

The Malheur Occupation and the Problem with History

WILLIAM G. ROBBINS

A SELF-STYLED GROUP of armed patriots set off a firestorm of controversy in January 2016 when it took control of the Malheur National Wildlife Refuge headquarters thirty-five miles south of Burns, Oregon. Challenging the function and purpose of federal management, the militants demanded that ownership of the land be turned over to the citizens of Harney County. Burns, the county seat, and nearby Hines are home to ranching and farming people and, until the 1980s, a thriving logging and lumbering industry. A sizable number of federal and state agency employees also make their homes in the two communities. Following a stand-off that lasted several weeks — and law enforcement officers at a highway blockade killing LaVoy Finicum, one of the occupants who was traveling to a meeting in John Day — the group surrendered, charged with wide-ranging federal crimes. Some of those arrested had participated in a confrontation with federal agents two years earlier at Cliven Bundy's ranch in Bunkerville, Nevada, because Bundy refused to pay fees to graze cattle on federal lands.¹

The protesters had traveled to Burns when Chief U.S. District Judge Ann Aiken ordered ranchers Dwight Hammond and his son Steven to complete their court-ordered sentences for setting fire to public grazing lands.² The radicals — none of them residents of Harney County — knew little about the 130 years of livestock grazing in the region, its large cattle enterprises, or the creation of the Malheur National Wildlife Refuge, and they misread the constitutional and legal grounding of federal land ownership. Despite sporting the apparel of cattlemen, few were legitimate ranchers. The leader of the group, Cliven Bundy's son, Ammon, was not a rancher, but an Arizona businessman who had recently relocated to Idaho. The many news photographs, however, show him wearing a black, broad-brimmed western hat.³

The militants put forth a defiant, aggressive anti-government attitude in their demands to restore a mythical past that would right the wrongs being imposed on the county's population of 7,402. Carrying pocket-sized



IN JANUARY 2016, a group of armed protesters took control of the Malheur National Wildlife Refuge in Harney County, Oregon. The group challenged federal land management and demanded federal lands be turned over to the county.

copies of the U.S. Constitution, some spouted arcane interpretations of the nation's founding document. The protestors raised timeworn historical issues regarding the federal estate in the American West: access to and use of land, the legal boundaries between public and private ownership, and the constitutional questions involved. The group's insistence that Harney County should control and own all federal lands within its boundaries echoed the protests of the Sagebrush Rebellion of the 1970s and 1980s, when protesters advocated for greater control or outright privatization of federal lands in the West. Nye County, Nevada, commissioner Dick Carver gained notoriety in July 1994, using his bulldozer to reopen a national forest road to assert a private right to public land.⁴

The nearly half-century movement to privatize public grazing lands in the American West rests in historical developments that have pushed the ranch and cattle industry to the brink of ruin. Similar to other Western resource industries, the consolidation of markets, increased operating costs, drought, and climate change have wreaked havoc on cattle ranchers. Between 1953 and 2014, Bureau of Land Management (BLM) livestock

grazing permittees have dropped from more than 18 million animal unit months (AUMs) to approximately 8 million. The proliferation of feedlots in the West and Midwest has put many small ranchers out of business, leaving those who rely on federal lands a small segment of the industry. Federal environmental legislation since 1970 — Clean Air, Clean Water, and Endangered Species acts — has added to disgruntlement in the rural West.⁵ Under those stresses, the federal government has served as a convenient scapegoat for forces that have led to a decline in the ability of family-scale ranches to be successful.

While the Malheur occupants made lots of rhetorical noise, their individual arguments were disparate, including the extreme anti-government views of Ammon and his brother Ryan Bundy, who argued that the federal government had no right to its lands in Harney County and should turn over control to county officials. Peter Walker, a University of Oregon geographer who spent several weeks in January 2016 interviewing occupiers and attending meetings, reported that the group openly admitted “that they intended to make Harney County the first ‘constitutional’ county in America.” Sixty-eight-year-old Neil Wampler, an occupier, told interviewer Hal Herring, “When our founders created the states out of the territories, 95 percent of it was meant to be private land.” Jason Patrick told Herring that the federal government had no constitutional right to lands in Harney County, saying simply, “that’s it. If we don’t abide by the Constitution, which limits what the federal government can do, then we have no rule of law, we have no country.” During opening arguments in the trial of seven of the defendants in September 2016, Ammon Bundy’s lawyer, Marcus Mumford, told jurors that “the federal government didn’t have the right to own” the 187,000-acre Malheur Wildlife Refuge.⁶

THE HISTORY OF THE MALHEUR REFUGE and Harney County differs sharply from the claims of the occupiers, with the federal government’s activities in sharp contrast to the grasping, dictatorial, and arbitrary cattle barons who dominated the county from the 1870s until the Great Depression. The 10,228-square-mile county, one of the largest in the United States and twice the size of the State of Connecticut, is a place of few people and vast open spaces where the federal government owns and manages most of the land.⁷ Much of the county is located in a series of internal drainages, with streams draining into playa lakes of varying magnitude and depth that diminish in surface area as summer wears on. Malheur Lake is a classic example of Great Basin ponds and lakes that expand considerably during heavy precipitation — especially snow in the mountains — and contract to a smaller scale during years of little precipitation. A striking illustration of



OHS research library.org lot. 369_Finley_A2069

THIS 1908 PHOTOGRAPH taken by William Finley shows gulls and terns congregating at Malheur Lake, which is now part of the Malheur National Wildlife Refuge.

the lake’s ebb and flow occurred in the mid 1980s, when above-average snowfall tripled its size from 67 to 160 square miles, flooding several lowland farmsteads. Conversely, in the drought year of 1992, the lake shriveled to just 200 acres — about a third of a square mile.⁸

Beginning with the U.S. Army’s removal of the Northern Paiute people to sub-marginal locations during the late 1860s, the county has been the setting for struggles over the control of land and water, with geography playing a significant role in land-ownership patterns. The great cattle empire builders were first on the scene, treating the Harney Basin as if it were pastureland free for the taking. Contrary to the occupiers’ characterizations of a heavy-handed federal government, owners of large ranches monopolized waterways (and thereby the best grazing land), fending off small homesteading farmers who arrived during the late 1880s and 1890s. With the coming of California cattlemen and their herds — fleeing that state’s restrictive grazing laws during the 1870s — “free range was enthroned” in the Harney Basin, writes George Brimlow. John Devine was first to arrive in the late summer of

1869 with some 2,500 head of cattle, setting up shop on White Horse Creek south of Steens Mountain, the fifty-mile long, north-south fault-block massif that rises to 9,733 feet. Peter French followed in the early fall of 1872 with 1,200 head of cattle owned by wealthy Californian Hugh Glenn, establishing headquarters where the Blitzen River streams away from the western side of Steens Mountain. Although others would follow, Devine and French set the standard for their shrewd use of loopholes in federal land laws to acquire huge acreages centered around critical waterways.⁹

A central component of Harney County’s history, a story familiar to many of the public-land states in the American West, has been access to federal land. From the time the American empire extended to the Pacific in 1848 during the war with Mexico, the public domain has been contested ground, involving speculators, railroad companies, cattle drovers, miners, farmers, timber barons, and those seeking riparian advantage in arid regions. The term *public domain* refers to the public ownership of lands managed by the United States government. Beginning in the late eighteenth century and through much of the nineteenth century, the federal government sold or issued grants of public domain lands to promote westward settlement.¹⁰ While cattlemen have been at the center of some of the more violent confrontations, farmers, miners, lumbermen, and white and Indian fishers have fought over access to land, minerals, anadromous-bearing streams, and access to natural resources on the public domain. Southeastern Oregon, the centerpiece of this inquiry, provides a striking archetype for the dispossession of Indian people, their removal from valuable land, and the arrival of large cattle herders who treated the area’s grazing lands as a vast commons to enter and occupy. Those time-worn conflicts regarding access to federal lands across the West continue to the present, with battles raging over grazing permits, access to public timber, and fracking for oil and gas.¹¹

Because they hold the overwhelming majority of public lands, twelve states in the West have been at the center of controversies involving federal control and management. Of the nation’s approximately 640 million acres of public land, only 4 percent lies outside the West. Five agencies administer today’s federal estate — the BLM, U.S. Forest Service, Fish and Wildlife Service, National Park Service, and Department of Defense. The BLM is charged with managing 247.3 million acres nationally, the Forest Service 192.9 million acres, the Fish and Wildlife Service 89.1 million acres, the Park Service 79.6 million acres, and the Department of Defense 14.4 million acres in military bases and training grounds. In perhaps an understatement, the Congressional Research Service reported in 2014 that the concentration of nearly 96 percent of all public land in the Western states “contributed to a higher degree of controversy over land ownership and use in that part of the country.”¹²

FEDERAL ACREAGE IN PUBLIC-LAND STATES			
STATE	TOTAL FEDERAL ACRES	TOTAL ACRES IN STATE	PERCENT OF STATE
Alaska	223,803,026	365,481,600	61.2%
Arizona	28,064,307	72,688,000	38.6%
California	45,864,800	100,206,720	45.8%
Colorado	23,870,652	66,485,760	35.9%
Idaho	32,621,631	52,933,120	61.6%
Montana	27,003,251	93,271,040	29%
Nevada	59,681,502	70,264,320	84.9%
New Mexico	26,981,490	77,766,400	34.7%
Oregon	32,614,185	61,598,720	52.9%
Utah	34,202,920	52,696,960	64.9%
Washington	12,176,293	42,693,760	28.5%
Wyoming	30,013,219	62,343,040	48.1%

THIS TABLE COMPILES data for Western states found in the Congressional Research Service’s 2014 “Federal Land Ownership: Overview and Data” report. The five federal agencies that own land include the Bureau of Land Management (BLM), Forest Service, Fish and Wildlife Service, National Park Service, and the Department of Defense.

