CULTURAL HISTORY
U. S. Public Land Survey System: Forty Acres

(Revised September 2015)

By Neal McLain

As I've noted in previous columns in this series about the Public Land Survey System (PLSS), most of the public lands in the 30 Public Land States were originally owned by the United States Government. The Land Ordinance of 1785, adopted by the Second Continental Congress and readopted by subsequent congresses, specified that the public lands were to be surveyed into Congressional townships by the General Land Office. The GLO then sold land to settlers in 40-care parcels, frequently called "forties."

The number 40 has resonated through American history for two centuries, even though most citizens have no idea what it means. Terms such as "the back 40" and "the north 40" pop up repeatedly in popular culture, and even in the names of businesses.

There are establishments with "forty" references all over the country, even in states like New York and Texas that are not public land states, and that were never surveyed under PLSS guidelines**:**

The *Back Forty Restaurant* in New York City.
The *Back Forty Bed and Breakfast Ranch* in Texas.
The *Back Forty* band, "a staple of the Midwest music scene."
The *Back Forty Texas BBQ* — in California!
The *North Forty News*, a newspaper in Colorado.
The *South 40 Farm Store* in Grant's Pass, Oregon.

New Your City's ***Back Forty Restaurant*** is almost 350 miles east of the Ohio POB, the closest actual "Back 40" near New York.
Source: Back Forty Restaurant

Unlike most these establishments, South 40 Farm Store really is in a "south 40"**:** SE Quarter SE Quarter Section 25 T36S R6W, Willamette Meridian.

Pop culture aside, the number 40, together with its multiples and submultiples, has played a significant role in many of our nation's most contentious political battles. Here are four examples.

THE HOMESTEAD ACT OF 1863

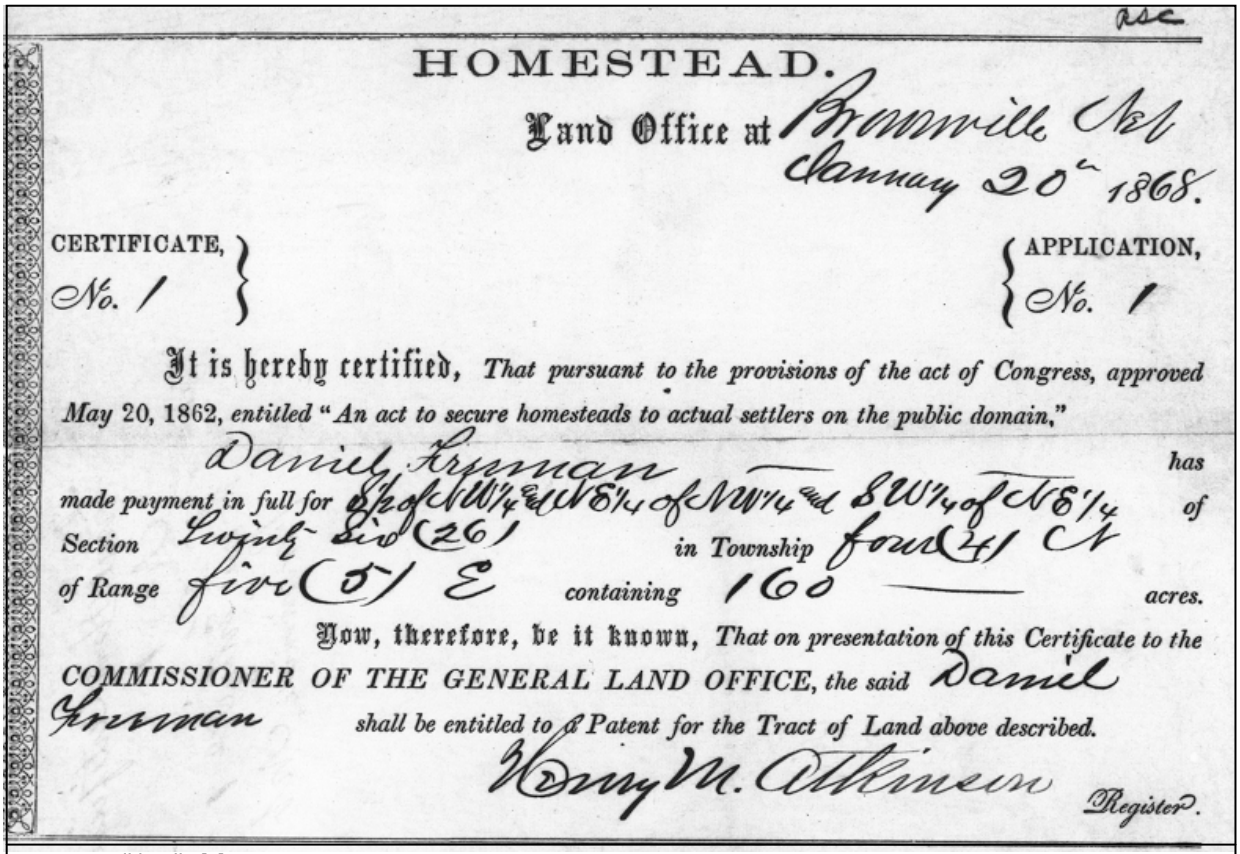
The Homestead Act authorized the United States General Land Office to grant, in exchange for a filing fee of $18, a 160-acre parcel (four forties, or one quarter section) to any citizen "for the purpose of actual settlement and cultivation" provided that the grantee lived on the land for five years. According to the National Park Service**:**

