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LANDS, LAWS, AND WOMEN

DECISIONS OF THE GENERAL LAND OFFICE, 1881-1920

A PRELIMINARY REPORT

NANCY J. TANIGUCHI

“Settlement” of the West—by common understanding—has meant the taking up of the public domain, especially homesteads and preemptions, under federal law. Obviously, “settlement” in this sense has little to do with actual occupation, or the property rights of Native Americans and long-resident Hispanics would not have been so long ignored. The specific process of settling involved three steps: filing a claim, proving up and/or making payment, and obtaining title or ownership. Each of

these steps had its pitfalls, which, when they occurred, were usually resolved by the General Land Office (GLO), a division of the Department of the Interior from 1849 to 1946. This body, composed of an advisory board under a presidentially appointed commissioner, reported to the Secretary of the Interior and its decisions could also be appealed to him.¹ Selected decisions, usually chosen for their illustration of some new point or clarification of a rule, were then published annually. In addition, regulations promulgated independently of any case, pronouncements of the Land Commissioners and the Secretary of the Interior, and infrequent advisory statements by the Department of Justice and other federal entities dealing with public lands were also published in the series.² The richness of these volumes for scholars derives not only from their geographical, social, and economic spread, but from the generally short presentation of each of the cases (one to four pages), the anecdotal nature of the illustrative material, and the precise legal wording.³

Depending on the year, between 4 and 21 per cent of the published cases involved women.⁴ Women’s use of law has been somewhat overlooked by historians of the settlement of the

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West. The purpose of this study was to begin the tabulation of data in the published *Land Office Decisions*. This paper sets the material in context, presents our first broad tabulations, suggests some important questions and tentative answers, and brings these useful documents to the attention of other scholars of women in the West. Since we postulated legal possession as the basis of settlement, the obvious question emerged: How did women fare in disputes over "settling" the West? What were the effects of time and place on their success, defined as more cases won than lost by women? Specifically, during the decades from 1881 to 1920, when and where did women win more often than they lost in disputes over the public domain adjudicated by the General Land Office?

THE GENERAL LAND OFFICE

Unfortunately, these records are not complete. The GLO published only a small portion of the enormous number of cases that came before it. During the era that the American frontier officially "closed," the government truly did a "land office business." For example, the Secretary of the Interior noted that in December 1907 alone he had received 105 appeals from the GLO, decided 98, and had 1,003 others pending.⁵ Furthermore, the GLO was charged with a dizzying array of responsibilities. Historian Malcolm Rohrbough gives a general outline of its duties:

The object [of the General Land Office] was to prepare lands for sale, sell them impartially to the highest bidder at public auction, collect monies, give good and clear title, and keep complete records. Very rapidly, the Land Office became involved in interpreting and administering a complex, ever changing set of rules that involved more liberal ways of distributing lands to the public (preemption, graduation and homesteading), the use of lands as a public subsidy (canals, railroads, land-grant colleges), and a variety of ways to use lands (agriculture, mining, lumbering, grazing, recreation).⁶

Even when land titles were litigated in the courts, final disposition of federal land had to be made through the GLO, since the courts could decide but not enforce.

The many duties of the Land Office were an outgrowth of a generous national philosophy. According to Benjamin Hibbard, the Land Office was supposed to translate into practice the "widespread and firm belief that the wilderness was and ought to remain free to the man who should subdue it."⁷ Or, in some cases, the woman who did. In either case, when disputes occurred, they were brought to the General Land Office.

During the period of this study, from 1881 to 1920, the GLO earned both praise and blame. An 1884 *Treatise on the Public Land System* . . . claimed "There is no more responsible bureau of the government than that of the General Land Office." The author continued,

The laws and decisions of various states and territories have to be examined to determine who are the lawful wives, widows, heirs, devisees, executors, administrators, or guardians . . . [and to determine] boundaries, riparian rights, entries, locations, cultivation, improvements, settlement, domicile . . . and a host of other matters.⁸

On the other hand, as Rohrbough points out, the agency exercised all these responsibilities despite the "parsimonious attitude displayed by Congress, especially in the nineteenth century," and lack of adequate funding certainly contributed to the more widespread perception of the GLO as a highly shady outfit.⁹ As an 1886 observer noted, "Millions of acres of this [public] domain have been seized and stolen, and I have to say this robbery could not have succeeded without the collusion and cooperation of agents employed to protect the interests of the people."¹⁰

For those dissatisfied with the GLO's decisions, the appeals route to the Secretary of the Interior led into an even more complicated morass. As noted by historian Leonard D. White:

The Department of the Interior might well have been designated the Department of the Great Miscellany . . . organized [with] Lands from Treasury, Patents from State, Pensions and Indian Affairs from War. . . . There was no semblance of unity then among the major historic components.¹¹

These myriad duties meant that the Secretary lacked adequate time to supervise the General Land Office and his rulings were often inconsistent in cases taken to him on appeal.¹²

Another reason for the GLO's enormous case load was the unrealistic nature of much federal land law. Historian Benjamin Hibbard noted that the Homestead Act worked in areas where 160 acres was economically viable, but it led to friction in regions in which the unit was simply too small. E. Louise Peffer succinctly analyzed the Desert Land Act of 1877 as providing a grant "too small to attract investment" to be proved up in a time "too short to permit completion of construction." The act merely invited fraud by "those who were interested in neither irrigation or settlement."¹³ Other laws earned similar criticisms.

