

SUPPLEMENT.

BIENNIAL MESSAGE  
OF  
GOV. L. E. GROVER.

To the Senate and House of Representatives of the State of Oregon: GENTLEMEN—

On the recurrence of each succeeding biennial session of your honorable body, it is interesting to note the evidences of our development as a State, and of our progress as a community.

Never have the assurances of our coming strength and stability been more marked than at the present time. Acknowledging the leading hand of Providence in all our advancement, let us endeavor to subordinate the struggles of political parties and of persons to the ever-commanding interests of the people, and so to conduct our public action as always to keep in view the chief public good. Gathered here from widely-separated fields of action, and from diversified pursuits of life, and representing the various interests of the State, it is your high privilege to deepen and strengthen the foundations of our institutions, and to give new impulse to the current of our prosperity.

Since your last meeting our people have been blessed with general health; abundance has crowned our harvests, and success has followed most of our enterprises. Alive to the importance of our present position, and realizing the advantages which with nature has endowed us as a State, let us emulate each other in the high endeavor to place our youthful commonwealth on the solid pathway to future eminence among her sisters of the Union.

In exercising my constitutional duty to give to the Legislature information touching the condition of the State, I lay before you the following accounts and suggestions concerning the various important matters affecting the administration of public affairs during the past two years:

FINANCES.

On examination of the reports from the accounting Departments of the State for the biennial period beginning September 6, 1870, and ending September 6, 1872, the following statement is submitted:

RECEIPTS.

Balance in Treasury Sept. 6, 1870	\$267,369.48
Rec'd since—Gen. Fund, coin	165,225.76
"    "    "    "    "    "    "	670.00
"    "    "    "    "    "    "	82,170.58
"    "    "    "    "    "    "	32,258.09
"    "    "    "    "    "    "	31,973.39
"    "    "    "    "    "    "	3,710.03
"    "    "    "    "    "    "	67,295.24
"    "    "    "    "    "    "	35,945.52
"    "    "    "    "    "    "	846.29
"    "    "    "    "    "    "	332.44
"    "    "    "    "    "    "	13,306.08
"    "    "    "    "    "    "	13,306.08
Total	\$942,570.54

DISBURSEMENTS.

Paid on current liabilities existing before Sept. 6, 1870	\$281,773.14
Paid Soldier's Bounty and Relief Bonds	32,650.23
Paid the boat subsidy	12,811.95
Paid common school and University loans-distributions, etc.	143,737.67
Paid support of Penitentiary	45,475.03
Paid Penitentiary building	49,331.33
Paid Insane and Idiotic	65,871.95
Paid Legislative, Executive, Judicial, Public Printing, Conveyance of contracts and income etc.	137,365.24
Total	\$899,923.10

FUNDS IN TREASURY SEPTEMBER 6, 1872.

General Fund, coin	\$5,321.91
"    "    "    "    "    "    "	979.00
Common School Fund, coin	2,465.69
Common School Fund, currency	1,759.09
University Fund, coin	68.35
University Fund, currency	251.14
State Land Fund, coin	25,557.16
State Land Fund, currency	35,813.62
Soldiers' Bounty and Relief Fund	82,466.44
Escheat Fund, coin	1,612.92
"    "    "    "    "    "    "	1,785.37
Five Per Cent. Fund, currency	13,306.08
Total	\$172,597.41

LIABILITIES OF THE STATE.

This State has no funded debt. Bonds issued for construction of Canal and Locks at the falls of Willamette river, \$200,000.00. The sum is to be paid out of funds arising on sale of State lands held under internal improvement grant of 1841, and the five per cent. of net proceeds of sales of public lands in Oregon.

SOLDIERS BOUNTY AND RELIEF BONDS.

Bounty bonds	\$44,450.00
Relief bonds	46,027.00
Total	\$90,477.00

Outstanding Treasury warrants \$76,883.69.

To these must be added the deficiencies not audited, chiefly arising from accounts for conveying and keeping the insane, and for the con-

struction of the new Penitentiary building.