> *A homesteader had only to be the head of a household and at least 21 years of age to claim a 160-acre parcel of land. Settlers from all walks of life including newly arrived immigrants, farmers without land of their own from the East, single women, and former slaves came to meet the challenge of "proving up" and keeping this "free land". Each homesteader had to live on the land, build a home, make improvements and farm for five years before they were eligible to "prove up". A total filing fee of $18 was the only money required, but sacrifice and hard work exacted a different price from the hopeful settlers* [1] .

U. S. Public Land Survey System: Forty Acres

The Homestead Act was a result of many years of controversy over the disposition of public lands in the 30 public lands states. In the mid-1800s, northern states viewed the distribution of free western land as a way to prevent the spread of slavery into the new territories. The southern states opposed it, but the secession of eleven southern states during 1860-61, prior to the Civil War, cleared the way for its passage. After President Abraham Lincoln signed the act, it became law on January 1, 1863.

Here's an example of an original homestead grant — the first homestead grant issued in Nebraska, dated January 1868, just ten months after Nebraska was admitted as a state.



HOMESTEAD.

Land Office at Brownville Neb
January 20th 1868.

CERTIFICATE, No. 1

APPLICATION, No. 1

It is hereby certified, That pursuant to the provisions of the act of Congress, approved May 20, 1862, entitled "An act to secure homesteads to actual settlers on the public domain,"

Daniel Freeman has made payment in full for S½ of NW¼ and NE¼ of NW¼ and SW¼ of NE¼ of Section Twenty-Six (26) in Township four (4) North of Range five (5) E containing 160 acres.

Now, therefore, be it known, That on presentation of this Certificate to the COMMISSIONER OF THE GENERAL LAND OFFICE, the said Daniel Freeman shall be entitled to a Patent for the Tract of Land above described.

Henry M. Atkinson Register.

Source: Wikipedia [2]

Nebraska Homestead Grant No. 1

HOMESTEAD. Land Office at Brownville, Neb., January 20th 1868. Certificate No. 1. It is hereby certified, that pursuant to the provisions of the act of Congress, approved May 20, 1862, entitled "An act to secure homesteads to actual settlers on the public domain," Daniel Freeman has made payment in full for S 1/2 of NW 1/4 and NE 1/4 of NW 1/4 and SW 1/4 of NE 1/4 Section Twenty-Six (26) in Township four (4) north of Range five (5) E containing 160 acres. Now, therefore, be it known, That on presentation of this certificate to the COMMISSIONER OF THE GENERAL LAND OFFICE, the said Daniel Freeman shall be entitled to a Patent for the Tract of Land above described.