As Peffer indicated, not only friction, but fraud, was the usual result of bad law. Widespread dissatisfaction with GLO administration of the land laws led to the creation of the first Public Lands Commission in 1879 and to the codification of the nearly three thousand acts of Congress relating to the public domain since the days of American independence.¹⁴ The Department of the Interior and the General Land Office soon began publishing significant decisions in a series of volumes, the first covering 1881 to 1883. Subsequent volumes of land decisions were issued roughly annually, although some were based on the calendar year and others on the fiscal year.¹⁵ The volumes enabled the public—and the modern historian—to understand the policies and procedures of the land office.

Simply publishing land decisions did not stop fraud, however, and the Commissioner of the General Land Office suspended all entries on the public lands from 1885 to 1888.¹⁶ During

the first decade of the twentieth century President Theodore Roosevelt temporarily withdrew millions of acres of public lands from entry, again undoubtedly limiting the numbers of cases brought by women and men. Attempted correctives such as these often led to the promulgation of new rules, some of which contradicted previous GLO rulings.

This fascinating, complicated public land system has attracted many scholars to date.¹⁷ Yet their analyses of the disposal of the public domain have not specifically focused on the women. Conversely, studies of women's land ownership tend to be narrowed to a single individual, state, or territory.¹⁸ In contrast, this study looks at the broad pattern of American land claims over four decades but concentrates only on those cases involving women.

WESTERN LAND AND THE NATION

The "settling" of the West—defined here as legal ownership—had historical primacy in the national psyche. The Land Ordinance, establishing the system of federal lands, preceded the Constitution. The country's westward spread, exemplified by the Louisiana Purchase under Thomas Jefferson's administration, was seen as a positive good. "Manifest Destiny" of the mid-nineteenth century codified this tendency. At the end of the century, Frederick Jackson Turner's famous essay gave to the entire settlement process the central position in the creation of American democracy. Recent scholarship, sometimes known as the "New Western History," maintains this primacy as firmly as it debunks Turner.¹⁹ As Donald Worster writes, "there is plenty of thick history to be written about this region. . . . Given enough time and effort, it may someday also offer a story of careful, lasting adaptation of people to the land."²⁰

WOMEN AND LAND

Obviously, women were among those who have tried to adapt. Their reactions to the western landscape indicate both the impor-

tance of their environment to them and the kinds of concerns that either motivated them or had to be overcome before they could attempt ownership. They saw land variously as a boundary to be crossed, as an emotional stimulus (positive or negative), and as the basis of sustenance. The first of these three—land as divider—has increasingly been addressed in the extant literature, particularly in works dealing with the overland migration.²¹ Women who traversed the western land captured its power in the vivid descriptions they wrote in journals and letters. Overlander Sarah Royce found almost Biblical solace in a burst of flame from a smoldering prairie brush fire, saying, “to my then overwrought fancy it made more vivid the illusion of being a wanderer in a far off, old time desert, and myself witnessing a wonder phenomenon . . . I was strengthened thereby.”²² Royce then managed to settle down to life in Gold Rush California.

Not all female settlers found inspiration in western landscapes. In a contrasting vein, a later historian proclaimed:

But raise the eyes to the bare prairie, and they sweep the horizon. . . . They stare, stare—and sometimes the prairie gets to staring back . . . How much of the exodus from the frontier in the eighties was due to the women—both the women who stayed until the prairie broke them and the many more who fled from the terror of it—nobody can know.²³

However, recent historians are trying to find out. Some of the best compilations and analyses of women’s varied response to landscape can be found in Annette Kolodny, *The Land Before Her: Fantasy and Experience of the American Frontier, 1630–1860*, which is among the works discussed by Vera Norwood in “Women’s Place: Continuity and Change in Response to Western Landscapes.”²⁴ Obviously, emotional reactions to the land colored choices about settlement and ownership.

Many women, for varied reasons, decided to stay in the West, although their role in the settlement process has sometimes been seen as

peripheral. Generalizing on the frontier experience, Glenda Riley asserts in *The Female Frontier*,

women had little to say in the choice of the location of the new family homestead that they would manage. Often, the men of the family went ahead to procure suitable land. Because women were charged with the care of children and because travel conditions were harsh, it was not usually feasible for women to serve as advance agents.

Riley then describes the financial transaction of a pioneering father who pulled out “‘a canvas sack from somewhere’ and count[ed] out ‘one thousand dollars in gold to pay for the land and some more to pay the judge for the legal fees.’”²⁵ Yet some women did have the wherewithal to play the same scene.

