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Class SD 426
Book A.5
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COMPILATION OF LAWS,

AND

REGULATIONS AND DECISIONS THEREUNDER,

RELATING TO THE

ESTABLISHMENT OF

FEDERAL FOREST RESERVES,

UNDER SECTION 24 OF THE ACT OF MARCH 3, 1891
(26 STAT., 1095),

AND THE

ADMINISTRATION THEREOF.

APPROVED BY THE SECRETARY OF THE INTERIOR, OCTOBER 3, 1903.

Department of the Interior, General Land Office.

WASHINGTON:

GOVERNMENT PRINTING OFFICE.

1903.

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U.S. laws established

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DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 3, 1903.

The following revised compilation of laws and regulations, and decisions thereunder, relating to the establishment of Federal forest reserves under section 24 of the act of March 3, 1891 (26 Stat., 1095), and the administration thereof, is issued for the information of those concerned.

J. H. FIMPLE,
Acting Commissioner.

Approved, October 3, 1903.

THOS. RYAN, *Acting Secretary.*

SYNOPSIS OF LAWS RELATING TO FEDERAL FOREST RESERVES,
ESTABLISHED UNDER ACT OF MARCH 3, 1891 (26 STAT., 1095).

GENERAL LAWS.

ACT OF MARCH 3, 1891 (26 Stat., 1095):

Section 24 thereof authorizes the President of the United States to establish public forest reserves.

ACT OF JUNE 4, 1897 (30 Stat., 34-36):

Provides for the administration of forest reserves established under section 24 of the act of March 3, 1891 (26 Stat., 1095).

ACT OF FEBRUARY 28, 1899 (30 Stat., 908):

Authorizes the Secretary of the Interior to rent or lease suitable spaces and portions of ground near or adjacent to mineral, medicinal, or other springs within public forest reserves.

ACT OF MARCH 3, 1899 (30 Stat., 1095), "Sundry Civil;" ACT OF FEBRUARY 9, 1900 (31 Stat., 21), "Urgent Deficiency;" ACT OF JUNE 6, 1900 (31 Stat., 614), "Sundry Civil;" ACT OF MARCH 3, 1901 (31 Stat., 1037), "Deficiency;" ACT OF MARCH 3, 1901 (31 Stat., 1158), "Sundry Civil;" ACT OF JUNE 28, 1902 (32 Stat., 452), "Sundry Civil;" and ACT OF MARCH 3, 1903 (32 Stat., 1115), "Sundry Civil," contain the following provision:

Provided further, That forest agents, superintendents, supervisors, and all other persons employed in connection with the administration and protection of forest reservations shall, in all ways that are practicable, aid in the enforcement of the laws of the State or Territory in which said forest reservation is situated in relation to the protection of fish and game.

ACT OF MARCH 3, 1899 (30 Stat., 1097), "Sundry Civil:"

Provides "that hereafter all standard, meander, township, and section lines of the public-land surveys shall, as heretofore, be established under the direction and supervision of the Commissioner of the General Land Office, whether the lands to be surveyed are within or without reservations, except that where the exterior boundaries of public forest reservations are required to be coincident with standard, township,

or section lines such boundaries may, if not previously established in the ordinary course of the public-land surveys, be established and marked under the supervision of the Director of the United States Geological Survey whenever necessary to complete the survey of such exterior boundaries."

ACT OF MARCH 3, 1899 (30 Stat., 1233), "Deficiency:"

Provides "that in the form provided by existing law the Secretary of the Interior may file and approve surveys and plats of any right of way for a wagon road, railroad, or other highway over and across any forest reservation or reservoir site when, in his judgment, the public interests will not be injuriously affected thereby."

ACT OF MAY 5, 1900 (31 Stat., 169):

Amends act of February 24, 1897 (29 Stat., 594), entitled "An act to prevent forest fires on the public domain."

ACT OF JUNE 6, 1900 (31 Stat., 614), "Sundry Civil," and ACT OF MARCH 3, 1901 (31 Stat., 1037), "Deficiency:"

Provide "That all selections of land made in lieu of a tract covered by an unperfected bona fide claim, or by a patent, included within a public forest reservation, as provided in the act of June fourth, eighteen hundred and ninety-seven, entitled 'An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes,' shall be confined to vacant surveyed nonmineral public lands which are subject to homestead entry not exceeding in area the tract covered by such claim or patent: *Provided*, That nothing herein contained shall be construed to affect the rights of those who, previous to October first, nineteen hundred, shall have delivered to the United States deeds for lands within forest reservations and make application for specific tracts of lands in lieu thereof."

ACT OF JUNE 6, 1900 (31 Stat., 661):

Amends certain provisions in the act of June 4, 1897 (30 Stat., 35), respecting sale of forest reserve timber.

ACT OF FEBRUARY 15, 1901 (31 Stat., 790):

Authorizes and empowers the Secretary of the Interior to permit, under certain restrictions and conditions, "the use of rights of way through the public lands, forest and other reservations of the United States, and the Yosemite, Sequoia, and General Grant national parks, California, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for canals, ditches, pipes and pipe lines, flumes, tunnels, or

other water conduits, and for water plants, dams, and reservoirs used to promote irrigation or mining or quarrying or the manufacturing or cutting of timber or lumber, or the supplying of water for domestic, public, or any other beneficial uses."

ACT OF APRIL 15, 1902 (32 Stat., 106):

Provides for the relief, within two years from the passage of the act, of *bona fide* settlers within forest reservations created under section 24 of the act of March 3, 1891 (26 Stat., 1095), who have, through ignorance or some unavoidable cause, failed to place their claims of record within the statutory period.

LOCAL LAWS.

ACT OF FEBRUARY 20, 1896 (29 Stat., 11):

Opening certain forest reservations in the State of Colorado for the location of mining claims, etc.

ACT OF MAY 18, 1898 (30 Stat., 418):

Grants the Santa Fé and Grand Canyon Railroad Company right of way through the Grand Canyon Forest Reserve in Arizona.

ACT OF JUNE 27, 1898 (30 Stat., 493):

Grants the Cripple Creek District Railway Company right of way through the Pikes Peak Timber Land Reserve in Colorado, and also over certain public lands outside of the reserve.

ACT OF JULY 8, 1898 (30 Stat., 729):

Grants the Cripple Creek Short Line Railway Company right of way through the Pikes Peak Timber Land Reserve in Colorado, and also over certain public lands outside of the reserve.

ACT OF JANUARY 10, 1899 (30 Stat., 783):

Grants the Saginaw Southern Railroad Company right of way through the San Francisco Mountains Forest Reserves in Arizona, and also over certain public lands outside of the reserves.

ACT OF FEBRUARY 28, 1899 (30 Stat., 910):

Grants to the Pasadena and Mount Wilson Railway Company right of way through the San Gabriel Forest Reserve in California; and also authorizes the Secretary of the Interior to sell to the said railway company, its successors and assigns, certain tracts of land along said right of way for stations, hotels, astronomical observatories, etc.

ACT OF JUNE 6, 1900 (31 Stat., 657):

Grants to the town of Flagstaff, Ariz., right of way over certain lands in the San Francisco Mountains Forest Reserves in Arizona for a pipe line to be used in the conveyance of water.

ACT OF MARCH 3, 1899 (30 Stat., 1095):

Makes provision respecting special homestead privileges for certain settlers in the Black Hills Forest Reserve, in the State of South Dakota.

ACT OF FEBRUARY 25, 1903 (32 Stat., 907):

Grants the Central Arizona Railway Company right of way through the San Francisco Mountains Forest Reserve under certain specified conditions.

COMPILATION OF LAWS, AND REGULATIONS AND DECISIONS THEREUNDER, RELATING TO THE ESTABLISHMENT OF FEDERAL FOREST RESERVES UNDER THE ACT OF MARCH 3, 1891 (26 STAT., 1095), AND THE ADMINISTRATION THEREOF.

GENERAL LAWS.

ESTABLISHMENT OF FEDERAL FOREST RESERVES.

Section 24 of the act of March 3, 1891 (26 Stat., 1095), confers upon the President of the United States authority to set apart lands in the public-land States and Territories for forest-reserve purposes. It reads as follows:

[Act of March 3, 1891 (26 Stat., 1095).]

CHAP. 561.—AN ACT to repeal timber-culture laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

SEC. 24. That the President of the United States may, from time to time, set apart and reserve, in any State or Territory having public land bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations, and the President shall, by public proclamation, declare the establishment of such reservations and the limits thereof.

* * * * *

ADMINISTRATION OF FOREST RESERVES.

Provision for the administration of forest reserves established under section 24 of the said act of March 3, 1891, is made in the act of June 4, 1897 (30 Stat., 34-36), as follows:

[Act of June 4, 1897 (30 Stat., 34-36).]

CHAP. 2.—AN ACT making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the following sums be, and the same are hereby, appropriated, for the objects hereinafter expressed, for

Appropriations
for sundry civil
expenses.

the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, namely:

* * * * *

Forest reserves. Survey of.

For the survey of the public lands that have been or may hereafter be designated as forest reserves by Executive proclamation, under section twenty-four of the act of Congress approved March third, eighteen hundred and ninety-one, entitled "An act to repeal timber-culture laws, and for other purposes," and including public lands adjacent thereto, which may be designated for survey by the Secretary of the Interior, one hundred and fifty thousand dollars, to be immediately available: *Provided*, That, to remove any doubt which may exist pertaining to the authority of the President thereunto, the President of the United States is hereby authorized and empowered to revoke, modify, or suspend any and all such Executive orders and proclamations, or any part thereof, from time to time as he shall deem best for the public interests:

Vol. 26, p. 1103.

Providos. President may revoke, etc., Executive orders.

Provided, That the Executive orders and proclamations dated February twenty-second, eighteen hundred and ninety-seven, setting apart and reserving certain lands in the States of Wyoming, Utah, Montana, Washington, Idaho, and South Dakota as forest reservations, be, and they are hereby, suspended, and the lands embraced therein restored to the public domain the same as though said orders and proclamations had not been issued: *Provided further*, That lands embraced in such reservations not otherwise disposed of before March first, eighteen hundred and ninety-eight, shall again become subject to the operations of said orders and proclamations as now existing or hereafter modified by the President.

Proclamations of February 22, 1897, suspended, etc. Vol. 29, p. 895, etc.

Lands undisposed of before March 1, 1898, again subject to proclamations, etc.

Surveys to be made by Director of Geological Survey.

The surveys herein provided for shall be made, under the supervision of the Director of the Geological Survey, by such person or persons as may be employed by or under him for that purpose, and shall be executed under instructions issued by the Secretary of the Interior; and if subdivision surveys shall be found to be necessary, they shall be executed under the rectangular system, as now provided by law. The plats and field notes prepared shall be approved and certified to by the Director of the Geological Survey, and two copies of the field notes shall be returned, one for the files in the United States surveyor-general's office of the State in which the reserve is situated, the other in the General Land Office; and twenty photolithographic copies of the plats shall be returned, one copy for the files in the United States surveyor-general's office of

Plats and field notes, filing, etc.

the State in which the reserve is situated; the original plat and the other copies shall be filed in the General Land Office, and shall have the facsimile signature of the Director of the Survey attached.

Such surveys, field notes, and plats thus returned shall have the same legal force and effect as heretofore given the surveys, field notes, and plats returned through the surveyors-general; and such surveys, which include subdivision surveys under the rectangular system, shall be approved by the Commissioner of the General Land Office as in other cases, and properly certified copies thereof shall be filed in the respective land offices of the districts in which such lands are situated, as in other cases. All laws inconsistent with the provisions hereof are hereby declared inoperative as respects such survey: *Provided, however,* That a copy of every topographic map and other maps showing the distribution of the forests, together with such field notes as may be taken relating thereto, shall be certified thereto by the Director of the Survey and filed in the General Land Office.

Force and effect.

Inconsistent laws.

Proviso.

Maps.

All public lands heretofore designated and reserved by the President of the United States under the provisions of the act approved March third, eighteen hundred and ninety-one, the orders for which shall be and remain in full force and effect, unsuspending and unrevoked, and all public lands that may hereafter be set aside and reserved as public forest reserves under said act, shall be as far as practicable controlled and administered in accordance with the following provisions:

Vol. 26, p. 1095.

No public forest reservation shall be established, except to improve and protect the forest within the reservation, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States; but it is not the purpose or intent of these provisions, or of the act providing for such reservations, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes.

Forest reservations, when to be established.

The Secretary of the Interior shall make provisions for the protection against destruction by fire and depredations upon the public forests and forest reservations which may have been set aside or which may be hereafter set aside under the said act of March third, eighteen hundred and ninety-one, and which may be continued; and he may make such rules and regulations and establish such serv-

Provisions for protection against fire, etc.

Rules and regulations.

ice as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction; and any violation of the provisions of this act or such rules and regulations shall be punished as is provided for in the act of June fourth, eighteen hundred and eighty-eight, amending section fifty-three hundred and eighty-eight of the Revised Statutes of the United States.

Penalty.
Vol. 25, p. 166.
R. S., sec. 5388,
p. 1044.

Timber.
Appraisal and
sale of dead, etc.

For the purpose of preserving the living and growing timber and promoting the younger growth on forest reservations, the Secretary of the Interior, under such rules and regulations as he shall prescribe, may cause to be designated and appraised so much of the dead, matured, or large growth of trees found upon such forest reservations as may be compatible with the utilization of the forests thereon, and may sell the same for not less than the appraised value in such quantities to each purchaser as he shall prescribe, to be used in the State or Territory in which such timber reservation may be situated, respectively, but not for export therefrom. Before such sale shall take place, notice thereof shall be given by the Commissioner of the General Land Office, for not less than sixty days, by publication in a newspaper of general circulation, published in the county in which the timber is situated, if any is therein published, and if not, then in a newspaper of general circulation published nearest to the reservation, and also in a newspaper of general circulation published at the capital of the State or Territory

Notice of sale.

where such reservation exists; payments for such timber to be made to the receiver of the local land office of the district wherein said timber may be sold, under such rules and regulations as the Secretary of the Interior may prescribe; and the moneys arising therefrom shall be accounted for by the receiver of such land office to the Commissioner of the General Land Office, in a separate account, and shall be covered into the Treasury. Such timber, before being sold, shall be marked and designated, and shall be cut and removed under the supervision of some person appointed for that purpose by the Secretary of the Interior, not interested in the purchase or removal of such timber nor in the employment of the purchaser thereof. Such supervisor shall make report in writing to the Commissioner of the General Land Office and to the receiver in the land office in which such reservation shall be located of his doings in the premises.

Payments,
how made.

Cutting and
removal.

where such reservation exists; payments for such timber to be made to the receiver of the local land office of the district wherein said timber may be sold, under such rules and regulations as the Secretary of the Interior may prescribe; and the moneys arising therefrom shall be accounted for by the receiver of such land office to the Commissioner of the General Land Office, in a separate account, and shall be covered into the Treasury. Such timber, before being sold, shall be marked and designated, and shall be cut and removed under the supervision of some person appointed for that purpose by the Secretary of the Interior, not interested in the purchase or removal of such timber nor in the employment of the purchaser thereof. Such supervisor shall make report in writing to the Commissioner of the General Land Office and to the receiver in the land office in which such reservation shall be located of his doings in the premises.

The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such reservations may be located.

Use of timber,
etc., by settlers,
etc.

Nothing herein shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of such reservations, or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize their property under such rules and regulations as may be prescribed by the Secretary of the Interior. Nor shall anything herein prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof: *Provided*, That such persons comply with the rules and regulations covering such forest reservations.

Egress and ingress of settlers within reservations, etc.

Prospecting, etc.

Proviso.

Compliance with rules.

That in cases in which a tract covered by an unperfected bona fide claim or by a patent is included within the limits of a public forest reservation, the settler or owner thereof may, if he desires to do so, relinquish the tract to the Government, and may select in lieu thereof a tract of vacant land open to settlement not exceeding in area the tract covered by his claim or patent; and no charge shall be made in such cases for making the entry of record or issuing the patent to cover the tract selected: *Provided further*, That in cases of unperfected claims the requirements of the laws respecting settlement, residence, improvements, and so forth, are complied with on the new claims, credit being allowed for the time spent on the relinquished claims.

Selection of land in lieu of relinquished claim.

Proviso.
Unperfected claims.

The settlers residing within the exterior boundaries of such forest reservations, or in the vicinity thereof, may maintain schools and churches within such reservation, and for that purpose may occupy any part of the said forest reservation, not exceeding two acres for each school-house and one acre for a church.

Schools and churches.

The jurisdiction, both civil and criminal, over persons within such reservations shall not be affected or changed by reason of the existence of such reservations, except so

Civil and criminal jurisdiction.

far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such reservation is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State.

Waters.

All waters on such reservations may be used for domestic, mining, milling, or irrigation purposes, under the laws of the State wherein such forest reservations are situated, or under the laws of the United States and the rules and regulations established thereunder.

Restoration of mineral or agricultural lands to public domain.

Upon the recommendation of the Secretary of the Interior, with the approval of the President, after sixty days' notice thereof, published in two papers of general circulation in the State or Territory wherein any forest reservation is situated, and near the said reservation, any public lands embraced within the limits of any forest reservation which, after due examination by personal inspection of a competent person appointed for that purpose by the Secretary of the Interior, shall be found better adapted for mining or for agricultural purposes than for forest usage, may be restored to the public domain. And any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry, notwithstanding any provisions herein contained.

President may modify any Executive order, etc.

The President is hereby authorized at any time to modify any Executive order that has been or may hereafter be made establishing any forest reserve, and by such modification may reduce the area or change the boundary lines of such reserve, or may vacate altogether any order creating such reserve.

* * * * *

REGULATIONS GOVERNING FOREST RESERVES UNDER THE ACT OF JUNE 4, 1897. (30 STAT., 34-36.)

[Circular.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 4, 1900.