It will be observed that the Military Fund in the Treasury is nearly sufficient to pay off the Soldiers' Bounty and Relief Bonds. A majority of these bonds have been advertised for redemption, and might be liquidated in full within the next two years.

There are funds, also, in the Treasury sufficient to pay one-quarter of the canal and lock bonds. But a considerable portion of these funds are in currency, while the bonds are payable in gold. The authority to convert the currency into gold will be requisite before the currency funds can be applied to the liquidation of the bonds. It is probable that one-half of the canal and lock bonds, or the amount of one hundred thousand dollars thereof, could be canceled by payment within the next two years if the Legislature should so direct by appropriation, and the holders of the bonds should present them for payment.

These bonds run ten years from the date of their issue, unless a voluntary redemption of them occurs before their maturity. In case provision be not made for early redemption, an act should be passed giving the Treasurer authority to loan the moneys accumulating in the Internal Improvement Fund. The bonds bear interest at seven per cent, and the moneys can be loaned at ten per cent. per annum. A revenue of three per cent., per annum, can be made on all moneys of this fund, by holding and loaning them until the bonds are due. But, I think it the best policy to liquidate all these liabilities at the earliest practicable day, and to exhibit a State free from obligations of any kind.

THE FIVE PER CENT. FUND.

It will be observed that, in the statement of balances in the Treasury, the amount derived from the five per cent. of the net proceeds of sales of the public lands within the State is given at \$13,306.06. Of this sum \$1,545.92 was received during the administration of Governor Gibbs, and \$11,760.14 during the present administration, making the full amount in the Treasury. But during the term of office of my immediate predecessor, there was received from the United States Treasury, on account of this fund, the sum of \$5,124.25, which was embezzled by the officer receiving the same. The whole amount paid to this State on account of the Five Per Cent. Fund has been \$18,790.23.

The correspondence with the Treasury Department and the General Land Office concerning this fund, is herewith communicated. It will be observed that the sum received by Governor Gibbs, having been paid into the School Fund without separate report of the same to the Legislature, it did not at first appear that any of this fund had been paid to the State at the time this correspondence was undertaken.

STATE TAXATION.

There is now a manifest inequality in the several counties in this State, returned upon the same classes of property of equal value. There also exists in several counties a gross undervaluation of all classes of property. While this condition of things would make but little difference with the county finances, it greatly diminishes the funds which should come into the State treasury; being based upon a percentage of the assessments, and not upon a fixed proportion to be raised by each county.

There is another defect in our taxing system, which works, perhaps, a greater inequality and injustice than those named. In assessing property, under the present law, the party assessed is permitted to deduct his indebtedness from the valuation of his property. In counties where property is assessed at one-third its real value, as in the case in most counties, a person owning property to the amount of three thousand dollars, and being in debt one thousand dollars would pay no tax; for his property worth three thousand dollars, would be valued at one thousand by the assessor, which would be balanced by his indebtedness of one thousand dollars. But a prudent neighbor, worth the two thousand dollars or any other sum, and not in debt, would be required to pay taxes on the full amount of his assessment. It will thus be seen, that every dollar of indebtedness, under our present mode of assessment, may balance real value of property to the amount of three dollars. And if the indebtedness of our citizens, taken collectively, amounts to ten millions dollars, the amount of property, untaxed, on this account, is thirty millions. Again there is a gross undervaluation of the property of the whole State, produced by our present vicious mode of assessment. This State has property, at its cash value, over and above liabilities, to the amount of one hundred and twenty millions. Our last State assessment was thirty-four millions. During the last ten years we have doubled our population and increased the value of our property fourfold, but our assessment rolls show an increase of property valuation of less than thirty-five per cent.

With five times as many insane to support, and four times as many State prisoners to keep as we had ten years ago, with other expenses incidentally greater, as we increase our population, how can the State be kept out of debt, even on account of current expenditures, without sound assessments according to the increase of property?