Given women’s varied economic and social situations, women saw land ownership as the basis for personal economic well-being. The most famous member of this group has to be Elinore Pruitt Stewart, whose *Letters of a Woman Homesteader* advocated women’s land ownership as the route to prosperity. Her famous letter on “The Joys of Homesteading” claims: “homesteading is the solution of all poverty’s problems. . . . [A]ny woman who . . . is willing to put in as much time at careful labor as she does over the washtub, will certainly succeed. . . . and [will have] a home of her own in the end.”²⁶ Yet as Sherry Smith cautions us in her recent article on Stewart’s actual legal transactions, Elinore never “proved up.” Instead, her marriage to Clyde Stewart and her relationship with her new mother-in-law, Ruth Stewart, led Elinore—even before she wrote these words—to relinquish her homestead claim, which her mother-in-law promptly acquired.²⁷ Clearly this outcome did not diminish Stewart’s perception of the importance of land ownership for women or her own achievements as a homesteader, but the reality of women’s land ownership in general as well as in this specific case is more complex than it has been portrayed up until the 1990s.

LAND DECISIONS CASES

This complexity is clearly reflected in the *Land Decisions*. Of the 1213 cases we abstracted, our research team (see note 3), had to eliminate several because of incomplete reporting that we did not have time to review. The resulting study, therefore, covers 1162 cases. Most often women were sole litigants; that is, either an individual contestant, a plaintiff, a defendant, or, in rare cases involving two women, a plaintiff *and* a defendant. However, we also abstracted cases in which a woman was a party, although not the main contestant, for example, as one of a group of heirs.

From the outset, it was obvious that these cases would provide a rich source of illustrative and narrative material. For example, one of the major concerns confronting women was, upon marriage, would they lose their ownership rights if their *claim* (the first step in the ownership process), then subject to *proof* (the second step), had not yet proceeded to *title* (the final step)? A precedent was set in answering this question with the 1886 case of Maria Good, an individual contestant. She had homesteaded on the Kansas prairie in 1880 and filed for a quarter section under the Homestead Act, meeting all the legal qualifications. She subsequently married a mechanic in nearby Norton, Kansas, and lived with him in town during the winters, and on the homestead in summers, though "never absent for more than three months at a time; . . . [and] never moved her household goods from the land . . . [and maintained] the improvements, which are valued at \$600, consisting of a house, a well, wind-mill, sheds, an orchard of one hundred and twenty-eight trees, and fifteen acres under cultivation." The Commissioner of the General Land Office originally overturned her claim when she appeared in 1885 for final proof on the grounds that, by marriage, she had forfeited her entry rights as a single woman. The case was appealed to the Secretary of the Interior, who disagreed, citing the Homestead Act of 1862 which pertained "'to *actual settlers* on the Public Domain.'" Since nothing in Maria Good's ac-

tions had hampered her actual settlement, as defined by the law, she deserved clear title to the land. The Secretary consequently reversed the decision of the Commissioner, and Maria Good became a landowner.²⁸

Other women who married in similar circumstances did not wish to live apart from their husbands, resulting in novel solutions. Caroline E. Gisselberg (maiden name unknown) homesteaded as a single woman in Washington in 1884 and subsequently married her next-door neighbor, Jonas Gisselberg. The two built a house straddling the boundary of the two claims, so they could live together and attempt to fulfill both residence requirements. Interior Department officials did not see it that way, however. While referring to the case of Maria Good, which set the precedent that marriage of itself did not affect a woman's ownership rights, the Assistant Secretary of the Interior upheld the decision of the Commissioner of the General Land Office denying Caroline Gisselberg ownership (in the face of a contest by one T. J. Lincoln). They reasoned that, since her husband had used the same residence to make final proof in his claim, she had legally abandoned hers. She lost the land.²⁹

Other contests, such as the case of *Pruitt v. Chadbourne*, involved two would-be residents on a single tract, rather than one couple on two claims. Anna Chadbourne settled on land near Leadville, Colorado, in August 1882, filed a declaratory statement (claim) the next day, and subsequently began constructing a house, despite the presence on the land of a cabin, well, fence, and other "improvements." These had been constructed by "one Anthony," who had then sold them to a second party and he to W. H. Pruitt on the same day that Chadbourne had actually settled on the land. When Pruitt appeared with his family to take up residence, he was prevented from doing so by Chadbourne. The Acting Secretary of the Interior upheld the Commissioner's decision to award the land to Chadbourne, as she was the first *bona fide* settler, and ruled that purchase of the improvements by Pruitt did not constitute a claim to the land itself.³⁰

Lands claimed by a single family often came into contest as the family fell apart. In two separate instances, the entryman—in both cases the husband and father—left the scene, with different results. In *Keys v. Keys* (1899) Robert C. Keys died intestate before he had proved up on his homestead in Oklahoma Territory, leaving his widow and four children by a previous marriage to deal with his claim. The widow, Frances E. Keys, although entitled by the Homestead Act to the entire claim, mistakenly believed that she could only have the “widow’s portion” (ie., one-third) and therefore agreed to divide the land with her stepchildren. One of them, Horace A. Keys, moved into an unoccupied house on his portion and rented part of the remaining land from his stepmother. Frances Keys soon discovered that she was entitled to the entire tract, so she brought contest, gaining entry rights to the entire tract.³¹