1. Under the authority vested in the Secretary of the Interior by the act of Congress, approved June 4, 1897, entitled "An act making

appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," to make such rules and regulations and establish such service as will insure the objects for which forest reservations are created under section 24 of the act of March 3, 1891 (26 Stat., 1095), the following rules and regulations are hereby prescribed and promulgated:

OBJECT OF FOREST RESERVATION.

2. Public forest reservations are established to protect and improve the forests for the purpose of securing a permanent supply of timber for the people and insuring conditions favorable to continuous water flow.

3. It is the intention to exclude from these reservations, as far as possible, lands that are more valuable for the mineral therein, or for agriculture, than for forest purposes; and where such lands are embraced within the boundaries of a reservation, they may be restored to settlement, location, and entry.

PENALTIES FOR VIOLATION OF LAW AND REGULATIONS.

4. The law under which these regulations are made provides that any violation of the provisions thereof, or of any rules and regulations thereunder, shall be punished as is provided for in the act of June 4, 1888 (25 Stat., 166), amending section 5388 of the Revised Statutes, which reads as follows:

That section fifty-three hundred and eighty-eight of the Revised Statutes of the United States be amended so as to read as follows: "Every person who unlawfully cuts, or aids, or is employed in unlawfully cutting, or wantonly destroys or procures to be wantonly destroyed, any timber standing upon the land of the United States which, in pursuance of law, may be reserved or purchased for military or other purposes, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under authority of the United States, shall pay a fine of not more than five hundred dollars or be imprisoned not more than twelve months, or both, in the discretion of the court."

This provision is additional to the penalties now existing in respect to punishment for depredations on the public timber. The Government has, also, all the common-law civil remedies, whether for the prevention or redress of injuries, which individuals possess.

5. The act of February 24, 1897 (29 Stat., 594), entitled "An act to prevent forest fires on the public domain," provides ^a—

* * * * *

Large areas of the public forests are annually destroyed by fire, originating in many instances through the carelessness of prospectors, campers, hunters, sheep herders, and others, while in some cases

^aIn place of the act of February 24, 1897 (29 Stat., 594), see (on p. 85) the amending act of May 5, 1900 (31 Stat., 169).

the fires are started with malicious intent. So great is the importance of protecting forests from fire that this Department will make special effort for the enforcement of the law against all persons guilty of starting or causing the spread of forest fires in the reservations in violation of the above provisions.

6. The law of June 4, 1897, for forest reserve regulations also provides that—

The jurisdiction, both civil and criminal, over persons within such reservations shall not be affected or changed by reason of the existence of such reservations, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such reservation is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State.

PUBLIC AND PRIVATE USES.

7. It is further provided that—

Nothing herein shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of such reservations, or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize their property under such rules and regulations as may be prescribed by the Secretary of the Interior. Nor shall anything herein prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof: *Provided*, That such persons comply with the rules and regulations covering such forest reservations.

The settlers residing within the exterior boundaries of such forest reservations or in the vicinity thereof, may maintain schools and churches within such reservation, and for that purpose may occupy any part of the said forest reservation, not exceeding two acres for each schoolhouse and one acre for a church.

All waters on such reservations may be used for domestic, mining, milling, or irrigation purposes, under the laws of the State wherein such forest reservations are situated, or under the laws of the United States and the rules and regulations established thereunder.

8. The public in entering, crossing, and occupying the reserves, for the purposes enumerated in the law, are subject to a strict compliance with the rules and regulations governing the reserves.

9. Private wagon roads and county roads may be constructed over the public lands in the reserves wherever they may be found necessary or useful, but no rights shall be acquired in said roads running over the public lands as against the United States. Before public timber, stone, or other material can be taken for the construction of such roads, permission must first be obtained from the Secretary of the Interior. The application for such privilege should describe the location and direction of the road, its length and width, the probable quantity of material required, the location of such material, and its estimated value.

10. The permission to occupy public lands in the reserves for school-houses and churches, as provided for in the law, is merely a privilege, and is subject to any future disposition that may be made of such tracts by the United States.

11. The right of way in and across forest reservations for irrigating canals, ditches, flumes and pipes, reservoirs, electric-power purposes, and for pipe lines will be subject to existing laws and regulations; and the applicant or applicants for such right will be required, if deemed advisable by the Commissioner of the General Land Office, to give bond in a satisfactory surety company to the Government of the United States, to be approved by him, such bond stipulating that the makers thereof will pay to the United States for any and all damage to the public lands, timber, natural curiosities, or other public property on such reservation or upon the lands of the United States, by reason of such use and occupation of the reserve, regardless of the cause or circumstances under which such damage may occur.

12. Under the term "to regulate their occupancy and use" the Secretary of the Interior is authorized to grant such licenses and privileges, from time to time, as may seem to him proper and not inconsistent with the objects of the reservations nor incompatible with the public interests.

PASTURING OF LIVE STOCK.^a

13. * * * * *

RELINQUISHMENT OF CLAIMS.^b

14. * * * * *

15. * * * * *

16. * * * * *

17. * * * * *

18. * * * * *

LOCATION AND ENTRY OF MINERAL LANDS.

19. The law provides that "any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to

^a In place of paragraph 13 see circular of December 23, 1901, on page 61.

^b For the amending acts of June 6, 1900 (31 Stat., 614), and March 3, 1901 (31 Stat., 1037), see under the heading "Exchange of relinquished claims and private holdings within forest reserves for outside tracts," on page 22; and in place of paragraphs 14, 15, 16, 17, and 18 see circular of July 7, 1902, on page 23.

such location and entry," notwithstanding the reservation. This makes mineral lands in the forest reserves subject to location and entry under the general mining laws in the usual manner.

20. Owners of valid mining locations made and held in good faith under the mining laws of the United States and the regulations thereunder are authorized and permitted to fell and remove from such mining claims any timber growing thereon for actual mining purposes in connection with the particular claim from which the timber is felled or removed. (For further use of timber by miners see below, under heading "Free use of timber and stone.")

FREE USE OF TIMBER AND STONE.^a

21. * * * * *

SALE OF TIMBER.^b

22. The following provision is made for the sale of timber within forest reservations in limited quantities:

For the purpose of preserving the living and growing timber and promoting the younger growth on forest reservations, the Secretary of the Interior, under such rules and regulations as he shall prescribe, may cause to be designated and appraised so much of the dead, matured, or large growth of trees found upon such forest reservation as may be compatible with the utilization of the forests thereon, and may sell the same for not less than the appraised value in such quantities to each purchaser as he shall prescribe, to be used in the State or Territory in which such timber reservation may be situated, respectively, but not for export therefrom. Before such sale shall take place, notice thereof shall be given by the Commissioner of the General Land Office, for not less than sixty days, by publication in a newspaper of general circulation, published in the county in which the timber is situated, if any is therein published, and if not, then in a newspaper of general circulation published nearest to the reservation, and also in a newspaper of general circulation published at the capital of the State or Territory where such reservation exists; payments for such timber to be made to the receiver of the local land office of the district wherein said timber may be sold, under such rules and regulations as the Secretary of the Interior may prescribe; and the moneys arising therefrom shall be accounted for by the receiver of such land office to the Commissioner of the General Land Office, in a separate account, and shall be covered into the Treasury. Such timber, before being sold, shall be marked and designated, and shall be cut and removed under the supervision of some person appointed for that purpose by the Secretary of the Interior, not interested in the purchase or removal of such timber nor in the employment of the purchaser thereof. Such supervisor shall make a report in writing to the Commissioner of the General Land Office and to the receiver in the land office in which such reservation shall be located of his doings in the premises.

The sale of timber is optional, and the Secretary may exercise his discretion at all times as to the necessity or desirability of any sale.

23. While sales of timber may be directed by this Department with-

^a In place of paragraph 21 see circular of December 12, 1901, on page 39.

^b For modifications of the act of June 4, 1897, and of these regulations on the subject, see under the heading "Sale of timber," on page 44.

out previous request from private individuals, petitions from responsible persons for the sale of "the dead, matured, or large growth of trees" in specified locations will be considered. Such petitions must describe the land upon which the timber stands by legal subdivisions, if surveyed; if unsurveyed, as definitely as possible by stating distance and direction from the nearest surveyed land, and stating natural landmarks; the character of the country, whether rough, steep or mountainous, agricultural or mineral, or valuable chiefly for its forest growth. If the petition calls for matured green timber, it must show on what evidence it is asserted that the trees have attained their full growth, and it must be further shown that their removal will tend to preserve and promote the life and growth of the younger trees.

The desired timber should be described, as the case may be, according to the following classification: Standing green; down, not dead; standing dead; and down dead. If any of the desired timber be dead, state whether killed by windfall, fire, or other cause. If desired for saw timber, state the estimated quantity in feet, board measure, and value per thousand feet; state also the number of cords and value per cord of the tops and lops of the saw timber. If the entire amount of timber to be purchased is desired for cord wood, state the aggregate number of cords and value per cord. Of the live timber, state the different kinds and estimate the quantity of each kind in trees per acre. Estimate the average diameter of each kind of timber three feet above the ground, and estimate the number of trees of each kind per acre above the average diameter. State the number of trees of each kind above the average diameter it is desired to have offered for sale, with an estimate of the number of feet, board measure, therein, and value per thousand feet, and an estimate of the cord wood in the tops and lops thereof, and value per cord; or if the entire purchase is to be used for cord wood, state the aggregate number of cords and value per cord. These petitions must be filed with the supervisor in charge of the reservation, or portion of the reservation, wherein the timber is situated. Upon receipt of such an application the supervisor will attach thereto an indorsement recommending the allowance or disallowance of the application, stating the reasons on which his recommendation is based, and immediately forward to the superintendent in charge, who will promptly forward the application to this office with recommendation.

24. Upon receipt of an application to purchase timber as above, the Commissioner will cause further investigation to be made, if necessary, for the purpose of ascertaining all facts to enable intelligent action on the case. He will then transmit the application, with report and recommendation, to the Secretary of the Interior for action.

25. When a sale is ordered the Commissioner will direct the publication of notice in accordance with the law above quoted; and if the timber to be sold stands in more than one county, publication will be

made in each of the counties, in addition to the required general publication. The time and place of filing bids and other information necessary to a correct understanding of the terms of each sale will be given in the notices. Before any notice is published the applicant will be required to deposit with the receiver of the local land office a sum sufficient to cover the cost of publication. In the event of the depositor being the successful bidder this amount will be credited on the purchase price of the timber; but in case the timber is awarded to another the amount so deposited will be returned. If the applicant should fail to bid during the time fixed for filing bids, the deposit will be retained to pay the cost of advertising.

26. After a body of timber has been advertised, as above, and no sale made, the timber, in whole or in part, may, within one year thereafter, be sold by the Commissioner of the General Land Office, at private sale, for not less than the appraised value, without further notice by publication, and all notices for publication will contain a statement to this effect. Persons desiring to purchase timber at private sale should file application with the supervisor in charge of the reservation, or part of reservation, in which the timber is situated, stating the quantity of timber applied for, its location, the price offered, and the fact that the timber has already been advertised, giving the date of the advertisement. The supervisor will immediately forward such application, with report and recommendation, to the superintendent, who will promptly forward the application, with recommendation, to the Commissioner of the General Land Office. The Commissioner will examine the application and forward to the Department, with recommendation, for final action. The superintendent will be notified by the Commissioner of the action taken, and he will, in turn, notify the applicant and the proper supervisor.

27. The timber will not be sold for less than the appraised value, and when a bid or an offer to purchase at private sale has been accepted, the purchaser will be notified to make payment therefor. Payment for all timber purchased must be made to the receiver of public moneys for the land district in which the timber is situated. In sales in excess of five hundred dollars in value, allotments, at a fixed price, may be made to several bidders to avoid monopoly. The right is reserved to reject any or all bids. A reasonable cash deposit, to be specified in the published notice, will be required to accompany each bid, and every applicant to purchase at private sale must deposit an amount equivalent to twenty per cent of the value of the timber applied for. These deposits must be made with the receiver of public moneys, and, if sale is made, the amount will be credited on the purchase price of the timber. If sale is not made, deposits will be returned.

28. Within thirty days after notice to a bidder of an award of timber to him, payment must be made in full to the receiver for the timber so awarded, or equal payments therefor may be made in

thirty, sixty, and ninety days from date of such notice, at the option of the purchaser. The purchaser must have in hand the receipt of the receiver for each payment before he will be allowed to cut, remove, or otherwise dispose of the timber covered by that payment. The timber must all be cut and removed within one year from the date of the notice by the receiver of the award; failing to do so, the purchaser will forfeit his right to the timber left standing or unremoved and to his purchase money: *Provided*, That the limit of one year herein named may be extended by the Secretary of the Interior, in his discretion, upon the recommendation of the Commissioner of the General Land Office, and upon good and sufficient reasons being shown therefor.

29. Ample notice must be given by the purchaser, to the supervisor, of the proposed date of cutting and removal of the timber, in order that an officer may be designated to superintend the cutting. Instructions as to disposition of tops, brush, and refuse, to be given through the supervisors in each case, must be strictly complied with, as a condition of said cutting and manufacture.

30. The act provides that the timber sold shall be used in the State or Territory in which the reservation is situated, and it is not to be exported therefrom. Where a reservation lies in more than one State or Territory, this requires that the timber shall be used in the State or Territory where cut.

31. Receivers of public moneys will issue receipts in duplicate for moneys received in payment for timber, one of which will be given the purchaser, and the other will be transmitted to the Commissioner of the General Land Office in a special letter, reference being made to the letter from the Commissioner authorizing the sale, by date and initial, and with title of case as therein named. Receivers will deposit to the credit of the United States all such moneys received, specifying that the same are on account of sales of public timber on forest reservations under the act of June 4, 1897. A separate monthly account current (Form 4-105) and quarterly condensed account (Form 4-104) will be made to the Commissioner of the General Land Office, with a statement in relation to the receipts under the act as above specified.

32. Where timber has been appraised and advertised for sale and no satisfactory bid has been offered, a new appraisement and sale may be ordered after the lapse of one year, if, within that time, no application to purchase said timber at private sale, for not less than the appraised value, has been made.

33. Special instructions will be issued for the guidance of officials designated to examine and appraise timber, to supervise its cutting and removal, and for carrying out other requirements connected therewith.

BINGER HERMANN,
Commissioner.

Approved April 4, 1900.

E. A. HITCHCOCK, *Secretary.*

**EXCHANGE OF RELINQUISHED CLAIMS AND PRIVATE HOLDINGS
WITHIN FOREST RESERVES FOR OUTSIDE TRACTS.**

I. ACT OF JUNE 4, 1897 (30 Stat., 36)—see page 9.

Exchange of tracts authorized by.

II. ACT OF JUNE 6, 1900 (31 Stat., 614).

Amends the lieu-selection provisions in the act of June 4, 1897 (30 Stat., 36).

[Act of June 6, 1900 (31 Stat., 614).]

CHAP. 791.—An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and one, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Appropriations for sundry civil expenses.

That the following sums be, and the same are hereby, appropriated, for the objects hereinafter expressed, for the fiscal year ending June thirtieth, nineteen hundred and one, namely:

* * * * *

Selections of land in lieu of tracts covered by an unperfected bona fide claim, etc.

That all selections of land made in lieu of a tract covered by an unperfected bona fide claim, or by a patent, included within a public forest reservation, as provided in the act of June fourth, eighteen hundred and ninety-seven, entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," shall be confined to vacant surveyed nonmineral public lands which are subject to homestead entry not exceeding in area the tract covered by such claim or patent: *Provided*, That nothing herein contained shall be construed to affect the rights of those who, previous to October first, nineteen hundred, shall have delivered to the United States deeds for lands within forest reservations and make application for specific tracts of lands in lieu thereof:

* * * * *

III. ACT OF MARCH 3, 1901 (31 Stat., 1037).

Re-enacted the above provisions in the act of June 6, 1900 (31 Stat., 614).

[Act of March 3, 1901 (31 Stat., 1037).]

CHAP. 831.—An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June thirtieth, nineteen hundred and one, and for prior years, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Deficiencies appropriations.

That the following sums be, and the same are hereby,

appropriated out of any money in the Treasury not otherwise appropriated, to supply deficiencies in the appropriations for the fiscal year nineteen hundred and one, and for prior years, and for other objects hereinafter stated, namely:

* * * * *

That all selections of land made in lieu of a tract covered by an unperfected bona fide claim, or by a patent, included within a public forest reservation, as provided for in the act of June fourth, eighteen hundred and ninety-seven, entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," shall be confined to vacant surveyed non-mineral public lands which are subject to homestead entry not exceeding in area the tract covered by such claim or patent: *Provided*, That nothing herein contained shall be construed to affect the rights of those who, previous to October first, nineteen hundred, shall have delivered to the United States deeds for lands within forest reservations and make application for specific tracts of land in lieu thereof.

Proviso.

Selections of land in lieu of tract covered by unperfected bona fide claim, etc.

* * * * *

IV. REGULATIONS GOVERNING EXCHANGE OF RELINQUISHED CLAIMS AND PRIVATE HOLDINGS WITHIN FOREST RESERVES FOR OUTSIDE TRACTS.

Are contained in circular of instructions issued July 7, 1902 (see below), and in decisions published in "Decisions of the Department of the Interior relating to public lands."

[Circular.]

INSTRUCTIONS RELATIVE TO FOREST-RESERVE LIEU LANDS SELECTIONS.

[Acts June 4, 1897 (30 Stat., 36), and June 6, 1900 (31 Stat., 614).]

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., July 7, 1902.

REGISTERS AND RECEIVERS, UNITED STATES LAND OFFICES.

GENTLEMEN: The act of Congress approved June 4, 1897 (30 Stat., 34-36), provides among other things with respect to forest reserves established and to be established under section 24 of the act of March 3, 1891 (26 Stat., 1095)—

That in cases in which a tract covered by an unperfected bona fide claim or by a patent is included within the limits of a public forest reservation, the settler or owner thereof may, if he desires to do so, relinquish the tract to the Government, and may

select in lieu thereof a tract of vacant land open to settlement not exceeding in area the tract covered by his claim or patent; and no charge shall be made in such cases for making the entry of record or issuing the patent to cover the tract selected: *Provided further*, That in cases of unperfected claims the requirements of the law respecting settlement, residence, improvements, and so forth, are complied with on the new claims, credit being allowed for the time spent on the relinquished claims.

