lumbermen were not identical. The lumbermen monopolized the timber, controlled the market, and regulated the price of lumber. For example, he referred to his report of January 18, 1886. A lumberman in Montana had burned the slabs rather than sell them to the settlers in order to compel the settlers to buy good lumber at a much higher price. Sparks also noted that large quantities of timber were exported from Western Montana and Idaho to such distant markets as St. Paul, Minnesota where it was sold at a competitive price. The Commissioner observed in conclusion that all of the signatories of the petition had a vested interest in modifying the circular. Sparks questioned whether the petition actually represented the settlers' desires.³⁴

Irregardless of Commissioner Sparks' opinion, on June 1, 1886, the Department of the Interior issued a circular modifying the provisions of the circular of May 7, 1886, and broadening the interpretation of the "Free Timber Act" of 1878. The new circular modified section two of the May 7th

³³ U.S., Congress, House, Executive Documents, 49th Cong., 2nd sess., 1886, Pt. V, No. 1, Serial 2468, 447-448.

³⁴ Ibid., 449.

circular, which required the land from which timber was removed to be known to be strictly and distinctly mineral, to read "strictly mineral in character." It also changed the interpretation from allowing removal of timber only by the individuals or their agents for personal use, to allowing individuals to cut timber from mineral land and sell it to bona fide residents of the Territory. In accordance with the latter modification, the June circular required mill owners to keep a record of all timber removed as well as a record of the individuals to whom it was sold. The buyer was required to give the mill owner a written statement that the timber was for his own use and only for an authorized purpose. The mill owners were required to permit agents of the Interior Department to inspect the records of their sales at all times.³⁵

While the politicians from Montana were pleading for the Interior Department to liberalize the timber cutting regulations, the lumbering operations continued undisturbed. In the spring of 1886, the general manager of the Montana Improvement Company wrote to Governor Hauser. He asked the Governor if he would take the six car loads of cord-wood which the Montana Improvement Company had cut the previous year for the Governor's mining and reduction company. Hauser personally noted on the letter that he would pay the

³⁵ U.S., Interior Department, Annual Report of the Secretary of the Interior, 1886, II, 453.

previous year's price delivered.³⁶

The following fall A. B. Hammond wrote to Governor Hauser concerning the type of wood the Wicks and Butte Railroad, of which Hauser was a director, would need. The railroad required an estimated 4,000,000 feet of bridge timber exclusive of its other wood requirements. Hammond noted that it would take about 7,000,000 feet of logs to fill the order. He explained that only a little more than half of a log could be utilized for timbers and the balance would be used for planks and boards.³⁷

On February 5, 1887, the United States Surveyor-General was informed that Congress had appropriated \$15,000 for surveying the public timber lands where the Montana Improvement Company had been cutting. A detailed list of the lands involved, described as accurately as possible considering the circumstances, was given to the Surveyor General. Bids were advertized for on March 17, 1887. The Congressional appropriation of August 4, 1886, allowed the mileage rates of \$9, \$7, and \$5 for standard and meander, exterior township, and subdivision lines respectively. On April 30, 1887, the Surveyor-General informed the Land Office that he had not received a single bid. He attributed this failure to the insufficient compensation for surveying the difficult

³⁶ Thomas Hatheway to S. T. Hauser, May 25, 1886, Hauser Papers MSS.

³⁷ Ibid., A. B. Hammond to S. T. Hauser, Sept. 16, 1886.

terrain involve.³⁸

In 1887 the federal government encountered difficulties in its \$1,100,000 suit against the Northern Pacific Railroad and the Montana Improvement Company. The Montana Territorial Court ruled that a survey was necessary to show the exact rights of the parties involved in the action before the government could seek compensation for any trees cut illegally. The Court ruled that the government could not lawfully demand an injunction against the timber operation until it could show specifically that its property had been injured or threatened.³⁹

In 1888 the Land Commissioner reported that the Land Office was attempting to indict the Northern Pacific Railroad Company and the Montana Improvement Company for their timber violations. The Department had been investigating new and more extensive depredations involving the Northern Pacific controlled lumber firm. The Commissioner reported that "every effort has been made to check their bold and defiant operations, but without success."⁴⁰ Because of the adverse decision the previous year and the failure

³⁸ U.S., Congress, House, Executive Documents, 50th Cong., 1st sess., 1887, Pt. V, No. 1, Serial 2541, 317-318.

³⁹ United States, appellant v. Northern Pacific Railroad, Company, respondent, 4 Montana Reports 351 (1887); U.S., Congress, House, Executive Documents, 50th Cong., 1st sess., 1887, Pt. V, No. 1, Serial 2541, 327-328.

⁴⁰ U.S., Congress, House, Executive Documents, 50th Cong., 2nd sess., 1888, Pt. V, No. 1, Serial 2636, 52.

to receive bids on the 1886 Congressional appropriation, the government finally gave up its attempt to indict the two companies.

Hammond consequently was still the lumber magnate of the region and he continued expanding his operations. He refused to be intimidated by the federal government. In 1886 his legal council had defeated the government in court; while his men belligerently out-manuvered the under-staffed Land Office. The Montana depredators destroyed evidence and made it difficult for the government to locate witnesses.⁴¹

Not only had the timber interests continued expanding their operations in Montana, but Hammond, Daly and other leaders in the Territory, who were interested in increasing their legal rights to public timber, began to assess the political situation in 1888. As the national elections approached, these timber-men concluded that the Democrats would lose the Presidential election. With the prospect of a Republican Administration under William Harrison, the old party Democrats such as A. B. Hammond and Marcus Daly quietly switched political affiliations. The timber interests believed they would need a Representative who would have influence with the anticipated Republican Administration. However, Montana was a Democratic Territory and after the mining magnate William Andrews Clark won the Democratic primary election, he

⁴¹ U.S., Congress, House, Executive Documents, 50th Cong., 1st sess., 1887, Pt. V, No. 1, Serial 2541, 165.

anticipated an easy victory in the general election. His Republican opponent, Thomas Carter, did not appear to be strong opposition. However, Clark was defeated in the general election by 5,126 votes. Clark won in only two agricultural counties--Gallatin and Chouteau. Carter won in fourteen counties in the Democrat dominated Territory. These included Clark's resident county of Silverbow by 1,641 votes and Deerlodge county, where Clark had extensive financial interests, by 1,111 votes.⁴² Following an analysis of the election returns, it became apparent that the formerly Democratic dominated lumbering areas of the Territory as well as the mining regions of the Anaconda Company had voted heavily Republican. William A. Clark bitterly believed that he had been betrayed and this caused a violent political struggle in Montana which lasted for a decade.⁴³

By 1889 Montana timber operations had expanded into a large and profitable industry. In 1888 the sawed lumber in Montana was estimated at 150,000,000 board feet and was valued at \$22,500,000.⁴⁴ During the 1880s, the federal government had been unsuccessful in solving the timber

⁴² The Official Canvas by the Territorial Canvassing Board, The Helena Daily Independent, Dec. 9, 1888.

⁴³ For a detailed discussion see: K. Ross Toole, "The Genesis of the Clark--Daly Feud," The Montana Magazine of History (April, 1951), 21-33.

⁴⁴ U.S. Congress, House, Executive Documents, 51st Cong., 1st sess., 1889, Pt. V, No. 1, Serial 2724, CXIV.

problem. During the 1890s, the lumber industry in Montana rapidly expanded. The federal government was confronted with increasing difficulties in its attempt to prohibit timber cutting on public land.

CHAPTER IV

THE FEDERAL GOVERNMENT AND MONTANA DEPREDACTIONS IN THE 1890s

During the 1880s, the western lumbering interests continued to lobby in Congress for legislation granting legal provisions to obtain sufficient timber to supply their needs. In 1890 and 1891 federal legislation regarding public timber became an important and controversial issue in Congress. The conservationists were demanding federal legislation to curtail the extensive stealing and waste by the lumbermen; the lumbermen were demanding less interference by the federal government. The arguments in Congress paralleled these two philosophies.

Montana Senator Wilber F. Sanders was a prominent spokesman for the western timber interests. Sanders re-assured his Congressional colleagues that:

there is not the remotest desire on the part of the citizens . . . I represent . . . to get timber land or timber for nothing; but the simple fact is that they can not get it; they can not buy it unless they go up to Oregon or Minnesota, distant from 700 to 1,100 or 1,200 miles Now it is wise . . . it is just, it is beneficent that these needs that exist there and that must be supplied . . . be provided for by law . . . without subjecting the persons to a criminal prosecution or to a civil action.¹

¹ U.S., Congressional Record, 51st Cong., 1st sess., 1890. XXI, Pt. V, 10088.

Vermont Senator George F. Edmonds, a former Land Office Commissioner, retorted that:

all the timber on all the public lands of the United States . . . would be open and common loot for every miner, for every railroad, for every saw mill, for everybody who thinks that he can make some money out of cutting down the forests and selling their products.²

On March 3, 1891, the lumber interests finally secured Congressional passage of the first realistic timber cutting legislation. The new law provided for the removal of timber from public lands "by a resident . . . for agricultural, mining, manufacturing, Italics mine or domestic purposes under rules and regulations prescribed by the Secretary of the Interior"³ This law stipulated that it amended and did not repeal the "Free Timber Act" of 1878. The authorization for the Secretary of the Interior to issue regulations for the cutting of public timber resulted in the policy of granting permits for cutting timber on public land. During the term of Land Commissioner Silas W. Lamoreaux, 1893 to 1897, the lumbermen were leniently issued permits.

The law of March 3, 1891, also was designed to pacify the conservationists' demands. Section twenty-four authorized the President to reserve by public proclamation "any

² U.S., Congressional Record, 51st Cong., 1st sess., 1890 XXI, Pt. V, 10089.

