

THE LOCATION AND SURVEY OF OREGON DONATION LAND CLAIMS

by
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In the 1850's the promise of free land in the fertile Willamette Valley of Oregon led to the epic trek of thousands of pioneers down the Oregon Trail. Just how the pioneers went about locating their Donation Land Claims on the public domain in the Oregon Territory is a story hidden in a many records. These records include historical society publications, files of the General Land Office of the United States, now located in the National Archives, local libraries and county courthouses. This article focuses on the role of the settlers, surveyors and the federal government in the location and survey of the Oregon donation land claims.

The Granting Act

The Act of September 27, 1850 granted 320 acres of federal land to a qualified⁽¹⁾ settler who resided on the public lands in the Oregon Territory on or before December 1, 1850 and who had cultivated the same for four consecutive years. Under the same terms it granted 160 acres to a claimant who settled in the Oregon Territory between December 1, 1850 and December 1, 1853 (later extended to 12/01/1855). A married man could claim a like amount for his spouse in her own name for a total of 640 and 320 acres respectively.

Nature of Grant

The land grants under this act were in the form of a present to settlers in the Oregon Territory who arrived there on or prior to specified dates. The only requirements were that they resided on and cultivated part of the claim for four consecutive years. The settler could locate anywhere on vacant unreserved non-mineral public land in the then Oregon Territory. This gift or grant gave the settler a right to the land the moment he occupied and cultivated it. After a claimant had submitted the required notification, including proof of settlement, cultivation, and citizenship and upon completion of the survey by the government a certificate was issued to the settler by the General Land Office. This certificate gave the him marketable title. The only way a settler could lose the rights to his claim was by a failure to meet the stipulated requirements. The records of the General Land Office show that in some instances the claims were abandoned.

Directions as to Claim Location

According to the 1850 Act, grants located after December 1, 1850 had to conform as nearly as practicable to the legal subdivision of the rectangular surveys if the claim was located on public land that had already been surveyed into townships and sections. The rectangular surveys in Oregon were started in June of 1851 and had been extended over most of the fertile valleys by 1856. Nearly all of the bottom land in the Willamette, Umpqua and Rogue river valleys had been claimed by the end of 1852. If the claim was located after December 1, 1850, and prior to the rectangular survey, its boundaries had to be cardinal i.e. north-south and east-west. Most of the claims preceded the rectangular surveys. A claim had to be in compact form. Claims located before December 1, 1850 under authority of the Oregon Territorial Government did not have to conform to these specifications. This is why the boundaries of some donation land claims in the Willamette Valley are not necessarily cardinal.

The Act of 1850 required claims to be laid down temporarily on the township plats by the Surveyor General. Claims were numbered consecutively beginning with the number 37 in each township. When, upon completion of the rectangular survey, it appeared that a claim fell in two or more townships it normally was given a different claim number in each township. In order to protract the claims on plats the intersections of the section lines with the claim boundaries had to be determined. The instructions for the execution of rectangular surveys, issued by the Commissioner of the General Land Office to the Surveyor General of Oregon, dated March 3, 1851, called for a tie from such intersections to at least one of the angles (corners) of the claim giving the course and distance from the intersection to the claim corner. In cases where a settler's dwelling or other structure was visible from the lines of survey, bearing ties were to be made to them from two points on a survey line. According to the instructions, these procedures would legally determine the connections of the claims with the rectangular public land survey. All these observations were to be recorded in the field notes of the survey.

Claimants to Notify the Surveyor General

The Donation Act of 1850 called for the appointment of a Surveyor General for the Oregon Territory. The first Surveyor General, Mr. John B. Preston, was appointed November 22, 1850 and he opened his office in Oregon City on May 5, 1851. It was his duty to extend the rectangular surveys over the Oregon Territory and to survey the donation land claims. In 1851 the Willamette Meridian was extended north and south and the Base Line east and west from an Initial Point located in what is now known as Willamette Stone State Park in Portland, Oregon.