By a subsequent act, approved June 6, 1900 (31 Stat., 614), it is declared—

That all selections of land made in lieu of a tract covered by an unperfected bona fide claim, or by a patent, included within a public forest reservation, as provided in the act of June fourth, eighteen hundred and ninety-seven, * * * shall be confined to vacant surveyed nonmineral public lands which are subject to homestead entry not exceeding in area the tract covered by such claim or patent: *Provided*, That nothing herein contained shall be construed to affect the rights of those who, previous to October first, nineteen hundred, shall have delivered to the United States deeds for lands within forest reservations and make application for specific tracts of lands in lieu thereof.

This provision was re-enacted March 3, 1901 (31 Stat., 1037).

GENERALLY.

1. Relinquishments under the above acts may include any tract within the limits of a forest reserve covered by an unperfected bona fide claim under any of the general land laws of the United States, or to which the full legal title has passed out of the Government and beyond the control of the Land Department by a patent or by that which is the full legal equivalent of a patent.

2. Mineral lands, whether covered by patent or not, can not be relinquished as bases for lieu selections under said acts.

3. Relinquishments made in pursuance of said acts must be executed, acknowledged, and recorded in the same manner as conveyances of real property are required to be executed, acknowledged, and recorded by the laws of the State or Territory in which the lands are situated.

4. Selections after October 1, 1900, are authorized to be made only of vacant, surveyed, nonmineral lands which are subject to homestead entry.

5. Selections filed prior to October 1, 1900, may embrace unsurveyed lands, but must, within thirty days from notice by the local officers of the filing in their office of the township plat of survey, be made to conform to such survey.

6. Selections of unsurveyed lands will not be passed to patent until after four months following the filing of said plat in the local office. This is to enable any person claiming an adverse right therein to regularly assert the same.

7. The land relinquished and the land selected must be, as near as practicable, equal in area.

8. In a selection made prior to the receipt by the local officers of the instructions of this Office dated January 16, 1900, for less land than

that relinquished, ninety days from notice is allowed the selector in which to make additional selection in full satisfaction of such relinquishment, or waive his right to do so, and in default thereof the relinquishment and the partial selection will be rejected. This is not a new rule, but rather a restatement of the existing practice.

9. The rule of approximation permitted in entries under the homestead and other public land laws may properly be applied to selections under the acts aforesaid. (See 31 L. D., 225.)

10. Should a selection be presented, based upon a relinquishment or reconveyance to the United States of lands which are not at the date of the filing of such selection within the limits of a forest reserve, the selection will be rejected, unless it appears that such lands were within the limits of such a reserve at the date of the recording on the proper records of such relinquishment or reconveyance.

11. Selections should be filed in the proper land office within a reasonable time after the relinquishment or reconveyance has been recorded in the manner indicated.

12. In all cases where the showing required in these instructions, both as to the title or claim to the land relinquished and as to the character and condition of the land selected, is not made by the selector at the time of filing the selection, you will reject the selection and give due notice thereof to the parties interested, in which notice the reasons for your action must be stated. Appeal from such action may be taken under the rules as in other cases. At the expiration of the time allowed for appeal, you will forward the record with your report thereon.

13. If protest or objection shall be at any time filed against the selection, you will forward the same to this Office for consideration in connection with the selection.

LAND COVERED BY PATENT OR PATENT CERTIFICATE.

14. Where the legal title to the relinquished land has passed out of the United States, there must be filed with each relinquishment a duly authenticated abstract of title showing that at the time the relinquishment was filed for record the legal title was in the party making the relinquishment and that the land was free from liability for taxes, pending suits, judgment liens, and from other incumbrance.

15. Where the legal title to the relinquished land has not passed out of the United States, but patent certificate therefor has issued and is outstanding, there must be filed with each relinquishment a duly authenticated abstract of title showing that at the time the relinquishment was filed for record the full equitable title was in the party making the relinquishment and that the land was free from liability for taxes, pending suits, judgment liens, and from other incumbrance.

16. A relinquishment by an individual of land the legal title to which has passed out of the United States, or for which patent certificate is outstanding, must show whether the person relinquishing is married or single; and if married, the wife or husband of such person, as the case may be, must join in the execution of the relinquishment in such manner as to effectually bar any right or estate of dower, curtesy, or homestead, or any other claim whatsoever to the land relinquished, or it must be fully shown that under the laws of the State or Territory in which the relinquished land is situated such wife or husband has no interest whatever, present or prospective, which makes her or his joinder in the relinquishment necessary.

17. Selections in lieu of lands covered by patent or patent certificate may embrace contiguous or noncontiguous tracks in the same land district.

18. All papers and proofs necessary to complete a selection must be filed at one and the same time, and until they are all presented no right will vest under the selection.

19. A selection based upon land covered by a patent or by a patent certificate must be made by the owner of the land relinquished or by a duly authorized agent or attorney in fact; and when made by an agent or attorney in fact, proof of authority must be furnished.

20. No fees or commissions are required to be paid in any selection made in lieu of land covered by a patent or by a patent certificate.

21. The affidavit to support a selection based upon the relinquishment of land covered by a patent or by a patent certificate must be made by the selector, or by some credible person possessed of the requisite personal knowledge in the premises, and must be filed with and as a part of the selection. This affidavit must show that the selected land is nonmineral in character; that it contains no salt springs or deposits of salt in any form, sufficient to render it chiefly valuable therefor, and that it is not in any manner occupied adversely to the selector. (Form 4-061a.)

22. In making selections in lieu of relinquished lands covered by patent or patent certificate, Form 4-643, or its equivalent, should be used; and in every such selection the selector must show, to the satisfaction of the local officers, by affidavit or otherwise, in addition to the other proofs required, that the relinquished land does not constitute the basis for any other selection made by him, and also whether or not the selected land is situated within 6 miles of a mining claim.

23. Where the selection is within 6 miles of a mining claim or within a mineral township you will require the selector, within twenty days from the filing of his selection, to begin publication of notice thereof at his own expense in a newspaper to be designated by the register as of general circulation in the vicinity of the land and published nearest thereto. Such publication must cover a period of thirty

days, during which time a similar notice of the selection must be posted in the local land office and upon each and every noncontiguous tract included in the selection.

24. The notice should describe the land selected and give the date of selection, and state that the purpose thereof is to allow all persons claiming the selected land under the mining laws, or desiring to show it to be mineral in character, an opportunity to file objection to such selection with the local officers for the land district in which the land is situate and to establish their interest therein or the mineral character thereof.

25. Proof of publication shall consist of an affidavit of the publisher, or of the foreman, or other proper employee of the newspaper in which the notice was published, with a copy of the published notice attached. Proof of posting upon the land and that such notice remained posted during the entire period required shall be made by the selector or some credible person having personal knowledge of the fact. The register shall certify to posting in his office. The first and last dates of such publication and posting shall in all cases be given.

26. Where, at the time of the filing of a selection in lieu of relinquished land covered by a patent or by patent certificate, the showing required by these instructions is fully made by the selector, the selection will be received by the register and receiver and proper notation thereof made upon their records. If publication of notice of the selection as provided in paragraphs 23, 24, and 25 of these instructions is not necessary, the selection, when so received and noted of record, will be forthwith forwarded to the Commissioner of the General Land Office for his action thereon. If publication shall be necessary under said paragraphs 23, 24, and 25, the selection will, after such publication is completed, be promptly forwarded to the Commissioner of the General Land Office for his action. The action of the register and receiver in receiving a selection and making notation of the same upon their records will not in itself operate to confer any right upon the selector such as to prevent the subsequent rejection of the selection where it is found that the selection as made was defective in any essential particular and for that reason should have been rejected.

UNPERFECTED BONA FIDE CLAIMS NOT COVERED BY PATENT CERTIFICATE.

27. Where the land relinquished is covered by an unperfected bona fide claim, for which no certificate for patent is outstanding, there must be filed with the selection a certificate by the recorder of deeds or official custodian of the records of transfers of real estate in the proper county that no instrument purporting to convey or in any way encumber the title to the land or any part thereof is on file or of record in his office, or if any such instrument or instruments be on file or of record therein the certificate must show the facts.

28. A selection in lieu of an unperfected claim not covered by patent certificate must in all respects conform to the law under which such unperfected claim is held and will be subject to the payment of such fees and commissions as would be required under the statute to complete the unperfected claim in lieu of which the selection is made.

29. If the land relinquished is covered by an unperfected claim, such as a homestead or desert entry, to which certificate for patent has not issued, and the law under which the claim was initiated requires that land taken thereunder must be in one body, the same requirement must be observed in making the lieu selection.

30. A selection of land in lieu of an unperfected claim held under the settlement laws, if credit for residence on the unperfected claim be desired, must, in addition to other proofs, be accompanied by the affidavit of the selector, corroborated by two witnesses, showing when residence was established on the unperfected claim and the duration of such residence. In such a case, unless the selector has resided upon, cultivated, and improved the relinquished unperfected claim for the full period required by law to earn a patent thereto, he must establish and maintain a residence on the land selected, and cultivate and improve the same for the full period required by law to earn a patent, less the time spent upon the relinquished unperfected claim.

31. If the relinquished unperfected claim be not one held under the settlement laws, the affidavit as to residence required by the preceding paragraph need not be furnished; but in either case the selector must make affidavit that he has not sold, assigned, mortgaged, or contracted to sell the land covered by the relinquished unperfected claim.

32. In case a settler on an unsurveyed tract within a forest reserve desires to make a change of settlement to land outside of the reserve and receive credit for previous residence on the relinquished claim, he must file his selection in the same manner as provided with respect to selections in lieu of other unperfected claims, accompanied by the affidavit as to residence required in such cases, and should describe his unsurveyed claim with sufficient accuracy to enable the local land officers to approximately determine its location.

33. In making selections in lieu of relinquished unperfected bona fide claims not covered by patent certificate, Form 4-634, or its equivalent, should be used; and every such selection must also be supported by affidavit the same as required by paragraph 21 of these instructions (Form 4-061a). In such selection special notice of the selection by publication or otherwise will not be required.

34. Selections in lieu of relinquished unperfected bona fide claims not covered by patent certificate, where the essential requisites shall have been fully complied with by selectors at the time of filing their selections, will be received and noted of record in the same manner and upon the same conditions as provided in paragraph 26 of these

instructions, and will be forthwith forwarded to the Commissioner of the General Land Office for his action thereon.

35. A strict observance of these instructions will be required.

All previous circulars or instructions in conflict herewith are hereby revoked.

Very respectfully,

BINGER HERMANN.

Commissioner.

Approved:

E. A. HITCHCOCK, *Secretary.*

[4-643. Perfected claims.

SELECTION IN LIEU OF LAND IN ——— FOREST RESERVE,

[Act June 4, 1897.]

TO THE REGISTER AND RECEIVER, UNITED STATES LAND OFFICE,

GENTLEMEN: I am the owner of the ——— meridian, containing ——— acres; that said land is situate and lying within the boundaries of the ——— Forest Reserve; that I desire to relinquish and reconvey said land unto the United States, and in lieu thereof to select the ——— land district, State of ———, and containing ——— acres, under the provisions of the act of June 4, 1897 (30 Stat., 36).

In compliance with the regulations under said act I have made, executed, and caused to be recorded in the proper county and State a deed of reconveyance to the United States of the tract first above described and situate within said ——— Forest Reserve, and in relation thereto have caused a proper abstract of title to be made and authenticated, both of which are herewith submitted.

There are also submitted certificates from the proper officers showing that the land relinquished, or surrendered, is free from encumbrance of any kind; also that all taxes thereon, to the present time, have been paid, and an affidavit showing the lands selected to be nonmineral in character and unoccupied. I therefore ask that a United States patent issue to me for the tract or tracts thus selected.

Dated, ———.

LAND OFFICE AT ———,

———, 190—.

I, ———, register of the land office, do hereby certify that the land above selected, in lieu of the land herein relinquished to the United States, is free from conflict, and that there is no adverse filing, entry, or claim thereto.

Register.

Selection approved by the Commissioner of the General Land Office, per letter "R" to register and receiver ———, 190—.

———, Div. "R."

Application

No. —.

HOMESTEAD.

[Act June 4, 1897.]

LAND OFFICE AT ———,

———, 190—.

I, ———, whose post-office address is ———, ———, do hereby apply to enter, under section 2289, Revised Statutes of the United States, and the act of Con-

gress approved June 4, 1897 (30 Stat., 36), the _____ of section _____, in township _____, of range _____, containing _____ acres, in lieu of the _____ of section _____, in township _____, of range _____, in the district of lands subject to sale at _____, containing _____ acres, which latter land is within the _____ Forest Reserve, and all right, title, and interest in or to same has been relinquished by me to the United States.

LAND OFFICE AT _____,
_____ 190—.

I, _____, register of the land office, do hereby certify that the above application is for _____ lands of the class which the applicant is legally entitled to enter under section 2289, Revised Statutes of the United States, and the act of Congress approved June 4, 1897 (30 Stat., 36), and that there is no prior valid adverse right to same. _____^a

Register.

HOMESTEAD AFFIDAVIT.

U. S. LAND OFFICE AT _____,
_____ 190—.

I, _____, of _____, _____, having filed my application No. — for an entry under section 2289, Revised Statutes of the United States, and the act of Congress approved June 4, 1897 (30 Stat., 36), do solemnly swear that I am not the proprietor of more than one hundred and sixty acres of land in any State or Territory; that I am _____^b; that my said application is honestly and in good faith made for the purpose of actual settlement and cultivation and not for the benefit of any other person, persons, or corporation, and that I will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that I am not acting as agent of any person, corporation, or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that I do not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for myself, and that I have not, directly or indirectly, made, and will not make, any agreement or contract, in any way or manner, with any person or persons, corporation or syndicate whatsoever, by which the title which I might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except myself; and further, that since August 30, 1890, I have not entered under the land laws of the United States or filed upon a quantity of land, agricultural in character and not mineral, which, with the tracts now applied for, would make more than three hundred and twenty acres, except _____, and that I have not heretofore made any entry under the homestead laws, except _____.

(Sign plainly with full Christian name.)

Sworn to and subscribed before me this _____ day of _____, 190—, at my office, at _____, in _____ county, _____.

^aIf land applied for is unsurveyed, insert "subject to any prior valid adverse right" and erase "and that there is no prior valid adverse right to same."

^bHere insert statement that affiant is a citizen of the United States, or that he has filed his declaration of intention to become such, and that he is the head of a family or over twenty-one years of age, as the case may be. It should be stated whether applicant is native born or not, and if not, a certified copy of his certificate of naturalization or declaration of intention, as the case may be, must be furnished.

SPECIAL AFFIDAVIT.

[Act June 4, 1897.]

U. S. LAND OFFICE AT _____,
_____, 190—.

_____, being first duly sworn, on oath says he is the identical person who made _____ entry at the U. S. Land Office _____ of the _____, section _____, in township _____ of range _____, containing _____ acres; that he settled upon said land _____; that he built a house thereon of (kind) _____ (size) _____; that he (and his family) ha— lived therein continuously from _____ to _____ (except _____); that he has cultivated _____ acres and raised _____ crops thereon; that he has been over each and every legal subdivision thereof and knows the character of same, and that it is nonmineral in character, and is land subject to entry under the homestead laws; that he has placed thereon improvements to the value of \$_____.
_____.

(Sign plainly with full Christian name.)

Sworn to and subscribed before me this _____ day of _____, 190—, at my office, at _____, in _____ county, _____.

_____, of _____, _____, and _____, of _____, _____, being first duly sworn, on oath, each for himself, and not one for the other, say that they know the above affiant, _____, and the land embraced in his homestead entry within the _____ Forest Reserve; that they have heard read the above affidavit, and of their own knowledge know the statements therein made are true; that they have no interest in said claim or the land sought to be entered in lieu thereof by said affiant.

_____.

Sworn to and subscribed before me this _____ day of _____, 190—, at my office, at _____, in _____ county, _____.

AFFIDAVIT FOR SELECTIONS.

[Under act of June 4, 1897 (30 Stat., 36).]

FOREST RESERVES.

To be made by the selector, or other credible person cognizant of the facts, before an officer authorized to administer oaths. Before being sworn, affiant should be advised of penalties of a false oath.

UNITED STATES LAND OFFICE,
_____,
_____, 190—.

_____, being duly sworn according to law, deposes and says that he is a citizen of the United States, and that his post-office address is _____, _____; that he is well acquainted with the character and condition of the following-described land, and with each and every legal subdivision thereof, having personally examined the same, to wit: _____; that his personal knowledge of said land enables him to testify understandingly with respect thereto; that there is not, within the limits of said land, any known vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper; that there is not, within the limits of said land, any known deposit of coal, or any known placer deposit, oil, or other valuable mineral; that said land contains no salt spring, or known deposits of salt in any form, sufficient to render it chiefly valuable therefor; that no portion of said land is

claimed for mining purposes under the local customs or rules of miners, or otherwise; that said land is essentially nonmineral in character, has upon it no mining or other improvements, and is not in any manner occupied adversely to the selector; and that the selection thereof is not made for the purpose of obtaining title to mineral land.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by ————), and I verily believe him to be a credible person and the person he represents himself to be; and that this affidavit was subscribed and sworn to before me at my office in ———, ——— on this ——— day of ———, 190—.

**CONTROL OF PRIVATE HOLDINGS IN FOREST RESERVES PENDING
FINAL ACTION ON RELINQUISHMENT THEREOF.**

Prior to final action on relinquishments to the United States of private holdings of lands within forest-reserve limits no permits are granted for their occupancy and use or for any special privilege thereon. (Acting Secretary of the Interior to the Commissioner of the General Land Office, December 22, 1902, and January 5, 1903, in privilege cases Nos. 17 and 18, Priest River Forest Reserve.)