³ U.S., Statutes at Large, XXVI, 1093.

part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations"4 Between September 28, 1893, and January, 1897, President Cleveland utilized this act to establish seventeen forest reservations in the United States which totaled 17,500,000 acres.⁵ None of the first forest reservations affected the lumbering operations in Montana and thus, caused little opposition in the Treasure State. However, subsequent timber land reserved under this act in Montana caused it to be a highly controversial law.

In 1892 the Montana lumbermen benefited from additional legislation when Congress amended the Timber and Stone Act of March 3, 1878, to encompass all public land in the United States.⁶

The legislation in 1891 and 1892 was important in the struggle over utilization of timber on public land. The lumbermen were granted legal means for securing timber from public land in an attempt to comply with their requests for the legal right to supply the lumber requirements of their regions. However, the regulations, which the Department of the Interior established, were designed for small lumbering

⁴ U.S., Statutes at Large, XXVI, 1103.

⁵ U.S., Congress, Senate, Executive Documents, 55th Cong., 1st sess., 1897, V, No. 105, Appendix A, Serial 3562, 38.

⁶ U.S., Statutes at Large, XXVII, 348.

operations. The politically influential lumbermen in Montana had operations which were too extensive to abide by the restricting regulations. Consequently, the controversy continued as the federal government attempted to protect the public timber from commercial exploitation on a large scale.

During the 1890s, while Congress was struggling to formulate effective legislation for the public timber regions, the lumber operations in Montana were consolidating and expanding.

After the federal agents began to keep the Montana Improvement Company's activities under close surveillance, the company's operations were shifted to other corporations.⁷ In the fall of 1885, A. B. Hammond's brother, F. A. Hammond, purchased the mill on the Blackfoot River from the Montana Improvement Company and moved it to Hell Gate Canyon. F. A. Hammond sawed lumber from the timber growing along the Hell Gate River until he sold the mill in May, 1886, to George W. Fenwick, who was Hammonds' brother-in-law. Another Hammond brother Henry Hammond, acquired the dam site on the Blackfoot River in July, 1885, from the Montana Improvement Company. The dam, which the Montana Improvement Company built

⁷ Although the annual reports depict an active operation until 1888, in 1890 the company appeared to be inactive. R. A. Eddy was President of the firm until 1888, but after 1890 the board of directors was composed of lower echelon subordinates of the Hammond organization. See: Annual Statements of the Montana Improvement Company, Missoula County Clerk and Recorder, Missoula, Montana, File No.: 51, 56, 132, 185, 251, 287, 317, 342, 397, 426, and 449.

in 1883, had been washed out in a flood. Henry Hammond rebuilt the dam and built a new sawmill which was named Bonner Mill.⁸

On August 4, 1887, the Blackfoot Milling Company was incorporated for \$300,000 by members of A. B. Hammond's organization.⁹ Six months later another corporation was formed under the slightly different name of Blackfoot Milling and Manufacturing Company. The authorized stock was also \$300,000.¹⁰ The latter corporation acquired the total assets of the Bonner Mill. In return Henry Hammond received one-fourth of the stock. A. B. Hammond owned one-fifth of the stock.¹¹

Andrew B. Hammond Jr. remained in the background during the last half of the 1880s while his relatives and close associates managed the lumbering operations. Hammond later denied having any connections with the lumbering operations during this period.¹² However, the available correspondence

⁸ Hammond v. United States, 246 Federal Reporter 44 (1917).

⁹ Blackfoot Milling Company Articles of Incorporation, Aug. 4, 1887, Missoula County Clerk and Recorder, Missoula, Montana, File No. 12. The Trustees were William H. Hammond, Charles B. Dawes, and Edward A. Winstanley.

¹⁰ Blackfoot Milling and Manufacturing Company Articles of Incorporation, Jan. 21, 1888, Missoula County Clerk and Recorder, Missoula, Montana, file No. 14. The Trustees were: Charles H. McLeod, John M. Keith, Charles C. Beckwith, George L. Hammond, Edward A. Winstanley, Charles Dawes, Thomas C. Marshall, Howard P. Heacock, and Michael J. Connell.

¹¹ Hammond v. United States, 246 Federal Reporter 44 (1917)

¹² Ibid., 40.

indicates that he was actively soliciting large orders for lumber as well as being concerned over the timber situation.¹³

On November 14, 1891, the Big Blackfoot Milling Company was incorporated for \$700,000. This was the last of the lumbering firms which the Hammond organization formed in Montana.¹⁴ The Big Blackfoot Milling Company acquired the assets of the Blackfoot Milling and Manufacturing Company. Henry Hammond continued as President of the new corporation. Because of the Act of March 3, 1891, which legalized the removal of timber from public land by means of timber permits, A. B. Hammond publicly engaged in the lumber business once again.

In 1890 the Hammond lumbering interests encountered formidable competition from Marcus Daly. The copper magnate, who had been an original incorporator of the Montana Improvement Company, established a lumbering enterprise in the Bitter Root Valley which was comparable to Hammond's enterprise in the Missoula vicinity. The Bitter Root Development Company, incorporated by Daly on August 8, 1890, ended A. B. Hammond's complete domination of the large commercial lumber industry in Montana. The original five trustees of

¹³ A. B. Hammond to S. T. Hauser, Oct. 12, 1886, Hauser Papers MSS; Ibid., Nov. 3, 1886; Ibid., Nov. 16, 1886; Ibid., Nov. 23, 1886.

¹⁴ Big Blackfoot Milling Company--Articles of Incorporation, Missoula County Clerk and Recorder, Missoula, Montana, file No. 204. Incorporators were: A. B. Hammond, Richard A. Eddy, E. L. Bonner, Thomas Hatheway, C. H. McLeod, W. H. Hammond, and John M. Keith.

the new lumber enterprise reflected its mining orientation. They were all from Silverbow County and friends of Marcus Daly.¹⁵

Daly had begun to take an interest in the Bitter Root Valley late in the 1880s. Because of the extensive requirements for timber in Daly's mining enterprise, he instigated a policy of verticle integration in his mining operations. It was economically practical to eliminate the expense of purchasing lumber from independent lumber companies and supply the timber required in his mining operations through his own lumber company. The lumber requirements in the mining industry were becoming immense. In 1888 the Anaconda Company was using 40,000 board feet of lumber per day for the mines--exclusive of the smelter and reduction works.¹⁶ Daly began his lumbering operations in the Bitter Root Valley using two portable mills for the first two years of his operation. In 1892 he built a permanent mill near the town of Hamilton which he had founded. Daly's investment in the Valley became extensive. During the 1890s, Marcus Daly accumulated a 30,237 acre estate in the Valley. It consisted of choice agricultural and timber land located on the east

¹⁵ Bitter Root Development Company, Certificate of Incorporation, Missoula County Clerk and Recorder, Missoula, Montana, File No. 140. Incorporators were: James W. Hamilton, William Toole, Daniel J. Hennessy, John R. Toole, and William Dixon.

side of the Bitter Root River.¹⁷

Daly supplied the timber for his sawmills through contracts with local small logging operations as well as his own logging crews. The government agents charged that the Kendall Brothers, Harper Brothers, Grant L. Shook, William Toole, Andrew Kennedy, D. V. Bean, and John Ailport were logging millions of board feet of timber under contracts with Marcus Daly beginning in 1891.¹⁸

Soon after Marcus Daly organized the lumbering business in the Bitter Root Valley, he began forming a series of corporations. He maneuvered the stock between the various corporations which his business associates formed. The government later claimed that the corporations were formed for the purpose of concealing the illegal timber cutting operations and confusing the government's investigation.¹⁹

On January 14, 1891, Daly and his associates organized the Anaconda Mining Company which was stocked for \$12,000,000. On December 5, 1891, its stock was increased to \$25,000,000. Marcus Daly controled 70% of the stock.

On April 27, 1894, the Bitter Root Development Company

¹⁷ This was the total taxable acreage owned by Marcus Daly in the Bitter Root Valley in 1900 as compiled by Henry H. Beverly, Jr., an associate of the writer. Ravalli County Assessor Office, Hamilton, Montana, Book No. 1900.

¹⁸ United States v. Bitter Root Development Company, 200 U.S. 457 (1906).

¹⁹ Ibid.

transferred all of its assets to Marcus Daly for the consideration of \$1.00.²⁰ Subsequently, on May 1, 1894, Daly deeded the property of the Bitter Root Development Company to the Anaconda Mining Company for \$1,442,379.46.²¹ The government charged that Daly had received a portion of the consideration for this transaction in cash and a portion in additional stock of the Anaconda Mining Company.²²

On June 6, 1895, the formation of corporations continued when Daly's allies organized the Anaconda Copper Company with the authorized capital stock of \$30,000,000.²³ Nine days later, the same individuals incorporated the Anaconda Copper Mining Company with the authorized capital of \$30,000,000. The same seven trustees were also named to manage the new company.

On May 29, 1895, the property of the Anaconda Mining Company (which owned the Bitter Root Development Company assets) was transferred to the Anaconda Copper Mining Company for the minimum consideration of \$1.00.²⁴

During the legal maneuvering of ownership of Daly's

²⁰ Ravalli County Deed Book, Hamilton, Montana, No. 16, 302.

²¹ Ibid., 280.

²² United States v. Bitter Root Development Company, 200 U.S. 459 (1906).

²³ Incorporators were: Moses Kirkpatrick, William Scallon, and Malcolm B. Bromley. Trustees listed in addition: Michael Donahue, William L. Hoag, Daniel J. Hennessy, and Joseph Long.

