grants to the States certain school-section lands that are mineral in character, it is provided by subsection (c) of section 1 that where such lands are embraced within an existing reservation at the date of said Act of 1927, they are thereby excluded from the grant made by said act.

(b) Under the amendatory Act of May 2, 1932 (47 Stat. 140; 43 U.S.C. 870), it is provided that in the event of the restoration of the lands from such reservation, the grant to the State of such mineral school-section lands will thereupon become effective.

(c) Adjudications in connection with the State's title to school sections will be governed by the provisions of this amendatory Act of May 2, 1932.

## Subpart 2624 [Reserved]

## Subpart 2625—Swamp-land Grants

SOURCE: 35 FR 9610, June 13, 1970, unless otherwise noted.

### § 2625.0–3 Authority.

(a) Circular dated Mar. 17, 1896, containing the swamp-land laws and regulations, states:

As soon as practicable after the passage of the swamp-land grant of September 28, 1850, viz, on the 21st of November 1850, the commissioner transmitted to the governors of the respective States to which the grant applied copies of office circular setting forth the provisions of said Act, giving instructions thereunder, and allowing the States to elect which of two methods they would adopt for the purpose of designating the swamp lands, viz:

1. The field notes of Government survey could be taken as the basis for selections, and all lands shown by them to be swamp or overflowed, within the meaning of the act, which were otherwise vacant and unappropriated September 28, 1850, would pass to the States.

2. The States could select the lands by their own agents and report the same to the United States surveyor general with proof as to the character of the same.

The following States elected to make the field notes of survey the basis for determining what lands passed to them under the grant, viz: Louisiana, Michigan, and Wisconsin. Later the State of Minnesota adopted this method of settlement.

The authorities of the following States elected to make their selections by their own agents and present proof that the lands selected were of the character contemplated by the swamp grant, viz: Alabama, Arkansas, Florida, Illinois, Indiana, Iowa, Mississippi, Missouri, and Ohio. Later Oregon adopted this method.

The States of Alabama, Arkansas, Indiana, Mississippi, and Ohio adopted the second method at the beginning, but they changed to the first method, i.e., to the field notes of survey, as a basis of settlement, in recent years.

The authorities of California did not adopt either method, and the passage of the Act of July 23, 1866, rendered such action on their part unnecessary.

In Louisiana the selections under the grant of March 2, 1849, forming the bulk of the selections in said State, are made in accordance with the terms of said act by deputy surveyors, under the direction of the United States surveyor general, at the expense of the State.

(b) The grant of swamp lands, under Acts of March 2, 1849, and September 28, 1850, is a grant in praesenti. See United States Supreme Court decisions Railroad Co. v. Fremont County (9 Wall, 89, 19 L. ed. 563); Railroad Co. v. Smith (id. 95, 19 L. ed. 599); Martin v. Marks (7 Otto 345, 24 L. ed. 940); decisions of the Secretary of the Interior, December 23, 1851 (1 Lester's L.L. 549), April 25, 1862, and opinion of Attorney General, November 10, 1858 (1 Lester's L.L. 564).

(c) The Act of September 28, 1850, did not grant swamp and overflowed lands to States admitted into the Union after its passage. See decision of Secretary of the Interior, August 17, 1858; Commissioner, General Land Office, May 2, 1871 (Copp's L.L. 474), affirmed by Secretary June 1, 1871, and Commissioner, General Land Office, January 19, 1874 (Copp's L.L. 473), affirmed by Secretary July 9, 1875.

(d) A State having elected to take swamp land by field notes and plats of survey is bound by them, as is also the Government. (See Secretary's decisions, October 4, 1855 (1 Lester's L.L. 553), August 1, 1859 (id. 571), December 4, 1877 (4 Copp's L.L. 149), and September 19, 1879.

(e) The Swamp-Land Acts do not contain any exception or reservation of mineral lands and none is to be implied, since at the time of their enactment the public policy of withholding

mineral lands for disposition only under laws including them, was not established. Work, Secretary of the Interior v. Louisiana (269 U.S. 250, 70 L. ed. 259).

### § 2625.1 Selection and patenting of swamp lands.

(a) All lands properly selected and reported to the Bureau of Land Management as swamp will be compared with the records of the said office, and lists of such lands as are shown to be swamp or overflowed, within the meaning of the Acts of March 2, 1849, and September 28, 1850 (9 Stat. 352, 519), and that are otherwise free from conflict will be made out by such office and approved.

(b) When the lists have been approved a copy of each list will be transmitted to the governor of the State, with the statement that on receipt of his request patent will issue to the State for the lands. A copy of each list also will be transmitted to the authorizing officer of the proper office for the district in which the lands are situated, and he will be requested to examine the same with the records of his office and report any conflicts found.

(c) Upon receipt of a request from the governor for patent, and a report from the authorizing officer as to status, patents will issue to the State for all the lands embraced in said lists so far as they are free from conflict.

(d) Under the provisions of the Act of March 2, 1849, granting swamp lands to the State of Louisiana, a certified copy of the list approved by the Director, transmitted to the Governor, has the force and effect of a patent.

### § 2625.2 Applications in conflict with swamp-land claims.

Applications adverse to the State, in conflict with swamp-land claims, will be governed by the following rules:

(a) In those States where the adjudication of swamp-land claims is based on the evidence contained in the survey returns, applications adverse to the State for lands returned as swamp will be rejected unless accompanied by a showing that the land is non-swamp in character.

(b) In such case, the claim adverse to the State must be supported by a statement of the applicant under oath, corroborated by two witnesses, setting forth the basis of the claim and that at the date of the swamp-land grant the land was not swamp and overflowed and not rendered thereby unfit for cultivation. In the absence of such affidavit the application will be rejected. If properly supported, the application will be received and suspended subject to a hearing to determine the swamp or nonswamp character of the land, the burden of proof being upon the nonswamp claimant.

(c) In those States where the survey returns are not made the basis for adjudication of the swamp-land selections, junior applications for lands covered by swamp-land selections may be received and suspended, if supported by non-swamp affidavits corroborated by two witnesses, subject to hearing to determine the character of the land, whether swamp or non-swamp, and the burden of proof will be upon the junior applicant. Likewise, the State, if a junior applicant, may be heard upon furnishing an affidavit corroborated by two witnesses alleging that the land is swamp in character within the meaning of the swamp-land grant, in which case the burden of proof at the hearing will be upon the State.

(d) Where hearings are ordered in any such cases, the Rules of Practice governing contests will be applied, except as herein otherwise provided.

## Subpart 2627—Alaska

SOURCE: 35 FR 9611, June 13, 1970, unless otherwise noted.

### § 2627.1 Grant for community purposes.

(a) *Authority.* The Act of July 7, 1958 (72 Stat. 339, 340), grants to the State of Alaska the right to select, within 25 years after January 3, 1959, not to exceed 400,000 acres of national forest lands in Alaska which are vacant and unappropriated at the time of their selection and not to exceed 400,000 acres of other public lands in Alaska which are vacant, unappropriated, and unreserved at the time of their selection. The act provides that the selected