The Act required the claimants to notify the Surveyor General of the "precise tract" claimed by them. These notifications were supposed to be submitted within three months after the completion of the rectangular survey of the township in which the claim was located. Where a claim was located in a surveyed township the notifications were to be submitted within three months after settlement. Notifications consisted of forms provided by the General Land Office. They were numbered consecutively as they were received in the office of the Surveyor General.

The Role of the Surveyor

If a claim was located after December 1, 1850 and prior to the rectangular survey the settler was required to conform the boundaries of his claim to cardinal directions. In public land surveying cardinal directions, i.e. north, south, east and west, refer to true north rather than magnetic north. The difference between true and magnetic north in Oregon around 1855 was on the average in excess of 19 degrees. This fact was well known to surveyors and their assistants but probably not fully understood by the average pioneer. The means by which this difference can be determined is by celestial observations on the stars including the sun. It is quite likely that the pioneers had a better understanding of land surveying than their offspring today. However, it is safe to assume that most of them were not familiar with making celestial observations to determine a true cardinal course. Therefore, they probably were not able to properly locate the boundaries of their claims without the help of a surveyor or someone with some surveying experience.

Some of the donation claims were located under the authority of the Oregon Territorial Government prior to 1850. The metes and bounds boundary of one such claims on the Clackamas River was surveyed for the claimant by one H. Jordan on April 14, 1847. He reported the magnetic declination to be 19-20' East in that part of the valley.

Claimants in an unsurveyed townships probably settled upon and cultivated some of the better land located in the general area of the claim immediately upon arrival in the territory. This is evidenced by the fact that the rectangular survey plats show that many cultivated tracts do not necessarily conform to the actual boundaries of the claim. The next step they took was to employ a fellow pioneer with some surveying experience, a county or private surveyor, a United States Deputy Surveyor or his assistants⁽²⁾ in order to locate and mark the boundaries of the area to which he was entitled and to provide him with a description of it.

Payment for this service was more than likely made by the claimant to the individual who did the work. Although, some of these location surveys may have been done by "government surveyors or their assistants," they were not the official surveys contemplated in the donation act. In such cases the claimant was under the impression that he had to pay the government twice. It is for this reason that the Surveyor General of Oregon was alleged to have taken advantage of his position by exacting "illegal" fees (\$8 per mile) from the settlers for having his deputies locate the claims prior to the completion of the rectangular surveys. This practice was not well received by the claimants who viewed it as an extortion and it was discontinued circa 1855⁽³⁾. Claims located in a surveyed township had to conform to legal subdivisions of a section and had to be in a compact form.

Claim Boundary Described in the Notification

A notice was sent to the settlers when the rectangular survey of a given township was completed and approved. The first such notice to settlers in the State of Oregon was published on February 5, 1852. It stated that the Surveyor General of Oregon was prepared to receive notifications of claims. The settlers who had located prior to the rectangular survey were advised to have their claim surveyed and corners established and tied to a corner of the rectangular survey.

A satisfactory claim boundary description for the notification document could be prepared from the tie to a legal corner of the rectangular survey contained in the field notes of that survey and the claimants location survey. The following abstract of actual field notes of the public land surveys shows such a tie to a claim corner:

S.89-52'W. between Secs. 13 & 24.

6.20 chains Road NW & SE

8.40 " To stream 20 links

9.50 " Dunn's field

30.00 " To fence leave field N20·E

40.00 " Set ¼S post from which a Black Oak bears N29½·E 475 lks. dist. Alberding house bears N.73 W.

42.40 " To a claim line between Dunn and Alberding, course North & South. South 29.25 chs. to the Southwest corner of Dunn and Southeast corner of Alberding⁽⁴⁾.

The following abstract of an actual notification document shows that the tie to the claim corner in the description of the notification agrees with the tie reported in these field notes:

"Not. No. 325 C.N. (56) Beg. 29.25 ch. S. and 2.40 ch., W. of the 1/4 cor. bet. Sec's 13 & 24 (T39SR1E). Thence N. 45 ch., E. 35.56 ch., S. 45 ch., W. 35.56 ch. Entitled to 160 acres."