²⁴ Ravalli County Deed Book, Hamilton, Montana, No. 16, 441.

timber interests in the Bitter Root Valley, the lumbering operations were expanding. Because of the extent of the Bitter Root Development Company operations, the federal government began to investigate the company soon after it was incorporated. In 1894 the United States Land Office recommended that the Bitter Root Development Company be indicted for cutting 31,525,000 board feet of saw-logs valued at \$315,250. The Land Office reported that the lumber firm was the principal supplier of wood for the Anaconda Mining Company. The Land Office further reported that Marcus Daly owned the principal portion of both of these companies.²⁵ The total volume of wood being cut by Daly's lumber operations was apparent from the amount of wood the Anaconda Company consumed. For example, during the six month period prior to their brief shut-down in the fall of 1891, Anaconda's operations in Butte and Anaconda utilized 65,000 cords of wood and 18,500,000 board feet of lumber. After resuming operations, the daily consumption averaged 700 cords of wood and 100,000 board feet of lumber. In 1892 Anaconda Mining Company's wood consumption was 255,000 cords and 40,000,000 board feet of lumber. In addition to the lumber utilized by his mining operations, Daly's lumber operations in the Bitter Root Valley also were cutting "not less than"

²⁵ Both operations were under the control of the Anaconda Mining Company as of May 1, 1894.

50,000,000 board feet of lumber which they annually sold in lumber yards located in various towns in the State.²⁶

Most of the other timbermen in the Bitter Root Valley sold their lumber either to Daly's company or the other mining companies in Silverbow County. The volume of timber cut in the Bitter Root Valley was large. The Ravalli County Assessor reported that in 1896 there were eight saw-mills operating in the County with a total estimated production of 72,000,000 board feet of lumber.²⁷ W. J. Kendall, who had been logging in the Valley for a number of years, contracted much of his business to Anaconda. In 1897 he cut approximately 7,000,000 board feet of logs between February and the spring "drive" in April.²⁸ During the same year, Harper and Baird's lumbering operation contracted to deliver to J. T. Carroll of Butte all of the lumber which they could cut between February and August.²⁹

The logs were cut during the entire year and stacked along the river to await the main "drives" to the mills located down-stream--principally Daly's large mill at Hamilton. There was usually one large "drive" in the spring.

²⁶ U.S., Interior Department, Annual Reports of the Department of the Interior, "Report of the Secretary of the Interior--Report of the Commissioner of the General Land Office," 1897 76-77.

²⁷ Western News (Hamilton, Montana), Dec. 8, 1897.

²⁸ Ibid., Feb. 17, 1897. "Driving" was floating the river.

²⁹ Ibid.

However, if it appeared that there would be an insufficient supply of logs to keep the mills operating, there would be another "drive" during the late summer. The 1896 "drive" was composed of an estimated 70,000,000 board feet of logs which required a force of over 300 men.³⁰

Marcus Daly's lumber operations were not confined to the Bitter Root Valley. Daly established lumber operations in the Flathead Valley north of Missoula although the government did not include them in their investigations of Daly's depredations of public timber. Lumber became the first product to be exported from the Flathead Valley after the Great Northern Railroad was completed in 1891. In 1893 Anaconda's Butte-Montana Company was built at the mouth of the Stillwater and Whitefish Rivers east of Kalispell.³¹ The major purpose of Daly's Flathead Valley lumber operations was to produce lumber and fuel for the mines and smelters in Silverbow County. However, the timber from the Flathead region also was shipped on the Great Northern Railroad to Great Falls to supply fuel for the smelter. The company also exported lumber to the Eastern part of the State and North Dakota for sale. It was possible for the Flathead operations to compete with the Missoula lumber companies for the Silverbow

³⁰ Western News (Hamilton, Montana), April 8, 1896.

³¹ Arnold William Bolle, "The Basis of Multiple use Management of Public Lands in the North Fork of Flathead River, Montana" (unpublished Ph.D. dissertation, School of Public Administration, Harvard University, 1959), 64-65. Hereafter cited as Bolle, "Management of Public Lands."

markets because the Great Northern Railroad charged fifteen cents per hundred weight which was the same rate the Missoula mills were paying the Northern Pacific.³²

During the 1890s, many lumber companies in Montana utilized the timber cutting permits issued by the Department of the Interior. Both the Bitter Root Development Company and Anaconda Mining Company were granted several permits. The government charged that under the legality of their permits Daly's personnel indiscriminately cut timber both from the land included in the permits and the public domain in the vicinity of the permitted sections.

During the 1890s, A. B. Hammond expanded his enterprises to the West Coast. He invested not only in lumber, but also in railroads, canneries, steamships and other industries. Although he still maintained his interests in the expanding lumber industry in Montana, Hammond spent very little time in the State. He was either consolidating his interests on the West Coast or in New York raising capital to finance his extensive and expanding investments. Charles H. McLeod assumed the management of Hammond's Montana enterprises. McLeod was

³² In 1904 when James Hill began to invest in sawmills, the Great Northern increased its rate to twenty-one cents per hundred weight; the Northern Pacific changed its rate to seven cents. The Butte-Montana Company could no longer compete for the Butte Market and Amalgamated sold the company at a loss. See: Bolle, "Management of Public Lands," 65.

³³ United States v. Bitter Root Development Company, 200 U.S. 459 (1906).

technically the manager of the Missoula Mercantile Company, but he also supervised the lumber interests and represented Hammond's interests in local politics.

In 1894 the controversy over the location of the State Capital illustrated the effects of politics on Hammond's lumber interests. Hammond wrote to former governor S. T. Hauser, who was in New York, and requested that Hauser go to Washington and secure the appointment of men favorable to Hammond's interests as register and receiver for Missoula County. The rivalry between the State's two largest timber entrepreneurs was evident. Marcus Daly was also attempting to secure the appointment of two of his men whom Hammond characterized as "willing tools of Daly's and shameless enough to resort to any means to serve him."³⁴ Hammond believed that Daly was attempting to place the Hammond organization in the position of being forced to support Anaconda for the State Capital in its competition with Helena.

Hammond also had to maintain national political influence since he was continually in danger of receiving a federal indictment. In February, 1895, E. L. Bonner was in Washington observing the government's timber policy. He telegraphed the Hammond organization that the government was contemplating re-opening their investigations of the Montana Improvement Company. Hammond immediately dispatched Senator Thomas F.

³⁴ A. B. Hammond to S. T. Hauser, May 15, 1894, Hauser Papers MSS.

Carter from New York, where the two men were conferring, to Washington, D. C. to investigate the situation. Because of Bonner's nervousness over a federal investigation, Hammond was not confident in his business associate's ability to deal with the Interior Department. However, in March Hammond reported to McLeod that Carter and Bonner were not able to secure any information in Washington concerning the possible suit against his lumber operations. He believed that the officials were keeping the investigation secret. Hammond declared that he would attempt once more to stop the proceedings. If that failed, he would contest it in court. Hammond considered the latter action the best long term solution since the Washington officials were unpredictable.³⁵ However, the government officials did not file an indictment against Hammond's lumber operations at that time.

During this period, Hammond's organization was attempting to secure a government appointment for one of their men as commissioner for Missoula County to select mineral land. In a series of letters and coded telegrams, Hammond kept McLeod informed on the progress of securing the appointment for Gust Moser.³⁶ At the time Moser was

³⁵ See: C. H. McLeod's correspondence for February and March, 1895, McLeod Papers MSS.

³⁶ Two of the coded telegrams were decoded originally--evidently by C. H. McLeod. On January 22, 1966, a cryptographer, Henry Ephron, decoded a third telegram. Although several still have not been decoded, from the available correspondence, they do not appear important for this study.

was serving as secretary of the inactive Montana Improvement Company.³⁷ As the Federal Mineral Land Selector, Moser would be important to the Hammond interests because he could classify prime public timber land as mineral. The Hammond interests could then cut the timber legally under the provisions of the "Free Timber Act." Hammond cautioned McLeod to have Moser keep the anticipated appointment secret until after it was confirmed. Hammond's remark that the appointment would not have been possible without the endorsement and efforts of T. F. Oakes, the Vice-President of the Northern Pacific Railroad, illustrated Hammond's extensive political influence.³⁸

Hammond had been receiving timber cutting permits since the passage of the legislation in 1891 which authorized this method of procuring public timber. To curtail a single company's control of the lumber industry in a specific area, the Interior Department was reluctant to grant a permit to any single enterprise to cut timber from more than a couple of sections. On August 28, 1891, Hammond's Big Blackfoot Milling Company first applied for a permit to cut timber from a narrow strip of land bordering the Big Blackfoot River for sixty miles. The area contained thirty-seven sections and because of the river it was easy to float logs to the mill at

³⁷ Annual Statement of the Montana Improvement Company, Missoula County Clerk and Recorder, Missoula, Montana, Sept. 1, 1895, file No. 342.

³⁸ See Hammond-McLeod correspondence: March 1, 2, 7, 15, 17; 1895, McLeod Papers MSS.

Bonner, Montana. On January 16, 1892, the Secretary of the Interior granted the Big Blackfoot Milling Company permission to cut timber on seventeen and five-eighths sections for a twelve month period. On September 10, 1892, a second petition was filed requesting permission to cut timber from all of the land included in the original petition for a period of three years. Although the Secretary denied the request at first, Hammond's organization finally convinced him to reconsider and on February 13, 1893, the Department granted the lumber company permission to cut timber from twenty-two and one-eighth sections for a three year period. However, after President Cleveland appointed Hoke Smith Secretary of the Interior, Smith revoked the \$138,000 permit and granted the Big Blackfoot Milling Company four sections until January 1, 1894.³⁹

The Department of the Interior subsequently required that applications be submitted annually for timber permits. Because of the small area granted to each company and considering the size of Hammond's operation, the Land Office's charges that the company was cutting timber from land not included in the permit was probably correct. However, Hammond also had the legal right to cut timber from the vast quantities of Northern Pacific land located along the Blackfoot River and west of Missoula in accordance with the agreement with the railroad.⁴⁰

³⁹ U.S., Interior Department, Annual Report of the Secretary of the Interior, I, 1893, 307.