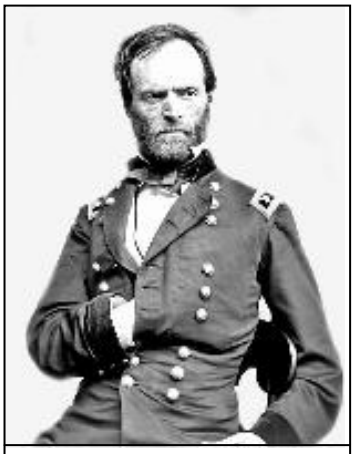
Henry M. Atkinson, Register.

U. S. Public Land Survey System: Forty Acres

"FORTY ACRES AND A MULE"

After the Civil War, "Forty Acres and a Mule" became a rallying cry for abolitionists who wanted the government to set aside farm land for freed slaves. The specific reference to "forty acres" appeared in *Special Field Orders No. 15*, issued in January 1865 by Union Army Major General William Tecumseh Sherman during his famous March to the Sea. This order specified that

> *The islands of Charleston south, the abandoned rice fields along the rivers for 30 miles back from the sea, and the country bordering the St. John's River, Florida, are reserved and set apart for the settlement of the Negroes now made free by the acts of war and the proclamation of the President of the United States."* [3]



William Tecumseh Sherman. Photo attributed to Matthew Brady. Source: Wikipedia [5]

This document further states that "each family shall have a plot of not more than forty acres of tillable ground**...**," but it doesn't mention a mule.

The "Proclamation" that Sherman mentions is, of course, *The Emancipation Proclamation*, issued by President Abraham Lincoln in January 1863**:** "**...**all persons held as slaves within said designated [Confederate] States and parts of States are and hence forward shall be free**...**" [4]

Under Sherman's order, many forty-acre parcels actually were distributed to black families. By June 1865, as many as 10,000 freed slaves had settled on some 400,000 acres in Georgia and South Carolina. [6]

Florida's St. John's River rises in Indian River County, near Vero Beach, and flows north to its mouth east of Jacksonville.
Source: woofish.com [7]

These parcels were surveyed by the metes-and-bounds methods used in all of the eastern states, not by the rectangular grid plan of the PLSS. We see the evidence of this surveying technique on modern maps**:** a random pattern of fields running at odd angles with no particular reference to cardinal directions.

But "40 acres" was the mindset of the day**:** it was the magic number for a farm field, whether or not it had been surveyed under PLSS guidelines.

The lands mentioned in Sherman's order are coastal lowlands and barrier islands along the Atlantic coast and lands along coastal rivers. Sherman specifically mentions the St. John's River, a long slow-moving river in northeast Florida, bordered by extensive wetlands and forested bottomlands.

The plantation owners of the antebellum south regarded these mosquito- and snake-infested lowlands with disdain, choosing instead to build their plantation homes inland on higher ground. But their slaves worked the fields and lived in cottages in the lowlands.

Sherman — certainly no abolitionist himself — nonetheless must have felt some sympathy for the thousands of recently-freed slaves, many of whom were following his army in a huge ragtag procession. By offering "abandoned rice fields" and lands along the rivers, he was offering ownership of lands in areas where they already lived.

President Lincoln's assassination in April 1865 changed the course of events. Lincoln's Vice President, Andrew Johnson, succeeded Lincoln as President. Though a southerner and a Democrat, Johnson had remained loyal to the North during the Civil War. But as President during the Reconstruction period after the war, he frequently bent to the wishes of southerners. During the summer and fall of 1865, he issued a number of "special pardons," essentially rescinding Sherman's order and returning the deeded lands back to the former white land owners.

Ironically, these lands contain what is now some of the most expensive real estate in the United States**:** Hilton Head Island, Kiawah Island, and downtown Jacksonville. Even in today's depressed real-estate market, a Google search turns up numerous residential properties listed at asking prices exceeding $1 million.