Of the twelve public-land states, Oregon ranks fifth at 52.9 percent of its area under the jurisdiction of federal agencies. In terms of the percentage of federal land, Nevada ranks first at 84.9 percent, followed by Utah with 64.9 percent (see table above). The nation’s sovereign Indian reservations are not included in those statistics, and nor are Alaska’s thirteen large Native Regional Corporations. Slightly more than half of Oregon’s 61,598,720 acres are shared between the BLM and Forest Service. As of 2013, the five federal agencies shared the following acreages in Oregon: BLM, 16,142,471 acres; Forest Service, 15,674,661 acres; Fish and Wildlife Service, 573,416 acres; National Park Service, 192,127 acres; and Department of Defense, 31,510

acres. Harney County, the state's largest, has approximately 73 percent of its land in federal ownership and another 4 percent under state and county management. The vast majority of the state's BLM lands are in southeastern Oregon.¹³ With 73 percent of its public land outside the tax rolls (but receiving federal payments to partially offset those losses), Harney County may well be a prototype for political jurisdictions where many residents feel excluded from decision-making, especially with political conservatives in Congress persistently making charges of federal over-reach.

PERTINENT TO LAND CONTROVERSIES in Western states, it is important to know that states have been intimately associated with federal initiatives from the beginning. The federal government has granted land to territories and states to support common schools, universities, and land-grant colleges. Congress also provided generous land grants to promote Western settlement — to build railroads and military roads, to attract settlers through homestead laws, and at the turn of the twentieth century, for reclamation projects. Those conventions for disposing of federal land shifted to retention during the late nineteenth century, and contrary to the arguments of the Malheur protesters, constitutionally sound federal legislation framed those initiatives. The federal government began withdrawing access to public lands for specific purposes when it established Yellowstone National Park in 1872 and then escalated the practice with passage of the Land Revision Act in 1891 (better known as the Forest Reserve Act), a measure authorizing the president to withdraw federal forest land from being privatized.¹⁴

Important to Harney County — and northeastern sawmill towns in La Grande, Baker City, and John Day — President Theodore Roosevelt established ten new reserves in Oregon between 1904 and 1906, one of them the sprawling Blue Mountain Reserve extending north and east from Burns to the Wallowa Mountains. The reserves were renamed national forests in 1907. Another federal initiative shaping public lands in Oregon — creating wildlife refuges — originated when Roosevelt established several refuges, first on Pelican Island in Florida and, in 1908, the Malheur Lake Bird Refuge. Although he had declared Malheur a wildlife refuge, the designation had little meaning until the Great Depression, when the federal government added land to the refuge that encompassed streams flowing into Malheur Lake.¹⁵

The General Land Office in the Interior Department continued to manage, or mismanage, as critics were quick to note, lands outside the forest reserves. In the absence of an effective regulatory policy, federal ranges (including those in southeastern Oregon) were free and open to those with ambition and capital. Large-scale commercial timber harvesting in the Mal-

heur National Forest (one segment of the former Blue Mountain Reserve) would await the arrival of a rail line to Burns in the 1920s. South and west of Burns, the use of public lands centered principally on grazing. By the mid 1880s, the three largest livestock owners in Harney County — the French-Glenn interests, Todhunter and Devine, and Riley and Hardin — owned 60 percent of all cattle grazed in the region. From their earliest arrival, cattlemen in the Harney Basin focused on gaining control of water rights to ensure their survival and to discourage others from gaining access to the open range. In this Darwinian environment, and in the absence of federal and state regulations, they played footloose and fancy free with the public range, buying out competitors to their advantage and burdening the land with too many cattle when the market was soft.¹⁶

While historians have focused on timberland fraud in the late nineteenth century, equally flagrant cases of deceit took place in southeastern Oregon, where stockmen such as Peter French made fraudulent use of Homestead, Swamp Land, and Desert Land acts to block-up enormous acreages of land — always centered around waterways. French initially filed (for his California boss, Hugh Glenn) a homestead claim to 160 acres of alluvial land where the Blitzen River emerges from the western slope of Steens Mountain. That claim was the first in a series of moves French made to expand his operation. French and Glenn purchased 48,570 acres of “swampland” and livestock in the adjacent Diamond Valley from A.H. Robie in 1877. Title to the property was in limbo, however, because the Department of Interior had not yet classified the property as swampland. Nevertheless, by the end of the decade, French was running some 20,000 head of cattle on the expanding properties.¹⁷

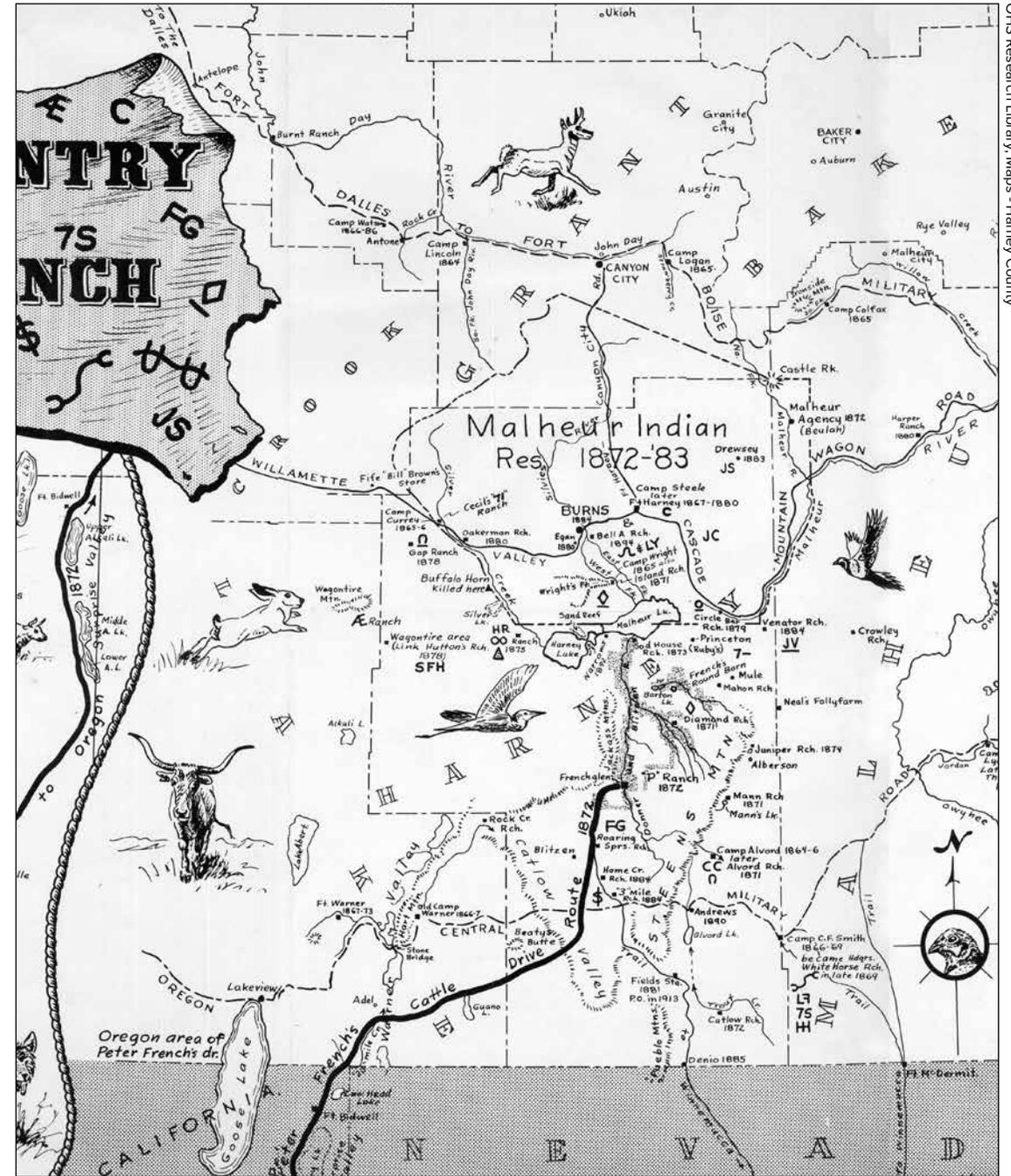
In piecing together his ranching empire, French made use of dummy entrymen, a practice through which his employees would file for a 160-acre homestead claim, reputedly live on the property to obtain legal ownership, and then sign over the title (“commutation”) to French for a small fee. With many of the claims filed along waterways, French fraudulently gained a monopoly over riparian zones on streams flowing from Steens Mountain, especially the Blitzen River. Between 1882 and 1889, French acquired more than 26,000 acres, with employees responsible for commuting to the company more than half of the acreage. French also made liberal use of the Swamp Land Act — federal lands given to states to encourage citizens to reclaim marshes and tidelands for agricultural purposes. Although all large operators made widespread fraudulent purchases of swampland claims, The Dalles *Weekly Mountaineer* charged that the French-Glenn interests were particularly aggressive, using the Swamp Act to gain control of streams to “effectually keep settlers out as if they had a patent to the whole region.”¹⁸