⁴⁰ C. H. McLeod to A. B. Hammond, April 18, 1896, McLeod Papers MSS.

In 1895 Hammond had particular difficulty securing a permit for an additional four sections. Hal Corbett, Hammond's attorney, wrote McLeod from Washington, D. C. that Governor Leslie had raised some question of the legality of Hammond's operations. The governor caused the Commissioner to delay issuing the permits for several weeks. Corbett praised Commissioner Lamoreaux as being "a fine man" and was confident that he could explain any questionable aspects of the report from the special agent whom the Department of the Interior had sent to investigate.⁴¹

In utilizing every available means for securing a permit, the Hammond organization hired Frank B. Lamoreaux, a Stevens Point, Wisconsin lawyer, as their special lobbyist. This illustrated Hammond's shrewdness since Lamoreaux publically did not have any connections with the Montana lumber operations. However, he did have important political connections in Washington. The Wisconsin lawyer's uncle was Silas W. Lamoreaux, the Commissioner of the General Land Office.

After returning to Wisconsin from a trip to Montana, Frank Lamoreaux wrote McLeod that he would write his uncle in Washington and "advise the granting of this permit." He requested additional information describing the land involved. However, since the Big Blackfoot Milling Company had made the application, he thought the Commissioner would understand

⁴¹ Hal Corbett to C. H. McLeod, Aug. 2, 1895, McLeod Papers MSS.

the locality.⁴² Ten days later McLeod received another letter from Lamoreaux stating that he could not do anything by correspondence and would have to go to Washington. He also informed McLeod that "you will understand that I shall want some money to use otherwise than for my own time and expenses"43

Frank Lamoreaux went to Washington to circumvent the opposition and secure approval for the timber cutting permits on the Blackfoot River. On October 31, 1895, Lamoreaux wired McLeod, ". . . am confident can receive option desired for two thousand dollars more [,] considerable opposition . . ."44 A letter to C. H. McLeod of the same date discussed the Washington situation in more detail. Concerning the reports received by the Federal Land Office, Frank Lamoreaux wrote:

They report that your company is composed of the same individuals that had been wronging the Government under another name [,] that you were not living up to either the spirit or letter of the law. That you cut all timber without regard to the rules of the interior department. [The Interior Department stipulated that trees of less than eight inches in diameter could not be cut.] Trespassed upon Government lands, set fires to cover up your tracks [,] cut witness trees & c & c . . . that your company were [sic] making vast sums of money out of the

⁴² Frank Lamoreaux to C. H. McLeod, Oct. 4, 1895, McLeod Papers MSS.

⁴³ Ibid., Oct. 14, 1895. Words underlined in the original by Lamoreaux.

⁴⁴ Ibid., Oct. 31, 1895, telegram.

government's timber by violating the laws and recommended not granting the permits and even recommended legislation opposing the granting of further permits to cut timber.⁴⁵

Lamoreaux briefly described his defense of the Hammond organization and requested a meeting with McLeod or one of the organization's lawyers in Chicago to discuss the situation in detail. He concluded by cautioning McLeod that the information was all confidential because he had

pulled strong strings and . . . vouched for the strictest secrecy from all interested parties, shall want some or all moneys paid at Chicago if we are successful as have some large bills to pay in connection with this deal.⁴⁶

Finally, on November 8, 1895, Lamoreaux reported that he had secured the permits and requested that McLeod meet him in Chicago with the money.⁴⁷

Although the Hammond organization had squelched the Interior Department's special investigation during the spring of 1895, some of the organization's personnel were indicted in the Montana District Court in the spring of 1896 for timber depredations. The government offered to compromise for twenty-five cents per tree cut since the amount involved was not extensive. Hammond's Montana attorney, Thomas C.

⁴⁵ Frank Lamoreaux to C. H. McLeod, Oct. 31, 1895, McLeod Papers MSS.

⁴⁶ Ibid.

⁴⁷ Ibid., Nov. 8, 1895, telegram.

Marshall, estimated that it would cost about \$1,500 for the 6,000 trees that had been illegally cut. He suggested that they settle for that amount rather than contest the indictment and risk a larger judgement against them.⁴⁸

The Montana lumbermen generally had been victorious in their contests with the federal government over the use of timber from the public domain. However, in February 1897, the timber conservationists were triumphant. Although in 1891 Congress had authorized the President to reserve timber land, none had been reserved in Montana. On February 6, 1897, Secretary of the Interior D. R. Francis submitted a report to President Grover Cleveland urging him to establish thirteen additional forest reservations containing an aggregate of 21,379,840 acres. He emphasized that it had been three and a half years since a President had utilized this prerogative. The acreage which Secretary Francis proposed that the President reserve was approximately 4,000,000 acres more than had been included in forest reserves during the preceding six years. To justify this large reservation of public land, Francis emphasized that the public forests were "being rapidly denuded and the loss resulting therefrom is incalculable,"⁴⁹

President Cleveland complied with the suggestion of

⁴⁸ McLeod Correspondence, January, 1896, McLeod Papers MSS.

⁴⁹ U.S., Congress, Senate, Executive Documents, 55th Cong., 1st sess., 1897, V, No. 105, Serial 3562, Appendix A, 38.

Secretary of the Interior. Before he completed his term as President, Grover Cleveland established the thirteen proposed forest reserves to celebrate George Washington's birthday. The Executive Order of February 22, 1897, included 8,000,000 acres of Montana forest land.⁵⁰

The timber interests in Montana were not pleased with the Executive Order. The Montana Congressmen reflected this animosity by strongly objecting to the reservation of the forest land. Senator Lee Mantle promised his colleagues that:

if the people of those states should be subjected to loss and the hardship and the privation which must necessarily follow . . . that order . . . I shall do my utmost to prevent any important legislation from being crystallized into law until this gross injustice . . . has been remedied and righted.⁵¹

In the House of Representatives, Charles Hartman of Montana also demanded abolition of the proclamation. He claimed that the entire mining industry of Silverbow County, Montana, which produced 212,000,000 pounds of copper in 1896 and spent over \$10,000,000 in wages, would be in danger of being forced to decrease its operations. In rebuttal the eastern conservationist members of the House questioned the actual motives behind the fight against the forest reserves.

⁵⁰ U.S., Congressional Record, 55th Cong., 1st sess., 1897 XXX, Pt. 1, 968. The reserves established in Montana were: the Bitter Root Forest Reserve, the Flathead Forest Reserve, and the Lewis and Clark Forest Reserve.

⁵¹ U.S., Congressional Record, 54th Cong., 2nd sess., 1897, XXIX, Pt. 3, 2931

They charged that a timber "ring" in the Western States was behind the opposition to the Presidential proclamation. Representative Hartman angrily denied the accusation.

I defy the gentleman /Representative Bartlett of New York/ to name any timber ring that is in anyway back of the effort which is being put forth by our people to prevent the settlers from being deprived of the right to take timber . . . and to enable miners to run their tunnels⁵²

Hartman further charged that the "alleged scientific gentlemen" who investigated and proposed the areas to be included in the reservations were never within two or three hundred miles of some of the reservations. In a final analysis of President Cleveland's reservation of timber lands, Hartman described the action as "a parting shot of the worst enemy the American people ever had."⁵³

The 8,000,000 acres of timber land which the government reserved in Montana did not appear to cripple the mining industry as Hartman had predicted. The logging operations in Montana continually expanded during the 1890s. The lumber industry also became more consolidated. In 1898 A. B. Hammond terminated his influence in the Montana timber industry when he sold the Big Blackfoot Milling Company to Marcus Daly. Subsequently, the major portion of the Montana

⁵² U.S., Congressional Record, 54th Cong., 2nd sess., 1897, XXIX, Pt. 3, 970.

⁵³ U.S., Congressional Record, 55th Cong., 1st sess., 1897, XXX, Pt. 1, 970.

lumber industry was under the control and influence of the Anaconda Mining Company. By 1899 the large sawmill at Hamilton and the smaller sawmills in the Bitter Root Valley annually cut approximately 100,000,000 feet of logs into lumber. The mines in Silverbow County utilized a major portion of the lumber.⁵⁴ The \$250,000 Anaconda Mining Company sawmill in Hamilton, which had a capacity of 180,000 board feet of lumber per day, cut a large portion of the lumber in the Bitter Root Valley. The mills in the Bitter Root Valley daily shipped twenty to thirty carloads of lumber out of the Valley by railroad.⁵⁵ The shipments of lumber from Hamilton alone averaged ten carloads per day during the spring of 1899 with an anticipated increase as the season progressed.

In 1899 the Anaconda Mining Company established five logging camps. In order to keep the Company's sawmills operating all year, there were over 200 men and sixty teams of horses working to remove between 18,000,000 and 20,000,000 board feet of logs from the forests in the Bitter Root Valley.⁵⁶ By November 1, 1899, the Big Anaconda mill in Hamilton had installed enough additional machinery to increase its daily production to 250,000 board feet.⁵⁷ The Hamilton

⁵⁴ Western News (Hamilton, Montana), Feb. 15, 1899.

⁵⁵ The Missoulian Souvenir of the National Irrigation Congress, 1899.

⁵⁶ Western News (Hamilton, Montana), Feb. 15, 1899.