THE DAWES ACT OF 1897

The Dawes Act [8] attempted to repeat the success of the Homestead Act on Indian reservations. It purported to be a mechanism for allotting up to "one-quarter of a section" (four forties, or 160 acres) of reservation land to native Americans in the hope that land ownership would enable them to become self-sufficient.

But there were (at least) four problems with the idea**:**

- Homesteaders taking land under the Homestead Act did so voluntarily, and were able to select from a choice of available sites. By contrast, native Americans had little choice**:** the available land was the land in the reservation.
- On many reservations, there was not enough tillable land to satisfy the allotments.
- Much of the reservation land was of poor quality, or lacked irrigation.
- By creating a market for reservation land, the act opened the reservations to land speculators. Much of the good-quality land (what there was of it) was bought up by non-Indians.

The Dawes Act was part of a larger effort by the United States Government to assimilate Native Americans into American society. Whether or not the government should have undertaken this effort in the first place is beyond the scope of this column**;** suffice it to say that it has been controversial. As a Wikipedia author notes**:**

> *Often Native Americans are perceived as having been assimilated. However, some Native Americans feel a particular sense of being from another society or do not belong in a primarily "white" European majority society, despite efforts to socially integrate them.*[9]

U. S. Public Land Survey System: Forty Acres

The Dawes Act was repealed in 1934, thus officially ending the effort to assimilate Native Americans into American culture. But one provision of the act remains in force today**:** it guaranteed that Native Americans taking up land under the Act would be United States Citizens. This fact, combined with the fact that Native Americans are the only minority group holding "treaty rights" — rights granted under treaties between the various Indian nations and the U.S. Government — has given Native Americans substantial clout in its negotiations.

As the Wikipedia author notes**:**

> *Since the 1960s and 1970s, **...** there have been major changes in [American] society. Included is a broader appreciation for the pluralistic nature of United States society and its many ethnic groups, as well as for the special status of Native American nations. More recent legislation to protect Native American religious practices, for instance, points to major changes in government policy. Similarly the Native American Graves Protection and Repatriation Act of 1990 was another recognition of the special nature of Native American culture and federal responsibility to protect it.* [10]

THE CENTRAL VALLEY PROJECT

California is one of the 30 Public Land States, and much of the state has been surveyed along PLSS guidelines. The rectangular patterns of the PLSS land surveys stand out clearly in the farming areas of the Central Valley and the Salinas Valley.

Salinas Valley agricultural lands near Castroville, California, 2003. The rectangular grid pattern of Public Land Survey System is clearly evident in this photo. Photo**:** Neal McLain.

For thousands of years before these lands were cleared for agriculture, much of the valley land was arid, but numerous rivers, fed by snowmelt from nearby mountains, sustained extensive wetlands. According 19th-century explorer James C. Carson, the Central Valley once encompassed "tens of thousands of acres of wetlands and riparian forests." Today, after more than 150 years of intensive farming and ranching, only five percent of the wetlands remain. [11]

U. S. Public Land Survey System: Forty Acres

The Central Valley.
Source: University of California at Davis Cooperative Extension Service. [13]

The Central Valley Project has provided much of the water necessary for this farming and ranching. The project is a complex network of dams and aqueducts that brings millions of acre-feet of water to farms in the Central Valley. The project was started in 1933 by the California State Legislature, and was subsequently taken over by the Department of the Interior's Bureau of Reclamation. [12]

Under the terms of the National Reclamation Act of 1902, water was only available to individually-owned farms of less than 160 acres (four forties) or 320 acres for a family (eight forties). The act also stated that large landholders who accept subsidized water must agree to sell their federally irrigated holdings in excess of 160 acres at pre-water prices within ten years.