Our State is organized upon the most economical basis; and if there is one sentiment in our Constitution more prominent than another, it is the mandate to keep free from debt. It will be proper in this connection to

call your special attention to a clause of that instrument which has heretofore been passed with little heed, but which, if observed, will be a most salutary effect upon our public finances. I refer to Article IX., Sec. 6, which reads as follows: "Whenever the expenses of any fiscal year shall exceed the income, the Legislative Assembly shall provide for levying a tax for the ensuing fiscal year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expense of the ensuing fiscal year."

No legislation under this requirement will be necessary, nor need there be any increase of the rates of taxation if our assessment law be modified in the proper manner, and a State Board of Equalization be created, which I recommend.

Upon the question of deductions on account of liabilities, it may be remarked that it has become the settled policy in States having the soundest financial systems, to make no deductions from their valuations of real estate on account of personal liabilities; and as real estate is the basis of all property, it is a question among writers on political economy whether real estate alone should not constitute the basis of taxation.

PUBLIC LANDS OF THE STATE.

On the accession to office of the present State Administration, none of the public lands to which the State was entitled under the various acts of Congress, requiring selection by the State authorities, and approval by the Land Department of the United States had been secured to the State, except a part of the Internal Improvement grant of 500,000 acres.

Selections, indeed, from time to time, had been made of the University lands and the indemnity school lands, by different officers, under different acts of the Legislature; but no work in this respect had received approval at the local land offices in Oregon, and no proper presentation of them had been made to the General Land Office of the United States; so that no lands of these classes had become vested in the State. To secure a title to all the public lands belonging to the State, has been a leading object of the present Executive. The efforts made in this behalf have been attended with a good degree of success.

THE UNIVERSITY LANDS.

The grant of Congress for the support of a State University, consists of forty-six thousand and eighty acres of land. Efforts at locating these lands began as early as 1853, but owing to irregularities of the work, and misapprehension of its condition the localities remained totally unrecognized by the United States, and consequently open for pre-emption or homestead settlement. From these facts, many of the lands first selected under this grant have been lost to the State, and other of necessarily a poorer quality, had to be located to fill the grant. In listing the University lands for final approval, great care was taken to cover all the former listings of lands which were occupied by settlers under the right of the State, and especially to secure all former listings which could be held free from conflict with rights of settlers under any other claim of title.

The entire grant, with the exception of a small part held in suspense by the United States, for adjustment of abandoned donation rights and other incidental, apparent, but not real conflicts, have been fully listed, approved by the local land offices, and by the General Land Office, and the Secretary of the Interior, constituting perfect title in the State.

INDEMNITY SCHOOL LANDS.

The lands to which the State was entitled, to be taken in lieu of those portions of the sixteenth and thirty-sixth sections in each township, for common school purposes, which were occupied by settlers in advance of the surveys, were found in the same condition as the University lands. None of them had become vested in the State, and nothing had been done in relation thereto which had been recognized by the General Land Office of the United States. The work of listing and securing the full approval of the indemnity school lands, as far as the public surveys had extended last year, has been accomplished, with the exception of a portion of those lying east of the Cascade Mountains; and in relation to these latter, they have been properly listed by the State and approved by the La Grande Land Office, but yet await final action at Washington. The amount of indemnity school lands which have been selected and vested in the State within the past two years, is one hundred and seven thousand eight hundred and thirty-seven acres. This work will be required to be constantly followed up as the public surveys progress, from year to year, until the public surveys shall embrace the whole State.

AGRICULTURAL COLLEGE LANDS.

The act of Congress of July 2d, 1862, donating public lands to the several States which may provide colleges for the benefit of agricultural and mechanic arts, provided that the lands selected by any State within its borders under said act should be taken from such as were subject to private entry. But the commission appointed by the Legislature four years ago to select the ninety thousand acres to which this State is entitled under this grant, not being able to find any considerable body of public lands within the State subject to private entry, located the entire quantity of these agricultural selections in the Klamath Lake basin, in Southern Oregon, on surveyed public lands of the United States of good quality, but not technically subject to private entry. Basing objection on the ground that these selections were not lands sub-

ject to private entry, the Land Office at Roseburg, within which district the lands lay, refused to approve the selections.