⁵⁷ Ibid., Feb. 27, 1900.

sawmill's production was approximately the same as the Big Blackfoot Mill at Bonner which the Anaconda Company had purchased from Hammond.

In a single camp the Anaconda Company cut 70,000,000 board feet of logs to supply their expanded operations in 1900.⁵⁸ With the increased demand for logs by 1900, the railroad was replacing the old method of "driving" the river as the method of transporting the logs to the sawmills. The Anaconda Company began building railroad spur lines to the location of some of their extensive logging operations.

The increasing lumbering operations in the Bitter Root Valley had not escaped investigation by the federal authorities. Although the 1894 investigations of the illegal cutting of timber from the public lands had not been completed with court indictments, the timber operations were kept under federal investigation. In 1897, after Binger Herman replaced Silas W. Lamoreaux as United States Land Commissioner, the Land Office resumed its investigations of timber depredations in Montana. Because of the extensive operations of the lumber interests in the Bitter Root Valley, Commissioner Herman sent Special Timber Agent Ryan to investigate. Agent Ryan secured the assistance of Martin Toole who had been lumbering in the Valley for approximately ten years. During their investigations, which lasted about a year, they credited

⁵⁸ Western News (Hamilton, Montana), Nov. 8, 1899.

the Anaconda Company with illegally cutting 65,000,000 board feet of timber from the public domain. At the end of this period, Agent Ryan was forced to resign because of poor health and was replaced in the summer of 1898 by Special Agent Chadwick. Martin Toole and Agent Chadwick, at the conclusion of six months of investigating, were able to credit the Anaconda Company with cutting an additional 8,000,000 board feet of timber from another government tract. In August of 1899, Chadwick and Toole resumed their investigations and reported another 30,000,000 feet of timber which the Anaconda Company had cut from government land. The total amount of timber that the Anaconda Company removed from government land, according to figures compiled through these investigations, amounted to 103,000,000 board feet. The local newspaper, in discussing the depredations, claimed that if the investigations continued the government would be able to prove that the Anaconda Company had cut at least another 100,000,000 board feet of public timber.⁵⁹ The Western News further charged that the government had discontinued its investigations of the operations of the Anaconda Mining Company because of pressure from Montana Senator Thomas Carter who had been hired by Standard Oil Company as a company lawyer.⁶⁰

⁵⁹ Western News (Hamilton, Montana), Oct. 31, 1900.

⁶⁰ In 1899 Standard Oil Company purchased all of Daly's holdings except his farm near Hamilton and became involved in the Montana timber depredations.

The Northwest Tribune of Stevensville joined the Western News in demanding that the "Standard Oil Timber Thieves in Montana" be indicted. It also charged that Senator Carter was instrumental in preventing the indictments.

The department of the interior and the Attorney General of the United States have both insisted that these suits be brought . . . but Mr. Rodgers [United States District Attorney for Montana] Senator Carter's appointee, has not yet raised a finger to protect the public interests.⁶¹

The Northwest Tribune continued by quoting correspondence between Rodgers, the Montana United States District Attorney, and the United States Attorney General--John W. Griggs. The substance of the correspondence was that H. H. Rogers, President of Standard Oil Company, had told Mark Hanna and United States President McKinley to stop the suits or else Rogers would not donate money for the Republican campaigns.

In March 1901, the government began filing suits against the Daly operations in the Bitter Root Valley. Since Marcus Daly had died on November 12, 1900, the suits were filed against his estate, i.e., his widow--Margret Daly--as executrix of the Marcus Daly estate; the Anaconda Mining Company; and Daly's various confederates in the organization's lumber operations.

⁶¹ Supplement to the Northwest Tribune (Stevensville, Montana), Oct. 19, 1900.

CHAPTER V

TRIALS OF THE DEPREDATORS

At the beginning of the twentieth century, the government began prosecuting the major timber depredators in Montana. The first federal indictments were filed against Marcus Daly and his business associates who had been cutting vast quantities of timber in Montana during the 1890s. The government's suits were in regard to the timber cut in the Bitter Root Valley. Since Marcus Daly had died, the federal suits named his widow Margret--both individually and as executrix of his estate, Bitter Root Development Company, Anaconda Mining Company, Anaconda Copper Company, Anaconda Copper Mining Company, John R. Toole, William W. Dixon, William Scallon, and Daniel J. Hennessy.¹

The government maintained that on April 1, 1888, it owned the lands described in the action which contained more than \$2,000,000 worth of timber. The defendants had removed the timber without authorization. The government claimed that Marcus Daly, "on or about January 1, 1890," decided to appropriate for his own use all of the marketable timber on the lands involved. The appellant then described the formation

¹ United States v. Bitter Root Development Company, 200 U.S. 451 (1906).

and operations of the Bitter Root Development Company. The government officials admitted that the defendants were granted permits to cut timber from portions of the tracts included in the lands described in the court action. However, the appellant charged that the defendants fraudulently removed timber from large adjoining tracts of land. The appellant subsequently discussed the organization and stock manipulation between the various corporations which Daly and his associates formed during the 1890s to conduct their various business enterprises--including their large lumber operations.

The government maintained that it was unable to give specific details concerning individual depredations or the persons involved because the operations were concealed within the various corporations which had been formed to supervise the enterprises. The appellant stated that the government agents did not have access to the defendant's records for these corporations. The appellant attempted to justify their action in equity, although they concurrently had several depredation cases in courts of law. The government attorneys argued that it was too difficult to present the complicated composition of the case to a jury without specific details concerning the individuals involved. The government attorneys pointed out that fraud was the fundamental source of equity jurisdiction. The equity court also eliminated the multiplicity of suits which would be involved if the case was taken before the law courts.

The appellees contended that the case could only be

tried in a court of law and that an equity court had no jurisdiction in the case. The lower courts ruled in favor of the defendants and the Supreme Court concurred with their decision. The Court ruled that the case was only a trespass or trover to recover damages sustained by the complainant from the removal of timber from the public lands. Consequently, the complainant had an adequate and complete claim in a court of law. The Court thus declared that it had no jurisdiction over the issue in a court of equity.

The Daly organization was thus acquitted on a technicality. Although the Judges ruled that the government could subpoena the defendant's records of the lumber operations, the government did not re-indict them in a lower court. It would have been impossible to prevent the Daly organization and Amalgamated from destroying their records and the government could not produce enough evidence on each individual's role in the operations to secure a favorable verdict.

When the government indicted Marcus Daly's lumber operations, Senator W. A. Clark pledged his support of the government's claims against the Daly estate and Amalgamated. Clark believed that it was an undisputable case of depredations of the public timber. He exemplified this by describing the mountains denuded of timber which was cut in Amalgamated's sawmills in the Bitter Root Valley and used in the mines and smelters in Anaconda, as well as the coal mines at Belt. He complained in the United States Senate that Amalgamated Copper Company's destructive timber removal

caused drought and injured the sheep industry as well as making placer mining impossible.²

Senator Clark also needed lumber for his extensive mining operations in Butte and he established lumber operations in Western Montana. However, Clark did not utilize the permit method of acquiring the lumber. The Senator began purchasing timber land in 1899 to supply the lumber which he needed. Following the practice of his competitor--Marcus Daly, Clark integrated all of the operations in his mining enterprise including the procurement of lumber. On January 15, 1899, William A. Clark incorporated the Western Lumber Company for a period of fifty years. The principal office for the company was in Spokane, Washington. He listed Butte, Montana as a branch office and Missoula, Montana as a place of business.³ Robert M. Cobban, a Missoula and Butte real estate agent, served as Clark's agent in securing the real estate lands that Clark needed for his lumber operations.

Six months after United States Senator William A. Clark publicly "supported" the government's indictments against the allegedly illegal lumber operations of Amalgamated Copper Mining Company, he received federal indictments for his lumber operations. The federal government filed suits

² Western News (Hamilton, Montana), Nov. 28, 1900.

³ Western Lumber Company--Articles of Incorporation, Jan. 15, 1899, Missoula County Clerk and Recorder, Missoula, Montana, file No. 463.

against him for fraudulently acquiring 11,480 acres of timber land through Robert M. Cobban. The government charged that the timber land described in the indictment had been acquired under the Timber and Stone Act of June 3, 1878, which had been amended on August 4, 1892, to include Montana.⁴ The land acquired under this act was granted to United States citizens in quantities of not more than 160 acres to any one person or association of persons for the minimum price of \$2.50 per acre. Each applicant was required to file a statement, verified under oath, that he was not applying for the land for speculation and that he wanted to appropriate it for his own exclusive use and benefit. The applicant also had to swear that he had not made a contract or agreement of any kind so the title to the land would benefit anyone except the applicant.

The government charged that R. W. Cobban, subsequent to January 1, 1898, began procuring titles to lands obtained under the provisions of the Timber and Stone Act.⁵ In order to rapidly accumulate the land, Cobban signed an agreement on May 22, 1899, with C. L. Griswold to secure land according to the provisions of the Timber and Stone Act. John B. Catlin, a former official of the Missoula Land Office, also joined the enterprise. The government charged that these

⁴ U.S., Statutes At Large, XXVII, 348.

⁵ United States v. Clark, 138 Federal Reporter 295 (1905)

three individuals selected the timber land to be filed upon and secured fifty men and women to file upon the land. Cobban and his associates paid all of the filing fees in addition to paying the individuals who filed on the land \$100 each.⁶

Members of Hammond's organization even became involved in the trial. Thomas Marshall, who was the organization's chief lawyer in Montana as well as an original incorporator of the Blackfoot Milling and Manufacturing Company, represented the entrymen.⁷ C. H. McLeod, who was in charge of Hammond's Montana operations, and John Bonner, who also still had an interest in Hammond's operations, posted Cobban's \$10,000 bond and Catlin's \$3,000 bond.⁸

The United States District Attorney released Chauncy Griswold after Griswold agreed to testify for the appellant. The Helena Herald denounced the government for withdrawing the indictments against Griswold in return for his testimony. The newspaper editorialized that this privilege only should be granted to the individuals of less guilt which was considered the general practice.⁹ However, the government was more interested in reclaiming the land which Clark had acquired than obtaining judgements against the individuals

⁶ United States v. Clark, 138 Federal Reporter, 300 (1905).