French expanded his operation again in the early 1880s, buying John Catlow's Trout Creek properties south of Steens Mountain and taking every opportunity to purchase land from small holders. With French and other large ranchers enlarging their properties, consolidation and mergers became the watchwords of the day. Because fraudulent titles under the Swamp Land Act accompanied many property transfers, new owners fought through legal channels to have the General Land Office certify their new holdings as legitimate. The act was infamous, with apocryphal stories about a rancher hauling a rowboat on a wagon across dry ground, claiming that it was marshland. Distinguished Northwest historian Dorothy Johansen wrote of the irony of swamp land legislation — the transfer of thousands of acres of land from the public domain to the private sector in places where “the nearest water was at least thirty feet below the surface.”¹⁹

The *Portland Oregonian* pointed to the evils of the Swamp Land Act in 1884, referring to Harney County as “a vast cattle range” made possible through “the robbers act” that allowed large cattle operators to monop-



BY THE MID 1880S, PETER FRENCH was one of the three largest livestock owners in Harney County. This 1964 map, published in *Cattle Country of Peter French*, illustrates land ownership in Harney County during the late nineteenth century. On the left, the map illustrates French's route from



California to Oregon, and on the right, his 1872 cattle drive into the Blitzen Valley. Also pictured in the center of the map on this page is the Malheur Indian Reservation and Harney County's early ranches clustered around the Blitzen River and Harney and Malheur lakes, including the Double O, Diamond, Bell A, and P ranches.

lize water rights. The land in question was in southeastern Oregon, with lakes “surrounded by natural meadowlands invaluable to the stockmen.” The large ranchers selected their lands “with a view to cutting off every access to the water,” leaving the country beyond “a cattle range for the land grabber.” To keep homesteaders at bay, cattlemen put up miles of fences on the public domain to protect their primary land and water property. The General Land Office intervened in 1890, ending the practice of fencing off sections of public land.²⁰

French’s Diamond Valley property was involved in a General Land Office investigation in 1887 that questioned the legality of claims classified as swamp lands. Although the State of Oregon (acting on behalf of the federal government) had sold the lands under the Swamp Land Act, the Department of Interior was the final arbiter — granting patents only to areas that legally qualified as swamp or marsh land. The agent conducting the investigation, Charles Schackleford, reported that many thousands of the acres investigated were “high and dry, covered with sage brush” and “never subject to overflow, and in no sense swamp.” His report involved tracts of land that the Oregon land commissioner had approved but the General Land Office had not yet patented. French fought the charges on the former Robie properties, hiring a Washington, D.C., law firm and prestigious Portland lawyer Lair W. Hill, who protested that if the Department of Interior refused to patent the acres, “a great wrong will be done” to those, like French, who, Hill claimed, came by their properties honestly. The government subsequently patented the properties to French.²¹

IN HIS SOCIAL HISTORY of large cattle enterprises in southeastern Oregon, Peter Simpson argues that open-range cattle herding was thoroughly speculative, “suited to bringing the largest return at the least expense,” a monopoly business model designed to ward off competitors and destined to ecological ruination of the ranges. With their livestock “wagered against weather, disease, and a fluctuating market,” the gamble gone wrong “was paid off at spring roundup where the carcasses were counted against the survivors.” The agricultural census for 1880 reported that “oscillations of climate” in southeastern Oregon had contributed to “great changes in the water supply to the area.” Farmers attempting to raise crops “without an artificial supply of water . . . had generally failed.” The census pointed to problems with the distribution of water, especially for small farmers who complained that large cattle enterprises monopolized riparian zones and prevented irrigation development.²²

In the absence of regulations, large cattle enterprises grazed livestock at will in the Harney Basin and on Steens Mountain. Reporting for the 1880

census, Clarence Gordon described the effects of the harsh winter of 1879–1880, during which overstocked ranges were worsened when cattlemen held their stock off the market because of weak prices. With the onset of winter, Gordon observed, the western slope of Steens Mountain was suffering from a prolonged drought and too many cattle that failed “to lay on fat.” By the mid 1880s, Peter French’s P Ranch kept more than 40,000 head of cattle along a mix of private and public lands in the Blitzen River drainage and the western slopes of Steens Mountain.²³

Harney and neighboring Malheur County ranked as Oregon’s top counties for the number of cattle and sheep in the 1900 census. Although a few livestock owners grazed sheep in Harney County during the 1880s, most were residents who raised both sheep and cattle. By the late 1890s, however, non-resident herders began “passing through” on their way to the next viable public range to graze their large flocks. Even with inaccurate statistics — because herders were always on the move from one county to the next — Harney County’s assessor recorded an astounding 565,530 sheep between 1896 and 1907. When transient flocks of sheep began descending on the county in the 1890s, cattlemen in Harney, Malheur, Crook, and Grant counties were alarmed. Simpson describes the background to the friction that took place:

As long as the weather was mild, the climate moist, and the grass plentiful, and the numbers of bands of sheep were moderately few, cursing and arguments would generally comprise whatever altercations occurred. But as the number of sheep rose, arguments became more common, frequently embellished with fist fights and even an occasional pistol-whipping. . . . The fighting was between transient sheepmen over the chunks of free range that were left because cattlemen and resident sheepmen had already acquired most of the pastureland and water rights they needed.²⁴

The conflict in Harney County focused on itinerant herders with their large flocks who owned no property, paid no taxes, and had no roots in the community. Locals complained that migrating flocks of sheep were crowding the ranges and damaging forage for livestock. The real issue, however, was the incursion of outside grazers who upset the established order of resident livestock owners. Historian J. Orin Oliphant argues that the struggle involved “two conflicting interests on unpoliced lands open without cost to each of these interests.” With no regulations, the conflict centered on sheepmen who wanted to graze their flocks on the margins of free public ranges where local livestock owners had not already occupied grazing areas and riparian zones.²⁵

Consolidation of properties accelerated again when southeastern Oregon experienced another disastrous winter in 1889–1890. When the winter

snowpack failed and area streams dried to a trickle in July 1889, ranchers who had put up hay made early use of already spare winter haystacks. The principal casualty was John Devine, the ranch manager and co-owner with W.B. Todhunter of Whitehorse Ranch. Devine had already lost part of his ranch when the Department of Interior declared patents for his title to swamp lands illegal. And then, without hay to feed his cattle, thousands of animals died, forcing the properties into receivership and their sale to the large California firm Miller and Lux which incorporated the combined properties into the Pacific Livestock Company.²⁶

During the 1890s, charges of land monopoly in Harney County — often involving absentee owners — appeared regularly in state and local newspapers. Flamboyant Bill Hanley, who emerged as a major ranch operator and political figure in the twentieth century, put the case bluntly: “The cattleman looked on the settler as someone getting in his way. The settler looked upon the cattleman as a monopolist.” The local press — the *East Oregon Herald* and *Harney Valley Items* — waged a war of words, accusing cattlemen of dominating land ownership and inhibiting economic development. Court cases proliferated, with mixed results for small landholders and aspiring homesteaders. A few vented their bitterness, torching haystacks and burning rangelands, but the most notorious case of violence was the murder of Peter French. Ed Oliver, a small landholder whose property was surrounded by the P Ranch, shot French under disputed circumstances on December 26, 1897. A jury of his peers in Burns found Oliver innocent of manslaughter.²⁷

