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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.

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(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 non-swamp 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

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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 lands must be adjacent to the established communities or suitable for prospective community centers and recreational areas. The act further provides that such lands shall be selected with the approval of the Secretary of Agriculture as to national forest lands and with the approval of the Secretary of the Interior as to other lands, and that no selection shall be made north and west of the line described in section 10 of the act without approval of the President or his designated representative.

(b) *Applicable regulations.* Unless otherwise indicated therein, the regulations in § 2627.3 (a) to (d) apply to the grant and selection of lands for community purposes. In addition to the requirements of § 2627.3(c), where the selected lands are national forest, the ap-

plication for selection must be accompanied by a statement of the Secretary of Agriculture or his delegate showing that he approves the selection.

(c) *Approval of selections outside of national forests.* Selection of lands outside of national forests will be approved by the authorized officer of the Bureau of Land Management if, all else being regular, he finds that approval of a selection of lands adjacent to an established community will further expansion of an established community, or if the lands are suitable for prospective community centers and recreational areas.

§ 2627.2 Grant for University of Alaska.

(a) *Statutory authority.* The Act of January 21, 1929 (45 Stat. 1091), as supplemented July 7, 1958 (72 Stat. 339, 343; 43 U.S.C. 852 note), grants to the State of Alaska, for the exclusive use and benefit of the University of Alaska, the unsatisfied portion of 100,000 acres of vacant, surveyed, unreserved public lands in said State, to be selected by the State, under the direction and subject to the approval of the Secretary of the Interior, and subject to the conditions and limitations expressed in the act.

(b) *Applications for selection.* (1) Applications to select lands under the grant made to Alaska by the Act of January 21, 1929, will be made by the proper selecting agent of the State and will be filed in the proper office of the district in which such selected lands are situated. Such selections must be made in accordance with the law and with the applicable regulations governing selection of lands by States as set forth in part 2620.

(2) Notice of selection and publication is required as provided by § 2627.5 (b) and (c).

(3) Each list of selections must contain a reference to the act under which the selections are made and must be accompanied by a certificate of the selecting agent showing the selections are made under and pursuant to the laws of the State of Alaska.

(4) The selections in any one list must not exceed 6,400 acres.

(5) Each list must be accompanied by a certification of the selecting agent stating that the acreage selected together with the cumulative acreage