This was the condition of this class of lands two years ago. It was found necessary that an act of Congress should be passed to enable the State either to hold these selections or to make new ones in accordance with the act of 1862. On the presentation of the matter to our delegation in Congress, they procured, at the last session, the passage of an act which provides "that the lands granted to the State of Oregon for the establishment of an agricultural college by act of Congress of July 2, 1862, and acts amendatory thereto, may be selected by said State from any lands within said State subject to homestead or pre-emption entry under the laws of the United States; and in any case where land is selected in the State, the price of which, if fixed by law at the double minimum of two dollars and fifty cents per acre, such land shall be counted as double the quantity toward satisfying the grant; that any such selections already made by said State, and the lists duly filed in the proper district land office, be and the same are hereby confirmed, except so far as they may conflict with any adverse legal right existing at the passage of this act."

The act also provides that "said lands shall not be sold by the State for less than two dollars and fifty cents per acre; and when settlement is made upon the same, preference in all cases shall be given to actual settlers, at the price at which said lands shall be offered."

The lists of the Agricultural College selections are now awaiting action of the new land office at Linkton, under the foregoing provisions of the late act of Congress, and will doubtless be shortly approved. It is understood that none of these lands which have been selected fall within reach of any railroad grant, so that the State will probably secure the full amount of the ninety thousand acres at first selected. As these lands will, within a short period, be fully vested in the State, legislation providing for their sale will be proper. Indeed, to facilitate the settlement of the southern portion of the State, it is important that this legislation be had at the present session. In making provision for the disposal of these lands, I would suggest that the general policy of the State, heretofore adopted, in disposing of all her arable lands in limited quantities, and favoring actual settlers, be still adhered to.

INTERNAL IMPROVEMENT GRANT.

Of the grant of five thousand acres to the State for internal improvements, by Act of Congress of Sept. 4, 1841, four hundred and fifty-six thousand seven hundred and eighty-nine acres, are now finally approved and fully vested in the State, and the balance being duly listed and approved by the local land offices, will be within a short time certified as approved by the General Land Office; the principle on which these latter lists were suspended, having been already settled in favor of the State selections.

SWAMP LANDS.

By the Act of Congress approved September 25th, 1850, it was provided "that to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands made unfit thereby for cultivation, which shall remain unsold at the passage of this Act, shall be, and the same are hereby granted, to said State." The provisions of this Act were extended to Oregon by act of Congress approved March 12, 1860.

The policy of the General Government conveying the swamp lands lying within the borders of the several States to the respective States in which they are found, is a well settled one. To the States interested, it is important, as it gives them the control of extensive portions of the common domain, which, if not so granted, might lie waste and become sources of disease, breeding malarious distempers. It is also important to the States interested, that these lands should be reclaimed so as to become fit for agricultural occupancy, and consequently subject to taxation.

But little notice was taken of this important grant by the public authorities of this State until the session of the last Legislature, at which an Act was passed bearing date October 26, 1870, entitled "An Act providing for the selection and sale of the swamp and overflowed lands belonging to the State of Oregon." This Act provided that the Board of School Land Commissioners should appoint deputies to proceed as soon as practicable, to select in the field all the lands rendered unfit for cultivation by inundation or overflow within this State, and to make return of the same to said Commissioners.

Pursuant to this authority, deputies have been appointed who have proceeded to the field and made selections in their several districts of such land as they deemed to fall within the description of said Acts of Congress, omitting under instructions from the Board, all such swamp lands as are claimed and occupied by bona fide settlers, under whatever right they claim. The amount of swamp and overflowed lands so selected, free from conflict, and reported to the Board up to the present time is 174,213.97 acres, lists of which have been duplicated and duly forwarded for filing in the office of the Surveyor General of Oregon.