Relinquished lands prior to acceptance thereof by the Government are under its jurisdiction, and all unlawful timber cutting thereon and any intrusions thereon or unauthorized occupancy and use thereof will be regarded and dealt with as trespass. (Commissioner of the General Land Office to Supervisor Robert S. Bragaw, January 14, 1903.)

When one having private right to land in a forest reservation accepts the provisions of the act of June 4, 1897, by relinquishing to the Government the title or right he has, or by attempting to do so, he thereby abandons its control and submits the land to the control of the Government. If such land, by reason of fallen and dead timber or other inflammable material, is a menace to the forest growth upon the surrounding lands, the authority of the Department extends to the abatement of such dangerous conditions. Pending the consideration by the Department of an offered exchange, the control of the lands abandoned by the owner must, for safety of the reservation, be lodged somewhere, and as no other authority exists authorized to control it but that of the owner and the Secretary of the Interior, when actual possession of such land is abandoned by the owner, the right of control and police for safety of that and the surrounding lands immediately devolves upon the Secretary of the Interior as a necessity arising from the conditions and the duty to regulate, control, and protect the reservation.

I am therefore of opinion that when actual possession of land held in private right in a forest reservation is abandoned by the owner, and conditions exist by reason of fallen or dead timber which make it a

menace to the safety of the forest growth on the reservation it is within the powers of the Secretary to take any proper measures for the abatement of such conditions, either by authorizing the removal of such inflammable material by parties desiring to make use of it, with or without sale of it, or, if necessary, by clearing, burning, and destroying the dangerous material as a protective measure by persons employed for that purpose.

If a profit results, the fund so received should be kept account of until final action upon the relinquishment, to be paid to the owner if the title he tenders is not finally accepted, the right of control so existing and exercised being regarded as a conserving one, simply for safety of the property and its surroundings. (Opinion; 32 L. D., 110.)

SCHOOL LANDS IN FOREST RESERVES.

Where a forest reservation includes within its limits a school section surveyed prior to the establishment of the reservation, the State, under the authority of the first proviso to section 2275, Revised Statutes, as amended by the act of February 28, 1891, may be allowed to waive its right to such section and select other land in lieu thereof.

The decision herein of December 27, 1894, 19 L. D., 585, recalled and vacated.

Instructions of December 19, 1893, 17 L. D., 576, modified. (State of California, 28 L. D., 57.)

By the act of June 21, 1898, a grant, *in presenti*, of school lands is made to the Territory of New Mexico; and under the provisions of section 2275, Revised Statutes, as amended by the act of February 28, 1891, said Territory may relinquish its claim to such school sections as it may be entitled that are included within the limits of a forest reserve, and select other lands in lieu thereof. (Territory of New Mexico, 29 L. D., 365.)

ELIMINATION OF AGRICULTURAL LANDS.

ACT OF JUNE 4, 1897; 30 Stat., 36. (See page 9.)

Authorizes elimination from forest reservations of lands found to be better adapted for agricultural purposes than for forest uses.

In regard to agricultural lands included within a forest reserve, the Department of the Interior has held as follows:

If agricultural lands are improvidently included in a forest reservation they can be eliminated therefrom only by a proclamation of the President or by the action of Congress, and until so eliminated such lands will continue a part of the reservation.

* * * * *

Relative to the authority of the President to establish forest reservations and to the character of the land which may be embraced therein, section 24 of the act of March 3, 1891, *supra*, and the provisions of the act of June 4, 1897, *supra*, bearing thereon, being *in pari materia*, must be construed together to ascertain the intention of Congress in the premises. In said section 24 it is provided:

That the President of the United States may, from time to time, set apart and reserve, in any State or Territory having public land bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations, and the President shall, by public proclamation, declare the establishment of such reservations and the limits thereof.

In the said act of June 4, 1897, it is provided that—

No public forest reservation shall be established, except to improve and protect the forest within the reservation, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States; but it is not the purpose or intent of these provisions, or of the act providing for such reservations, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes.

And that—

Upon the recommendation of the Secretary of the Interior, with the approval of the President, after sixty days' notice thereof, published in two papers of general circulation in the State or Territory wherein any forest reservation is situated, and near the said reservation, any public lands embraced within the limits of any forest reservation which, after due examination by personal inspection of a competent person appointed for that purpose by the Secretary of the Interior, shall be found better adapted for mining or for agricultural purposes than for forest usage, may be restored to the public domain.

The President is hereby authorized at any time to modify any Executive order that has been or may hereafter be made establishing any forest reserve, and by such modification may reduce the area or change the boundary lines of such reserve, or may vacate altogether any order creating such reserve.

A very large discretion is evidently lodged in the President by these statutory provisions. His judgment is to be guided and controlled only along general lines. In the said legislation of 1891 practically no limit is placed upon the exercise of his authority to establish forest reservations from time to time except that the lands reserved must be "public lands wholly or in part covered with timber or undergrowth." In the act of 1897 his authority is further limited only to the extent of the declaration therein of the purposes of such legislation, and that the inclusion in forest reservations "of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes" is not intended to be authorized thereby. Recognizing that lands "better adapted for mining or for agricultural purposes than for forest usage" had already been and might thereafter be included in such reservations, that act made provision for their elimination when ascertained as therein directed.

The language quoted in the two instances immediately preceding is worthy of particular notice. It is not simply lands that are merely agricultural in character that are not to be included in forest reservations, or, if included, may be restored to the public domain, but "lands more valuable * * * for agricultural purposes than for forest purposes," or "for forest usage." The language used, it is evident, was carefully and wisely chosen. In determining whether any particular tract or body of land ought to be included in a forest reservation, or, if included, ought to be eliminated therefrom, its value to the reservation for forest purposes or for purposes of a reservation generally, and the effect of its omission or elimination therefrom are to be weighed against its value for agricultural purposes. Its relative position in the proposed or existing reservation may be of much importance in such determination. If immediately within the reservation boundary, for instance, its separation from the reservation might be a matter of small concern; but if at some distance within the reservation, and especially if many tracts be thus eliminated, the consequences thereof might, and probably would be, very injurious, affecting not only the integrity of the reservation, but its maintenance and control, and perhaps eventually rendering abortive the purposes for which it was established. Considerations like these may render the nature of the soil of such tracts or bodies of land, or their condition as to the growth of trees or other vegetation thereon, of minor importance in the determination; and when the tract is small, consisting of but 40 acres, and far within the limits of the lands reserved, as in the present instance, the mere fact that it might be nearly or even entirely devoid of timber and distinctly agricultural land would not, under ordinary circumstances, if otherwise subject to inclusion in a forest reservation, justify its exception or elimination therefrom. (E. S. Gosney, 30 L. D., 44.)

It was not intended by the act of June 4, 1897, to exclude from reservation small tracts, here and there, within the limits of a forest reservation, because of the fact that said tracts were not covered with timber. (Jared Woodbridge, 29 L. D., 531.)

While lands embraced within a forest reservation may be excluded, because shown to be more valuable for agricultural than for forest purposes, until formally restored to the public domain such lands are not subject to general disposition, and no rights can be acquired by the attempted entry thereof. (Jared Woodbridge, 29 L. D., 531.)

Lands within the limits of a forest reserve, which at the date of its establishment are covered by a lawful preemption filing of record, are excepted from such reserve subject to claimant's continued compliance with law; but in the event of the cancellation of such filing the land at once becomes a part of the reserve. (John E. Henry, 30 L. D., 158.)

BONA FIDE SETTLERS IN FOREST RESERVES.

ACT OF APRIL 15, 1902 (32 Stat., 106).

Provides for the relief, within two years from the passage of the act, of bona fide settlers within forest reservations created under section 24 of the act of March 3, 1891 (26 Stat., 1095), who have, through ignorance or some unavoidable cause, failed to place their claims of record within the statutory period.

The full text of the act and the instructions issued thereunder are contained in the following circular:

[Circular.]

BONA FIDE SETTLERS IN FOREST RESERVES.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., May 12, 1902.

REGISTERS AND RECEIVERS,

United States Land Offices.

GENTLEMEN: Attention is called to the following act of Congress, approved April 15, 1902, entitled "An act for the relief of bona fide settlers in forest reserves:"

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where a claimant under the settlement laws of the United States within the limits of a forest reserve created under the provisions of section twenty-four of the act of March third, eighteen hundred and ninety-one, entitled "An act to repeal timber-culture laws, and for other purposes," has failed, by reason of ignorance of the proclamation of the President, or of the filing of the township plat of survey, or from unavoidable accident or conditions, or from misunderstanding of the law, to place his claim of record within the statutory period, such claimant may be permitted within a period of two years from and after the passage of this act to file his claim in the proper United States land office and receive patent therefor upon showing due compliance with the law under which the claim is asserted, notwithstanding the reservation, provided that he made bona fide settlement upon the land claimed prior to the date of the proclamation establishing the forest reserve and maintained continuous residence thereon for the requisite period. The benefits of this act shall extend to bona fide claims already received by the local land offices after the statutory period, and for which patents have not issued, provided the settlers have complied with the provisions of the law except as to the time of filing their claims.

Settlers, in order to obtain the benefit of this act, must have made bona fide settlement upon the land claimed prior to the date of the proclamation establishing the forest reserve and maintained continuous residence thereon for the period required by the law under which the claim is asserted.

Applications for entry under the terms of this act must be filed in the local land office within two years from April 15, 1902.

With the application to make entry, the applicant must file an affida-

vit showing the date of his settlement, and that his residence on the land applied for has been continuous since that date; and that his failure to place his claim of record within the statutory period was due to some one of the reasons set forth in this act.

Bona fide claims which have heretofore been erroneously allowed by the local land officers for lands within forest reserves after the expiration of the statutory period within which to place such claims of record are confirmed by this act, provided the settlers have complied with the provisions of the laws under which the claims were initiated, and that their failure to place their claims of record in proper time is satisfactorily explained as due to causes bringing them within the conditions prescribed in this act. This applies only to claims where settlement was made prior to the creation of the forest reserve.

Very respectfully,

BINGER HERMANN,
Commissioner.

Approved, May 12, 1902.

E. A. HITCHCOCK,
Secretary of the Interior.

MINERAL LANDS WITHIN FOREST RESERVES.

ACT OF JUNE 4, 1897; 30 Stat., 36. (See page 9.)

Makes mineral lands in forest reserves subject to location and entry under the general mining laws in the usual manner. (See circular of April 4, 1900, page 14.)

COAL LANDS.

The words, "the existing mining laws of the United States," are to be construed, in legislative enactments, as embracing sections 2347 to 2352, inclusive, of the Revised Statutes, commonly known as the "coal-land law," unless an intention to the contrary is expressed. (T. P. Crowder, 30 L. D., 92.)

Coal lands are mineral lands within the meaning of the act of June 4, 1897, and as such are subject to entry, when found in forest reservations, the same as other mineral lands within such reservations. (T. P. Crowder, 30 L. D., 92.)

COAL LANDS WITHIN FOREST RESERVES.

(See "Mineral Lands within Forest Reserves.")

TIMBER CUTTING ON MINING CLAIMS.

Timber cut from one mining claim may be used on another mining claim only when the two form a group or are part of a group.

A group of mining claims, in considering timber regulations in forest reserves, is defined as a set of claims, all contiguous, or such that one can pass from any one of the claims to another without leaving the group. All claims forming a group must be of the same kind—either placer or lode.

Timber may be cut on one mining claim and used on another only when there is a good showing that the claims were located in good faith and with no attempt to connect denuded lode claims with others covered by a desirable stand of timber. (Ruling by the Secretary of the Interior October 31, 1902, in the case of the Mt. Baker Mining Company.)

If the claims are not contiguous, and though separated by only a short distance, not greater even than one-half mile, timber can not be procured from one for use on the other, except by purchase, upon application submitted to the Secretary. (Ruling by the Secretary of the Interior October 12, 1901, in the case of the Cash Mine Company.)

WAGON ROADS FOR BENEFIT OF MINING CLAIMS.

Wagon roads for benefit of mining claims are not considered part of assessment work when outside the boundaries of a mining claim and leading from claim to claim over a forest reserve, and can be built only under permit from the Secretary of the Interior. (Commissioner of the General Land Office to Forest Supervisor F. N. Haines, July 14, 1902.)

FREE USE OF TIMBER AND STONE.

I. ACT OF JUNE 4, 1897; 30 Stat., 35. (See p. 9.)

Contains the following provision:

The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes, such timber to be used within the State or Territory, respectively, where such reservations may be located.

II. REGULATIONS GOVERNING THE FREE USE OF TIMBER

Are contained in the following circulars:

Circular of December 12, 1901. (See below.)

Circular of January 15, 1902. (See p. 40.)

Circular of February 27, 1902. (See p. 51.)

[Circular.]

AMENDMENT TO THE RULES AND REGULATIONS GOVERNING FOREST RESERVES.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., December 12, 1901.

Paragraph 21 of the Rules and Regulations Governing Forest Reserves, issued April 4, 1900, and amended March 19, 1901, is further amended so as to read as follows:

FREE USE OF TIMBER AND STONE.

21. The law provides that—

The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such reservations may be located.

This provision is limited to persons resident in the State or Territory where the forest reservation is located who have not a sufficient supply of timber or stone on their own claims or lands for the purposes enumerated, or for necessary use in developing the mineral or other natural resources of the lands owned or occupied by them. Such persons, therefore, are permitted to take timber and stone from public lands in the forest reservations under the terms of the law above quoted, strictly for their individual use on their own claims or lands owned or occupied by them within the State or Territory where such reservation is located, but not for sale or disposal, or use on other lands, or by other persons: *Provided, however,* That the provisions of this paragraph shall not apply to companies or corporations. Before any timber or stone can be taken hereunder from the forest reserves, the person entitled thereto must first make application to the forest supervisor in charge of the reservation, or part of reservation, setting forth his residence and post-office address, designating the location, amount, and value of the timber or stone proposed to be taken, the place where and the purpose for which the said timber or stone will be used, stating, in case the application is for timber, what sawmill or other agent, if any, will be employed to do the cutting, removing, and sawing, and pledging that no more shall be cut from the reservation than he actually needs for bona fide use on his own land or claim; and that none shall be sold, disposed of, nor used on any other than his own land or claim; and guaranteeing to remove and safely dispose of all tops, brush, and refuse cutting beyond danger of fire therefrom. Upon receipt of the application, the supervisor will immediately make investigation of the facts in the case. If,

in his judgment, the application be meritorious, and no injury to the forest cover will result from the removal of such timber, he will thereupon approve such application, giving the party permission to remove the timber under the supervision of a forest officer: *Provided*, That where the stumpage value of the timber exceeds twenty dollars, permission must be obtained from the Department, and for this purpose the supervisor, in all such cases, will submit the application to the Commissioner of the General Land Office, with his recommendation thereon. In case the application be approved, the supervisor will be notified and the cutting will be allowed, under supervision, as in cases where the amount involved is less than twenty dollars. Every forest supervisor having charge and supervision of the cutting of timber under the foregoing regulations will submit quarterly reports to the Commissioner of the General Land Office for transmission to the Department, in order that the Secretary of the Interior may be advised of the quantity of timber cut and whether the privilege granted is being abused. These reports should show the names of the persons who have applied, during the quarter, for permission to cut timber free of charge, the kind of timber applied for, the quantity, the stumpage value of the same, and the purpose for which the applicant desired to use it. In cases of emergency, where needy persons require immediate relief in the form of a load of dry firewood, the supervisor has authority to grant such privilege without marking or measuring the material beyond assigning to the applicant the particular area where to cut this material; all cases of this kind to appear in the usual monthly report.

BINGER HERMANN,
Commissioner.

Approved, December 12, 1901.

E. A. HITCHCOCK,
Secretary of the Interior.

[Circular.]

INFORMATION REGARDING THE "FREE USE" OF FOREST-RESERVE
TIMBER.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 15, 1902.

1. The matter is a privilege, and not a right. It may be refused to any person.

2. *Who can get timber under free-use provisions of law:* It is usually granted to settlers, farmers, prospectors, and others residing within or in the neighborhood of a forest reserve.

3. *Who can not get it:* It is refused to companies, corporations, saw-mill parties, and owners of large establishments, who require larger quantities and are expected to purchase; and to nonresidents of the State in which the reserve is located.

4. *How much is given, and by whom:* Permits for an amount not exceeding \$20 in stumpage value may be granted by the forest supervisor. Permits for a larger amount, and within the stumpage value of \$100, are granted only by the Secretary of the Interior.

5. *How often the same person can apply:* Not oftener than once a year.

6. *How long a permit holds good:* Six months from the date when it was issued; or less time, in the discretion of the forest supervisor.

7. *What can be obtained:* All kinds of timber; generally dry fire-wood, dry poles, and logs; also, if really needed, green timber.

8. *How obtained:*

(a) Application must be made to the forest supervisor.

(b) Blank form of application is furnished by the forest officers, and is filled out and signed by the applicant. (If necessary, the forest officer will lend assistance in filling out the blank application.)

(c) The timber must be located by a forest officer before any cutting is done.

9. *Terms of this privilege:*

(a) Only the timber applied for can be cut. For instance: No green timber may be taken if dry wood is applied for.

(b) Only so much can be cut as was applied for; and it must be measured, either standing or in the pile, before being hauled away.

(c) No unmarked live timber can be cut.

(d) There must be no cutting across the line of the area assigned. Cutting across the line is trespass.

(e) The rules about cleaning up tops and brush must be obeyed. The cutting area must be left in good, clean condition.

(f) The rules generally governing forest reserves must be observed.