In the foregoing field notes the claim line is called for at 42.40 chain and the $\frac{1}{4}$ Section corner is called for at 40.00 chain S.89.52'W. In the final official government survey of the claim the southwest corner is 29.26 chain South and 2.29 chain S.89.52'W. of the said corner and the acreage 159.89 acres.

The following facsimile of Notification No. 7651 shows that the boundary description it contains makes no mention of corner monuments, bearing trees, adjoining claims or topographic features. The claim line crossing and tie to a corner of the public land survey was probably extracted from the field notes of the rectangular survey. This information combined with the notes of the privately conducted claim boundary location survey was sufficient for the preparation of the claim description contained in this notification. No additional field work would have been necessary to prepare the description.

No. 7651

*Notification to the Register and Receiver of the
Land Office for Oregon,*

on the settlement of the Public Land, in Township numbered 9 *South* Range 2 *East*
PURSUANT to the Act of Congress, approved on the 27th day of September, 1850, entitled,
"An Act to create the office of SURVEYOR GENERAL OF THE PUBLIC LANDS IN
OREGON, and to provide for the survey and make Donations to Settlers of the Public
Lands" and amendments thereto--

John B. Potter, a married man of Linn County

In the Territory of *Oregon* hereby give notice of my claim to
DONATION of 320 *acres*

of Land, known and designated in the Surveys and Plats of the United States, as the
Part of Sections 22 & 27 T. 9 S. R. 2 E. Bounded and described as follows. Beginning 20.00
chains South and 8.00 chains West of the Qr. Sec. Stake between Sections 22 & 27 --- Thence
North 40.00 Chains, or to the River Thence with the Meanders of the North fork of Santiam
80.00 Chains, South Easterly thence South 60.00 Chains

" West 40.00 "

" North 40.00 "

" West 40.00 "

Jane Potter

for John B. Potter

11th November 1855 her husband now

temporary absent

Final Donation Land Claim Surveys

The law required claimants to pay for the survey of their claim. The cost of surveying claim boundaries could not exceed \$8.00 per mile. This amount was prescribed in the Act of 1850 for the survey of township and section lines on the public lands in the Oregon Territory. The Surveyor General was required to survey and mark the boundaries of the claims at the request and expense of the claimants and to note, temporarily, the boundaries of the claims on the township plats. The final surveys were executed by U.S. Deputy Surveyors appointed by the Surveyor General. The General Land Office furnished the deputy surveyor with an abstract of

the description of the claim contained in the notifications. Following is a copy of such an abstract:

Not. No.325 C.N.(56) Beg. 29.25 ch. S. and 2.40 ch., W. of the 1/4 cor. bet. Sec's 13 & 24 (T39SR1E), Thence N. 45 ch., E. 35.56 ch., S. 45 ch., W. 35.56 ch. Entitled to 160 acres."

The final boundary surveys established the claim corners and the bearing trees to the corners. They also resolved conflicts in claim boundaries. From one of the claim's corners or angles, a bearing and distance tie was made to one or more corners of the rectangular survey. As seen previously the ties reported in the final claim surveys do not necessarily agree with those contained in the field notes of the rectangular survey. Also, the bearings and distances of the claim boundaries may vary from those contained in the notification. Items of topography intersected by the claim lines, such as stream and road crossings, were also noted at their respective distances as well as corners of adjacent claims which fell on the claim lines. The field notes of the claim surveys are generally similar to the field notes of the surveys of township and section lines.

Plats of Survey of Donation Land Claims

After all the claims in a township had been surveyed by the deputy surveyors the field notes were transmitted to the Surveyor General for his examination and approval. A map or plat of the survey of the claims was prepared in the Surveyor General's office from these field notes. This map consists of the usual sectioned diagram of a township plat, drawn to a scale of 2 inches equals 1 mile, showing protracted sections and all the surveyed claims in their respective location. These plats designate the lots in sections which are rendered fractional by the invasion of the donation land claims. This plat was signed and dated by the Surveyor General and constitutes the official plat of donation land claims.