⁷ Great Falls Tribune, Aug. 21, 1901

⁸ Helena Semi-Weekly Herald, July 2, 1901.

⁹ Ibid., Aug. 6, 1901.

who had filed for the land.

When they were arraigned, the entrymen all insisted that they had applied for the land for their own use. However, the validity of their statements was questionable when their various occupations were analyzed. Included in the group of persons who filed for the timber land for "his own exclusive use" were: Three housewives, six housekeepers, one dressmaker, one teacher, one engineer, one gardener, and a variety of carpenters, laborers and farmers.¹⁰ Griswold testified that he had served as a witness for the entrymen in twenty cases.¹¹ He further stated that he had the individuals file their entries according to the agreement which he had with Cbbban. He admitted that he had committed perjury in the land office at both Missoula and Helena, Montana. He justified his actions by declaring that it was the "custom of the country" to swear falsely when making a final proof in the land office for timber lands. The defense lawyers attempted to discredit Griswold because of his admitted perjury at various times. They questioned whether he had expected to receive a government appointment for serving as a government witness. He admitted that he had expected an appointment, but had not been promised one. Griswold also denied that he had told a third party that he was going to force

¹⁰ Helena Semi-Weekly Herald, Aug. 23, 1901.

¹¹ Great Falls Tribune, Dec. 18, 1901.

Cobban to pay him \$3,500 on their contract or else Griswold would have the government cancel the land patents. Subsequently, the defense produced affidavits signed by Griswold on June 12, 1901, in which he stated that he did not know of any acts that Cobban had authorized in violation of the Timber and Stone Act. The affidavit also stated that Cobban had instructed him not to make any contracts for the purchase of lands before the final proof was secured. Griswold acknowledged his signature on the affidavit and admitted receiving \$1,500, but stated that he had refused to sign the affidavit before having an attorney review it. He testified that he took it to Joseph Dixon's residence and that Dixon recommended that he sign it.¹²

Griswold's testimony aided the government very little in their attempt to revoke W. A. Clark's titles to the contested land. In the Montana Federal District Court's decision, Judge Knowles reviewed Griswold's various sworn statements and his subsequent contradictions. The Judge stated that he did not believe that Griswold had sufficiently refuted the attacks by respectable witnesses against his general reputation and thus was not a reliable witness.¹³

The government contended that Clark knew at least generally that the total of eight-two patents which he

¹² The Daily Missoulian (Missoula, Montana), Aug. 4, 1905.

¹³ United States v. Clark, 125 Federal Reporter 778 (1903).

received from Cobban were fraudulently acquired under the provisions of the Timber and Stone Act.

The decision of the Circuit Court centered on Clark's ownership of the land. For the purpose of simplifying the decision, they ignored the problem of the legality of the patents received by the entrymen. The Court ruled that Clark had not known of the illegal means used by Cobban to acquire the titles for the land. The Court believed that because of Clark's business background, he would not knowingly have allowed Cobban to make a profit of \$217,517.25 from the transactions. Clark testified he had requested that his general manager, Withey, purchase 40,000,000 board feet of lumber to operate his extensive mining operations. Cobban had claimed to own land containing the needed lumber and an agreement was made to purchase the land for \$1.25 per thousand board feet of lumber. Cobban made two sales to Clark's agents on July 19, 1899, and September 16, 1899. Clark then loaned Cobban money to acquire additional land which Clark subsequently purchased from Cobban. The Court ruled that even though Clark knew that some of the money was intended to be used to purchase additional land, the evidence did not show that Clark knew or expected that the land would be acquired fraudulently.

The Court stated that Clark had purchased the land in good faith that the titles had been legally acquired. He had relied upon the judgement of his attorney's that the

titles were legal in the same manner that he relied upon the statements of his agents concerning the quality and quantity of the lumber which the land contained. The Court also emphasized that the federal officials had not questioned the legality of the entrymen's applications between the time that the titles were applied for and when they were granted. The Judges ruled that if the government revoked the titles to land held by an innocent purchaser, a third party would always be in danger of losing his title to land because of possible prior illegalities of which he was unaware. The Circuit Court ruled in favor of Clark and affirmed the decision of the District Court.¹⁴

The decision of the Circuit Court was not unanimous. There was enough doubt in the evidence supporting Clark's position to cause Justice Gilbert to write a dissenting opinion. He believed there was a concert of action engineered by Cobban. Seventeen of the deeds were filed on September 16, 1899; twenty-nine were executed on November 11, 1899; and twenty-two were executed on November 13, 1899. Justice Gilbert also noted that the inspection of the lands by William A. Clark's agents was contemporaneous with the entries, while Clark had loaned Cobban large sums of money to obtain the title to the land involved.¹⁵

¹⁴ United States v. Clark, 138 Federal Reporter 294 (1905).

¹⁵ Ibid., 303.

The government appealed the indictment of Clark to the Supreme Court which concurred with the decision of the lower courts.¹⁶ The Justices declared that they followed the decisions of the lower courts unless the evidence clearly indicated a reversal. They felt there was nothing to indicate to Clark that his purchases were acquired by fraud. They believed that the friendly relations between some of Clark's agents and Cobban did not necessarily indicate fraud.

Although Clark won an acquittal, there was enough doubt in the evidence for two Supreme Court Justices to dissent from the majority decision of the Court.

After Clark's victory in the lower court, the Great Falls Tribune praised his "sweeping victory" and blamed the indictments on political enemies and believed that "a victory such as he has gained is well worth all that it has cost him."¹⁷

Although Daly and Clark were victorious in their dispute with the government, others without the money or excellent legal council were convicted of illegally acquiring public timber land. On July 25, 1905, after Clark's victories in the lower courts, the government filed suits against a total of fifty-three individuals for perjury and subordination in

¹⁶ United States v. Clark, 200 U.S. 601 (1906).

¹⁷ Great Falls Daily Tribune, Nov. 9, 1903.

connection with the land frauds. The total value of the land involved was estimated at \$1,000,000.¹⁸ The government won their indictments against these individuals and they each were fined between \$11 and \$200.¹⁹

In another case, not connected with the Clark indictments, Charles Ahlm of Missoula admitted cutting 300,000 board feet of public timber. He stated that he had sold it for \$3 to \$6.50 per 1,000 board feet in order to make money to buy flour and bacon.²⁰ Ahlm and three other timber depredators who had taken small amounts of public timber were fined \$150 to \$200 each.²¹

The government had not terminated its attempts to indict the large depredators even though Clark and Daly had been able to win an acquittal. The federal government continued their attempts to indict Hammond for his twenty-five years of cutting public timber upon which he built his fortune.

In 1910 the federal agents were again compiling evidence and looking for witnesses in Montana in regard to Hammond's operations. John Cunningham, a former employee of the Hammond lumber operations, wrote to C. H. McLeod to inform him that a government agent was looking for Cunningham in regard

¹⁸ Great Falls Daily Tribune, July 26, 1905.

¹⁹ Thomas Marvin Kerlee, "Some Chapters on the Forest Homestead Act with Emphasis on Western Montana" (unpublished Masters Thesis, Montana State University, 1962), 37.

²⁰ Great Falls Daily Tribune, Jan. 20, 1906.

²¹ Ibid., Jan. 21, 1906.

to land frauds on the Big Blackfoot River while he was working for them. He reminded McLeod that he had "hired" the money from Judge Stevens to buy a "large amount of timber land" which he turned over to the "old company." Cunningham told McLeod that he did not want to get into any trouble.²²

McLeod re-assured Cunningham that he was in no danger. He further informed Cunningham that it was perfectly legal to buy timber land and then sell it. McLeod, who after 1900 had publicly pretended to be independent of the Hammond organization, claimed that he knew very little about the operations of the Big Blackfoot lumber operations. However, he did not believe that either the Big Blackfoot Company or Cunningham had ever defrauded the government.²³

Later in the spring of 1910, the correspondence between McLeod and John Cunningham indicated that McLeod was preparing Cunningham as a favorable witness if Hammond was indicted. "I know that you know that the Big Blackfoot Milling Company never cut any lumber in the Blackfoot country illegally I am much obligated to you for the information you have given us" ²⁴

²² John Cunningham to C. H. McLeod, Jan. 22, 1910, McLeod Papers MSS.

²³ C. H. McLeod to John Cunningham, Jan. 26, 1910, McLeod Papers MSS.

²⁴ C. H. McLeod to John Cunningham, April 8, 1910, McLeod Papers MSS.

In May, 1910, the Hammond organization was trying to avoid an indictment and stay out of court as they had been doing for twenty-five years while the other large companies such as Daly's and Clark's had been quickly indicted. McLeod arranged for Linis L. Sharp, Chief of the Land Office Field Division, to meet with A. B. Hammond. McLeod told Sharp that "when you . . . talk with him . . . you will realize that the Government has little cause to commence suit against him for timber trespass."²⁵

In 1912 the federal government finally indicted A. B. Hammond for illegally cutting timber from the public domain in Montana and tried him in the District Court in San Francisco. McLeod wrote to Milton Hammond, a resident of Darby, Montana, in reply to inquiries about the trial and thanked him for his favorable expressions of support:

If there was any timber cut on public lands, we do not know of it, and if you know of any timber cut on public lands, of course, I wish you would forget about it, as you say . . . you are willing to do.²⁶

On January 15, 1913, during the trial, the Hammond organization requested favorable publicity--both in California and Montana. McLeod reported that A. L. Stone, editor of the Missoulian, was willing to print any items they

²⁵ C. H. McLeod to Linis L. Sharp, May 10, 1910, McLeod Papers MSS.