These provisions have been sporadically enforced. Corporate farms — some of them exceeding thousands of acres — have still managed to get access to taxpayer-supported water. According to Peter Barnes, in an article published in *The New Republic* in 1972**:**

*The Reclamation Act has never been properly enforced for a variety of reasons. One is that, through one stratagem or another, large landholders have escaped having to sell their excess lands. Another is that even in the few cases where large landowners have agreed to sell, their prices have been so high, and terms so stiff, that only the wealthy could afford to buy**...***

To assure not only the sale of excess landholdings, but also their availability at prices that persons of limited means can afford, Rep. Robert Kastenmeir (D, Wisc.), Jerome Waldie (D, Calif.) and others have introduced legislation that would authorize the federal government itself to buy up all properties in reclamation areas that are either too big or owned by absentees. The government would then resell some of these lands, at reasonable prices and on liberal terms, to small resident farmers, and retain others as sites for new cities or as undeveloped open space. The plan would actually earn money for the government, since the lands would be purchased at true pre-water prices and resold at a slight markup. The money thus earned could be used for education, conservation or other purposes. [14]

That article was written in 1972. The battle still rages on today.

ENDNOTES

[1] National Park Service. *About the Homestead Act.* Homestead National Monument of America, Beatrice, Nebraska. Accessed 6 February 2010. <http://www.nps.gov/home/historyculture/abouthomesteadactlaw.htm>

[2] Wikipedia contributors. *Homestead Act.* Wikipedia, The Free Encyclopedia, 5 February 2010. Accessed 6 February 2010. <http://en.wikipedia.org/w/index.php?title=Homestead_Act&oldid=342194304>

[3] William Tecumseh Sherman. *In the Field, Savannah, Georgia, January 16th, 1865. Special Field Orders, No. 15.* Forty Acres and a Mule**:** Primary Sources. Accessed 6 February 2010. <http://www.pbs.org/wgbh/amex/reconstruction/40acres/ps_so15.html>

[4] Abraham Lincoln. *By the President of the United States of America: A Proclamation.* National Archives and Records Administration. Accessed 6 February 2010. <http://www.archives.gov/exhibits/featured_documents/emancipation_proclamation/transcript.html>

[5] Mathew Brady. *Photo Portrait of William-Tecumseh-Sherman*. Wikipedia, The Free Encyclopedia, 2 Feb. 2010. Accessed 6 February 2010. <http://en.wikipedia.org/wiki/William_Tecumseh_Sherman>

[6] Wikipedia contributors. *40 acres and a mule.* Wikipedia, The Free Encyclopedia, 28 Jan. 2010. Accessed 6 February 2010. <http://en.wikipedia.org/wiki/40_acres_and_a_mule>

[7] *Map of Florida showing St. John's River.* Original source unknown**;** this copy reproduced from Woo's Shad Fishing**:** Shad River Location maps. Accessed 6 February 2010. <http://www.woofish.com/St_Johns_River_large_op_800x740.jpg>

[8] Congress of the United States. *An Act to Provide for the Allotment of Lands in Severalty to Indians on the Various Reservations, and to Extend the protection of the Laws of the United States and the Territories over the Indians, and for Other Purposes.* United States Statutes at Large. The Avalon Project. Accessed 6 February 2010. <http://avalon.law.yale.edu/19th_century/dawes.asp>.

[9] Wikipedia contributors. *Americanization (of Native Americans).* Wikipedia, The Free Encyclopedia. 5 Feb. 2010. Accessed 6 February 2010. <http://en.wikipedia.org/wiki/Americanization_%28of_Native_Americans%29>

[10] ibid

[11] Brendan Smith. *Cosumnes River Preserve.* June 2005. Accessed 6 February 2010. <http://original.rlch.org/stories/cosumnesriver.html>

[12] United States Department of the Interior, Bureau of Reclamation. *The Central Valley Project.* Accessed 6 February 2010. <http://www.usbr.gov/mp/cvp/index.html>

[13] University of California Cooperative Extension. Agricultural and Natural Resources. *Map of California showing Agricultural Regions.* Accessed 6 February 2010. <http://ucce.ucdavis.edu/files/filelibrary/5312/32905.jpg>

[14] Peter Barnes. *The Case for Redistribution.* The New Republic, 1972. Reprinted in *The Progress Report.* Accessed 6 February 2010. <http://www.progress.org/barnes15.htm>