An even more revealing picture of familial strife emerges in the case of *Doyle v. Bender*, also in Oklahoma, in 1897. Samuel Doyle, the original entryman on the land, left home in 1893 “with the twofold determination of selling his claim and deserting his wife.” Before skipping town, he made a deal with Miss Sydna Bender, through “the representative of the Benders, . . . who took no steps to bring the matter to . . . [Sarah Doyle’s] attention.” Samuel Doyle filed a relinquishment after which Sydna Bender immediately filed a homestead entry on the same land. Although the deserted Mrs. Doyle insisted she intended to hold the land, Sydna Bender, “built a valuable house upon the land and put other improvements thereon amounting, together with the money paid for the relinquishment, to a considerable sum.” One imagines that at this point, Sarah Bender figured out what was going on. At any rate, she filed to keep the claim, and after two appeals, her rights were upheld on the basis that, as a deserted wife, “her rights attached the instant . . . [her husband’s] relinquishment was filed,” even before Bender’s homestead entry was made.³²

Desertion and divorce—a prevalent western trend—led to other land complications when

the husband remained in the neighborhood.³³ In *Leonard v. Goodwin*, an 1892 contest for South Dakota land, Amy H. Leonard claimed land that had been homesteaded by James Goodwin, his wife, and their five children before his subsequent desertion and their divorce. Leonard alleged that the divorce was fraudulent, intended to allow Martha Goodwin to prove up on a claim that she was entitled to as a *femme sole*, but which James could not acquire because he had already exhausted his entrance rights. Leonard’s witnesses, in support of her view, recounted that James “stayed overnight a few times, in the house, occupying the room of his oldest sons, sleeping with one of them; that he lived in the neighborhood at various places, working for different parties, sometimes for his son on the farm, receiving pay therefore the same as any other hired help; that he was at the house frequently, was seen to be holding one of the younger children.” Countering this testimony, Martha Goodwin asserted her side, worth recounting in full:

. . . that during the twenty years or more that she had lived with her husband, he had dragged herself and little family over five or six different states and territories of the West, and that they had never had any permanent abiding place; that he had been a drunkard, profligate in his habits, spending the money that she earned by washing and other labor outside of her family duties, and money she had inherited from her relatives. In addition to this it is shown that he was a man of violent temper, often abusing his children, and that the evening prior to his final departure from his home he had a violent fight with his oldest sons.

She continued that the “divorce was procured in good faith, without any intention of ever assuming the marital relations again . . . for the purpose of making a home for herself and the children.” The Interior officials, noting “her improvements and industry of herself and children” felt she had acted in “utmost good faith” and awarded Martha Goodwin the land.³⁴

In one final example, Interior officials again acted to enhance the welfare of a woman and her children under very different circumstances. In 1892, the Commissioner of Indian Affairs, the Secretary of the Interior, and the Assistant Attorney General all contributed to a decision on behalf of Amanda Hines. In relation to the Dawes Act (or General Allotment Act), Mrs. Hines, a member of the Sisseton and Wahpeton Sioux, had inquired about land she was preparing to select for herself and her children on the Lake Traverse Reservation in South Dakota. She wanted to know if selecting lands along the shores of a "meandered, nonnavigable lake, dry during the greater part of the year," would entitle her to lands on the lake bed. While noting that "It is the practice of the Department of Justice to decline to express an opinion upon a supposed case, . . . in view of the dependent character of the party . . . and her reliance upon the [Commissioner's] supervisory power . . . for guidance and protection," the government officials decided to rule anyway. They advised Mrs. Hines that, as owner of contiguous lots along the shore of the lake bed, her rights extend "to the lands in front of her lots to the middle of said lake."³⁵ At least in this instance, the variety of bureaus subsumed under the Department of the Interior probably expedited her case.

ANALYZING LAND DECISIONS CASES

Many more fascinating examples, involving the entire spectrum of women in the West, could be drawn from these decisions, but we must now turn to the broad picture. Although a study of this magnitude will take years to analyze fully, this preliminary analysis falls into the general pattern of a census abstract, providing the outline of the findings, if not the complete report. Likewise the data has been divided roughly by decade: 1881–1890, 1891–1900, 1901–1910, and 1911–1920. We decided that the most significant factor in the settlement of western land was the location of the land itself: the states or territories in which women met with their greatest number of land conflicts, and how these were resolved. Future questions will

be addressed to women's success before and after statehood, the ethnicity of claimants (where discernible; unfortunately, in few cases), repeated filings by the same woman in different states and territories, and the laws under which women were most successful in achieving their ownership rights, perhaps broken down by year, rather than by decade.

Even in sketching the broad outlines, we must first ask, what do these cases represent? They indicate some sort of conflict or discrepancy in the private acquisition of the nation's public domain. Not all states had public land to distribute. The original thirteen, Maine, Vermont, Kentucky, Tennessee, West Virginia, and Texas, all for various reasons, lacked a public domain—they had no federal lands within their borders. With few exceptions, they would not be the concern of the General Land Office.³⁶