(g) The wood, timber, or material derived from it is to be used only at the place stated in the application. The use of it elsewhere, and especially the sale of it, makes the cutting a trespass, and the applicant becomes liable to suit and *is always debarred thereafter from the privilege of free use.*

(h) The cutting of the timber by a local mill is permissible; but the sawing must be paid for in cash, and *can not be done on shares.* Moreover, the sawing and hauling of the lumber must be done in a manner required by the forest officer, and in such way as to enable him to determine whether or not the timber and lumber are really used in the place and manner promised in the application.

(i) In placing a valuation on timber given under the "free-use" act, \$1 per M for timber, green or dry, and 25 cents per cord for fuel wood, will be the minimum price considered.

(k) Applications for "shakes," etc., involving a wasteful use of timber, will be refused whenever a more economical utilization and satisfactory cleaning up of the tops and lops is not guaranteed.

BINGER HERMANN,
Commissioner.

Approved.

E. A. HITCHCOCK,
Secretary of the Interior.

**COMPANIES AND CORPORATIONS PROHIBITED FROM USING
FOREST-RESERVE TIMBER FREE OF COST.**

No authority to permit free use of forest-reserve timber by corporations, municipal or otherwise. (Decision by the Department June 25, 1900, in the case of petition by the board of county commissioners of Uinta County, Utah.)

A company or corporation engaged in mining or in prospecting for valuable mineral deposits is a "miner" or "prospector," as the case may be, within the meaning of the act of June 4, 1897.

The act of June 4, 1897, does not in itself permit any person, company, or corporation to use, free of charge, stone or timber found upon a forest reservation, but confers upon the Secretary of the Interior authority to say, through regulations prescribed by him, by whom, among those named, and when and to what extent, the privilege named in the statute may be enjoyed.

The regulations of April 4, 1900, issued under the act of June 4, 1897, do not in terms include or exclude mining companies or corporations, and it rests with the Secretary of the Interior to determine, in the exercise of the discretion with which he is invested by the statute, whether these regulations shall include or exclude such companies or corporations. (Opinion, 30 L. D., 462.)

The absence of specific prohibition of the free use of forest reserve-timber by companies and corporations was remedied by the issuance of circular of December 12, 1901 (see p. 39), which, in amending paragraph 21 of circular of April 4, 1900 (see p. 14), specifically provided: "That the provisions of this paragraph shall not apply to companies or corporations."

**OPERATION OF THE ACT OF JULY 1, 1898 (30 STAT., 618), IN THE
TETON FOREST RESERVE.**

Free use of timber in the Teton Forest Reserve allowed to citizens of Idaho under the act of July 1, 1898 (30 Stat., 618), in accordance with the following instructions:

The act of July 1, 1898, conferred upon residents of the State of Idaho the same right to cut and remove timber from lands within the limits prescribed by said act, in the State of Wyoming, whether reserved or unreserved, as was enjoyed by the residents of Wyoming under the acts of March 3, 1891, and June 4, 1897. (Instructions, 31 L. D., 412.)

FREE USE OF FOREST-RESERVE TIMBER IS A PERSONAL PRIVILEGE.

Under the regulations of the Department, this (the free use of forest-reserve timber) is a personal privilege, and it will not be permitted to be used for commercial purposes. (Secretary to Commissioner of the General Land Office, October 29, 1900, in cases of Crandell, Evans, and Garcia, Black Mesa Forest Reserve, Ariz.)

FREE USE OF FOREST-RESERVE TIMBER FOR PUBLIC SCHOOL PURPOSES.

In respect to allowing applications for free use of forest-reserve timber by the trustees of a public school district, no definite course of action can be laid down in such cases. If the public school district is within or very near to the reserve, and is comprised of pioneers or of persons so poor that it is a struggle with them to maintain a school, an application from them for free timber may be allowed, rather than applications for school districts in a well-to-do community, quite able to purchase necessary fuel, which can always be had at a moderate cost. (Commissioner of the General Land Office to Forest Superintendent C. S. Newhall, June 18, 1902.)

FREE USE OF FOREST-RESERVE TIMBER FOR EMERGENCY REPAIR OF BRIDGES AND HIGHWAYS.

In the matter of the free use of timber for the repair of bridges and highways in emergency cases, the honorable Secretary of the Interior, under date of November 19, 1902, authorized the local forest officer in charge to issue permits to county or town supervisors and other persons, upon proper application and official report thereon to that officer, for the free use of timber, not exceeding the stumpage value of \$20, in cases demanding the immediate repair of damages to the road arising from severe rains, floods, or snowslides that have made washouts, destroyed bridges, or otherwise made the road impassable.

In a special case of extreme emergency, when the forest officer is not accessible and the timber is needed to at once render the road passable, the person repairing it may use what is needed for that purpose and afterwards make application to the local forest offi-

cer in charge. That officer is to see that this is done in every instance. (Instructions by the Commissioner of the General Land Office to forest officers, November 29, 1902.)

DISCONTINUANCE OF THE FREE USE OF TIMBER IN THE WICHITA FOREST RESERVE.

The free-use privilege in respect to timber in the Wichita Forest Reserve discontinued and timber therein disposed of only by sale, owing to the limited supply of the timber and great demand therefor. (Ruling by the Secretary of the Interior, November 17, 1902.)

PERMITS TO CUT WILD GRASS FOR HAY IN FOREST RESERVES.

Forest supervisors authorized to issue permits to cut wild grass for hay in forest reserves under conditions similar to those governing the free use of timber and upon applications to be passed upon by the forest supervisor instead of by the Department. (Acting Secretary of the Interior to Commissioner of the General Land Office, September 5, 1902.)

SALE OF TIMBER.

I. ACT OF JUNE 4, 1897; 30 Stat., 35. (See page 9.)

Makes provision for the sale of timber within forest reserves in limited quantities.

II. ACT OF JUNE 6, 1900 (31 Stat., 661).

Amends the act of June 4, 1897 (30 Stat., 35).

The full text of the act of June 6, 1900, is as follows:

[Act of June 6, 1900 (31 Stat., 661).]

CHAP. 804.—AN ACT to amend chapter two of the laws passed by the first session of the Fifty-fifth Congress of the United States, being an act entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," approved June fourth, eighteen hundred and ninety-seven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That chapter two of the laws of the first session of the Fifty-fifth Congress, being an act entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," approved June fourth, eighteen hundred and ninety-seven, be, and the same is hereby, amended by striking out the following words where the same appear in said act, commencing with the word "Before," in line thirty-six, on page thirty-five of volume thirty of the United States

Public lands,
Appraisal and
sale of dead, etc.,
timber.
Vol. 30, p. 35
amended.

Statutes at Large, and ending with the word "exists," in the forty-third line of said volume and page, as follows: "Before such sale shall take place notice thereof shall be given by the Commissioner of the General Land Office, for not less than sixty days, by publication in a newspaper of general circulation published in the county in which the timber is situated, if any is therein published, and if not then in a newspaper of general circulation published nearest to the reservation, and also in a newspaper of general circulation published at the capital of the State or Territory where such reservation exists," and insert in lieu thereof the following: "Before such sale shall take place notice thereof shall be given by the Commissioner of the General Land Office, for not less than thirty days, by publication in one or more newspapers of general circulation, as he may deem necessary, in the State or Territory where such reservation exists: *Provided, however,* That in cases of unusual emergency the Secretary of the Interior may, in the exercise of his discretion, permit the purchase of timber and cord wood in advance of advertisement of sale at rates of value approved by him and subject to payment of the full amount of the highest bid resulting from the usual advertisement of sale: *Provided further,* That he may, in his discretion, sell without advertisement, in quantities to suit applicants, at a fair appraisement, timber and cord wood not exceeding in value one hundred dollars stumpage: *And provided further,* That in cases in which advertisement is had and no satisfactory bid is received, or in cases in which the bidder fails to complete the purchase, the timber may be sold, without further advertisement, at private sale, in the discretion of the Secretary of the Interior, at not less than the appraised valuation, in quantities to suit purchasers: *And provided further,* That the provisions of this act shall not apply to existing forest reservations in the State of California, or to reservations that may be hereafter created within said State."

Notice of sale.

Provided.
Emergency,
etc., sales in advance of advertisement.

Private sale where bid unsatisfactory, etc.

California forest reservations excepted.

III. REGULATIONS GOVERNING SALES OF TIMBER

Are contained in the following circulars:

Circular of April 4, 1900^a (see page 14).

Circular of January 22, 1902 (see below).

Circular of February 27, 1902 (see page 51).

^aThe regulations in the circular of April 4, 1900, regarding publications of notices of sales of timber are modified by the provisions in the subsequent act of June 6, 1900 (31 Stat., 661).

[Circular.]

SALE OF TIMBER IN FOREST RESERVES.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 22, 1902.

GENERAL.

1. Timber will be sold, both live and dead, wherever the removal of such material will be beneficial, or at least not detrimental, to the forest reserves.

2. In the disposition of this material the local demand will have preference, and, in localities where this local demand is so great that all available timber is likely to be needed, applications involving the export of the material to distant points will be refused.

HOW THE TIMBER MAY BE PURCHASED.

1. The applicant who wishes to purchase timber will apply, in person or in writing, to the supervisor of the reserve, stating—

- (a) How much timber he wishes to buy;
- (b) The kind of material desired;
- (c) Where the timber is located.

2. As soon as practicable, the supervisor or his assistant will go over the ground with the applicant and determine whether the timber may be sold, under what conditions, and at what price.

3. After an agreement is reached the applicant should sign a definite application, prepared on the regular form, with the assistance of the forest officer.

4. After this the forest officer marks out the block or area where the timber may be cut, maps it, and estimates the amount of timber on the whole, and also the particular kind applied for. He also makes a general forest description of the tract, block, or quarter section.

5. Then the application, together with the forest officer's description and recommendation, is sent to the Department at Washington.

6. If approved, the timber will be advertised in a local paper for thirty days (sixty days in California). This advertisement will be waived only in cases where the amount involved in the sale is of \$100 stumpage value or less.

7. Bids on this timber will then be in order. These bids, together with a deposit (insuring the good faith of the bidder), should be sent by the bidders to the receiver of the local land office, and the bid will be forwarded from that office to the Department.

8. At the end of thirty days (sixty days in California), the timber will be awarded to the highest bidder; and if the applicant is the suc-

cessful bidder the deposit is credited on the sale; if not, the money will be refunded.

9. When the timber is awarded the applicant will sign a contract containing the specifications contained in the original application, as to manner of cutting, scaling, and cleaning up, etc., and if the case seems to justify it, he will be asked to give a bond, usually in an amount double the value of the timber, to secure the proper fulfillment of the contract.

10. Cutting may then begin.

11. The material will be skidded or piled in the customary manner, and the purchaser is required to mark the tops of the logs to facilitate scaling.

12. The scaling will be done in the customary way by the old Scribner rule, by which the contents of a 16-foot log are as follows:

Diameter inside of bark.	Contents in feet B. M.	Diameter inside of bark.	Contents in feet B. M.	Diameter inside of bark.	Contents in feet B. M.
<i>Inches.</i>		<i>Inches.</i>		<i>Inches.</i>	
6	9	21	304	36	923
7	16	22	334	37	1,029
8	25	23	377	38	1,068
9	36	24	404	39	1,120
10	49	25	459	40	1,204
11	64	26	500	41	1,272
12	79	27	548	42	1,343
13	97	28	582	43	1,396
14	114	29	609	44	1,480
15	142	30	657	45	1,518
16	159	31	710	46	1,587
17	185	32	736	47	1,656
18	213	33	784	48	1,728
19	240	34	800		
20	280	35	876		

This rule applies to saw timber and mining timber. Logs of 24 feet and over in length are scaled at more than one point; so that a log 24 feet long, for instance, is scaled at 16 feet and at the top. In other words, long pieces are treated as 16-foot logs and fractions thereof.

Square-hewed goods are measured like sawed timber, as solid pieces. Thus, an 8 by 12 inch 16-foot timber contains 128 feet board measure.

Railway ties are simply counted, and

30 ties, 8 feet in length, equal 1,000 feet board measure.

40 ties, 6 feet in length, equal 1,000 feet board measure.

Cordwood is measured in the ordinary way. Where green timber 10 inches and over in diameter is cut into cordwood it is charged as timber, and two cords are considered equal to 1,000 feet board measure.

13. The scaling will be done according to the conditions of the case. If the cutting is on a sufficiently large scale it will be done in such a way as to keep up with the work; otherwise, the scaling will be done at set times.

14. All timber must be marked with the U. S. stamp before it may be removed.

The following blank forms for application and contract filled in as samples will be used in all timber sales:

[4-178]

No. 123.

PUBLIC TIMBER SALE.

Black Hills Forest Reserve.

APPLICATION.

I hereby make application for the sale and purchase of timber located and described as follows: 100 M feet B. M., saw timber, green or dry; no M feet B. M., mining timber, green or dry; no railroad ties, — green, — dry; 250 cords cordwood, — green, and dry —; and is located SW $\frac{1}{4}$, SW $\frac{1}{4}$, S. 25, T. 3 N., R. 3 E. To be used at mines near *Deadwood*.

I promise to deposit with the receiver of public moneys at the United States land office at *Rapid City, S. Dak.*, such sum as may be required at the time of filing my bid for the above-described timber, and I further promise that in case my application is favorably considered I will deposit with the said receiver such sum as may be required to cover the cost of advertising for bids for the purchase of this timber, and in the event that the timber is awarded to me as the successful bidder I promise to pay to the said receiver the amount covered by my bid. [Here insert the condition of payment, whether full cash payment or one-third down and the balance in thirty, sixty, and ninety days, as the case may be.] *Cash in advance, at price of: \$2.50 per M ft. B. M. for timber; 30 cents per cord for cordwood of all kinds; credit being given for the sums heretofore deposited with the said receiver by me in connection with this sale and purchase; which, otherwise, will be refunded to me.*

And I further agree and promise to conduct the work of cutting and removing said timber in accordance with the following specifications:

1. I will comply strictly with the laws and the regulations governing forest reserves.

2. Submit all timber and wood to measurement by the forest officer before the same is removed.

3. Pay in advance for all timber before cutting the same.

4. To cut only timber on the area agreed upon and blazed and marked, and not to cut any of the live trees bounding this area.

5. To leave no logs, ties, lagging, or other material in the woods, and to pay double the agreed price for any material thus left in the woods.

6. To pay for all material used in shanties or buildings of any kind; also for material used in the construction of skidways, corduroy, log roads, bridges, and other improvements.

7. To cut only marked timber, and to cut all marked timber.

8. To leave no trees lodged in process of felling.

9. That all material is marked on skidway or in pile, the amount to be placed in plain figures at top or on blaze near by, and that no material will be piled on such skidway or pile after the scaling has been finished.

10. All felling and cutting with saw, *except firewood*.

11. Stumps — high. None higher than 18 inches.

12. Shaft of tree to be used to diameter of 6 inches, —.

13. Cord wood to be cut from all tops down to a diameter of 3 inches. \

14. Tops to be dragged bodily into openings ready for burning. *See 15.*

15. Tops to be lopped and brush piled *on entire area*.

16. No hewing, except at skidways in openings —.

17. No cutting of timber in summer season between month of — and —,

Waived in this case.

18. Cut all dead material sound enough for fuel —.
19. Cut only standing dead material. *See No. 18.*
20. Cut only and all dead material. *Dead and green allowed.*
21. Build camps at place agreed upon, located —, as per map —. *No camps allowed in this case.*
22. Construct dam at point agreed upon, located at —, as per map —. *No dams allowed in this case.*
23. To pile or skid all material before measuring —.
24. Scaling to be done [once a week or month, continuously, to keep up with cutting] *once a week*, the maximum to be not over 20 M feet B. M., and 25 cords, — ties per day or week *per week*.

I further agree that, in case my bid for this timber is accepted, I will execute a contract embodying the above provisions for the purchase of said timber, and deliver therewith a bond which shall be satisfactory to the forest officers for the faithful performance of the conditions imposed in said contract; and I further agree that, in case of failure on my part to fulfill, all and singular, the requirements of said contract, I will forfeit the said bond and all moneys paid to the receiver of public moneys herein mentioned.

JNO. DOE.

Dated at *Hill City, S. Dak., Jan. 15, 1902.*

[4—179.]

No. 123.

PUBLIC TIMBER SALE.

Black Hills Forest Reserve.

CONTRACT.

This contract is hereby entered into by and between *Jno. Doe*, party of the first part, and the Secretary of the Interior for the United States of America, party of the second part, for the purchase of certain public timber in the *Black Hills Forest Reserve*, based upon the bid of the said *Jno. Doe* for said timber, submitted in pursuance of a duly advertised proposal to sell said timber, which bid has been accepted by the Secretary of the Interior, said bid and advertisement being made a part of this contract.

Approximately 100 M feet B. M., saw timber, green or dry; no M feet B. M., mining timber, green or dry; no railroad ties, — green, — dry; 250 cords cord wood, — green and dry. All timber to be removed within one year from date of this contract, and is located SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$, S. 25, T. 3 N., R. 2 E. To be used at mines near Deadwood.

In consideration of the sale of this timber to me I, *Jno. Doe*, promise to pay the receiver of public moneys at the United States land office at *Rapid City, S. Dak.*, the sum of *three hundred and twenty-five dollars (\$325)*, being at the rate of *\$2.50 per thousand for timber and 30 cents per cord for cord wood, entire sum cash in advance*, credit being given for the sums heretofore deposited with the said receiver by me in connection with this sale and purchase.

And I further agree and promise to conduct the work of cutting and removing said timber in accordance with the following specifications:

1. I will comply strictly with the laws and the regulations governing forest reserves.
2. Submit all timber and wood to measurement by the forest officer before the same is removed.
3. Pay in advance for all timber before cutting the same.