“Peter French’s death,” writes Margaret Sullivan, “solved nothing.” Led by the Pacific Livestock Company, large cattle properties continued into the twentieth century. Two events in 1883 affected the sprawling French-Glenn holdings — French married Glenn’s daughter Ella, and a few months later, Glenn’s bookkeeper shot Glenn to death. French’s short-lived union with Ella ended in divorce. Problems with homesteaders and directing the flood irrigation of grazing areas demanded French’s full attention. Although French owned about 20 percent of the French-Glenn Livestock Company at the time of Glenn’s murder, the wealthy Colusa County, Californian’s death placed the Oregon holdings in legal limbo. While Glenn’s heirs diminished French’s role in running the Harney County operation, the P Ranch manager continued to add to the company’s land base. Sometime after French’s death in 1889, F.C. Lusk, a Chico, California, attorney and administrator of the Glenn and French estates, appointed the able Bill Hanley to manage the 150,000-acre P Ranch, a position he retained when Henry Corbett of Portland purchased the French-Glenn Livestock Company in 1906.²⁸

HARNEY COUNTY’S population at the onset of the twentieth century was 2,598, a number that would fluctuate over the decades depending on local economic conditions (see table to the right). Australian historian Geoffrey Blainey’s apt phrase, “the tyranny of distance,” is a fit metaphor for the county in 1900: stage lines from Burns connected with railroads in Vale (131 miles east), Winnemucca, Nevada (284 miles south), and Shaniko and Austin (213 and 102 miles north). The completion of James J. Hill’s railroad from the Columbia River to Bend in 1911 provided another rail connection 125 miles to the West. When the Union Pacific extended a rail line from Ontario to Crane in 1916 — 30 miles southeast of Burns — the county finally had a viable transportation link for taking livestock to markets. A Department of Interior study of the Harney Basin in 1909 cited cattle, “practically all of which are controlled by the larger stockowners,” as its most important industrial pursuit.

The report concluded that the basin “will always be mainly a stock-raising country, because of the great areas of plateau that are fit for little except grazing.”²⁹

Sparsely settled Harney County became part of a private-sector move in the arid regions of the American West to promote dry-land farming during the early twentieth century. Urged on through marketing campaigns, railroads and land companies promoted the settlement of Oregon’s high desert country after passage of the Enlarged Homestead Act in 1909. What followed was an inrush of settlers to take up dry-farming, or what promoters

HARNEY COUNTY POPULATION (1890–2010)		
YEAR	POPULATION	PERCENT CHANGE
1890	2,559	n/a
1900	2,598	1.5%
1910	4,059	56.2%
1920	3,992	-1.7%
1930	5,920	48.3%
1940	5,374	-9.2%
1950	6,113	13.8%
1960	6,744	10.3%
1970	7,215	7.0%
1980	8,314	15.2%
1990	7,215	-15.1%
2000	7,609	7.8%
2010	7,422	-2.5%

U.S. CENSUS DATA from 1890 to 2010, compiled by the author, reflects the population fluctuations in Harney County.



CATTLE GRAZE at Bill Hanley's Bell A Ranch in 1910. Hanley controlled more than 195,000 acres in Harney County on three ranches.

referred to as “scientific soil culture.” Barbara Allen’s *Homesteading the High Desert* notes that the flood of settlers moving into nearby Lake County’s Fort-Rock-Silver Lake area “receded almost as abruptly, leaving the inevitable debris in its ebb.” Only half the dry-land homesteaders stayed long enough to gain title to their land. In the end, it “was a failed effort.”³⁰ The disastrous dry-farming enterprises underscore the sobering reality — ignored by the Malheur occupiers — of the failures of small freeholders in the arid West.

Events in southeastern Oregon mirrored Lake County’s experiences. Prominent agricultural extension agent E.R. Jackman described an in-migration of gullible homesteaders that “became a torrent . . . [to] just about every piece of land level enough to farm.” The settlers, who came from everywhere, were poor, “completely ignorant of dry-land farming . . . [and] doomed to failure from the moment they stopped.” Established ranchers viewed the newcomers with concern, worried that hungry people would lust after their fat cattle. The dry-land farmers quickly failed, selling out or just walking away, leaving their claims to the large landholders. Testimony to those failures is evident today in the “fifteen or more sets of buildings on a big ranch.”³¹

Bill Hanley, who had already pieced together the Bell A Ranch on the East Fork of the Silvies River south of Burns, purchased the Riley and Hardin Double O Ranch in the Harney Lake area in 1903. He continued to add to his properties until he amassed some 20,000 acres on which he grazed 6,000 to 7,000 head of cattle. Between his own properties and management of the French-Glenn operation, Hanley controlled more than 195,000 acres, nearly one-third of Harney County’s private lands. Unlike his cattle-baron predecessors, however, Hanley was a progressive and modernizer, promoting economic development schemes to bring more people to the county through his Harney Valley Improvement Company. Foremost among his initiatives were efforts to form irrigation districts and schemes to drain several thousand acres of the Blitzen Valley marsh and turn it into irrigated cropland. Those efforts died aborning. A more grandiose Hanley enterprise, the Blitzen River Reclamation District, elected a board of directors, hired engineers to draft plans, and authorized the issuance of bonds. That undertaking also failed, despite spending some \$50,000.³²

With the French-Glenn Livestock Company struggling to remain profitable, the Glenn and French heirs sold the P Ranch properties to Portland’s Henry Corbett in 1907, the holdings becoming the Blitzen Valley Land Company. Still ranch manager, Hanley directed dredging of the Blitzen River, obliterating stream meanders, draining marshes, and moving water through ditches and spreading it on sagebrush areas to grow forage crops. With the work completed in 1913, George Brimlow observed that “dredging made it possible to cultivate some of the former swamp area and give a flow of water to soil where sagebrush had grown.” Like those before him, Hanley treated resources on public land as free for the taking, ordering his crews to cut western juniper at will to fire the boiler in his dredger. When the Forest Service learned of the practice, it issued Hanley a cease-and-desist order to stop the illegal cutting of trees on public lands. Hanley later complained that the reprimand occurred during “the indictment era in Oregon, with many public men in trouble over timber.” Hanley’s use of the phrase “indictment era” refers to fraudulent timber practices where speculators and their friends in public-land offices played fast and loose with state and federal land laws to transfer thousands of square miles of timber to private ownership.³³

AFTER YEARS of failed efforts to subdivide the P Ranch and sell the properties as small farms, the Blitzen Valley Land Company reorganized in 1916 as the Eastern Oregon Livestock Company, selling 40 percent of its stock to Louis Swift, the Chicago meat-packing magnate. The new corporation ran cattle and sheep on the ranch and continued to engage in speculative ven-

tures of subdividing and selling land. The meat-packing company rounded up feral pigs on the properties and sent them to Crane for rail shipments east. The new managers, however, ran aground of their own incompetence, failing to put up enough hay and losing half their herds during the first two winters. The Eastern Oregon Livestock Company fumbled its way through the 1920s, establishing the Blitzen River Reclamation District, which leased land to sharecropping dairies, whose products the company shipped to market via the Crane rail link. In the mid 1920s, the Swift interests built a hotel and store in the tiny settlement of Frenchglen; a few years later, it bought out Corbett's controlling shares. Several years of severely low snowpack in the mountains followed, and then markets fell into the abyss with the onset of the Great Depression. The Swift Company wanted out, selling 65,000 acres of the Blitzen Valley to the federal government for \$675,000 in 1934 to add to the wildlife refuge. The purchase provided a critically important addition to the Malheur Refuge.³⁴

Environmental changes in the Harney Basin during the first decades of the twentieth century had been extensive, involving the manipulation of streams and marshlands in what turned out to be an intrusive, complex, and ultimately problematic enterprise. Hanley's grandiose schemes on his own properties — the Double O and Bell-A ranches — expanded and thrived, using irrigation ditches to grow ample winter hay for his livestock. After his death in 1935, his wife Clara continued to run the ranches amid the twin calamities of a prolonged drought and the worst depression in American history. After reducing the number of livestock, she followed the owners of the old P Ranch and sold the Hanley holdings of 14,751 acres along the Silvies River to the federal government in 1941, adding another large property to the expanding wildlife refuge. The federal purchases of 1935 and 1941 followed more than sixty-five years of success and failure in the Harney Basin. Nancy Langston's *Where Land and Water Meet* captures the essence of those modifications:

*After four decades of overgrazing, irrigation withdrawals, grain agriculture, dredging and channelization, followed by several years of drought, the valley had become a dust bowl. Attempts to increase production by making wet lands drier and dry lands wetter had stripped the willows and cottonwoods from the banks, imprisoned the river in a channelized ditch, and dried up the meadows and marshes. People didn't fare much better than the land.*³⁵

The important federal purchases of the Blitzen Valley and the Hanley holdings marked a significant turning point for the Malheur Refuge. It took the hard work and lobbying of naturalist William Finley and a few others to convince federal officials to purchase the properties so valuable to the



OHS digital no. b0015226

THIS 1934 PHOTOGRAPH documents a receding lakebed in Harney County as part of the *U.S. v. State of Oregon* Supreme Court case. The court ruled that Malheur Lake was not a commercially navigable waterway, and the federal government therefore held legitimate title to the land.

health of the refuge. Since the creation of the refuge in 1908, the principal waterways draining into Malheur Lake — the Silvies and Blitzen rivers — had been channelized and turned into irrigation systems that destroyed the natural marshes. Moreover, because Malheur Lake's water levels fluctuated, ownership of the lakebed proper was tied-up in litigation, with the State of Oregon claiming title because it was an internal, navigable body of water, and the federal government arguing that the lake did not fit that description. The issue was muddied further when the Oregon Supreme Court found on behalf of homesteaders who claimed parts of the lakebed during dry years when the lake covered a much smaller area.³⁶

The title question was finally resolved in 1935 when the U.S. Supreme Court in *U.S. v. State of Oregon* ruled that the entire lakebed to its highest point was never an appropriate navigable body of water; therefore, title was never transferred to the state. The Court decreed that "in no case [could] a state deprive the United States of its title to land under unnavigable waters without its consent," adding, "the laws of the United States control the dis-



MALHEUR NATIONAL REFUGE administration building, pictured here in 1937, was constructed by Civilian Conservation Corps (CCC) workers, a New Deal agency intended to relieve unemployment during the Great Depression.

position of title to its lands.” As the *Oregonian* indicated in the midst of the 2016 Malheur occupation, the U.S. Supreme Court had ruled twice, in 1902 and 1935, “that the federal government has an incontrovertible claim to the refuge’s wetlands and lakebeds, dating back to the 1840s when Oregon was still a territory.” The newspaper added, “the current occupiers’ claims are not backed up by historical fact.”³⁷

With the legal cloud lifted over federal ownership in the midst of the Great Depression, the political stars were aligned to begin restoring the area to some semblance of its former existence as one of America’s most significant waterfowl sanctuaries. The critical development in restoring marshland habitat was the federal government’s purchase from Louis Swift of the old French-Glenn empire in the Blitzen Valley. “Control of the valley meant control of the Blitzen River,” writes Carla Burnside in her centennial history of the refuge. There is a circular logic to her statement that parallels French’s successful efforts to gain control of the Blitzen River to serve the interests of the P Ranch. Langston captures the significance of federal

control of the Blitzen Valley: “In a wonderful irony, the West’s grandest cattle empire became its grandest duck and wetland empire.” The expansion of the refuge to 146,503 acres in 1935 was only the beginning. Next came the hard work of re-engineering waterways to restore wetlands, the feature so important to attracting waterfowl and other aquatic animals.³⁸

Habitat restoration on the expanded refuge paralleled the efforts of Franklin Roosevelt’s New Deal administration to revive the moribund American economy through a variety of federal works programs to reduce unemployment. Among the New Deal agencies — and the most celebrated and successful — was the Civilian Conservation Corps (CCC), young men recruited to do the kind of conservation work needed at the Malheur Refuge. It was serendipitous that the first CCC camp on the refuge was being set up in the spring and summer of 1935 just as the Blitzen Valley became part of the refuge. Between the establishment of the CCC in the spring of 1933 and its disbandment in 1942 because of the Second World War, more than 1,000 young men worked on an amazing array of projects across the Malheur Refuge. Three separate CCC camps were established, one of them a small camp in the Malheur National Forest to cut timber for restoring the refuge infrastructure. Those collective works are apparent throughout the refuge today — stone buildings, fencing, cattle guards, bridges, roads, telephone lines, diversion dams, new ponds, and much more.³⁹

When Roosevelt created the Malheur Refuge in 1908, it was under the jurisdiction of the Bureau of Biological Survey in the Department of Agriculture. The bureau was transferred to the Department of Interior in 1939 and the following year was merged with the Bureau of Fisheries to become the U.S. Fish and Wildlife Service. The Malheur Bird Refuge also became the Malheur National Wildlife Refuge in 1940. John Scharff, who replaced Stanley Jewett as Malheur’s manager in 1937, oversaw the last years of CCC activity and continued as manager, directing restoration work, including building the large Krumbo Reservoir and the museum at refuge headquarters, until he retired in 1971. Scharff’s thirty-four years as manager is the longest such tenure in the entire national refuge system.⁴⁰

BEFORE THE ONSET OF THE DEPRESSION, Harney County promoters had been moving on other fronts to complete a rail connection from Crane to Burns — their purpose to leverage the Forest Service to sell timber in the Silvies River drainage. Edward Barnes, who began buying up private timber north of Burns, lobbied the Forest Service to open its great ponderosa pine stands in the Malheur National Forest to harvesting. Barnes achieved his objective when the agency offered a contract to Fred Herrick, an upper-Midwest lumberman. Stipulations in the contract required Herrick to build a

railroad from Crane to Burns, extend the line fifty miles north into the timber stands, and build a large sawmill, all within a fixed period of time. Herrick's crews completed the tracks from Crane to Burns in timely fashion but then experienced cash-flow problems that slowed construction of the railroad up the Silvies Valley and building of the sawmill two miles southwest of Burns. Pressed by financial houses, Herrick sold the railroads and the partially completed mill to Chicago lumberman Edward Hines in 1928.⁴¹

When the huge Hines mill opened in January 1930, Edward Hines, his wife, and his son were present to celebrate before a crowd of 3,000 people in a large pavilion on the grounds. Hines addressed the crowd, as did aging Bill Hanley and the mayor of Burns, Grover Jameson. Music and entertainment followed. Writing about the occasion two decades later, George Brimlow observed that the "three-bandsaw mill was ready for its cutting of the Bunyanesque stand of timber." The opening of the mill just as the American economy was in freefall did nothing to slow the county's unemployment slide. Harney County's population, which had grown more than 48 percent during the 1920s, declined some 9 percent during the 1930s. With the onset of the Second World War, however, the county's population increased every decade until the early 1980s, when a collapse in the lumber market and diminished timber supplies in the Malheur National Forest forced the closure of the Hines mill. Brimlow's earlier prediction of timber being harvested "on a sustained yield basis" proved an empty boast, with the timber exhausted after just fifty years.⁴²

Beyond the refuge, the General Land Office operated under a new congressional mandate when Congress passed the Taylor Grazing Act in 1934. The legislation placed rangelands under the new Grazing Service with governance vested in partnerships between the service and large-scale livestock owners who leased federal land. Congress added a provision in 1939 for local advisory boards for each grazing district, with larger cattle owners tending to control the boards. The Taylor Act, therefore, caused sheep numbers to fall sharply. Despite early and continuing criticism, the Taylor legislation established a new standard for the remaining public domain — it would not be sold, and the federal government would be responsible for management. Its purpose was to protect against over-grazing and to stabilize land-use practices. When President Harry Truman merged the General Land Office and Grazing Service into the BLM in 1946, the new agency systemized permits and leases, requiring ranchers to pay a modest fee for grazing a specified number of livestock.⁴³ Most important, the Taylor legislation brought an end to the unregulated grazing on public land.



OHQ digital no. 015093

IN JANUARY 1930, Edward Hines opened the Western Pine Co. sawmill to process timber from the Malheur National Forest.