Second, in the states and territories that did possess a public domain, what were the possible reasons for conflict? An obvious cause was simple pressure on land to absorb an increasing number of claimants. An 1875 survey of the nation from the 100th meridian to the Pacific noted that the time was near when "the landless and homeless . . . [could no longer] acquire both lands and homes merely by settling them." The author concluded, "The phenomenon of the formation and rapid growth of new, rich, and populous states will no more be seen in our present domain, and we must soon face a condition of facts . . . when, not new, but old states must make room for the increase in population."³⁷ The country as a whole was increasingly stretched to accommodate new immigrants. In 1879–80 immigration reached 450,000, and about seven million acres of arable land were taken up in the same fiscal year. Roy Robbins noted that the all-time high of immigrants to the United States reached 800,000 in 1882, and that "Two years later the Land Commissioner advised that the time had arrived when the wastefulness in the disposal of the public lands should cease." The remainder should be conveyed only to actual settlers.³⁸ Not surprisingly, reported land office claims by women peaked in 1891–1900, and the greatest activity took place

TABLE 1
WOMEN'S LAND OFFICE CASES BY DECADE

STATE OR TERRITORY	1881-1890	1891-1900	1901-1910	1911-1920	TOTAL
Alabama	10	8	0	0	18
Alaska	0	3	2	0	5
Arizona	2	7	2	4	15
Arkansas	2	1	0	0	3
California	40	63	18	27	148
Colorado	16	33	6	16	71
Dakota (Territory)*	82	3	0	0	85
Florida	4	8	0	1	13
Idaho	7	7	13	15	42
Illinois	3	0	1	0	4
Iowa	1	1	0	0	2
Kansas	48	36	3	0	87
Louisiana	5	9	3	1	18
Michigan	3	13	1	0	17
Minnesota	14	30	18	5	67
Mississippi	0	1	2	0	3
Missouri	1	3	1	0	5
Montana	9	18	16	37	80
Nebraska	27	21	10	4	62
Nevada	0	0	0	2	2
New Mexico	1	3	6	12	22
New York	1	0	0	0	1
North Dakota*	1	29	13	8	51
Ohio	0	1	0	0	1
Oklahoma	0	63	10	4	77
Oregon	12	16	13	18	59
South Dakota*	3	45	15	14	77
Utah	3	8	2	2	15
Washington	9	34	6	19	68
Wisconsin	0	17	0	1	18
Wyoming	9	4	6	7	26
TOTALS	313	485	167	197	1162

*Dakota Territory became the states of North and South Dakota in 1889.

in the states and territories of the Trans-Mississippi West (Table 1). Cases fell off sharply after 1900, probably as a result of the reduction in the size of the public domain caused by nineteenth-century land office activity.

As indicated in Tables 2 and 3, Dakota Territory provided the first, best hope for women and Montana the last, best hope, with California a frequent mecca. Based on the cases published, women brought the most litigation in

TABLE 2
WOMEN'S LAND DECISIONS PUBLISHED

STATE OR TERRITORY	1881-1890	STATE	1891-1900
Dakota (Territory)	82	California	63
Kansas	48	Oklahoma	63
California	40	South Dakota	45
Nebraska	27	Kansas	36
Colorado	16	Washington	34
Minnesota	14	Colorado	33
Oregon	12	Minnesota	30
Alabama	10	North Dakota	29
Montana	9	Nebraska	21
Washington	9	Montana	18
Wyoming	9	Wisconsin	17
Idaho	7	Oregon	16
Louisiana	5	Michigan	13
Florida	4	Louisiana	9
Illinois	3	Alabama	8
Michigan	3	Florida	8
South Dakota	3	Utah	8
Utah	3	Arizona	7
Arizona	2	Idaho	7
Arkansas	2	Wyoming	4
Iowa	1	Alaska	3
Missouri	1	Dakota (Territory)	3
New Mexico	1	Missouri	3
New York	1	New Mexico	3
North Dakota	1	Arkansas	1
Alaska	0	Iowa	1
Mississippi	0	Mississippi	1
Nevada	0	Ohio	1
Ohio	0	Illinois	0
Oklahoma	0	Nevada	0
Wisconsin	0	New York	0

those places and at those times. Probably they were at least reasonably confident of success, for only on that basis will anyone litigate. Perhaps their confidence also lay in the American legal system, as compared with Mormon Utah, with

significantly fewer conflicts, possibly as a result of its consensual society and historical distrust of the federal government.³⁹ Additionally, the areas with few cases, like Nevada, may simply have had a sparse population and little arable

TABLE 3
WOMEN'S LAND DECISIONS PUBLISHED

STATE OR TERRITORY	1901-1910	STATE	1911-1920
California	18	Montana	37
Minnesota	18	California	27
Montana	16	Washington	19
South Dakota	15	Oregon	18
Idaho	13	Colorado	16
North Dakota	13	Idaho	15
Oregon	13	South Dakota	14
Nebraska	10	New Mexico	12
Oklahoma	10	North Dakota	8
Colorado	6	Wyoming	7
New Mexico	6	Minnesota	5
Washington	6	Nebraska	4
Wyoming	6	Arizona	4
Kansas	3	Oklahoma	4
Louisiana	3	Nevada	2
Alaska	2	Utah	2
Arizona	2	Florida	1
Mississippi	2	Louisiana	1
Utah	2	Wisconsin	1
Illinois	1	Alabama	0
Michigan	1	Alaska	0
Missouri	1	Arkansas	0
Alabama	0	Illinois	0
Arkansas	0	Iowa	0
Florida	0	Kansas	0
Iowa	0	Michigan	0
Nevada	0	Mississippi	0
New York	0	Missouri	0
Ohio	0	New York	0
Wisconsin	0	Ohio	0

land. In fact, all of these factors may have a bearing, and individual locations deserve to be studied separately, or comparatively, to see which of these considerations had the greatest effect.