4. To cut only timber on the area agreed upon and blazed and marked, and not to cut any of the live trees bounding this area.
5. To leave no logs, ties, lagging, or other material in the woods, and to pay double the agreed price for any material thus left in the woods.
6. To pay for all materials used in shanties or buildings of any kind; also for material used in the construction of skidways, corduroy, log roads, bridges, and other improvements.
7. To cut only marked timber, and to cut all marked timber.
8. To leave no trees lodged in process of felling.
9. That all material is marked on skidway or in pile, the amount to be placed in plain figures at the top or on the blaze near by, and that no material will be piled on such skidway or pile after the scaling has been finished.
10. All felling and cutting with saw, *except firewood*.
11. Stumps — high; none higher than 18".
12. Shaft of tree to be used to diameter of 6 inches, —.
13. Cord wood to be cut from all tops down to a diameter of 3 inches.
14. Tops to be dragged bodily into openings ready for burning. *See No. 15.*
15. Tops to be lopped and brush piled *on entire area*.
16. No hewing, except at skidways in openings —.
17. No cutting of timber in summer season between month or — and —.

Waived in this case.

18. Cut all dead material sound enough for fuel —.
19. Cut only standing dead material. *See No. 18.*
20. Cut only and all dead material. *Dead and green allowed.*
21. Build camps at place agreed upon, located —, as per map —. *No camps allowed in this case.*
22. Construct dam at point agreed upon, located at —, as per map —. *No dams allowed in this case.*
23. To pile or skid all material before measuring —.
24. Scaling to be done [once a week or month, continuously, to keep up with cutting] *once a week*, the maximum to be not over 20 M feet B. M., and 25 cords — ties per day or week *per week*.

And as a further guarantee of a faithful performance of the conditions of this contract, I have executed and delivered herewith a bond in twice the amount of the purchase price named in this contract, which bond shall be forfeited, together with all moneys paid or promised under this contract, upon failure upon my part to fulfill, all and singular, the conditions and requirements herein set forth or made a part hereof.

Given under my hand at *Lead, S. Dak.*, this 20 day of *Feb.*, 1902.

JNO. DOE.

Given under my hand at Washington, D. C., this 15 day of *March*, 1902.

—————, Secretary of the Interior.

SPECIAL CONSIDERATIONS.

The following considerations are of special importance:

1. Applications will be considered and attended to in the order in which they are received; but exceptions to this rule will occur, with special local conditions, such as isolation of particular cutting, great distances, insufficient force of workers, etc.

2. All applications in any reserve will be held up and delayed whenever it becomes evident that the reserve force, for any reason whatever, fails to carry out the work according to the prescribed regulations.

3. In every case the timber purchased is not the *amount* called for in the application, but the amount actually found on the cutting area as located and marked out by the forest officer. If there is less timber on this area than the applicant desires, he must make a new application, but is *never* allowed to cut over the original line as laid down for his case.

4. The following violations of the regulations will be regarded as trespass, and will lead to a suspension of all operations until the case is settled:

- (a) Cutting across the line surrounding the cutting area;
- (b) Cutting of unmarked timber;
- (c) Removal of any material before it is properly sealed and stamped or marked.

5. Since a considerable time is necessarily required in attending to any case of timber sale, and the law positively forbids any short-cut methods, the public is earnestly requested not to delay applications of this kind.

6. When the applicant fails to hear of his application in a reasonable time, say thirty days, he should address letters both to the supervisor and to the honorable Commissioner of the General Land Office, Washington, D. C.

7. Any incivilities or evident neglect on the part of the forest officers which hinders the purchaser in his work or endangers his case by giving to it the appearance of willful or negligent trespass should be reported to the supervisor, and, if not properly corrected, should be reported to the Commissioner of the General Land Office.

8. Trespassers, in the absence of a proper settlement for the trespass, will not be awarded timber.

BINGER HERMANN,
Commissioner.

Approved, January 22, 1902,
E. A. HITCHCOCK,
Secretary of the Interior.

**INSTRUCTIONS IN CASES OF SALES AND ALSO IN CASES OF
"FREE USE" OF TIMBER IN FOREST RESERVES.**

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 27, 1902.

Forest reserves have two chief functions: Continued production of timber and regulation of the water supply; and since timber constantly grows scarcer and in greater demand, and as the industries which depend upon a sure and sustained waterflow are certain to increase, the future capability of the reserves is of even greater importance than their present condition. For this reason all questions concerning

their management must be decided with regard for future effects as well as immediate results.

The relative importance of the functions referred to, varies in different reserves. Protection of the water supply should never be lost sight of, even in the regions of heavy rainfall, where lumber production is most important; in mountainous reserves of the arid States it is paramount. It can only be insured where the ground is covered by vegetation, which prevents rapid run-off, and is best attained by a dense growth of vigorous timber.

For this reason the first question to arise when the removal of any timber is discussed is whether or not it can be spared, and to decide this question the forest officer must know whether another growth of timber will replace the one removed or whether the land will become waste.

The foremost point to be studied in this connection is the reproduction of the forest under various conditions. The number of small trees, their kind, their vigor, the seed-bearing capacity of those which would be left after cutting, the possible destruction of the young growth by logging or fire—all these points must be considered fully. The growths on similar areas which have been burned or logged afford the best guides in this study.

If it seems certain that the timber may be cut safely, the best method of cutting must be decided—whether the trees below a certain diameter should be left to form the next crop, whether a number of seed trees should be left, whether the surrounding timber will furnish enough and the right kind of seed, whether the cutting may be unrestricted or confined to strips—or, in other words, what system will be surest to bring about satisfactory reproduction.

Where the forests serve chiefly to supply timber, and the sale of timber is the principal work of the reserve, the character of the reproduction is of exceeding importance. The forest officer should endeavor to learn whether the second crop will be of species more or less valuable commercially than those composing the stand which it is proposed to cut. It may be better policy to hold a tract of good pine or red fir than to cut it if a worthless growth of lodgepole or hemlock is apt to follow.

Every effort should be made to dispose of mature, diseased, insect-affected, or dead timber and to reserve that which is making rapid growth.

Generally it should be borne in mind that the Department does not wish to encourage or urge the sale of healthy green timber, but that it will consider applications only where the material may be spared without injury to the reserve, and preferably, also, where the timber is needed by the people of the particular district.

SURVEYING AND MAPPING.

The foregoing rudiments of forest management will aid the forest officer to decide whether any proposed cutting warrants extended examination or is, on its face, inimical to the objects of the reserve. Detailed consideration of an application to purchase requires more specific knowledge of the situation, topography, and yield of the tract in question, and to systematize the collection of such information the following instructions are given head rangers and supervisors:

All land within the reserve which bears commercial timber likely to be in demand must be surveyed into "blocks," mapped and described in a systematic manner, so that the location and description of any tract applied for may be stated definitely. This work will be done by the head rangers or the supervisor himself, with such assistance from the ranger force as is necessary. Compasses, chains, and blanks for maps and descriptions will be furnished by the Department. The work will be prosecuted as fast as possible without interfering with other necessary duties of the forest force. It is not expected that it can be continued without interruption or completed in the near future, but it is desired that as soon as possible there shall exist fairly accurate maps and estimates of all reserve timber.

All timber land is to be laid off in tracts known as "blocks," not necessarily of uniform shape and size, but generally not to contain more than 160 acres. The blocks are to be numbered and a convenient number of blocks (seldom over 100) will constitute a district. Each block will be mapped, estimated, and described separately upon blanks furnished for the purpose, the original being forwarded to the central office, where copies will be made for the use of the supervisors.

In the case of lands already legally subdivided into sections the only surveying required will be the reblazing of obliterated section lines and the division into quarter sections by blazed lines from quarter post to quarter post. The blazes of all lines run by forest officers must be marked with the "U. S." hammer. In the case of surveyed land each quarter section will be mapped and treated as a block; it will be described and referred to in the ordinary way; as, for instance, NE. $\frac{1}{4}$ of sec. 21, T. 25 N., R. 3 E., etc.

In unsurveyed territory no attempt to follow the regular square-mile-section system need be made. The block should conform to the lay of the land and the conditions which regulate cutting. Ridges and streams should indicate boundaries wherever practicable, and at least one boundary or corner, serving as a starting point, should be identified with some easily found natural object. Roads or streams should be used as base lines where possible. The boundary lines need not run north and south by east and west, but may take such angles as may be necessary to follow the natural outlines referred to. The compass

bearing and length of each line must be recorded to admit of proper mapping of the block. All corners must be marked by posts and witness trees bearing the marks of the district and the block; as, D-3, B-1, meaning district No. 3 and block No. 1. The boundary lines must be clearly blazed and reenforced by the marking hammer.

The sketch map of the block must include such details as buildings, roads and trails, fences, mill sites, and mining or other claims. Each block should be mapped on a separate sheet, and all maps must be made on a scale of 12 inches to the mile.

DESCRIPTION AND ESTIMATE.

Complete information concerning each block must be recorded on the blank form (No. —) as indicated in the following imaginary case:

Division 3.

District 8, block 5.

(In case of surveyed land, description by township, range, meridian, section, and quarter.)

1. Topography. *Steep slope on north side of Cougar Creek.*
2. Surface. *Rough, rocky, difficult to log.*
3. Soil. *Compact loam.*
4. Acreage. *Total, 180; timbered, 155; logged, 120; burned, 5.*
5. Character of timber. *Dense stand of pure bull pine except narrow strip along creek, in which spruce forms half.*
6. Condition of timber. *Pine unusually sound, except along north edge, which was injured by fire in 1899. Spruce badly ground-rotten and falling constantly. Little dead material of any value on block.*
7. Reproduction. *Pine seedling growth sparse, but there are about 50 trees to acre just under merchantable size. Spruce reproduction good throughout a 10-rod strip along creek. On the whole, second crop is well assured.*
8. Accessibility. *Block lies ¼ miles from nearest mill, which is at Red Dog, on the railroad. Good downhill road all the way, and creek could be made drivable at small expense. The mill referred to is apparently permanent and timber will always be in demand. Can be logged and hauled for \$5 per thousand.*
9. Old cuttings. *About 20 acres in extreme northeast corner was cut in 1899 under sale case No. 40. This cutting is in poor condition, covered with rubbish, and reproduction is poor.*
10. Private interests. *Nothing of the kind but one placer claim on creek near southwest corner of block, apparently abandoned. Practically no timber on this claim.*
11. Proposed cuttings. *(This space is to be used when blank accompanies application.)*
12. Additional information and recommendations. *The burn which touches the north side of the block is covered with rubbish and apt to*

burn at any time. The prevailing winds are from the north. For this reason believe it safer to cut the block as soon as possible in spite of the good condition of the timber. Since there is a heavy stand of small trees, advise reducing the diameter limit from 12 to 10 inches, and do not think it necessary to leave any trees above this size for seed. The cutting should be made with special precaution against fire.

If different portions of the block vary so greatly in character that a single description is impracticable, two or more sections may be indicated on the map by dotted lines and each described on a separate blank.

All estimates of timber, whether for entire blocks or fractions thereof, should be submitted upon the following form, and the method of estimating must be stated.

ESTIMATE SHEET.

Estimated stand per acre on block 5, district 8, division 3—[Here state whether for entire block, portions of block, or tract applied for only].—Covers entire block.

LIVING TIMBER.

Species. (To be written in.)	Bull Pine.				TOTAL.
Number of trees above 8 inches, per acre	70				70
Average height of trees	55				55
Average number of trees per M.	16				16
Average stand, B. M., per acre	4,400				4,400
Per cent deduction for defect	5 %				5 %

DEAD TIMBER SOUND ENOUGH FOR USE.

Number of trees above 5 inches, per acre	2
Average stand, B. M., per acre	
Cords down timber, per acre	1
Cords standing timber, per acre, suitable for fuel only	1

What per cent of total was actually estimated, and what system was used? 10 per cent of the timbered area (155 acres). ¼-acre circle method.

JOHN DOE,
Head Ranger.

Feb. 2, 1902.

HANDLING OF APPLICATIONS.

If, after examining a tract applied for, the forest officer decides to recommend the sale, he explains to the applicant all the requirements which will be demanded of him by the regulations, adding such as he may think necessary in the instance at hand, and these are agreed to in the signed application. To avoid misunderstanding later it is important that all points concerning the proposed cutting be discussed fully before the application is submitted. Following are a number which must be included in all applications, and the forest officer is expected to add others when advisable:

1. To what minimum diameter on the stump will cutting be allowed?
2. How many seed trees per acre shall be left?
3. To what diameter in the tops must trees be utilized?
4. Should the brush be piled, and in what manner?
5. Will any extra work, such as cleaning up down stuff not cut by the purchaser or burning brush, etc., be required of him?
6. How high are the stumps to be (usually not higher than the tree is thick, and in valuable stuff not above 18 inches)?
7. Should felling be done with saws?
8. Will hewing be allowed except at skidways and openings?
9. Will cutting be allowed throughout the year?
10. What material may be used for skidways, road material, and camps, and shall it be paid for?
11. Where will applicant be allowed to locate camps, roads, dams, etc.?

CASE OF DEAD TIMBER.

This includes only *wood*, standing or down, which is actually dead, and in no case trees which are apparently dying. In the case of ever-green species all trees having any green leaves are classed as living timber. Since deciduous species, such as tamarack and most hardwoods, have no foliage in winter, special attention must be given during this season. Trees dead at the top and green below, generally called spike-topped trees, are classed as living, and must never be cut under dead-timber permits. The dead portion may, however, be sealed and charged for as dead timber.

In considering applications for dead timber, the following points should be discussed in addition to those enumerated above:

1. Should all, or only standing, dead timber be taken?
2. Should all sound enough for fuel be taken?^a

^a NOTE.—The purchaser shall not be bound to cut timber which may die after the date of sale, or to dispose of unsound material which was sound at that time, unless it is shown that reasonable diligence on his part would have prevented the loss.

If the applicant agrees to the conditions of cutting, as explained to him by the head ranger or other forest officer who has made the preliminary examination, such

3. Should all above a given size (what size?) be given?

4. Should purchaser pile the unsound portions of down trees from which he uses the sound parts?

4—178.

No. —.

PUBLIC TIMBER SALE.

— Forest Reserve.

APPLICATION.

I hereby make application for the sale and purchase of timber located and described as follows: — M feet B. M., saw timber, green or dry; — M feet B. M., mining timber, green or dry; — railroad ties, — green, — dry; — cord wood, — green, — dry; and is located —. To be used at —.

I promise to deposit with the receiver of public moneys at the United States land office at — such sum as may be required at the time of filing my bid for the above-described timber, and I further promise that in case my application is favorably considered I will deposit with the said receiver such sum as may be required to cover the cost of advertising for bids for the purchase of this timber, and in the event that the timber is awarded to me as the successful bidder I promise to pay to the said receiver the amount covered by my bid. — [Here insert the condition of payment, whether full cash payment or one-third down and the balance in thirty, sixty, and ninety days, as the case may be], credit being given for the sums heretofore deposited with the said receiver by me in connection with this sale and purchase; which, otherwise, will be refunded to me.

And I further agree and promise to conduct the work of cutting and removing said timber in accordance with the following specifications:

1. I will comply strictly with the laws and regulations governing forest reserves.
2. Submit all timber and wood to measurement by the forest officer before the same is removed.
3. Pay in advance for all timber before cutting the same.
4. To cut only timber on the area agreed upon and blazed and marked, and not to cut any of the live trees bounding this area.
5. To leave no logs, ties, lagging, or other material in the woods, and to pay double the agreed price for any material thus left in the woods.
6. To pay for all material used in shanties or buildings of any kind; also for material used in construction of skidways, corduroy, log roads, bridges, and other improvements.
7. To cut only marked timber, and to cut all marked timber.
8. To leave no trees lodged in process of felling.

officer must at once prepare, upon the proper blank form, a report embodying a description of the tract in question, an estimate of the timber upon it, and his recommendations regarding the proposed sale or permit. The application will not be considered unless accompanied by this report, and in most cases it will be desirable to defer filling that portion of the application blank devoted to the amount and location of the desired timber until the forest officer has completed his examination and estimate. With this definite information the applicant can state exactly the amount and situation of the timber, make his offer of price, and sign the application.

9. That all material is marked on skidway or in pile, the amount to be placed in plain figures at the top or on blaze near by, and that no material will be piled on such skidway or pile after the scaling has been finished.

10. All felling and cutting with saw —.
11. Stumps — high; none higher than —.
12. Shaft of tree to be used to diameter of — inches, —.
13. Cord wood to be cut from all tops down to a diameter of — inches —.
14. Tops to be dragged bodily into openings ready for burning —.
15. Tops to be lopped and brush piled —.
16. No hewing, except at skidways in openings —.
17. No cutting of timber in summer season between month of — and —.
18. Cut all dead material sound enough for fuel —.
19. Cut only standing dead material —.
20. Cut only and all dead material —.
21. Build camps at place agreed upon, located —, as per map —.
22. Construct dam at point agreed upon, located at —, as per map —.
23. To pile or skid all material before measuring —.
24. Scaling to be done — [once a week or month, continuously, to keep up with cutting], the maximum to be not over — M feet B. M., and — cords, — ties per day or week —.

I further agree that in case my bid for this timber is accepted I will execute a contract embodying the above provisions for the purchase of said timber, and deliver therewith a bond which shall be satisfactory to the forest officers for the faithful performance of the conditions imposed in said contract; and I further agree that in case of failure on my part to fulfill, all and singular, the requirements of said contract I will forfeit the said bond and all moneys paid to the receiver of public moneys herein mentioned.

Dated at —, —, 190—.

ESTIMATE, DESCRIPTION, AND REPORT.

Unless part of such information has been previously secured, the examination of the tract by the forest officer must include:

1. Surveying, mapping, and blazing out the block or blocks on which the cutting will be located.

2. Locating definitely enough to permit estimate, description, and locating on map, of cutting area itself.

3. Measuring and estimating of timber on proposed cutting area, and on entire block when practicable.

4. Description of block and cutting area.

5. Recommendations concerning proposed sale, with reasons for them. These should embrace such points as the probable effect on the future composition of the forest and the waterflow of the region; the condition of the timber in so far as it affects the policy of holding it for advance in price; the need for the timber applied for; the possibility or difficulty of getting it in some better place; the reliability of the applicant; and the price which should be obtained. The latter point is one of great importance, and should be decided, not by general precedent in the region, but by the actual value of the timber as

determined by its character, difficulty to log, and distance from market. Timber on a gentle slope and near a mill or drivable stream may be worth more than twice that made inaccessible by canyons or distance. The forest officer should determine the cost of marketing all material and recommend prices which will make it approximately equally desirable.

