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## INSTRUCTIONS TO SPECIAL TIMBER AGENTS.

The object of the government in endeavoring to prevent the waste and destruction of public timber is, primarily, to preserve it for the wants of future generations—having, of course, due regard for the requirement of the present. The result of the destruction of forests in permitting a more rapid melting of the snows in spring than would occur in the same region if well sheltered, and in decreasing the capacity of the soil to retain moisture after rains—in both cases increasing the liability to sudden and devastating floods, not only in the denuded sections, but sometimes hundreds of miles distant—also the well established climatic influences of such destruction in diminishing the annual rainfall, to the serious detriment of regions already subject to frequent droughts, and other reasons which present the preservation of the public timber a matter of vital importance not only to the agricultural but to many other extensive interests.

Government land embraces all land the title to which is the government; and for the present purpose may be divided into four classes:

1st. Vacant unoccupied public land.

2d. Land covered by homestead, pre-emption, or other entry upon which the claimant has not so filed his obligations under the law so as to entitle him to patent.

3d. Mineral lands.

4th. Military, naval, Indian, and other government reservations.

All unoccupied lands of the United States to which no valid claim has attached, and which are subject to homestead, pre-emption, or other entry, or which can be sold or otherwise disposed of by the United States, are vacant public lands.

From such lands, if not mineral in character, no person can lawfully fell or remove any timber, except right of way railroad companies for certain purposes, and under certain conditions.

Lands covered by homestead or pre-emption claims are lands upon which citizens of the United States have made entry, and have filed certain papers in the proper district land office, obligating themselves to conform with the requirements of law as to occupancy, cultivation, and improvement.

The claimant to any such land, providing he is living upon, cultivating, and improving the same in accordance with law and the rules and regulations prescribed by this department, is permitted to cut and remove, or cause to be cut and removed, from the portion thereof to be cleared for cultivation, so much timber as is actually necessary for that purpose, or for buildings, fences, and other improvements on the land entered.

In clearing for cultivation, should there be a surplus of timber over what is needed for the purposes above specified, he may sell or dispose of such surplus; but it is not allowable for him to denude the land of its timber for the purpose of sale or speculation until he has made final proof and acquired title.

When the facts justify the conclusion that the person has made his entry in good faith, and is cultivating and improving the land for the purpose of making it his home, the agent need not consider it his duty to report every deviation from the preceding rule. But where the person does not make the land his actual residence and cultivate and improve the same, or where the value of the timber cut and removed is greatly in excess of the improvements, or where other facts afford a strong presumption that the entry was not made in good faith, but solely for the purpose of denuding the land of its timber, the case shall be at once reported to this office.

No person other than the one making the entry has a right to cut timber from such land for any purpose whatever.

One of the most dangerous elements to contend with in case of forest fires, and one of the principal auxiliaries to the spread of the same, is the dry tops of trees which parties leave upon the ground after having cut and removed the timber for saw logs and other purposes. When the tree tops can be profitably cut into wood, the person cutting such trees on public land—when such cutting is authorized by law—must cut them to the top into wood, or at least cut up and pile the brush in such manner as to prevent the spread of fires.

A failure on the part of woodsmen to utilize all of the tree that can profitably be used, and to take reasonable precaution to prevent the spread of fires, will be regarded by this office as wanton waste, and subject them to prosecution for wanton waste and destruction of public timber.

Non-residents of a mineral district are not authorized, under any circumstances, to fell or remove timber from public mineral lands in said district, except for use in such district.

Railroad companies are prohibited from the privileges granted in said act; that is if they cannot take timber from public mineral lands for buildings, fuel, &c.; but are not prohibited from taking timber from such lands for construction purposes, as authorized under act of March 3, 1875.

Special attention is called to the fact that the authority granted in said act of June 3, 1878, applies exclusively to lands which are strictly mineral in character and subject to mineral entry only. The evidence must be positive that such lands are more valuable for the mineral thereon than for any other purpose, and that they are not suitable for agricultural purposes or civilization, or valuable solely for the timber thereon.

Every report of an alleged depredation upon land in a mineral district must be accompanied by affidavits from two entirely disinterested and responsible persons as to the mineral or non-mineral character of the land.

The object of the department in providing that such timber shall not be exported is, to protect the settlers in sparsely timbered districts from being deprived of the timber necessary for their domestic uses. It is not, however, the intent of the department to strictly enforce a technical prohibition in cases where the interests of the settlers in the districts from which timber is cut and removed are not injuriously affected thereby.