Proof of Settlement Certificate and Patent

Proof of settlement and cultivation had to be submitted to the local General Land Office within 12 months after settlement in a surveyed township or within 12 months of the completion of the survey if settlement preceded the township survey. The proofs consisted of printed forms completed by 2 persons who could attest to the facts in the case. When satisfactory proof had been received by the Land Office a certificate was issued.

Following is a copy of a donation certificate:

DONATION

CERTIFICATE

No. 5137

NOTIFICATION

No. 7651

Whereas, In conformity with the provisions of the 7th Section of the Act of Congress, approved September **27, 1850**, entitled "An act to create the office of Surveyor General of the Public Lands in Oregon, and to provide for the survey, and to make donations to settlers of the Public Lands," and the amendments thereto,

John B. Potter and his wife Jane Potter

of the county of *Linn* in the *State* of *Oregon*
claiming a Donation right, in virtue of the Act aforesaid, to *the following*
tract of Public Lands known and designated in the Surveys and Plats of the United States as the
Claim No. 37, being parts of Sec's 22, 26, & 27 in Township 9. South, Range 2 East. bounded
and described as
follows:

Beginning, at a point 8.00 chs. West and 15.69 chs. South of the N.W. Corner of the N.E. ¼ of
said Sec.27. running

Thence North 23.53 chs. thence East 23.15 chs.

" S.63·E. 17.00 " " S.47·E. 12.88 "

" S.75½·E. 10.10 " " East 17.40 "

" S.27·E. 5.60 " " S.64·45'E. 9.40 "

" South 38.75 " " West 49.20 "

" North 43.50 " " West 37.00 " to the place of beginning containing
319.81 acres.

The south ½ to the said John B. Potter and the North ½ to his wife the said Jane Potter
having proven to the satisfaction of the Register and Receiver of *the Willamette District Oregon*
the fact that such settlement was commenced on the *25th day of April 1855.*

Four years prior to the date hereof; and having, in pursuance of the requirements of
7th Section of the act aforesaid, established by Two disinterested witnesses,
the fact of continued residence and cultivation by the said act:

NOW, THEREFORE, BE IT KNOWN, That we, *L.T. Barin and T.R.*

Harrison REGISTER AND RECEIVER of Public Lands in

said *District* , do hereby, and pursuant to the 7th Section of the act aforesaid, certify to
the **COMMISSIONER OF THE GENERAL LAND OFFICE** the facts aforesaid,
accompanied by the

evidence thereof, in order that a patent may be issued to said claimants for the tract of land
described, as

required by the 7th section of the act aforesaid:

Provided, That the said Commissioner shall find no valid
objection thereto.

GIVEN under our hands at the LAND OFFICE at *Oregon City, Oregon*
this *29th* day of *November* ,1878

L. T. Barin , REGISTER.

T. R. Harrison , RECEIVER.

It is at once obvious that the description in the certificate is more refined than that contained in the notification. The description in the certificate agrees with and is based on the field notes of the actual final claim survey. These **original** field notes of the survey are on file in the Oregon State Office of the Bureau of Land Management and a duplicate copy is on file in the Bureau's

Eastern States Office in Springfield, VA. In many cases copies were also made for the counties where the claims were located. These copies are on file in the county courthouse.

As a point of interest to land surveyors, it will be seen that the description in the above **notification** calls for the meanders of the Santiam as one of the boundaries of the claim. This fact is not mentioned in the **certificate** and seemingly deprives the claimant of possible riparian rights. Without reading the notification a surveyor could assume this portion of the boundary to be metes and bounds description rather than a possible ambulatory boundary.

In many instances the certificate of donation is recorded in the county deed records instead of the actual patent document. A patent was issued by the General Land Office in Washington, D.C. upon surrender of the certificate of donation .