The volume of cases brought could also be correlated to larger trends. For example, according to Glenn S. Dumke, the California land boom of the 1880s had passed by the end of the

decade, leaving some towns and individuals ruined and others poised for success. Yet he concludes this economic study with the assertion that the experience made southern California truly American. Did the experiences of local women follow this pattern?⁴⁰ Or one might compare statistics on women in Minnesota with *Minnesota Lands* by Dana, Allison, and Cunningham, a study that quantifies most of

TABLE 4
LOCATION OF WOMEN'S LAND OFFICE SUCCESS* BY DECADE

1881-1890	1891-1900	1901-1910	1911-1922
California	Alabama	Arizona	Arizona
Dakota Territory	Arkansas	California	California
Illinois	Colorado	Idaho	Colorado
Louisiana	Florida	Illinois	Idaho
Michigan	Kansas	Montana	Montana
Minnesota	Louisiana	New Mexico	North Dakota
Missouri	Minnesota	Oklahoma	South Dakota
Montana	Missouri	Wyoming	Utah
Nebraska	Montana		
Utah	Oklahoma		
	Oregon		
	South Dakota		

*"Success" is defined as more cases won than lost by women. Cases between two women are cancelled out.

the historic and modern aspects of land ownership within the state. A more legalistic view of land ownership, such as that provided by W. W. Robinson in *Land in California*, might also provide a valuable framework for studies of women litigating their land claims, especially during the nineteenth century.⁴¹

Finally, where *have* women won more cases than they lost in their attempts to obtain land through decisions reported by the General Land Office? Montana was the only place where women achieved success throughout the whole period of study, at least in terms of simple numbers (Table 4). Percentage of women homesteading was not broken down by state or territory in this study. Word may have spread of favorable attitudes toward female landholding in Montana, as indicated by the following tallies:

	1881-90	1891-1900	1901-10	1911-22
Cases				
Won	5	12	10	20
Lost	4	6	6	17
Total	9	18	16	37

These statistics also suggest that Montana's election of Jeanette Rankin to Congress in 1914 as its first female member may have come out of decades of conditions more favorable to women than those of the rest of the country. At the very least, a scholar attempting to discern the social background for Rankin's election might want to submit a larger sample of women's land office claims in Montana to a rigorous examination.

Yet there appears to be no correlation between women's success in the General Land Office and woman suffrage. The states granting suffrage in the nineteenth century—Wyoming (1869), Colorado (1893), Idaho (1896), and Utah (1896)—offered no discernable advantage to women in terms of federal land litigation. Wyoming, in particular, allowed women success in only one decade, from 1901 to 1910, and then only by a margin of 3 to 2, with one additional case subject to further review. Perhaps the presence of mighty business combinations in that state, notably the railroads and copper companies, had a major impact on land acquisition by women. The success of women

against corporate, rather than individual, opponents, although abstracted in this study, has yet to be analyzed. A look at Wyoming litigation might offer valuable insights into those dynamics. Other questions, as yet unposed, could be addressed to these data.

Overall, the major importance of this study is that it indicates the richness of a generally untapped source, the use of which would allow more precise information on the legal aspects of women's "settlement" of the West. Some strides have been made in this direction. For example, in the newly published text, *A Place to Grow: Women in the American West*, Glenda Riley devotes half of the last section to "'Girl' Homesteaders," citing the extant literature on the topic.⁴² She should be applauded for this pioneering effort. "Homesteaders" as used here appears to be a historic, generic term, however; these "homesteaders" possibly included Desert Land Entrants, or Preemptors, or those who took up land under other acts that may have had an effect on the outcome of their claims. Exploring the details of these events would add specificity and more subtle shading to the currently emerging picture of the western woman. Future researchers could add a legal perspective to their "settlement" stories, ie.: *a woman goes to the land; a woman files for legal ownership of the land; she proves up or departs, and thereby affects the growth of the West.*

The General Land Office Records, providing life slices of individual women identified by name and location, can offer a fresh perspective on women's settlement of the West. First, they can augment existing research with an addition to the "paper trail" specific to any time and place under study. Second, the inclusion in these records of data on women of varied age, class, economic pursuit, race, and affiliation offers possibilities for comparison and tends to broaden research centered on the Homestead Act or a particular geographic location. Although useful overall, these records contain some weaknesses. First, they are an incomplete collection, as are all the records of the General Land Office. Only selected cases were published; the content of those not chosen can

never be known. Second, the brevity that makes these records so accessible often leaves the scholar wishing for more information. Only hard digging, generally in local sources, can fill in some of the gaps. Yet those now actively adding women's voices to the chorus of American history cannot afford to ignore these records. In concert with other materials, they enhance our knowledge of women's attempts at land ownership, largely in the West but under eastern-based laws and policy decisions. Only by linking women and laws, as these records do, can we more fully understand the growth of the entire nation.