BLM tied its grazing permits to "base property" in private land or water, detailing the terms and conditions under which livestock owners must operate. The agreements to graze livestock on public lands required permittees and lease holders to maintain the range in satisfactory condition. Grazing fees (adjusted annually) were based on animal unit months (AUMs). With the passage of environmental legislation in the 1970s, BLM was required to manage its grazing lands under the terms of the National Environmental Policy Act (1969), Endangered Species Act (1973), and the important Federal Land Policy and Management Act (1976). The Burns Grazing District — which conforms roughly to the boundaries of Harney County — listed 164 grazing permits in 2014 for 243,804 AUMs and nine leases for 3,946 AUMs.⁴⁴

STEENS MOUNTAIN, within the Burns Grazing District, has been operating under the Steens Mountain Cooperative Management and Protection Area since the year 2000. Rumors that environmentalists were lobbying for national park or monument status to protect the spectacular mountain spurred a compromise involving tribes, environmental organizations, private

landowners, and the BLM. President Bill Clinton's Secretary of the Interior, Bruce Babbitt, Oregon's congressional delegation, and Governor John Kitzhaber negotiated the complex and multifaceted piece of legislation. The law provided for a wilderness area, land exchanges, sustainable grazing requirements, and recreation use. The land exchanges enabled private landholders and the federal government to block-up contiguous areas, with the result that Steens Mountain Wilderness now includes 175,000 acres (with cattle grazing permitted on 75,000 acres). The Cooperative Management and Protection Area continues to embrace a mix of public and private lands.⁴⁵

The agreement, however, also harbored ongoing differences regarding development appropriate for the protected area. Writing for *High Country News* in 2011, Emilene Ostlind argued that the agreement never resolved differences between those promoting badly needed economic development for Harney County and the interests of outdoors enthusiasts who appreciated the Steens for its amenity values. Loud protests arose (most from beyond Harney County) when Columbia Energy Partners proposed building three wind farms in the Steens vicinity, two of them within the Cooperative Management area. Harney County Judge Steve Grasty (the county's chief executive officer) supported the wind farms, because they would provide a significant boost to the county's tax base and avoid the subdivision of property by enabling hard-pressed ranches to stay in one piece. Although Columbia Energy dropped the idea of putting up windfarms inside the protected area, it went ahead with its proposed Echanis project on the nearby property of Fred Otley, a fourth-generation rancher. That wind farm made headway until environmental organizations, including the Oregon Natural Desert Association, stalled the project through court action. At this writing, the Echanis plan is in a holding pattern, with arguments pending in the Ninth Circuit Court of Appeals. Scholars Mark Haggerty and Julia Haggerty caution county officials that such projects, promising revenue from energy development, rarely translate into lasting advantage for communities.⁴⁶ The cooperative agreement has not solved all the differences between developers and preservationists, but it has involved a collaborative approach to county land-use issues.

Although the Malheur National Wildlife Refuge was not proposed for national park or monument status, refuge managers wisely sought to engage the larger community when they began preparing a refuge-planning document in 2008. The refuge initiated an exhaustive collaborative review and planning exercise, culminating in the release of a Comprehensive Conservation Plan (CCP) in 2013. The nearly five years' work involved state, local,

and tribal governments, individuals, and private nonprofit organizations. The CCP emphasized cooperation and inclusiveness:

Collaboration with our neighbors, partners, and friends will be a critical cornerstone in our day to day work; we recognize that nature crosses our boundaries and we can be successful only in partnership. We recognize that our activities are inextricably linked to the health of the local economy. We commit to learn from our efforts, successes, and failures; to be humble about what we know; and to continuously strive for greater understanding in our stewardship of this remarkable place.

Tim Bodeen, refuge manager from 2008 to 2013, believed that accommodating cross-sections of the public would provide the refuge with greater community support. The CCP declared that cattle, if carefully monitored, fit within the agency's management objectives. The thirteen area ranchers who possess grazing permits on the refuge — one of them Fred Otley — are supportive. The agency's permits cover a unique "rake-bunch grazing program" that covers approximately 11,000 acres, involving the cattle feeding on "vegetation previously mowed and raked into small piles in the meadow." Otley praised the refuge for its willingness to listen; "automatically, that helps build better relations with the community."⁴⁷ With their repeated calls for "local control," the protesters who took over the refuge in January 2016 were evidently unaware of such cooperative initiatives, including the appointment of subregional BLM Resource Advisory Committees that represent groups across the West who have vested interests in agency policies.

THE GREAT RECESSION, beginning in 2008, battered resource-dependent communities across the West, including Burns. With the nearby Hines mill and its successors already down for the count, Harney County lost its last manufacturer in 2009 when RV-maker Monaco Coach closed shop. Monaco's departure left the county's unemployment rate at 18 percent in December 2009, compared with a statewide jobless rate of 11 percent. Those figures are reminders of the ravages of the early 1980s, when the Hines mill closed and left the county with 33 percent of its working population unemployed for a time. The 1980s economic downturn and the most recent recession reflect the insight of Montana writer Joseph Kinsey Howard, who once described his resource-dependent state as a subject colony "at the end of the cracked whip."⁴⁸

The Malheur Refuge occupants of early 2016 complained that ranchers were getting the short end of the stick, specifically targeting the ownership

and management of public lands and demanding their transfer to counties. The militants were either unaware or dismissive of the fact that the county received federal payments to offset property tax losses for nontaxable federal lands. With 4,462,691 acres of federal lands, Harney County received payments of \$1,060,415 for 2015. That annual disbursement was augmented with additional funds (\$34.5 million nationwide) at President Barack Obama's request to support fire fighters, schools, and road construction.⁴⁹

If the militants had consulted the Harney County government website, they would have discovered two documents — the first dated April 1994 and the second January 22, 2016 — both addressing the constitutional basis for federal ownership of public lands. When Commissioner Dick Carver in Nye County, Nevada, claimed in 1994 that the federal government lacked authority to retain public lands after statehood, Harney County officials asked the Roseburg law firm of Cegavske, Johnston and Associates for advice. Their legal brief concluded that, under statehood compacts, the federal government “has the unlimited discretion as to how it disposes of these lands and may set them aside for use such as forest preserves.” In the 2016 document, Willamette University Professor of Law Susan Lea Smith responded to questions about federal ownership and control of the Malheur National Wildlife Refuge. With decades of practice teaching natural resource law, Smith concluded that several “solid, indisputable U.S. Supreme Court cases establish that the federal government is constitutionally empowered to own land, control that land through federal statutes and regulations as it sees fit.”⁵⁰

In posting the legal statements for citizens to read, the Harney County Court (commissioners) acted prudently to counter the arguments of the Malheur occupants. After the last of the occupiers had surrendered and the county struggled to regain a sense of normality, residents who sympathized with the militants successfully circulated a petition to recall County Judge Steve Grasty for refusing to grant the protestors permission to use a fairgrounds building to hold a public meeting. Grasty, who had already announced that he would not run for reelection when his term expired at the end of 2016, easily prevailed in the balloting on June 28, 2016, garnering the support of 70.3 percent of the votes.⁵¹

There is little question that many rural communities in the West have troubled economies, but as Nancy Langston argues, “the cause is not the wildlife refuge system” — or the jailing of the Hammonds, the act that spurred the militants to action in Oregon. The Malheur Refuge is an asset to Harney County in generating jobs, attracting visitors — especially during the annual Migratory Bird Festival in April — and licensing permittees who graze their

livestock on refuge hay fields. Peter Walker, the University of Oregon geographer, points out that Harney County “is a recognized national leader in collaborative efforts between local land users, conservationists and federal natural resources agencies.” Hal Herring, the Montana journalist, spoke truth to the incessant media presence during the occupation that provided a “soapbox for disseminating payloads of misinformation about America's public lands, about their management, and about why we have them.”⁵²

From the beginning, the Malheur occupiers misconstrued the history and constitutional grounding of public lands, and used their specious interpretations to press for privatization of the public domain. Such arguments date from the first withdrawals of the forest reserves in the 1890s, when politicians in Colorado, Idaho, and Oregon argued that the withdrawals infringed on the rights of citizens by keeping forest land away from local residents.⁵³ The Malheur/Harney setting, however, differed dramatically from the claims of the Bundy group, because it was a cattlemen's empire from the earliest days of Oregon statehood. Those owners kept small farmers away from high-value grazing land — until the monopolists themselves mismanaged and overgrazed the range, went broke, and sold their properties to the federal government. The Civilian Conservation Corps, a federal agency committed to rehabilitating the Malheur water world and its people, provides a powerful rejoinder to those who argue that the national influence in Harney County and the rural West is without merit.

NOTES

Editor's note: On October 27, 2016, a jury acquitted seven defendants, including both Bundys, of conspiracy and weapons charges. Seven other defendants are scheduled to go on trial in February 2017, and several others pleaded guilty. The Bundy brothers also face pending charges, along with their father, in Nevada.

1. *New York Times*, January 6, 2016; and Harney County — The Official Site, <http://www.co.harney.or.us> (accessed March 23, 2016).

2. “Eastern Oregon Ranchers Convicted of Arson Resentenced to Five Years in Prison,”

October 7, 2015, United States Attorney's Office, District of Oregon, <https://www.justice.gov/usao-or/pr/eastern-oregon-ranchers-convicted-arson-resentenced-five-years-prison> (accessed May 17, 2016).

