

Lake County Examiner

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NO. 14.

REPUBLICAN CONVENTION

Delegates From all Parts of the County Assembled in Lakeview Friday in Convention

A great many of the delegates to the Republican County Convention arrived in Lakeview last Thursday, but those who lived near by came in Friday morning. When the hour of 2 p. m. arrived it was noticed that a large majority of the delegates were on hand, and were soon assembled at the court house. The convention was called to order by W. A. Massingill, chairman of the County Central Committee. Geo. W. Noble of Goose Lake precinct was chosen temporary chairman, and W. Y. Miller of Paisley, secretary. The chair proceeded at once to name the different committees. The committees on credentials were: E. E. Rhinehart, S. B. Chandler, S. J. Prose. This committee found the following delegates entitled to seats:

Silver Lake.
H. A. Brattain, proxy E. D. Lutz; E. D. Lutz, proxies John Hayes, R. E. Smith, S. K. Busick, Josiah Porter, G. B. Wardwell.

Summer Lake.
J. N. Watson, proxy C. Smith, G. H. Ahlridge.

Paisley.
J. N. Watson proxy W. F. Tucker, M. Lauritzen; W. Y. Miller, Geo. Bogue, John Simmons, Al Earrow, J. M. Benefield.

Crooked Creek.
S. B. Chandler, E. E. Rhinehart, S. B. Chandler, proxies N. R. Wilcox, C. C. Barnum.

Goose Lake.
R. O. Morris, Geo. W. Noble, John H. Noble, James McCreary, F. E. Russell.

Thomas Creek.
J. M. Hammersley, B. F. Barnum, S. J. Dutton, S. J. Prose.

North Lakeview.
J. C. Rosey, W. S. Blair, John O. Bull, C. P. Linebarger, E. M. Brown, R. H. Day, P. M. Curry, T. J. Hastings, John McElhinney.

South Lakeview.
H. C. Whitworth, R. T. Stripplin, E. M. Brattain, S. J. Studley, Geo. Reed, Dan Mulloy, N. Arzner, C. R. Anderson, W. A. Massingill.

Drews Valley.
Dan Chandler, W. D. Tracy, Dan Chandler proxy Fred Fisher.

South Warner.
L. D. Frakes; L. D. Frakes proxies of Tom Calderwood, J. E. Dunnavin, S. E. Sloan.

North Warner.
W. K. Barry; W. K. Barry proxies of W. E. Scammon, Hugh Ahern.

Cogswell Creek.
C. C. Cannon, Edw. Hartzog, A. M. Smith, A. E. Follett.

The chair then appointed the following committees. Resolutions: H. C. Whitworth, W. K. Barry, John McElhinney.

Permanent Organization: H. A. Brattain, W. D. Tracy, L. D. Frakes. Order of business: J. N. Watson, C. P. Linebarger, C. C. Cannon.

Nominations were then made for delegates to the congressional convention at Eugene. The following were the nominations with the votes they received: W. K. Barry 43, E. M. Brattain 44, R. E. L. Steiner 44, W. A. Massingill 46, John McElhinney 16, S. B. Chandler 15, J. N. Watson 17, S. J. Studley 15. As only 4 delegates were to be selected, the first 4 were elected. E. M. Brattain and W. A. Massingill were the only two who could go down to the congressional convention which meets at Eugene.

Weinstock, Lubin & Co's Catalogue.
Since the fire in January, Weinstock, Lubin & Co., are located in the former State Fair Pavilion, Sixth and M. Streets, Sacramento, and are carrying on a large city and mail order business as usual.

Send for Weinstock, Lubin & Co's handsome new Catalogue. It is free to any address and an interesting and helpful book to have, whether you buy from it or not.

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WARNER LAND DECISION

March 16, 1903.
J. L. Morrow et. al.,

v.
State of Oregon
and

Warner Valley Stock Company)
The commissioner of the General Land office.

Sir:
The State of Oregon and the Warner Valley Stock Company appealed from your office decision of March 2, 1901, rejecting the State's swamp land selections under the act of March 3, 1890 (12 Stat., 3) embraced in lists 30, 31 and 39, of lands described in your office decision, situate in township 39 south, ranges 24 and 25 east, and township 40 south, range 24 east, W. M., Lakeview, Oregon.

The former history of the contentions concerning these lands is more fully recited in Morrow et. al., v. State of Oregon, (28 L. D., 390), to which reference is here made. May 13, 1899, (28, lb., 395), the Department, for reasons there stated, ordered that:

All decisions respecting the character of these lands, or any of them, heretofore rendered by the Department, your office, or the local office, are set aside, with a view to a full and fair hearing, after due notice to all concerned, which hearing shall be conducted in accordance with the stipulation in writing filed herein by counsel for the respective parties May 4, 1899. In addition to the lands embraced in said lists 30, 31 and 39, this decision and the hearing and proceedings herein directed shall extend to and include any and all other lands described in said stipulation of May 4, 1899.