In examining the title of the State to these lands, and the condition of the grant, I found that there had been a practical omission on the part

of the Department of the Interior to execute the laws of Congress making this grant, as far as the same related to Oregon. The usual special instructions sent to Surveyors General of other States, holding under the same acts of Congress, directing a segregation of the swamp lands, had not been transmitted to the Surveyor General of this State. Deputy United States Surveyors in the field had generally made no note of the swamp lands, but had returned all this class as lands arable, and the several local land offices had been accustomed to dispose of them without reference to the title of the State, as public lands of the United States, subject to homestead and pre-emption settlement. By this means considerable portions of the swamp lands owned by the State, and which are still vested in the State, had been disposed of as the lands of the United States.

A letter was addressed by me to the Secretary of the Interior, bearing date November 9th, 1871, calling his attention to the acts of Congress under which we hold these lands, and to the omission of the Land Department of the United States to execute these laws. The correspondence on this subject is herewith accompanying. In this correspondence I have urged the General Land Department to execute the swamp land laws of Congress in favor of Oregon, as they have been executed in favor of other States, under the same laws, and to suspend all action of our local land offices involving adverse possession of these lands, until the question of title could be settled between the State and the United States. On the part of the Secretary of the Interior and the Commissioner of the General Land Office, a willingness has been indicated to enter upon the segregation of the swamp lands, but no work has been done in that direction by them, and no instructions have been issued, to the knowledge of the Executive, in answer to the requests contained in the correspondence. I can state, therefore, as the present condition of this important interest, that the acts of Congress making the swamp land grant to Oregon remain practically unexecuted by the Land Department of the United States. In the meantime, lands unquestionably of a swampy character are being disposed of by the local land offices, thus absorbing the property of the State and complicating the title to the swamp and overflowed lands within her borders.

The leading adverse interest militating against the right of the State to the swamp lands is the claim of railroad corporations to hold alternate sections of the public lands for a distance of thirty miles on either side of lines of their railroads. The swamp lands, being more valuable than adjacent mountain lands which would have to be selected in lieu of the wet lands within the railroad belt, are preferred by the railroad corporation.

In relation to the right of the State to hold these lands, even without any action of the United States Land Department, and without patent, I have not the slightest doubt. In the words of the Commissioner of the General Land Office, in his instructions to the surveyors General of the several States interested in the swamp land act of 1850, "this act clearly and unequivocally grants to the several States those lands which, from being swampy, or subject to overflow, are unfit for cultivation."

In the opinion of Attorney-General Black, to the Secretary of the Interior, of November 10, 1858, in relation to the same act of Congress under which we hold: "The act of Congress was itself a present grant, wanting nothing but a definition of boundaries to make it perfect; and to attain this object, the Secretary of the Interior was directed to make out an accurate list and plats of the lands and cause a patent to be issued therefor. But when a party is authorized to demand a patent for land, his title is vested as much as if he had the patent itself, which is but evidence of his title. The authority given to the Legislature to dispose of the land upon the patent, does not make the grantee less the exclusive owner of them than she would be if those words were omitted. \* \* \* The subsequent grant by Congress to the State for the use of the railroad, could not have been intended to take away from the State the rights previously vested in her for other purposes. \* \* \* There are cases in which grants are made under descriptions so vague and indefinite, that neither the grantee nor any other person can tell their location or boundaries, until the grantee does some act which locates and defines them. In such case, if any other right which is strictly defined, intervenes, the first grantee may lose what he would have been entitled to if his own grant had been descriptive or definite. But that principle does not apply here, because the general description of all swamp and overflowed lands within the limits of Arkansas is definite enough for the purposes of notice."

In another opinion of the Attorney-General to the Secretary of the Interior, dated June 7, 1857, in relation to another act of Congress, he says: "When Congress says that a certain portion of the public domain of the United States 'is hereby granted' to a State, what need can there be of any further assurance in order to give the State a perfect title in fee. \* \* \* The point is firmly settled if the highest judicial authority can settle anything."

These views of the Attorney-General are sustained by leading decisions of the Courts, both State and National, and have heretofore controlled the action of the General Government in administering this class of grants.