3. Hal Herring, “Can we make sense of the Malheur mess?” *High Country News*, February 12, 2016, <https://www.hcn.org/articles/malheur-occupation-oregon-ammon-bundy-public-lands-essay> (accessed February 22, 2016); Jon Talton, “Oregon refuge takeover sheds light on hard times for rural economies,” *Seattle Times*, February 6, 2016, <http://old.seattletimes.com/>

html/realstate/2028045182_jontaltoneconcol07x.html (accessed May 14, 2016); Robert Anglen, "What Made Ammon Bundy go from Arizona Businessman to leader of the Oregon standoff?," *The Arizona Republic*, January 27, 2016, <http://www.azcentral.com/story/news/local/arizona/2016/01/09/what-made-ammon-bundy-go-arizona-lead-oregon-standoff-federal-government/78420744/> (accessed September 29, 2016).

4. Talton, "Oregon refuge takeover"; Erik Larson, "Unrest in the West," *Time*, October 23, 1994, 52–67. For an excellent study of the late 1970s–1980s Sagebrush Rebellion, reflecting sentiments similar to those involved with the Malheur occupation, see R. Mcgreggor Cawley, *Federal Land, Western Anger: The Sagebrush Rebellion and Environmental Politics* (Lawrence: University Press of Kansas, 1993).

5. Tay Wiles and Brooke Warren, "Federal-Lands Ranching: A Half-Century of Decline," June 13, 2016, <https://www.hcn.org/issues/48.10/federal-lands-grazing> (accessed September 12, 2016). Animal unit months (AUMs) equates to one month's use by one cow and calf or five sheep.

6. Peter Walker, "Malheur Occupation is Over, But the War for America's Public Lands Rages On," *Observer: News and Politics*, February 22, 2016 (<http://observer.com/2016/02/malheur-occupation-is-over-but-the-war-for-america-public-lands-rages-on>) (accessed March 15, 2016); Herring, "Can We Make Sense of the Malheur Mess"; *New York Times*, September 14, 2016.

7. Originally the southern part of Grant County, Harney County was created by the Oregon Legislature in 1889. To avoid confusion, I will refer to the area as Harney County throughout this article.

8. U.S. Fish and Wildlife Service, Malheur National Wildlife Refuge, Oregon, "Geology and Geomorphology," <http://www.fws.gov/refuge/Malheur> (accessed April 6, 2016).

9. George Francis Brimlow, *Harney County, Oregon, and Its Range Land* (Port-

land: Binford and Mort, 1951), 54–59; Harney County, *Oregon Blue Book*, <http://bluebook.state.or.us/local/counties/counties13.htm> (accessed March 23, 2016); William G. Robbins, *Landscapes of Promise: The Oregon Story, 1800–1940* (Seattle: University of Washington Press, 1997), 160–61. The shortened version, Blitzen River — rather than the original name Donner and Blitzen River — is used for purposes of brevity. Various maps use both versions.

10. For a discussion of public domain, see Richard White, "Contested Terrain: The Business of Land in the American West," in *Land in the American West: Private Claims and the Common Good*, ed. William G. Robbins and James C. Foster (Seattle: University of Washington Press, 2000), 190–206; Karen R. Merrill, *Public Lands and Political Meaning: Ranchers, the Government, and the Property between Them* (Berkeley: University of California Press, 2002); and Paul Wallace Gates, *History of Public Land Law Development* (Washington, D.C.: Government Printing Office, 1968).

11. For the classic history of cattle herders in southeastern Oregon, with a special focus on the Malheur area, see Nancy Langston, *Where Land and Water Meet: A Western Landscape Transformed* (Seattle: University of Washington Press, 2003). *High Country News*, published since 1970, has devoted a majority of its attention to public land issues. Federal grazing permits refer to "grazing privileges," not "rights." I am grateful to William Rowley for this insight.

12. "Federal Land Ownership: Overview and Data," Congressional Research Service, December 29, 2014, <http://fas.org/sgp/crs/misc/R42346.pdf> (accessed April 7, 2016), p. 1–3.

13. *Ibid.*, 3–5; Harney County Economic Development: Community Profile, http://www.harneycounty.org/community_profile.html (accessed April 7, 2016).

14. Donald Worster, "Land Policy, Federal," in *The Oxford Companion to United*

States History, ed. Paul S. Boyer (New York: Oxford University Press, 2001), 431–32; Richard White, "It's Your Misfortune and None of My Own": *A New History of the American West* (Norman: University of Oklahoma Press, 1991), 137–54; Harold K. Steen, *The U.S. Forest Service: A History* (Seattle: University of Washington Press, 1976), 25–27; William G. Robbins, *Lumberjacks and Legislators: Political Economy and the U.S. Lumber Industry, 1890–1941* (College Station: Texas A & M University Press, 1982), 18–25; Gerald W. Williams, "National Forests in Oregon, 1892–1933," *The Oregon Encyclopedia*, http://www.oregonencyclopedia.org/articles/national_forests_in_oregon_1892_to_1933/#.VvosyY-cHcs (accessed March 31, 2016); Harold K. Steen, "The Beginning of the National Forest System," in *American Forests: Nature, Culture, and Politics*, ed. Char Miller (Lawrence: University Press of Kansas, 1997), 64–67. For details of the Land Revision Act, see Douglas A. Hedin, ed. Minnesota Legal History Project, [http://www.minnesotalegalhistoryproject.org/assets/Land%20Revision%20Act%20%20\(1891\).pdf](http://www.minnesotalegalhistoryproject.org/assets/Land%20Revision%20Act%20%20(1891).pdf) (accessed May 31, 2016).

15. Gerald W. Williams, "National Forests in Oregon, 1892–1933"; Robbins, *Lumberjacks and Legislators*, 30–31; Steen, "The Beginning of the National Forest System," 64–67; Langston, *Where Land and Water Meet*, 67; William Cronon, "Landscapes of Abundance and Scarcity," in the *Oxford History of the American West*, ed. Clyde A. Milner II, Carol A. O'Conner, and Martha Sandweiss (New York: Oxford University Press, 1994), 612.

16. Simpson, *The Community of Cattlemen*, 29–40; *An Illustrated History of Baker, Grant, Malheur, and Harney Counties* (Spokane: Western Historical Publishing Company, 1902), 363.

17. U.S. Fish and Wildlife Service, "Settling the Land," Malheur National Wildlife Refuge, Oregon, <https://www.fws.gov/refuge/malheur/about/settling.html> (accessed October 18, 2016); Richard Mark Pintarich, "The Swamp

Land Act in Oregon, 1870–1895," (M.A. thesis, Portland State University, 1980), 100.

18. Brimlow, *Harney County, Oregon*, 123; Sullivan, "Conflict on the Frontier," 177; The Dalles *Weekly Mountaineer*, cited in Orin Oliphant, *On the Cattle Ranges of the Oregon Country* (Seattle: University of Washington Press, 1968), 208–09.

19. Pintarich, "The Effect of the Swamp Land Act in Harney County," 102–03; Oliphant, *On the Cattle Ranges of the Oregon Country*, 189–90; Dorothy O. Johansen, *Empire of the Columbia: A History of the Pacific Northwest* (New York: Harper and Row, 1967), 351.

20. *Oregonian*, February 29, 1884; Sullivan, "Conflict on the Frontier," 176; Simpson, *The Community of Cattlemen*, 25.

21. *Oregonian*, January 24, February 8, and February 13, 1887.

22. Simpson, *The Community of Cattlemen*, 24; U.S. House of Representatives, *Reports on the Statistics of Agriculture . . . Eleventh Census, 1890*, 208–09.

23. Langston, *Where Land & Water Meet*, 38–42; Clarence Gordon, "Report on Cattle, Sheep, and Swine, Supplementary to Enumeration of Live Stock on Farms in 1880," in *United States Tenth Census, Report on the Productions of Agriculture in the United States, 1880* (Washington, D.C.: Government Publishing Printing Office, 1883), 127–28. The name "P Ranch" originated with a few cattle French purchased from a fellow named Porter just before he settled along the Blitzen River. Porter included in the sale his P brand. See E. R. Jackman and John Scharff, *Steens Mountain in Oregon's High Desert Country* (Caldwell, ID: Caxton Printers, 1967), 143.

24. Simpson, *The Community of Cattlemen*, 134–36. Rising wool prices caused investors to expand their flocks of sheep throughout the West.

25. *Ibid.*, 136–37; Oliphant, *On the Cattle Ranges of Eastern Oregon*, 337–38.