History of Location and Survey of DLC No.56 T.39 S.,R.1 E.,Willamette Meridian

The rectangular survey of T.39 S.,R.1 E., of the Willamette Meridian, was completed and approved on July 30, 1855. Presumably, the required notification was submitted by the claimant of DLC 56 within 3 months of this date. The field notes of the rectangular survey report the point where the section line intersected the claim line and they report tying to the southwest corner of the claim. The notes also contain frequent bearing ties to dwellings of settlers.

No record was found of the original location survey of the boundaries of this rectangular claim. An abstract of the claim description contained in the notification was sent for final survey to S. Truax, Deputy Surveyor, by L.J. Mosher, Register Umpqua Land District, Oregon Territory. The description in the notification previously referred to herein reads as follows:

"Not. No. 325 C.N. (56) Beg. 29.25 ch. S. and 2.40 ch., W. of the 1/4 cor. bet. Sec's 13 & 24 (T39SR1E). Thence N. 45 ch., E. 35.56 ch., S. 45 ch., W. 35.56 ch. Entitled to 160 acres."

The description indicates that a location survey had been made. In the final official survey the deputy refers to the fact that the claim was mostly under fence and cultivation at that time which demonstrates that the boundaries had been measured and marked during the location survey.

The final survey of the claim by Deputy Surveyor Sewall Truax, under his September 6, 1855 Contract No. 63 with the Surveyor General, was completed February 15, 1856. It shows the point of beginning to be 29.26 chain south (instead of 29.25) and 2.29 chain S.89°52'W (instead of 2.40 West) of the said 1/4 corner and the south boundary of the claim to be East 35.50 chains (instead of 35.56). The legal area of the claim is 159.89 acres according to the official plat and field notes.

The plat of the survey of claims in T.39 S., R.1 E., of the Willamette Meridian, which conforms to the approved field notes on file in the office of the Surveyor General, is dated August 24, 1857.

Present Condition of Boundaries and Corners of a Typical Oregon Donation Land Claim

Today, the northwest and northeast corner of Donation Land Claim No. 56 in T.39 S., R.1 E., are considered to be lost. The position of the southwest corner is uncertain. There is a controversy as to the proper position of the southeast corner. A monument was set at record distance from the stump hole of the original northwest bearing tree but not at record bearing. Ancient fencing and an old private survey tend to support the location of another monument which appears to have been established at record bearing and distance from the said stump hole.

Major portions of the east, north and the west boundary of the claim have not served as property lines for a long time and only small segments of these claim boundaries remain under fence today. A portion of the fenced south boundary predates the 1855 rectangular survey. It is shown as the boundary of a field on the plat of that survey. The 1856 field notes of the claim report it to be mostly under fence and cultivation. Remnants of an old rail fence are still evident along a portion of the southern boundary today. A portion of the easterly end of the original rail fence was replaced nearly 100 years ago by a still extant woven wire fence. The locus of the existing fence and an old gate post as well as remnants of an old rail fence along the easterly 10 chain of the south boundary is generally within less than two feet from a straight line, between the found original northeast corner of DLC 55 which lies in the south boundary of DLC 56, and the southeast corner point of DLC 56, when it is restored at *record bearing and distance* from the remaining evidence of the original bearing tree.

End Notes

- (1) Qualifications included race, sex, age and citizenship status.
- (2) Webster, Kimball. "The Gold Seekers of '49" pgs.197-198.
- (3) Bancroft's Works, Vol. 2, History of Oregon, pg. 294.
- (4) See 1855 field notes of the line between Sections 13 & 24 T.39S.,R.1E., Willamette Meridian.

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Lane J. Bouen was graduated from Iowa State University in 1957 and worked for the Bureau of Land Management in Oregon, Montana and Washington D.C from 1957 to 1989. He spent 20 years as Chief of Cadastral Survey in the Eastern States Office of the BLM. Lane was registered as a Land Surveyor in Oregon in 1964. He is now retired and lives in southern Oregon. Among his other accomplishments are co-authorship of the 5th thru 7th edition of Clark on Boundaries and seminars and lectures on public land surveying in a number of central and southern states. His hobby is finding original government corners. tbp