The stipulation provided that if a rehearing were ordered upon pending proceedings all claims adverse to the State and to the Warner Valley Stock Company, involving certain described lands, should be consolidated and tried, so far as possible, as one case, the State and the stock company to have the burden of proving the swampy character of the land, March 12, 1890, by general evidence as to all the lands, and any further evidence as to specific tracts.

July 17, 1899, a hearing was had at the local office in which the parties fully participated, and a great volume of evidence was introduced. February 3, 1900, the local office found that all the land in controversy March 12, 1890, was the bed of an apparently permanent lake. Upon appeal November 6, 1900, your office decision reversed the local officers and held that "the lands involved were not in 1890 covered by the waters of a permanent lake," and that neither the condition of the land, nor its settlement or other adverse filings and claims thereto, are "of such a character as to prevent the approval of the land to the State as swamp land." November 20, 1900, this decision was recalled, and March 2, 1901, your office vacated such former decision and held that:

The lands included in lists 30, 31 and 39, and all others described by the . . . stipulation filed . . . May 4, 1899, were not as a whole, nor as to the greater portion of the smallest legal subdivision, swamp and overflowed on March 12, 1890, and that the State of Oregon, and those claiming under it, has no title, interest or estate in and to any part of said lands by or through the provision of the act of March 12, 1890 Said claims are hereby rejected and said lands held for cancellation.

The controversy as to these lands has pended in one form or other, in the Courts, in your office, and this Department for many years, (See 5 L. D., 369; 17 L. D. 571; 19 L. D. 254; 23 L. D., 178; 28 L. D., 390.) A sur-

vey of Townships 39 south, ranges 24 and 25 east, was made in the field in June, 1875, in the returns of which a large part of the two townships was described and meandered as a lake. The field notes and general description are very meager and give no light as to the character of the body of water therein spoken of as "Warner Lake" and "lake." A survey of Township 40 south, range 24 east, was made in the field in July and August, 1879, in the returns of which a large portion of the township was described as marsh or lake, and was defined by a meander line running through "land marshy along lake covered with tules and flag grass;" "tules in and along lake;" "these lands are subject to overflow by the creek and lake, covered with tules, grass and flag;" "tules and flag grass in lake." The meander line referred to is one traced through sections 6, 7, 18, 19, 29, 16, 15, 10, 11, 1, and 2. The general description accompanying the field notes as to the lake or marsh is that:

The marsh or lake, if properly drained, is first-class muck land. This lake or marsh is reported much lower at this time than ever before, and yet it covers a large portion of the township. It having no outlet is filled up to overflowing each Spring by the melting of the snows and the spring rains. The meander lines are run on the line of the overflow, which is defined by the marsh and tules.

The meander line in this township connects with that in township 39, and together they enclose an area of about 22,000 acres.

Subsequently complaints were made by settler claimants that the surveys were fraudulent and included within the meander lines a large area of dry land. They asked that the public surveys be extended over the so-called lake, so that they have opportunity to present proper applications for the land they occupied and to protect their settlement rights. After examination and report by a special agent, it was so ordered January 17, 1887 (5 L. D. 369). Such surveys were made in August and September, 1887.

Substantially all the land thus surveyed was claimed by the State and her grantees under the swamp land grant September 28, 1850 (9 Stat., 510), extended to Oregon by the Act of March 12, 1890, supra, and was included in list 61, and presented December, 1888. Many tracts were claimed by individuals under the laws for disposal of agricultural lands and many controversies over them arose in the courts and land department. March 21, and November 16, 1892, your office prepared and submitted clear lists 30 and 31 to the Department for approval, which were approved April 9, and December 3, 1892, "subject to any valid adverse rights that may exist to any of the tracts therein described", which is the uniform character of approval given to all swamp land lists. This action was revoked March 3 1893, December 19, 1893, upon the papers then before the department, it was held that at the date of the grant all the lands in said list were covered by Lake Warner and were not of the character contemplated by the swamp land grant, and this decision (17 L. D. 574) directed, but not in pursuance of any consent or stipulation of parties, that:

All decisions, recommending or holding for cancellation entries or declaratory statements, upon the ground that the land in contest were granted to the State of Oregon as swamp and overflowed lands, by the act of March 12, 1890, to be set aside and annulled and the cases re-instated; and all contests based upon said ground alone, to be dismissed

December 13, 1894, your office transmitted clear list 39, made up of the tracts in lists 30 and 31 not within the area surveyed in 1887. This was rejected and cancelled by departmental decision of August 4, 1896, (23 L. D. 178), which held that:

The lands embraced in said lists 30, 31 and 39 were not on March 12, 1890, swamp and overflowed lands made unfit thereby for cultivation.

This decision was recalled August 11, 1896, and no definite further action was taken therein until the order of May 13, 1899, supra upon which the hearing now pending was had.