26. Simpson, *The Community of Cattlemen*, 32–33; Langston, *Where Land and*

Water Meet, 39; Brimlow, *Harney County, Oregon*, 176.

27. Anne Shannon Monroe, *Feelin' Fine! Bill Hanley's Book* (Garden City, New York: Doubleday, 1931), 128; Marjorie Thelen, "William Hanley," *The Oregon Encyclopedia* https://oregonencyclopedia.org/articles/hanley_william_1861_1935/#.WAZrh_krJaQ (accessed May 17, 2016); Ralph Friedman, *The Other Side of Oregon* (Caldwell, ID: Caxton Printers, 1993), 174–75; Brimlow, *Harney County, Oregon*, 175–77; Sullivan, "Conflict on the Frontier," 178–81; Pintarich, "The Swamp Land Act in Oregon, 1870-1895," 107–113.

28. Sullivan, "Conflict on the Frontier," 175 and 181; Pintarich, "The Swamp Land Act in Oregon," 98; Brimlow, *Harney County, Oregon*, 146, 177, 217.

29. Geoffrey Blainey, *The Tyranny of Distance: How Distance Shaped Australia's History* (Melbourne: Sun Books, 1966); Population of Counties by Decennial Census: 1900–1990, compiled by Richard Forstall, Population Division, U.S. Bureau of the Census, Washington, D.C., <https://www.census.gov/population/cencounts/or190090.txt> (accessed April 26, 2016); Gerald Waring, "Geology and Water Resources of the Harney Basin Region, Oregon," United States Geological Survey, Department of the Interior, Water-Supply Paper 231 (Washington: Government Printing Office, 1909), 15–17.

30. Barbara Allen, *Homesteading the High Desert* (Logan: Utah State University Press, 1987), 116–19, 129. For an important study of dry farming, see Mary W.M. Hargreaves, *Dry Farming in the Northern Plains: Years of Readjustment, 1920–1990* (Lawrence: University Press of Kansas, 1993).

31. Jackman, *Steens Mountain in Oregon's High Desert Country*, 16, 34.

32. Monroe, *Feelin' Fine! Bill Hanley's Book*, 125; Brimlow, *Harney County, Oregon*, 232–33; Langston, *Where Land and Water Meet*, 57–58. Hanley's Bell A Ranch, three miles south of Burns, was reputed to be

among the premium ranches in the West. See Friedman, *The Other Side of Oregon*, 173.

33. U.S. Fish and Wildlife Service, "Settling the Land"; Brimlow, *Harney County, Oregon*, 232–33; Monroe, *Feelin' Fine! Bill Hanley's Book*, 175–76; William G. Robbins, *Hard Times in Paradise: Coos Bay, Oregon, 1850–1986* (Seattle: University of Washington Press, 1988), 26–29.

34. U.S. Fish and Wildlife Service, "Settling the Land"; Langston, *Where Land and Water Meet*, 61–62, 89.

35. U.S. Fish and Wildlife Service, "Settling the Land: A Ranch on the West Side of Harney Lake," Malheur National Wildlife Refuge, Oregon, <https://www.fws.gov/refuge/malheur/about/settling.html> (accessed October 18, 2016); Langston, *Where Land and Water Meet*, 61.

36. Langston, *Where Land and Water Meet*, 38–48, 72, 79.

37. *U.S. v. State of Oregon* (1935), *Findlaw*, <http://caselaw.findlaw.com/us-supremecourt/295/1.html> (accessed May 10, 2016); *Oregonian*, February 22, 2016.

38. Carla D. Burnside, *Malheur's Legacy: Celebrating a Century of Conservation, 1908–2008* (Portland: U.S. Fish and Wildlife Service, Region 1, 2008), 15–17; Langston, *Where Land and Water Meet*, 89.

39. Burnside, *Malheur's Legacy*, 20–23.

40. Langston, *Where Land and Water Meet*, 189 n 93; and Burnside, *Malheur's Legacy*, 23–24.

41. Marjorie Thelen, "Hines and the Edward Hines Lumber Company," *The Oregon Encyclopedia*, https://oregonencyclopedia.org/articles/hines_and_the_edward_hines_lumber_company/#.WAZtnvkrJaQ (accessed October 18, 2016); Thomas R. Cox, "Frontier Enterprise versus the Modern Age: Fred Herrick and the Closing of the Lumberman's Frontier," *Pacific Northwest Quarterly* 84:1 (January 1993): 19–29; "Malheur Railroad: Frederick Herrick Lumber Company, History," <http://www.trainweb.org/highdesertrails/mrr.html> (accessed May 3, 2016).

42. Brimlow, *Harney County, Oregon*, 240–43.

43. White, "It's Your Misfortune and None of My Own," 479, 531; "Fact Sheet on the BLM's Management of Livestock Grazing," <http://www.blm.gov/wo/st/en/prog/grazing.html> (accessed May 31, 2016). For a recent study of the BLM, see James R. Skillen, *The Nation's Largest Landlord: The Bureau of Land Management in the American West* (Lawrence: University Press of Kansas, 2011).

44. Grazing Lease, U. S. Department of the Interior, Bureau of Land Management, <http://www.blm.gov/wo/st/en/prog/grazing.html> (accessed October 18, 2016); Burns Grazing District, <http://www.blm.gov/or/districts/burns/index.php> (accessed May 14, 2016); *BLM Facts: Oregon and Washington, 2014*, http://www.blm.gov/or/onlineservices/files/2014_BLM_Facts.pdf (accessed May 19, 2016); William Rowley to the author, correspondence, May 21, 2016.

45. U.S. Department of the Interior, "Steens Mountain," <http://www.blm.gov/or/districts/burns/recreation/steens-mtn.php> (accessed May 16, 2016).

46. Emilene Ostlind, "Battle over Steens Mountain wind farms shows limits of collaboration," *High Country News*, May 2, 2011; *Bend Bulletin*, November 30, 2008; *Portland Business Journal*, June 20, 2014, <http://www.bizjournals.com/portland/blog/sbo/2011/11/plans-scrapped-for-wind-farm-on-steens.html> (accessed May 16, 2016); Tara Thissell, BLM Public Affairs Specialist to the author, May 18, 2016; Mark N. Haggerty and Julia H. Haggerty, "Energy Development and Challenges in the Rural West," *Bridging the Distance: Common Issues in the Rural West*, ed. David Danbom (Salt Lake City: University of Utah Press, 2015), 161.

47. U.S. Fish and Wildlife Service, Malheur National Wildlife Refuge, "Malheur National Wildlife Refuge Comprehensive Conservation Plan," 2013; Talton, "Oregon Refuge Takeover"; Hal Bernton, "The Story

behind the Malheur National Wildlife Refuge, ranchers and armed anti-government protestors," *Seattle Times*, January 27, 2016, <http://www.seattletimes.com/seattle-news/politics/occupied-oregon-wildlife-refuge-known-for-listening-to-ranchers> (accessed May 10, 2016); Jess Wenick, Malheur National Wildlife Refuge ecologist to the author, May 19, 2016. The author traveled through parts of the refuge on August 26, 2016, and saw evidence of small piles of raked hay in several meadows.

48. *Oregonian*, December 29, 1985. The Joseph Kinsey Howard quotation is in William G. Robbins, "At the End of the Cracked Whip," *Montana, The Magazine of Western History* 38 (Autumn 1988): 3. See also, Martin Heinrich, "The Land Grab Out West," *New York Times*, October 26, 2014, <http://nyti.ms/ZRW5ZY> (accessed April 14, 2016).

49. Talton, "Oregon refuge takeover"; "Interior Announces Additional \$34.5 million in PILT Payments for Local Communities, U.S. Department of the Interior," <https://www.doi.gov/pressreleases/interior-announces-additional-345-million-pilt-payments-local-communities> (accessed September 14, 2016).

50. "Public Land Issues and Resources," *Harney County: The Official Site*, <http://www.co.harney.or.us/publiclandissuesandresources.html> (accessed March 10, 2016).

51. Amanda Peacher, "Harney County Voters Overwhelmingly Reject Recall Against Judge Grasty," June 29, 2016, www.opb.org/news/series/burns-oregon-standoff-bundy-militia-news-updates/oregon-harney-voters-reject-recall-against-judge-steve-grasty (accessed October 18, 2016).

52. Nancy Langston, "The surprising history of the Malheur wildlife refuge," *High Country News*, February 2, 2016; Walker, "Malheur occupation is over, But the war for America's Public Lands Rages on"; Herring, "Can we make sense of the Malheur mess?"

53. Robbins, *Lumberjacks and Legislators*, 23–26.