The removing of timber or lumber from one state or territory across the line into an adjoining state or territory, but not out of the same general district of section of country, is not such exportation as it is intended to prohibit.

In investigating cases of alleged export, special timber agents must examine carefully into all the facts, and report in full, especially as to the manner in which the settlers and residents of the district from which the timber is cut and removed are affected thereby.

The object of the department in prohibiting the cutting or removing of trees less than eight inches in diameter is the preservation of the young timber and undergrowth, so as to provide a supply for the future when such trees shall have matured. But it is not the intention to prohibit the cutting or removal of any full grown tree belonging to a species which, when mature, does not exceed eight inches in diameter, or of any mature tree; nor of trees of any description, even if less than eight inches in diameter, if it can be shown that there were no other trees in that vicinity. Therefore in investigating cases of al-

leged trespass where the trees cut or removed are of less than the prescribed size, the agent must ascertain and report the species of tree so cut or removed, the average size which trees of that species attain in that section of country, and whether the trees cut and removed were growing trees, or trees of mature growth, whether the trees in that vicinity generally are less than eight inches in diameter, and all other facts necessary to be known to enable this office to determine whether the cutting was that of mature trees of less than the required size, or of the largest trees obtainable in that locality even if less than eight inches in diameter, or whether it was a case of wanton and wasteful destruction of the public timber.

Locators of mining claims, so long as they comply with the law governing their possessions, are invested by congress with the exclusive right of possession and enjoyment of all the surface included within the lines of their locations. If a locator neglects to protect himself and his possessions, the law does not assume that the United States is injured by the cutting and use of the timber on such claim. It is the duty of the possessor to care for his own if trespass be attempted by a stranger; he alone is concerned for its protection and may undoubtedly maintain suit to that end.

All land-grant railroads are authorized, in the granting act, to take timber from the public land adjacent thereto, for construction purposes. This authority, however, is confined strictly to timber for construction purposes only, in every grant except that of the Denver and Rio Grande railroad, which authorizes said road to take timber for repairs also. All right-of-way railroads are authorized to take timber from the public lands adjacent to the line thereof, for construction purposes only, under act of March 3, 1875.

There is no law authorizing individuals to cut timber from the public lands and sell the same to railroads at a certain price per tie, or per thousand feet, or under contract, even though it may be used for construction purposes. The right is conferred only upon the railroads themselves; therefore the person cutting such timber must be in the actual employ of the road or its agent.

Any person who fells or removes timber, or hires others to fell or remove timber, from government land, for his personal benefit or advantage, or for the purpose of speculation and gain (except he has the right or permission so to do as specified under heads of "lands covered by homestead or pre-emption entry," "right of railroad companies," and "mineral lands"), is a timber trespasser of government land.

Any person who is authorized by law, or permitted, to fell and remove timber from government land, who fails to utilize all of the trees cut that can possibly be used, or to remove the brush and take every reasonable precaution to prevent the spread of forest fires; or who, in any other particular wastes or destroys the public timber, is guilty of timber trespass upon government land.

Any person who commits timber trespass upon government land is liable to both criminal prosecution and civil suit; criminal prosecution for the act of trespass, and civil suit for the value of the material taken and the damages sustained, together with the costs of court, and also the cost of survey and scalcement when the same shall be necessary to accurately determine the extent of trespass and the amount of damages.

The person or persons who contract for, purchase, or receive said timber are also liable to civil suit for the value thereof and damages sustained, together with costs as above.

Timber unlawfully cut from

government land is the property of the United States, and is subject to seizure as such, wherever or in whatever condition it may be found, and from any party having possession of it, or who in any way lays claim to it.

Cut timber is not a part of the realty and does not go with the land; it is personal property and the value of the same can be sued for after the land has been parted with by the government.

The value of such timber in a civil suit is the value of the timber, or lumber, at the place where and in the condition when found.



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Referring to the Tilden boom, that outspoken Democratic sheet, the Brooklyn Eagle, says: "Would not the party cut a ludicrous figure shouting about a fraud that ought to have been redressed in 1880, which it declined to give battle for? In this respect the party would not be unlike a woman who should come to court complaining of rape eight years after it was committed and saying that she had just woke up to the enormity of the outrage."



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