The report upon the foregoing points must be made upon the blank for block description already described. If it provides insufficient space, additional matter may be affixed. If the tract applied for is less than a block, and the estimate for the latter can not be relied upon for the small area in question, a separate estimate should be made and submitted upon another blank.

MARKING AND CUTTING.

If the application is approved, the head ranger or supervisor (with assistance, if necessary) will mark at once all trees to be cut. This is imperative in all cases involving living timber. Where only dead timber is purchased, and there is no danger of confounding it with timber in various stages of injury or disease, the marking of individual trees will be dispensed with. In such instances the forest officer may simply blaze and mark the boundary of the cutting area and instruct the purchaser in the manner of cutting.

The marking of standing timber must be done with the "U. S." stamping hammer, and all trees must be marked near the ground in order that the stumps may afford positive evidence of the marking. Where snow may conceal such marking from the cutters it will be necessary to mark each tree at a point several feet from the ground also.

Unless an emergency is declared by the Secretary of the Interior, no cutting shall be permitted until the advertisement of sale has run its course and the district ranger has been notified by the supervisor that the successful bidder has made the required advance payment and is entitled to the timber. Upon receiving this notice the ranger will permit cutting, and as soon as it begins will report the date thereof to the supervisor. This statement will be upon the regular scale-report blank and will begin the ranger's periodical report upon the cutting.

The head ranger will visit the cutting as often as possible, and will report fully upon its condition (using blank No. —).

It is the duty of the ranger to see that the cutting is confined to the least possible area and not distributed here and there over the entire tract; also that, so far as reasonable, all branches of the logging operations keep pace with each other. In no instance will the brush piling be allowed to fall behind the manufacture and removal of logs,

ties, and other material. The ground must be cleared as fast as the work proceeds.

The manner of piling brush may be varied according to conditions, but the object is always to insure ready and clean burning, as soon as possible, with the least injury to standing timber and seedlings. The piles should be compact and large enough to kindle easily and burn clean without repiling. When possible they should not be nearer than 15 feet from standing green trees or dead trees having many branches or a covering of moss which might be ignited. Where the density of the standing timber makes the above rule impracticable openings should be made by cutting, or if this is not feasible, the piling should be near the least valuable trees and where there is least danger of the fire spreading. All chunks, knotty sections, or other unutilized portions of trees, as well as the branches, must be piled, and as much of such material as possible should be piled together to insure clean burning. Where the contract does not oblige the purchaser to utilize the trees into the extreme tops, all the remaining portions must be cut up and piled or dragged full size into openings, where large piles may be burned safely.

SCALING.

When possible all timber should be scaled at skidway or landing and not as it lies in the woods. In all reserves the Scribner rule will be used for lagging and saw logs, and each stick must be scaled and stamped separately. Hasty methods of averaging different sizes will not be allowed.

Railway ties are rated as follows:

8-ft. ties, $33\frac{1}{3}$ ft. B. M. each;

6-ft. ties, 25 ft. B. M. each.

Posts, poles, and piles are measured by linear feet, the valuation per foot increasing with the length and size of the stick.

Shake and shingle-bolt material is measured by the cord.

Square material is scaled like lumber, at its actual contents B. M., making no allowance for saw kerf. Thus, an 8 by 12 inch 16-ft. stick contains 128 feet B. M.

Where green logs 8 inches and over in diameter are made into cord wood they are paid for as saw timber, at the rate of 2 cords to the 1,000 feet B. M.

All wood and timber must be scaled before removal from the tract or landing, and every stick of timber and pile of wood must be stamped with the "U. S." marking hammer.

BINGER HERMANN,
Commissioner.

Approved February 27, 1902.

E. A. HITCHCOCK,
Secretary of the Interior.

TIMBER SALES ON FOREST RESERVES IN CALIFORNIA.

By the act of June 4, 1897, it was the purpose of Congress to provide a complete scheme for the control and administration of forest reserves, and by the last proviso of the amendatory act of June 6, 1900, it was intended that forest reservations then existing or thereafter to be created in the State of California should be exempted from the operation of said amendatory act only, the act of 1897 remaining in force, unchanged, as to such reservations. (Rose Gold Mining and Milling Company, 30 L. D., 377.)

PASTURING OF LIVE STOCK.

ACT OF JUNE 4, 1897 (30 Stat., 35). (See p. 9.)

Under the authority granted the Secretary of the Interior therein, to regulate the occupancy and use of forest reservations, the following regulations have been prescribed respecting the pasturing of live stock:

[Circular.]

AMENDMENT TO THE RULES AND REGULATIONS GOVERNING FOREST RESERVES.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., December 23, 1901.

Paragraph 13 of the Rules and Regulations Governing Forest Reserves is hereby amended so as to read as follows:

PASTURING OF LIVE STOCK.

13. The pasturing of sheep and goats on the public lands in the forest reservations is prohibited: *Provided*, That in the States of Oregon and Washington, where the continuous moisture and abundant rainfalls of the Cascade and Pacific coast ranges make rapid renewal of herbage and undergrowth possible, the Commissioner of the General Land Office may, with the approval of the Secretary of the Interior, allow the limited grazing of sheep within the reserves, or parts of reserves, within said States: *And also provided*, That when it shall appear that the limited pasturage of sheep and goats in a reserve, or part of a reserve, in any State or Territory will not work an injury to the reserve, that the protection and improvement of the forests for the purpose of insuring a permanent supply of timber and the conditions favorable to a continuous water flow, and the water supply of the people will not be adversely affected by the presence of sheep and goats within the reserve, the Commissioner of the General Land Office may, with the approval of the Secretary of the Interior, also allow the limited grazing of sheep and goats within such reserve. Permission to graze sheep and goats within the reserves will be refused in all cases where such grazing is detrimental to the reserves or to the interests dependent thereon, and upon the Bull Run Forest Reserve in Oregon, and upon and in the vicinity of Crater Lake and Mount Hood, or other well-known places of public resort or reservoir supply. The pasturing of live stock other than sheep and goats will not be prohibited in the forest reserves so long as it appears that injury is not being done the forest growth and water supply and the rights of others are not thereby jeopardized. Owners of

all live stock will be required to make application to the Commissioner of the General Land Office for permits to graze their animals within the reserves. Permits will only be granted on the express condition and agreement on the part of the applicants that they will agree to fully comply with all and singular the requirements of any law of Congress now or hereafter enacted relating to the grazing of live stock in forest reserves, and with all and singular the requirements of any rules and regulations now or hereafter adopted in pursuance of any such law of Congress; and upon failure to comply therewith the permits granted them will be revoked and the animals removed from the reserves. Permits will also be revoked for a violation of any of the terms thereof or of the terms of the applications on which based. Annual permits may be granted by the supervisor in charge of the reserve to persons living within the limits of the reserve, where the total number of cattle and horses involved in the permit does not exceed one hundred head.

BINGER HERMANN,
Commissioner.

Approved, December 23, 1901.

E. A. HITCHCOCK,
Secretary of the Interior.

[Circular.]

STOCK-GRAZING IN THE FOREST RESERVES.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 22, 1903.

TO FOREST OFFICERS OF THE GENERAL LAND OFFICE.

SIRS: The Secretary of the Interior, in being charged with the proper protection of the forest reserves, has the power to regulate or prohibit any and all kinds of grazing therein.

Whenever it appears that grazing will do no marked damage to the reserves, it is allowed by the Department; but until the Secretary has decided that it will do no harm, and that a certain number of either sheep and goats or cattle and horses may graze in a reserve or part of a reserve, the grazing of stock is prohibited, and all parties responsible for its presence in the reserve prior to such decision by the Secretary of the Interior are liable to suits for trespass and damage.

If the grazing is permitted by the Secretary, it is allowed for only a stated period of one calendar year at a time, and will not be allowed the succeeding year until the Secretary has rendered a decision for such succeeding year.

The grazing, when allowed for any year, is generally governed by the following conditions:

1. Only citizens of the United States, or those who have declared their intention to become citizens, are entitled to the grazing privilege.
2. Stock from one State or Territory is not allowed to graze in a forest reserve in another State or Territory: *Provided, however,* That where satisfactory evidence is submitted showing that taxes are paid

on any given stock in more than one State or Territory, the habitat of such stock shall be held to be in either State or Territory in which such taxes are paid, and such stock shall be eligible to graze in a forest reserve in either State or Territory in which such taxes are paid; but when a permit is issued for the grazing of such stock in one of the States or Territories in which such taxes are paid, it shall not be eligible during the lifetime of such permit to graze in a reserve in any other State or Territory in which such taxes are paid.

3. The grazing of sheep, goats, and horses in herds is generally prohibited. If allowed, it is only in those reserves or in parts of reserves where special conditions warrant special privileges, and the sheep and goats are restricted to the limits and the period of grazing fixed by the Department.

4. Cattle are generally allowed to graze in all reserves, and excluded only in cases where unfavorable conditions make all grazing undesirable.

5. The few head of horses of prospectors and travelers are not considered in matters of grazing, and require no permit.

6. When the grazing has been allowed by the Secretary, all persons who desire the grazing privilege must make application on a blank form furnished by the Department and to be obtained from the forest supervisor. These applications must cover no more nor no less stock than the applicant actually owns and desires to graze in the reserve, and must show the brands of the stock and the grazing period allowed during the year.

7. No stock of any kind is allowed to graze in a reserve without a permit based on the application made. All permits, except those for 100 head or less of cattle and horses owned by persons who live in the reserve, are issued by the Department on the applications approved and forwarded by the supervisor.

8. After the Secretary has allowed the grazing for any year, the supervisor may issue permits himself for that year for not more than 100 head of cattle and horses combined, to any one person who actually lives in the reserve and who does not own more than 100 head; but the permit must not cover more stock than he owns, be it few or many, up to 100. These reserve residents or farmers must make application, which will be retained in the office of the supervisor, the same as outsiders, before the supervisor will issue the permit.

9. The stock covered by supervisor's permits is counted against the total allowed in the reserve by the Secretary. At the end of each month the supervisor should therefore report by letter the name and address of each person to whom he has issued a permit during the month and the number each of cattle and horses covered by the permit.

10. The applications of all reserve residents who have more than 100 head of cattle and horses are to be forwarded to the General Land

Office the same as the applications of outsiders, and the Department will issue the permits thereon.

11. Grazing applications which are not approved by the forest officer must not be forwarded to the General Land Office. If he disapproves an application, or reduces it, he should at once notify the applicant thereof.

12. The applications and permits for each of the three classes of stock will be given a separate set of numbers from number 1 up, sheep and goats being one class, cattle and horses a class, and cattle and horses for which the supervisor issues permits a separate class.

13. Cattle and horses need not, generally, be herded, although in exceptional cases the Department may require their herding. They will be restricted to the grazing period allowed, except that the stock of actual reserve residents, covered by permits, may graze any part or all of the year.

14. Reserves in which grazing is allowed by the Department will be divided into sheep and cattle ranges whenever this can be done without injury to either interest, but such division must first be determined by the Department. At the end of each grazing season the supervisor should report fully on any such existing divisions, and recommend any changes or further divisions which are warranted by existing conditions.

15. When the owner who has a permit is ready to drive in his stock he should notify the supervisor, stating the number, and, if cattle or horses, give their brands.

16. Persons grazing cattle and horses on the reserve only part of the time, some days off and some days on, require a permit; but such cases should be fully explained by the supervisor when he makes his recommendations and estimates.

17. The stock of applicants for the grazing privilege is given preference in the following order:

(a) Stock of the reserve residents.

(b) Stock of persons owning farms or ranches in the reserve, but not residing thereon.

(c) Stock belonging in the vicinity of the reserve known as neighboring stock.

(d) Stock coming from a considerable distance from the reserve.

18. Class (b) under paragraph 17 should not be construed so as to allow large stock owners to obtain the preference therein given by simply buying or obtaining small ranches inadequate for their business. This will not be tolerated.

19. All persons holding grazing permits pledge themselves to assist in protecting the reserve and in preventing and fighting fires.

20. All persons who violate any of the reserve rules or the terms

of their applications and permits will be debarred from the use of the reserve.

21. The total number of cattle and horses or sheep that may be allowed in a reserve is fixed by the Secretary of the Interior for the following year at the end of each grazing season. At the end of each season the supervisor should, therefore, go over the grazing grounds and examine into the effect the grazing has had on the reserve and make a full report thereon, with such recommendations as to changes in the number to be allowed the following year and such changes as to the areas to be opened to grazing as are warranted by the season's experience.

GRAZING ON PRIVATE LANDS WITHIN FOREST RESERVES.

22. Persons who own, or who have leased from owners, lands within any reserve which they desire to use for grazing purposes, and who must cross the reserve lands with their stock to reach such private holdings, must make application to the supervisor for the privilege of crossing. The application must be accompanied with an abstract of title showing the ownership of the land, and if leased from an owner a certified copy of the lease, and must state the number of stock to be taken in, the length of time required to cross the reserve land, the route over which the stock is to be driven, and the date of starting, and the time when the stock will start out again; also how much stock the owned or leased lands will carry during the period it is proposed to keep the stock thereon. When any such application is made to the supervisor he will examine it with care, and, if he finds it reasonable and just and made in good faith for the purpose of utilizing such private holdings only, he will approve the same and forward it to the Commissioner of the General Land Office. After the Secretary approves the application due notice thereof will be given the applicant, through the supervisor, and he may then take his stock in; but owners of lands within a reserve where grazing is allowed may avail themselves of the grazing privilege under paragraph 6 of this circular.

DRIVING LOOSE STOCK ACROSS FOREST RESERVES TO REACH SHIPPING POINTS OR OTHER GRAZING LANDS OUTSIDE OF THE RESERVES.

23. Persons wishing to cross any part of a forest reserve over a public road or trail, established sheep or cattle trail, or the ordinary mountain trail, with a band of sheep or herd of cattle or horses (the few head of stock following a wagon or pack train being excepted from this regulation), must make application to the forest supervisor in charge, either by letter or on the regular grazing application form,

for the privilege of grazing the stock on the reserve en route, and must have a permit from the supervisor, to be issued by him on the form in use by him for issuing grazing permits. The application must state the number of stock to be driven across the reserve, the date of starting, and period required for the passage. Grazing on the reserve along any such road or trail will only be allowed for the period actually necessary for the stock to make the passage across the reserve. If the occasion demands, forest rangers will be detailed by the supervisor to accompany the stock to see that there is no delay and unnecessary trespassing.

The ordinary application for cattle and horse grazing privilege, changed to either sheep, cattle, or horses, as the case may require, may be used for applications to drive loose stock across the reserves.

Very respectfully,

W. A. RICHARDS,
Commissioner.

Approved May 22, 1903.

THOS. RYAN, *Acting Secretary.*

FORMS FOR GRAZING APPLICATIONS AND PERMITS.

The following are the forms in use for grazing applications and permits:

APPLICATION FOR SHEEP-GRAZING PRIVILEGE.

No. —.

State of ————,
—————, 190—.

I, ———, of ———, being a citizen or having declared my intention to become a citizen of the United States and a resident of the State of ———, do hereby make application for the privilege of pasturing not more than ——— head of sheep, actually owned by me, within the ——— forest reserve: *Provided*, That there shall be excepted, and on which the animals shall not intrude, the following-described areas, localities, and tracts, to wit: ———.

It is my desire to graze said animals upon that part of the reserve bounded and described as follows, to wit: ——— exclusive of any of the said excepted areas, localities, and tracts which may fall within said bounds.

This application is made for my own exclusive use and benefit, and not directly or indirectly for the use of any other person, and not for the purpose of obtaining a permit to be sold or relinquished in any manner or for any consideration, and if the pasturing is permitted hereunder I do hereby agree that it shall not begin earlier than ———, 190—, and that it shall end not later than ———, 190—, and that the animals shall not be corralled within five hundred (500) yards of any running stream or living spring, and that they shall not intrude on any of the said excepted areas, or on any well-known places of public resort or reservoir supply.

Further, if this application is granted, I do hereby agree to fully comply with all and singular the requirements of any law of Congress now or hereafter enacted relating to the grazing of live stock in forest reserves, and with all and singular the requirements of any rules or regulations now or hereafter adopted in pursuance of any such law of Congress.

I also hereby bind myself and employees engaged in caring for the animals while on the reserve to extinguish all fires started by any of said employees before leaving the vicinity thereof, and to aid in extinguishing all camp and forest fires within the territory occupied by me or said employees, and to cooperate generally with the forest officers and rangers in protecting the reserve from fires and depredations, if possible to do so, and to give timely information thereof to the said forest officers and rangers.

I also further agree that as soon as my animals enter the reserve, and thereafter, to notify the forest supervisor in charge of the reserve of their specific location, and to give a description of the range occupied, to the end that their exact location at all times while in the reserve may be known to the forest officers.

This application is also made with the understanding and full agreement thereto that penalties will be imposed for a violation of rules as follows:

PERMITS CANCELED AND REFUSED.

1. For obtaining or attempting to obtain a permit on false representations.
2. For willful trespass upon areas where not permitted, either on closed areas or the ranges of others.
3. For setting out fires to clear range.
4. For *willful* negligence in leaving camp or other fires.
5. For refusing to observe promptly any direct order from the Department requiring an observance of any rule.

OTHER PENALTIES.