At the initiation of this controversy, the agricultural claimants asserted that at the date of the swamp land grant to the State the land in controversy was dry and suitable for agriculture without reclamation. At the recent hearing they contend that at the date of the grant the land was the bed of a lake or apparently permanent body of water, and did not pass by the grant and that the lake has since receded.

Before the hearing began the swamp land claimants move a continuance for absence of witnesses named in an affidavit filed, setting forth the names of the witnesses and facts to which they would testify. The adverse claimants admitted the persons named would so testify, and the hearing proceeded. The affidavit was to the effect that one of the parties named would testify that he was in the Warner Valley in 1864; two others that they were there in 1868; and six others that they had known the basin from 1866 to 1872, and that each would testify that these lands when first seen by them were swamp, marsh lands, covered with a rank growth of tules, flags and swamp grass, and were too wet for cultivation, but not covered by the water of a permanent lake. One of these parties afterwards testified, and the testimony of four others theretofore given in other proceedings concerning these lands was read by the swamp land claimants. The testimony taken at the hearing and testimony so theretofore taken, with the affidavit comprise that of two witnesses who first saw the lands in 1864, three in 1865, five in 1866, three in 1867, two in 1868, and one in 1869, or sixteen during that decade, and eleven others from 1871 to 1879, inclusive, a total of twenty-seven witnesses who observed the condition of the land in those years, many of whom were familiar with them for the greater part of the period covered by the testimony.

The agricultural claimants produced no evidence as to the condition of the land at or about the date of the grant, but relied upon testimony formerly adduced by the swamp land claimants, when the contention was as to the dry or the wet or submerged condition of the land at the time of the grant.

Without giving the testimony of witnesses in detail it suffices to say that the material facts established by the evidence are, substantially as follows:

The evidence on behalf of the swamp land claimants shows that the lands lie near the south end of a depressed valley or fracture of the earth's crust, about sixty or more miles long from north to south, and three to six miles wide, without drainage outlet, surrounded by walls of brown basalt, often one thousand feet high, divided into the Upper and Lower Warner valleys by narrows where it is contracted by a comparatively near approach of its precipitous sides. The floor of the valley near its south end slopes eastward and declines to the north, where its surplus water passes through the narrows into North Warner Valley. The entire basin has been somewhat indiscriminately described as War-

ner Lake, Warner Lakes, Warner Marsh and Warner Valley, from about 1849. The water of South Warner Valley mainly comes from two streams (Twenty Mile Creek and Deep Creek) fed principally by melting snows of the surrounding mountains entering the basin near its south end. In 1864, when the witnesses testifying first observed the valley, the lands in controversy as well as nearly all the floor of the basin, except small patches or streaks of open water, were covered by a rank growth of tules, canes, flags, and swamp grasses, the streams losing themselves in the marsh without any channels. The soil was muck, or peat, several feet thick, formed from decay of many years' vegetable growth. The spongy nature of the soil, with the dense standing and fallen vegetation, greatly retarded the flow of water over the surface of the valley towards the narrows, which had a fall of somewhat less than thirty-three feet, in a distance of about twenty-nine miles, or perhaps about eighteen feet in the last eighteen miles.

White settlers began to come into the valley about the fall of 1876, and some 7,000 or 8,000 head of cattle and several thousand hogs were taken there in the winter of 1876-77, and thence forward it was a winter range for stock. The muck and fallen vegetation became more compacted as stock penetrated and ranged in further and further from the edges of the morass. Some of the waters of Twenty Mile Creek were diverted into Surprise Valley, California, and irrigating ditches were taken out of Deep Creek for reclamation of arid lands, the surplus finally discharging into Pelican Lake some miles down the valley from the mouth of the creek. From large parts of the marsh the tangled and fallen vegetation was burned. Stock paths served the water for channels. For some periods of several years there was less snow and rain-fall upon the mountains and less flow of water into the valley. From these causes, a marked change came over the marsh and large parts of it became very productive of hay and may be mown, and parts of it are arable. But at all times there were only comparatively small spaces covered by water which was free of vegetation, and now there are two bodies of water in the Basin known as Cook's Lake and Pelican Lake, not, however, embracing any of the lands in controversy. The latter includes about three-fourths of Sec. 10 tp. 38 N., 24 E., with a rocky or gravel bottom, devoid of vegetation. The former, or Cook's Lake, is nearly two miles farther north, about two miles long and one wide, the character of the bed of which is not disclosed by the evidence. These are the only permanent bodies of water shown by the evidence to exist in the basin.

At the recent hearing the agricultural claimants adduced only the testimony of witnesses on behalf of the swamp land claimants, theretofore given in cases involving specific tracts, which testimony, it is claimed, so conflicts with that given at the recent hearing as wholly to discredit it. Examination shows that the discrepancies are rather as to the terms used than to the facts stated. At the recent hearing the witnesses called that a swamp or marsh which they generally at the former hearing called "Warner Lake or "a lake," but they usually added at such former hearing the words "or swamps," "or marsh," or described it as covered with tules, flags, canes and water grasses, showing its character. In their former testimony, the witnesses describing the land in

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