²⁶ C. H. McLeod to Milton Hammond, April 24, 1912, McLeod Papers MSS.

wanted and also agreed to send them on the press service to other State newspapers.²⁷

The government claimed that Hammond's companies cut 21,185,410 board feet of lumber between 1885 and 1894. The government furthermore established the following values for the illegally removed timber: \$1 per thousand board feet as stumpage, \$5 per thousand board feet when felled and prepared for sawing, and \$10 per thousand board feet as lumber. The government filed the indictment for \$211,854.10 which was the estimated value of the timber that Hammond's companies cut and converted into lumber.²⁸

The District Court jury decided the verdict in favor of the government. However, they only awarded the government \$51,040 plus the expenses of \$1,617.49 from Hammond.

Hammond refused to accept the verdict and his lawyers filed an appeal for a re-trial. Hammond contended that the Judge made an error in his instructions to the jury. The Judge instructed the jury that if they decided that the defendant (Hammond) knowingly cut timber from public land, they should award the plaintiff the market value at the time of the sale plus seven per cent interest. However, the Judge further instructed the jury that if it were an honest mistake, the plaintiff should be awarded the stumpage value.

²⁷ C. H. McLeod to W. S. Burnett, Jan. (n.d.), 1913, McLeod Papers MSS.

²⁸ Hammond v. United States, 246 Federal Reporter 54 (1917).

Hammond contended that the jury should not have been instructed to award the government anything in excess of the stumpage value. The District Court denied Hammond's appeal for a new trial.²⁹ Hammond then took the case to the Circuit Court of Appeals.

After reviewing the case, the Circuit Court of Appeals reversed the judgement and ordered that the case be re-tried in the District Court. The Court of Appeals declared that the District Court Judge had erred in his instructions to the jury. The majority opinion ruled that the measure of the damages was the value of the timber after it was cut and not removed instead of the profit made from the sale of the manufactured product. The Court also ruled that no interest was recoverable under the existing laws in actions of conversions and whether interest was to be included should have been left to the jury's discretion, especially when the government had waited for seventeen years before filing charges. The Court also construed the Act of March 3, 1891, as condoning the cutting of timber in Montana prior to that date when it was used in the State for domestic, mining, manufacturing or agricultural purposes.

The decision was not unanimous. Circuit Judge Gilbert dissented from the majority opinion concerning both the question of the value of timber which was recoverable to the

²⁹ United States v. Hammond, 226 Federal Reporter 849 (1914).

government and whether the government was entitled to interest. He believed that any objections by the defendant (Hammond) should have been registered in the lower court when the Judge issued the instructions to the jury. Judge Gilbert contended that the presiding Judge could have settled the entire question in the lower court. He believed that Hammond's council "at the conclusion of a trial ought not be permitted to hold back an important point of objection to an instruction, and thereby mislead the trial court and secure a reversal on appeal."³⁰

Regardless of this objection to the majority opinion, the government was defeated once again in its attempt to enforce the law. However, Hammond still faced a possible re-trial if the government decided to re-indict him in the District Court.

The Hammond organization exerted their influence in Washington and after a year of political maneuvering, they finally secured a permanent settlement. On December 30, 1918, Andrew B. Hammond Jr. agreed to pay \$7,066.61 as a final settlement with the government for the timber which he had cut from the public domain.

Hammond's chief lawyer, W. S. Burnett, thanked C. H. McLeod for securing the aid of Montana Senator Henry L. Myers. Burnett stated that Senator Myers personally

³⁰ Hammond v. United States, 246 Federal Reporter 54 (1917).

introduced him to the Commissioner of the General Land Office. He believed the introduction made it possible to receive a more patient hearing than he otherwise would have received. "In fact he [Senator Myers] was good enough to sit for at least half an hour through my first interview . . . supplementing his own observations from time to time as the discussion progressed."³¹ W. S. Burnett wrote to Senator Myers and reported the final outcome of the litigation. Burnett also thanked the Montana Senator "for the efforts which . . . [he] so promptly and effectively exerted on Mr. Hammond's behalf."³² Burnett reported to C. H. McLeod that the decision of the Circuit Court of Appeals would give a "clean bill of health" to all of the timber cut in Montana before March 3, 1891. However, he cautioned that there was only an even chance that the Supreme Court would support the ruling if it were appealed. The case was never appealed.

When A. B. Hammond consented to the compromise judgement, the settlement concluded the government's attempts to secure compensation for the public timber which was commercially exploited in Montana between 1880 and 1900. If the government

³¹ W. S. Burnett to C. H. McLeod, Dec. 31, 1918, McLeod Papers MSS.

³² W. S. Burnett to Senator Henry L. Myers, Dec. 31, 1918, McLeod Papers MSS.

³³ W. S. Burnett to C. H. McLeod, Dec. 31, 1918, McLeod Papers MSS.

had simply dismissed the case, they could have indicted the Missoula Mercantile Company, Eddy-Hammond Company, George Fenwick, and Henry Hammond--who operated the Hammond organization's timber enterprises after 1885, as joint tortfeasors.

CONCLUSION

The timber operations in Montana were an example of the period of individualism in American History known as the age of laissez faire. The timber and lumber operations in Montana followed the same basic pattern as the oil industry of John D. Rockefeller, the steel empire of Andrew Carnegie, and the hundreds of other men who acquired their wealth during the forty-year period following the Civil War. Many of these men acquired their wealth by utilizing the nation's natural resources. Because of the prevalent philosophy that the resources "were for the taking," they justified their actions as part of the nation's development. No one questioned the miner's right to gold, silver, or copper; or the farmer's right to claim a section of land under the Homestead Act of 1862 for his own use. The cattlemen of the western plains followed this philosophy in their use of the nation's natural resource of acres of grass without government interference. The lumberman felt that he also should have the privilege of utilizing the natural resource which he needed--timber.

As the financial empires of Rockefeller, Carnegie and the other large capitalists became imposing in size, their competitors and the new generation of middle class businessmen were becoming aware of the ruthlessness of the large industries. The small businessmen had only the federal

government to protect them from complete domination by the large enterprises--not only economically and socially, but also politically. However, the lumber interests in Montana deviated from this concept to some degree. A major difference was that the Montana lumbermen never developed a monopoly in Montana as did the individuals involved in the oil and steel industries. Except for Hammond, the large timbermen in the State operated the lumber business primarily to supply wood economically for their mining industry and the sale of lumber was simply a by-product.

The lumber interests, unlike the other industries which utilized the natural resources, were forced to contend with adverse laws. Although these laws were inadequate from the view-point of both the conservationists and the lumbermen, the government attempted to enforce them. Since the other industries were not hampered by federal regulation of the use of natural resources, the lumbermen sought legislation to provide them with a legal means of utilizing the public timber resources. However, when the laws were not changed adequately or rapidly enough, the timber interests were forced to ignore or attempt to circumvent the laws in order to operate their industry.

There was no concise solution to the moral or ethical problem. The entire problem of depredations of timber from public land arose from unrealistic laws. It is difficult to justify the lumbermen's actions since they were breaking the

law. They made personal fortunes from public timber of which the government should have regulated the use and for which the government should have received some compensation if the protectionists' point of view were to be followed.

The increasing public animosity toward the individual accumulation of wealth from public resources caused Congress eventually to appropriate enough money for the Department of the Interior to enforce their timber cutting regulations. The small fines and acquittals were mockeries to the indictments of the large timber interest; while the individuals who cut a small quantity were punished comparatively severely. The examples of this injustice were numerous. In Bozeman, Montana, an old man was fined \$50 for cutting twelve cords of wood "to keep this aged and weatherbeaten old soldier from a pauper's grave."¹ At Darby, Montana, a man spent twenty years establishing a home for his family. He cut some timber from the public domain and "he was pounced upon by the government agent and fined \$600 to pay off the fines . . . he had to sell his little sawmill and mortgage the little home he created."² The large interests were able to avoid severe penalties because of well-paid lawyers who appealed the cases to higher courts. They subsequently were able to secure a favorable decision

¹ Western News (Hamilton, Montana), Oct. 31, 1900.

² Ibid.

on technical points of law from the Supreme Court which was composed of men appointed during the laissez faire period.

The timber depredations must be analysed in reference to their setting in time. The entire issue is extremely complicated. However, the depredations in Montana were important as an example of the philosophy of laissez faire which prevailed in the lumber industry as well as the oil, steel, mining, livestock and other large business industries which were developed during this period in American History.

SELECTED BIBLIOGRAPHY

PRIMARY SOURCES

Congressional Records

- U.S. Annals of Congress. 5th Cong., III, 1797-1799.
- U.S. Annals of Congress. 14th Cong., 2nd sess., I, 1817.
- U.S. Debates in Congress. 19th Cong., 2nd sess., II, 1827.
- U.S. Debates in Congress. 21st Cong., 2nd sess., VII, 1831.
- U.S. Congressional Globe. 41st Cong., 2nd sess., I, 1869.
- U.S. Congressional Globe. 44th Cong., 2nd sess., V, 1876.
- U.S. Congressional Record. 51st Cong., 1st sess., XXI, 1890.
- U.S. Congressional Record. 54th Cong., 2nd sess., XXIX, 1897.
- U.S. Congressional Record. 55th Cong., 1st sess., XXX, 1897.
- U.S. Congressional Record. 60th Cong., 2nd sess., XLIII, 1909.