NOTES

This study has incorporated data collected by six student research assistants: Linda Danes, Kevin Davis, Michelle Edwards, Joanne Larsen, Inge Scott, and Lynette Chancellor, who helped with revisions. Linda Danes entered and processed all the data. Their efforts were funded by a Research and Creative Activity Grant from the California State University, Stanislaus. Professor Robert Taniguchi of Merced College generated most of the tables. This project could never have been completed without them.

1. Malcolm J. Rohrbough, "Bureau of Land Management," in Donald R. Whitnah, *Government Agencies* (Westport, Connecticut: Greenwood Press, 1983), p. 25. From its establishment in 1812 until 1849, the General Land Office was under the Department of Treasury, after which it was moved to the newly created Department of the Interior. Beginning in 1946 it has come under the Bureau of Land Management in the Department of the Interior.

2. *Decisions of the Department of the Interior and the General Land Office*, Vols. 1-48 (Washington, D.C.: Government Printing Office, various years), hereafter cited as L.D. (Land Decisions).

3. This study grew out of an undergraduate class project in which each student was required to study ten cases involving women from a single volume. It was then expanded with a Research Grant from the California State University, Stanislaus to include all the cases involving women for the years 1881 to 1920. Data was collected by the author and the six students thanked above and then processed by computer to tabulate won and lost rates, by state or territory and by decade.

4. Specifically, from a low of 12 of 180 cases reported in Vol. 30, 1 May 1900 to 30 June 1901 (4.2

percent) to a high of 36 of 171 cases reported in Vol. 42, 1 June 1909 to 31 May 1910 (21.1 percent).

5. *Reports of the Department of the Interior for the Fiscal Year Ended June 30, 1907*, Vol. 1 (Washington, D.C.: Government Printing Office), p. 9.

6. Rohrbough, "Bureau of Land Management" (note 1 above), p. 25.

7. Benjamin Horace Hibbard, *A History of the Public Land Policies* (Madison: University of Wisconsin Press, 1965), p. 547.

8. George W. Spaulding, *A Treatise on the Public Land System of the United States, with references to the land laws, rulings of the departments at Washington, and decisions of courts, and an appendix of forms in United States land and mining matters*. (San Francisco: A. L. Bancroft and Company, 1884), p. 10.

9. Rohrbough, "Bureau of Land Management" (note 1 above), p. 25.

10. Judge David Davis in *Congressional Record*, 17:6245 (28 June 1886), quoted in Harold H. Dunham, "Some Crucial Years of the General Land Office, 1875-1890," in Vernon Carstensen, ed., *The Public Lands: Studies in the History of the Public Domain* (Madison: University of Wisconsin Press, 1968), pp. 181-82.

11. Leonard D. White, *The Republican Era, 1869-1909: A Study in Administrative History* (New York: Macmillan Company, 1958), p. 175.

12. Dunham, "Some Crucial Years" (note 10 above), pp. 182-83.

13. Hibbard, *History of Public Land Policies* (note 7 above), p. 567; E. Louise Pepper, *The Closing of the Public Domain: Disposal and Reservation Policies, 1900-50* (Stanford: Stanford University Press, 1951), p. 18.

14. Paul Wallace Gates, *History of Public Land Law Development* (Washington, D.C., Government Printing Office, 1968), p. xi; Roy M. Robbins, *Our Landed Heritage: The Public Domain, 1776-1936* (Gloucester, Massachusetts: Peter Smith, 1960) pp. 289-90.

15. For this study we divided the volumes into four groups 1-11 (1881-90), 12-30 (1891-30 June 1901), 31-39 (1 July 1901-31 May 1911), and 40-47 (1 June 1911-30 June 1921).

16. Robbins, *Our Landed Heritage* (note 4 above), pp. 291-93.

17. In addition to those cited elsewhere, the scholar should also consult Malcolm J. Rohrbough, *The Land Office Business: The Settlement and Administration of the Public Lands, 1789-1837* (New York: Oxford University Press, 1968); Paul J. Culhane, *Public Lands Politics* (Baltimore: Johns Hopkins University Press, 1981); Marion Clawson, *The Federal Lands Revisited* (Washington, D.C.: Resources for the Future, 1983); David M. Ellis, ed. *The Frontier in American Development* (Ithaca: Cornell

University Press, 1969); Paul W. Gates, *Landlords and Tenants on the Prairie Frontier* (Ithaca: Cornell University Press, 1973); and Carl J. Mayer and George A. Riley, *Public Domain, Private Dominion* (San Francisco: Sierra Club Books, 1985), among others.

18. See, for example, Katherine Hill Harris, "Women and Families on Northwestern Colorado Homesteads, 1873-1920" (Ph.D. diss., University of Colorado, Boulder, 1983); H. Elaine Lindgren, *Land in Her Own Name: Women as Homesteaders in North Dakota* (Fargo: North Dakota State University Press, 1991). A brief, broader treatment is found in Sheryll Patterson-Black, "Women Homesteaders on the Great Plains Frontier," *Frontiers* (Spring 1976). The latest treatment is the most promising: Susanne George, *Adventures of the Woman Homesteader* (Lincoln: University of Nebraska Press, 1992). See also Sherry L. Smith, "Single Women Homesteaders: The Perplexing Case of Elinore Pruitt Stewart," *Western Historical Quarterly* 22 (May 1991): 163-83.