Congressional Reports

- U.S. Congress. House. Executive Documents. 38th Cong., 2nd sess., 1865, V, No. 1, Serial 1220.
- U.S. Congress. House. Executive Documents. 41st Cong., 2nd sess., 1874, V, No. 1, Serial 1639.
- U.S. Congress. House. Executive Documents. 49th Cong., 2nd sess., 1886, V, No. 1, Serial 2468.
- U.S. Congress. House. Executive Documents. 50th Cong., 1st sess., 1887, V, No. 1, Serial 2541.
- U.S. Congress. House. Executive Documents. 50th Cong., 2nd sess., 1888, V, No. 1, Serial 2636.

U.S. Congress. House. Executive Documents. 51st Cong., 1st sess., 1889, V, No. 1, Serial 2724.

U.S. Congress. Senate. Executive Documents. 55th Cong., 1st sess., 1897, V, No. 105.

Corporation Papers

Big Blackfoot Milling Company, Articles of Incorporation.
November 14, 1891. Missoula County Clerk and Recorder,
Missoula, Montana. File No. 204.

Bitter Root Development Company, Certificate of Incorporation.
August 12, 1890. Missoula County Clerk and
Recorder. Missoula, Montana. File No. 14.

Blackfoot Milling and Manufacturing Company, Articles of Incorporation.
January 21, 1888. Missoula County
Clerk and Recorder. Missoula, Montana. File No. 14.

Blackfoot Milling Company, Articles of Incorporation.
August 4, 1887. Missoula County Clerk and Recorder.
Missoula, Montana. File No. 14.

Montana Improvement Company, Annual Statements. Missoula
County Clerk and Recorder. Missoula, Montana. File
Nos: 51, 56, 132, 185, 251, 287, 317, 342, 397, 426,
449.

Montana Improvement Company, Articles of Incorporation.
August 1, 1882. Montana Secretary of State's Office.
Helena, Montana.

Western Lumber Company, Articles of Incorporation. January
15, 1899. Missoula County Clerk and Recorder. Missoula,
Montana. File No. 463.

Court Decisions

United States v. Ephraim Briggs, 9 Howard 351 (1848)

United States, appellant v. Northern Pacific Railroad
Company, respondent, 4 Montana Reports 351 (1887).

U.S. Davis' Administrator v. Weibold, 139 U.S. 570 (1891).

United States v. Clark, 125 Federal Reporter 774 (1903).

United States v. Bitter Root Development Company, 133 Federal Reporter 274 (1904).

United States v. Clark, 129 Federal Reporter 241 (1904).

United States v. Clark, 138 Federal Reporter 294 (1905).

United States v. Bitter Root Development Company, 200 U.S. 451 (1906).

United States v. Clark, 200 U.S. 601 (1906).

United States v. Hammond, 226 Federal Reporter 849 (1914).

Hammond v. United States, 246 Federal Reporter 246 (1917).

Interior Department

U.S. Interior Department. Annual Report of the Commissioner of the General Land Office. 1867.

U.S. Interior Department. Annual Report of the Commissioner of the General Land Office. 1877.

U.S. Interior Department. Annual Report of the Commissioner of the General Land Office. 1878.

U.S. Interior Department. Annual Report of the Commissioner of the General Land Office. 1885.

U.S. Interior Department. Annual Report of the Secretary of the Interior. 1868.

U.S. Interior Department. Annual Report of the Secretary of the Interior. 1870.

U.S. Interior Department. The Annual Report of the Secretary of the Interior. 1874.

U.S. Interior Department. The Annual Report of the Secretary of the Interior, I, 1879.

U.S. Interior Department. The Annual Report of the Secretary of the Interior, I, 1882.

U.S. Interior Department. The Annual Report of the Secretary of the Interior, I, 1883.

U.S. Interior Department. The Annual Report of the Secretary of the Interior, I, 1884.

- U.S. Interior Department. The Annual Report of the Secretary of the Interior, II, 1886.
- U.S. Interior Department. The Annual Report of the Secretary of the Interior, I, 1889.
- U.S. Interior Department. The Annual Report of the Secretary of the Interior, I, 1890.
- U.S. Interior Department. The Annual Report of the Secretary of the Interior, I, 1893.
- U.S. Interior Department. The Annual Reports of the Department of the Interior: Report of the Secretary of the Interior--Report of the Commissioner of the General Land Office. 1897.
- U.S. Interior Department. Decisions of the Department of the Interior Relating to Public Lands. IV.

United States Statutes

- U.S. Statutes at Large, XIII, 365.
- U.S. Statutes at Large, XV, 255.
- U.S. Statutes at Large, XVII, 212.
- U.S. Statutes at Large, XX, 88.
- U.S. Statutes at Large, XX, 89.
- U.S. Statutes at Large, XXVI, 1093.
- U.S. Statutes at Large, XXVII, 348.

Other Sources

- Hauser Papers MSS. Montana State Historical Society.
Helena, Montana. 1880-1890.
- McLeod Papers MSS. Department of History. University of
Montana. Missoula, Montana.
- Ravalli County Assessor. Assessment Book No. 1900. Hamilton,
Montana.

Ravalli County Clerk and Recorder. Ravalli County Deed Book No. 16. Hamilton, Montana. Entries Nos: 280, 302, 441.

SECONDARY SOURCES

Books

Carstenson, Vernon (ed). The Public Lands. Madison: University of Wisconsin Press, 1963.

Cushman, Dan. The Great North Trail: America's Route of the Ages. New York: McGraw-Hill Book Co., 1960.

Hakola, John W. (ed) Frontier Omnibus. Missoula: Montana State University Press, 1962.

Hibbard, Benjamin Horace. A History of the Public Land Policies. Madison: University of Wisconsin Press, 1924.

Historical Highlights of Public Land Management. Washington: United States Government Printing, 1962.

Howard, Joseph Kinsey (ed). Montana Margins: A State Anthology. New Haven: Yale University Press, 1946.

Ise, John. The United States Forest Policy. New Haven: Yale University Press, 1920.

Leeson, M. A. History of Montana, 1739-1885. Chicago: Warner, Beers & Co., 1885.

Miller, Joaquin. An Illustrated History of the State of Montana. Chicago: The Lewis Publishing Company, 1894.

The Montana Almanac: 1959-60. Missoula: Montana State University Press, 1958.

Oberholtzer, Ellis Paxson. Jay Cooke: Financier of the Civil War. 2 vols. Philadelphia: George W. Jacobs & Co., 1907.

Pack, Arthur Newton. Our Vanishing Forests. New York: MacMillan Company, 1923.

Palladino, L. B. Indian and White in the Northwest: A History of Catholicity in Montana, 1831 to 1891. Landcaster, Pennsylvania: Wickersham Publishing Co., 1922.

- Raymer, Robert G. Montana: The Land and the People. 3 vols. Chicago: The Lewis Publishing Co., 1930.
- Smalley, Eugene V. History of the Northern Pacific Railroad. New York: G. P. Putnam's, 1883.
- Smurr, J. W. and Toole, K. Ross (ed). Historical Essays on Montana and the Northwest. Helena, Montana: The Western Press, 1957.
- Stone, Arthur L. (ed) Following Old Trails. Missoula, Montana: Morton John Elrod, 1913.
- Woodward, C. Vann. Reunion and Reaction: The Compromise of 1877 and the End of Reconstruction. Boston: Little, Brown and Co., 1951.
- The Works of Hubert Howe Bancroft: History of Washington, Idaho, and Montana, 1845-1889. XXXI, San Francisco: The History Company, 1890.

Periodicals and Newspapers

- The Butte Semi-Weekly Miner. 1885-1888.
- The Daily Missoulian. 1905-1913.
- The Great Falls Daily Tribune. 1900-1910.
- The Helena Independent Weekly. 1885.
- The Helena Semi-Weekly Herald. 1900-1903.
- The Missoulian Souvenir of the National Irrigation Congress. 1899.
- The New North-West (Deer Lodge, Montana). 1885.
- Rae, John B. "Commissioner Sparks and the Railroad Land Grants," The Mississippi Valley Historical Review, XXV, (June, 1938 to March, 1939), 211-230.
- Supplement to the Northwest Tribune (Stevensville, Montana), October 19, 1900.
- Toole, Kenneth Ross. "The Anaconda Copper Mining Company-- A Price War and a Copper Corner," The Pacific Northwest Quarterly, XXXXI (October, 1950), 312-329.

Toole, Kenneth Ross. "The Genesis of the Clark-Daly Feud,"
The Montana Magazine of History (April, 1951), 21-33.

The Western News (Hamilton, Montana), 1892-1906.

Reports

Peters, William C. and Maxine C. Johnson. Public Lands in Montana: Their Historic and Current Significance.
April, 1959. Bureau of Business and Economic Research,
Montana State University, Missoula, Montana in cooperation
with the Montana State Planning Board, Helena Montana.

Proceedings of the American Forest Congress. Washington, D.C.,
January 2-6, 1905. Washington: A. M. Suter Publishing
Co., 1905.

Unpublished Material

Bolle, Arnold William. "The Basis of Multiple Use Management of Public Lands in the North Fork of Flathead River, Montana." Unpublished Dissertation for Doctor of Public Administration, Graduate School of Public Administration, Harvard University, 1959.

Coon, Shirley Jay. "The Economic Development of Missoula County." Unpublished Ph.D. Dissertation, Department of History, University of Chicago, 1934.

Kerlee, Thomas Marvin. "Some Chapters on the Forest Homestead Act with Emphasis on Western Montana." Unpublished Masters Thesis, Montana State University (Missoula, Montana), 1962.