19. The history of the Western myth is eloquently explored in Henry Nash Smith, *Virgin Land: The American West As Symbol and Myth* (Harvard: Harvard University Press, 1950). For the "New Western History" see Patricia Limerick, *Legacy of Conquest: The Unbroken Past of the American West* (New York: W. W. Norton, 1987); Limerick, Clyde A. Milner II, and Charles E. Rankin, eds., *Trails: Toward a New Western History* (Lawrence: University Press of Kansas, 1991); and Richard White, "It's Your Misfortune and None of My Own": *A New History of the American West* (Norman: University of Oklahoma Press, 1991).

20. Donald Worster, *Under Western Skies* (New York: Oxford University Press, 1992), p. 33.

21. For some examples, see John Mack Faragher, *Women and Men on the Overland Trail* (New Haven: Yale University Press, 1979); JoAnn Levy, *They Saw the Elephant: Women in the California Gold Rush* (Hamden, Connecticut: Archon Books, 1992); Lillian Schlissel, *Women's Diaries of the Westward Journey* (New York: Schocken Books, 1982); Sandra L. Myers, *Westering Women and the Frontier Experience, 1800-1915* (Albuquerque: University of New Mexico Press, 1982), pp. 98-139.

22. Sarah Royce, *A Frontier Lady: Recollections of the Gold Rush and Early California*, ed. Ralph Henry Gabriel (New Haven: Yale University Press, 1932), quoted in Robert V. Hine and Edwin R. Bingham, eds. *The American Frontier: Readings and Documents* (Boston: Little, Brown and Company, 1972), pp. 197-98.

23. Seth K. Humphrey, *Following the Prairie Frontier* (Minneapolis: University of Minnesota Press, 1931), quoted in Everett Dick, *The Lure of the Land:*

A Social History of the Public Lands from the Articles of Confederation to the New Deal (Lincoln: University of Nebraska Press, 1970), p. 155.

24. Vera Norwood, "Women's Place: Continuity and Change in Response to Western Landscapes," with "Commentary" by Cecelia Tichi and Patricia Clark Smith, in Lillian Schlissel et. al., eds., *Western Women: Their Land, Their Lives* (Albuquerque: University of New Mexico Press, 1988), pp. 155-95.

25. Glenda Riley, *The Female Frontier: A Comparative View of Women on the Prairie and the Plains* (Lawrence: University Press of Kansas, 1988), p. 47.

26. Elinore Pruitt Stewart, *Letters of a Woman Homesteader* (1914; rpt. Boston: Houghton Mifflin Company, 1988), p. 215.

27. Smith, "Single Women Homesteaders" (note 18 above).

28. 5 L.D. 196-98 (1886).

29. 7 L.D. 215 (1893).

30. 3 L.D. 100 (1884).

31. 28 L.D. 6 (1899).

32. 24 L.D. 535-36 (1897).

33. Robert L. Griswold, *Family and Divorce in California, 1850-1890: Victorian Illusions and Everyday Realities* (Albany: State University of New York Press, 1982); Susan Gonda, "Not a Matter of Choice: San Diego Women and Divorce, 1850-1880," *Journal of San Diego History* 37 (Summer 1991); Paula Petrik, "Not a Love Story: *Bordeaux v. Bordeaux*," *Montana* 41 (Spring 1991): 32-46.

34. L.D. 570-73 (1892).

35. 14 L.D. 156.

36. Gates, *History of Public Land Law* (note 14 above), p. 22. Some states have since returned land

to the federal government, for the creation of national parks, for example.

37. W. B. Hazen, "The Great Middle Region of the United States," *North American Review* 120 (1875): 22, quoted in Robbins, *Our Landed Heritage* (note 14 above), p. 270.

38. Robbins, *Our Landed Heritage* (note 14 above), p. 270.

39. The cooperative, rather than confrontational, ethos of Mormonism (that is, pertaining to other Mormons) is discussed in Thomas F. O'Dea, *The Mormons* (Chicago: University of Chicago Press, 1957), especially pp. 186-221. The Latter-day Saints legal system, including attitudes toward law and lawyers, is the subject of Edwin Brown Firmage and Richard Collin Mangrum, *Zion in the Courts: A Legal History of the Church of Jesus Christ of Latter-day Saints, 1830-1900* (Chicago: University of Illinois Press, 1988). Their historic distrust of the federal government came largely from federal anti-polygamy raids and the Utah War. See Gustive O. Larson, *The "Americanization" of Utah for Statehood* (San Marino: Huntington Library, 1971) and Norman F. Furniss, *The Mormon Conflict, 1850-1859* (New Haven: Yale University Press, 1960).

40. Glenn S. Dumke, *The Boom of the Eighties in Southern California* (San Marino: Huntington Library, 1944), especially pp. 259-76.

41. Samuel Trask Dana, John H. Allison, and Russell N. Cunningham, *Minnesota Lands* (Washington, D.C.: American Forestry Association, 1960); W. W. Robinson, *Land in California* (Berkeley: University of California Press, 1948).

42. Glenda Riley, *A Place to Grow: Women in the American West* (Arlington Heights, Illinois: Harlan Davidson, 1992).