The number of sheep covered by a permit to be materially reduced for the following-stated causes, viz:

1. For crowding onto a neighbor's range without the consent of said neighbor.
2. For bedding sheep more than six nights in succession in any one place, except when bedding bands of ewes during lambing season.
3. For entering the reserve prior to the date authorized.
4. For remaining in the reserve after the permit has expired.
5. For corralling within five hundred yards of a running stream or living spring.
6. For gross carelessness in leaving camp fires.
7. For failure to aid in extinguishing a fire occurring within the range occupied when possible to do so.
8. And for such other minor violations of the rules as may occur.
9. For failure to remove sheep promptly upon order of forest officer when damage is being done to the range.
10. For failure of herder to corral for count, upon order of forest officer or ranger, when number of sheep appears to be greater than the number covered by permit.

I also agree to forfeit the permit for a violation of any of its terms or of the terms hereof, or whenever an injury is being done the reserve by reason of the presence of the animals therein.

(P. O. address:) _____.

Witnessed by—

_____,
(P. O. address:) _____.

Examined and recommended _____, 190—.

_____,
Forest Supervisor.

Application approved _____, 190—.

_____,
Commissioner U. S. General Land Office.

SHEEP-GRAZING PERMIT.

[Act of June 4, 1897.]

No. —.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., ————, 190—.

Under Department regulations of December 23, 1901, M—, ———, of ———, is hereby authorized to pasture ——— head of sheep within the ——— forest reserve from ———, 190—, to ———, 190—: *Provided*, That the animals shall not be corralled within five hundred yards of any running stream or living spring, nor intrude upon (to which this permit does not extend) any place of public resort or reservoir supply, nor upon any of the areas, localities, and tracts, described as follows, to wit: ———.

This permit is issued on the conditions that said ——— has, by his application No. ———, dated ———, 190—, agreed to fully comply with all and singular the requirements of any law of Congress now or hereafter enacted relating to the grazing of live stock in forest reserves, and with all and singular the requirements of any rules or regulations now or hereafter adopted in pursuance of any such law of Congress, and that he or his employees engaged in caring for the animals while on the reserve will extinguish all fires started by himself or any of said employees before leaving the vicinity thereof, and to cooperate generally, so far as possible, with the forest officers and rangers in protecting the reserve from fires and depredations; and that as soon as said animals shall enter the reserve, and thereafter, to notify the forest supervisor in charge of their specific location, giving a description of the range occupied; and that the said application was made with the understanding, and full agreement thereto, that penalties will be imposed for a violation of rules, as follows:

PERMITS CANCELED AND REFUSED.

1. For obtaining or attempting to obtain a permit on false representations.
2. For willful trespass upon areas where not permitted, either on closed areas or the ranges of others.
3. For setting out fires to clear range.
4. For *willful* negligence in leaving camp or other fires.
5. For refusing to observe promptly any direct order from the Department requiring an observance of any rule.

OTHER PENALTIES.

The number of sheep covered by a permit to be materially reduced for the following-stated causes, viz:

1. For crowding onto a neighbor's range without the consent of said neighbor.
2. For bedding sheep more than six nights in succession in any one place, except when bedding bands of ewes during lambing season.
3. For entering the reserve prior to the date authorized.
4. For remaining in the reserve after the permit has expired.
5. For corraling within five hundred yards of a running stream or living spring.
6. For gross carelessness in leaving camp fires.
7. For failure to aid in extinguishing a fire occurring within the range occupied when possible to do so.
8. And for such other minor violations of the rules as may occur.
9. For failure to remove sheep promptly upon order of forest officer when damage is being done to the range.
10. For failure of herder to corral for count, upon order of forest officer or ranger, when number of sheep appears to be greater than the number covered by permit.

This privilege is extended with no obligation or agreement to maintain an exclusive possession upon any part of said reserve to any one person or firm, nor as to adjustment of any conflict as to possession.

For a violation of any of the terms hereof, or any of the terms of the application on which it is based, or wherever an injury is being done the reserve by reason of the presence of the animals therein, this permit will be canceled and the animals will be removed from the reserve.

Approved, _____, 190—.

_____,
Commissioner.
 _____,
Secretary of the Interior.

APPLICATION FOR CATTLE AND HORSE GRAZING PRIVILEGE.

No. _____.

State of _____,
 _____, 190—.

I, _____, of _____, being a citizen, or having declared my intention to become a citizen, of the United States and a resident of the State of _____, do actually own and do hereby make application for the privilege of pasturing _____ head of cattle and _____ head of horses within the _____ forest reserve: *Provided*, That there shall be excepted, and on which the animals shall not intrude, the following-described areas, localities, and tracts to wit: _____.

It is my desire to graze said animals upon that part of the reserve bounded and described as follows, to wit: _____.

This application is made for my own exclusive use and benefit, and not directly or indirectly for the use of any other person, and not for the purpose of obtaining a permit to be sold or relinquished in any manner or for any consideration, and if the pasturing is permitted hereunder I do hereby agree that it shall not begin earlier than _____, 190—, and that it shall end not later than _____, 190—, and that the animals shall not intrude on any of the said excepted areas or on any well-known places of public resort or reservoir supply.

Further, if this application is granted, I do hereby agree to fully comply with all and singular the requirements of any law of Congress now or hereafter enacted relating to the grazing of live stock in forest reserves, and with all and singular the requirements of any rules and regulations now or hereafter adopted in pursuance of any such law of Congress.

I also hereby bind myself and employees engaged in caring for the animals while on the reserve to extinguish all fires started by any of said employees before leaving the vicinity thereof, and to aid in extinguishing all camp and forest fires within the territory occupied by me or said employees, and to cooperate generally with the forest officers and rangers in protecting the reserve from fires and depredations, if possible to do so, and to give timely information thereof to the said forest officers and rangers.

I also further agree that as soon as my animals enter the reserve, and thereafter, to notify the forest supervisor in charge of the reserve of their specific location, and to give a description of the range occupied, to the end that their exact location at all times while in the reserve may be known to the forest officers.

I also agree to forfeit the permit for a violation of any of its terms or of the terms hereof or whenever an injury is being done the reserve by reason of the presence of the animals therein.

Witnessed by—

(P. O. address:) _____.

_____,
 (P. O. address:) _____.

Examined and recommended _____, 190—.

Application approved _____, 190—.

_____,
Forest Supervisor.
 _____,
Commissioner U. S. General Land Office.

CATTLE AND HORSE GRAZING PERMIT.

No. —.

[Act of June 4, 1897.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., ———, 190—.

Under Department regulations, as amended December 23, 1901, M—, ———, of ———, is hereby authorized to pasture ——— head of cattle and ——— head of horses within the ——— forest reserve from ———, 190—, to ———, 190—: *Provided*, That the animals shall not intrude upon (to which this permit does not extend) any place of public resort or reservoir supply, nor upon any of the areas, localities, and tracts describe as follows, to wit: ———.

This permit is issued on the conditions that the said ——— has, by his application No. ———, dated ———, 190—, agreed to fully comply with all and singular the requirements of any law of Congress now or hereafter enacted relating to the grazing of live stock in the forest reserves, and with all and singular the requirements of any rules or regulations now or hereafter adopted in pursuance of any such law of Congress, and that he, or his employees engaged in caring for the animals while on the reserve, will extinguish all fires started by himself, or by any of said employees before leaving the vicinity thereof, and to cooperate generally, so far as possible, with the forest officers and rangers in protecting the reserve from fires and depredations, and that as soon as the said animals shall enter the reserve, and thereafter, to notify the forest supervisor in charge of their specific location, giving a description of the range occupied: *Provided*, That this privilege is extended with no obligation or agreement to maintain an exclusive possession upon any part of said reserve to any one person or firm, nor as to adjustment of any conflict as to possession.

For a violation of any of the terms hereof, or of any of the terms of the application on which it is based, or wherever an injury is being done the reserve by reason of the presence of the animals therein, this permit will be canceled, and the animals will be removed from the reserve.

Approved ———, 190—.

—————,
Commissioner.—————,
*Secretary of the Interior.*GRAZING PERMIT.^a

No. —.

[Act of June 4, 1897.]

CATTLE AND HORSES OF RESIDENTS OF FOREST RESERVES.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
—————, ———, 190—.

Under Department regulations, as amended December 23, 1901, M—, ———, of ———, being a resident within the ——— forest reserve, is hereby authorized to pasture ——— head of horses and ——— head of cattle within said reserve from ———, 190—, to ———, 190—: *Provided*, That the animals shall not intrude upon (to which this permit shall not extend) any place of public resort or reservoir supply, nor upon any of the areas, localities, and tracts described as follows, to wit: ———.

This permit is issued on the conditions that the said ——— has, by his application No. ———, dated ———, 190—, agreed to fully comply with all and singular the

^aThis is the form used by supervisors as provided in paragraph 8.

requirements of any law of Congress now or hereafter enacted relating to the grazing of live stock in the forest reserves, and with all and singular the requirements of any rules or regulations now or hereafter adopted in pursuance of any such law of Congress, and that he, or his employees engaged in caring for the animals while on the reserve, will extinguish all fires started by himself or by any of said employees before leaving the vicinity thereof, and to cooperate generally, so far as possible, with the forest officers and rangers in protecting the reserve from fires and depredations, and that as soon as the said animals shall enter the reserve, and thereafter, to notify the forest supervisor in charge of their specific location, giving a description of the range occupied: *Provided*, That this privilege is extended with no obligation or agreement to maintain an exclusive possession upon any part of said reserve to any one person or firm nor as to adjustment of any conflict as to possession.

For a violation of any of the terms hereof, or any of the terms of the application on which it is based, or wherever an injury is being done the reserve by reason of the presence of the animals therein, this permit will be canceled, and the animals will be moved from the reserve.

_____,
Forest Supervisor.

RESTRAINT OF UNAUTHORIZED GRAZING IN FOREST RESERVATIONS.

UNITED STATES *v.* DASTERVIGNES ET AL.

(Circuit Court, N. D. California. August 18, 1902.)

No. 13259.

(118 Fed. Rep., 199.)

1. FORESTS — REGULATION — RULES — DELEGATION OF LEGISLATIVE AUTHORITY.

The act of Congress approved June 4, 1897 (30 Stat., 35), authorized the Secretary of the Interior, in his superintendence of all forest reservations, to "make such rules and regulations and establish such service as will insure the objects of such reservation, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction." *Held*, that the authority given the Secretary is not unconstitutional as a delegation of legislative authority.

2. SAME—USE OF PUBLIC LANDS.

The pasturing of sheep on the Stanislaus Forest Reservation having been forbidden by rule of the Secretary of the Interior under authority of act June 4, 1897 (30 Stat., 35), user can not give a right of pasturage there.

3. SAME—USER.

Inasmuch as laches can not be invoked against the Government, user of Government lands for pasturage gives no right so to do.

4. SAME—RESTRAINING USE—BILL—ALLEGATIONS.

A bill seeking to restrain defendants from pasturing sheep on a certain forest reservation alleged that defendants drove several bands of sheep upon the reservation. *Held*, that a demurrer on the ground that there was a misjoinder of defendants was of no merit, since, while it did not appear that the defendants committed several acts of trespass, it appeared there was a joint offense, and, even if the acts were several, they might all be included in one equitable action, the law and testimony applicable to each defendant being the same.

5. SAME—ALLEGATIONS—DAMAGES.

Where a bill to restrain the pasturage of sheep on a certain forest reservation alleged that the grasses, herbage, and undergrowth were injured by the tramping, traveling, and driving of the sheep, the allegations as to damage were sufficient to warrant continuance of a restraining order *pendente lite*.

DASTERVIGNES ET AL. *v.* UNITED STATES.

(Circuit court of appeals, ninth circuit. March 2, 1903.)

No. 893.

(122 Fed. Rep., 30.)

1. CONSTITUTIONAL LAW—DELEGATION OF LEGISLATIVE POWER—ACT AUTHORIZING REGULATIONS FOR FOREST RESERVATIONS.

The provisions of the sundry civil appropriation act of June 4, 1897, relating to forest reservations (30 Stat., 35 [U. S. Comp. St. 1901, p. 1540]), which authorizes the Secretary of the Interior to "make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction," and which itself prescribes the penalty for violation of such regulations, is not unconstitutional as delegating legislative power to an administrative officer, but is a valid delegation of power to make administrative regulations in relation to details necessary to carry out the purpose of the act.

2. FOREST RESERVATIONS—VALIDITY OF REGULATIONS—EXCLUSION OF SHEEP.

Rule 13, made and promulgated by the Secretary pursuant to such authority, which prohibits the pasturing of sheep and goats on public lands in the forest reservation, except in cases where permits for their limited grazing may be granted by the land department with the approval of the Secretary, is a proper and legitimate exercise of the authority conferred, which gives the Secretary the right to exclude from the res-

ervations any class of live stock found to be destructive of the purpose for which they were created; and such rule can not be said to create an unjust or illegal discrimination against the owners of the sheep, which constitute a class of live stock differing from any other in respect to pasturage, and which has uniformly been recognized as a proper subject for special legislation and regulation.

3. SAME—INJUNCTION AGAINST PASTURAGE OF SHEEP—GROUNDS.

A bill filed by the United States to enjoin the pasturage of sheep in a forest reservation, in violation of the regulations prescribed by the Secretary of the Interior, alleged that the sheep pastured within the reservation were committing great and irreparable injury to the public lands therein and to the undergrowth, timber, and water supply. Affidavits filed in support of such allegations recited that the sheep of defendants destroyed undergrowth, young and growing trees and seedlings, and ate and destroyed the roots of the vegetation and grasses, leaving the ground bare and subject to disastrous washings by the rains, to the irreparable injury of the reservation. *Held*, that such allegation and showing constituted a sufficient ground for the granting of a preliminary injunction.

4. EQUITY—SUFFICIENCY OF BILL—MULTIFARIOUSNESS.

A bill by the United States against a number of defendants, to enjoin them from pasturing sheep in a forest reservation, is not subject to the objection of misjoinder and multifariousness where it alleges that defendants are pasturing two bands of sheep in the reservation, and contains no averments which show or indicate any separate or distinct rights or different interests as between the several defendants.

(See also *United States v. Tygh Valley Land and Live Stock Co.*; 76 Fed. Rep., 693.)

**RENTING OR LEASING LANDS NEAR OR ADJACENT TO SPRINGS
WITHIN FOREST RESERVATIONS.**

ACT OF FEBRUARY 28, 1899 (30 Stat., 908).

Authorizes the Secretary of the Interior to rent or lease suitable spaces and portions of ground near or adjacent to mineral, medicinal, or other springs within public forest reserves.

[Act of February 28, 1899 (30 Stat., 908).]

CHAP. 221.—AN ACT to authorize the Secretary of the Interior to rent or lease certain portions of forest reserve.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and hereby is, authorized, Forest reserves.

Authority conferred to lease grounds in, for hotels, etc.

under such rules and regulations as he from time to time may make, to rent or lease to responsible persons or corporations applying therefor suitable spaces and portions of ground near, or adjacent to, mineral, medicinal, or other springs, within any forest reserves established within the United States, or hereafter to be established, and where the public is accustomed or desires to frequent, for health or pleasure, for the purpose of erecting upon such leased ground sanitariums or hotels, to be opened for the reception of the public. And he is further authorized to make such regulations, for the convenience of people visiting such springs, with reference to spaces and locations, for the erection of tents or temporary dwelling houses to be erected or constructed for the use of those visiting such springs for health or pleasure. And the Secretary of the Interior is authorized to prescribe the terms and duration and the compensation to be paid for the privileges granted under the provisions of this Act.

Regulations.

Funds to be used for care of forest reserves.

SEC. 2. That all funds arising from the privileges granted hereunder shall be covered into the Treasury of the United States as a special fund, to be expended in the care of public forest reservations.

SCOPE OF THE ACT IN REGARD TO THE EXTENT OF AREA THAT MAY BE LEASED.

The act of February 28, 1899, authorizing the Secretary of the Interior to lease lands adjacent to mineral springs within forest reserves for hotel or sanitarium purposes, contemplates the leasing of land not wholly occupied by the hotel or sanitarium, whenever such action is necessary to the proper conduct of such hotel or sanitarium, and to make the beneficial properties of the springs available to the public. (Opinion, 28 L. D., 386.)

RIGHTS OF WAY ACROSS FOREST RESERVES.

I. ACT OF JUNE 4, 1897 (30 Stat., 36). (See page 9.)

Contains the following provision:

Nothing herein shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of such reservations, or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize

their property under such rules and regulations as may be prescribed by the Secretary of the Interior. Nor shall anything herein prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof: *Provided*, That such persons comply with the rules and regulations covering such forest reservations. (See regulations under, contained in circular of April 4, 1900, p. 14.)

The act of June 4, 1897, provides for the control and administration of all public lands set apart as forest reserves by the President, under section 24, act of March 3, 1891, but makes no grant of right of way through these reservations, and does not give the Secretary of the Interior any new or additional authority to permit the use of a right of way through them or within their boundaries, and is not applicable to reservations created by special act of Congress. (Opinion, 28 L. D., 474.)

II. CANALS, DITCHES, AND RESERVOIRS IN FOREST RESERVES.

The grant made by the act of March 3, 1891, of rights of way for canals, ditches, and reservoirs over public lands and reservations of the United States was limited, by the terms of said act, to companies formed for purposes of irrigation, and while section 2 of the act of May 11, 1898, amendatory of the act of 1891, permits the use of rights of way, granted under said act of 1891, for other purposes, it does not enlarge the class of grantees, or make a new grant; hence, under these acts, the Secretary of the Interior has no authority to grant the right to establish a reservoir, or construct a ditch for mining or domestic purposes, within the limits of the Yosemite Park, or any forest reserve in California. (Opinion, 28 L. D., 474.)

[Also Hamilton Irrigation Company (21 L. D., 330) and Crystal Lake Irrigation and Power Company (27 L. D., 315), construing the act of May 14, 1896; 29 Stat., 120.]

III. "DEFICIENCY" ACT OF MARCH 3, 1899 (30 Stat., 1233).

Contains the following provision:

That in the form provided by existing law the Secretary of the Interior may file and approve surveys and plats of any right of way for a wagon road, railroad, or other highway over and across any forest reservation or reservoir site when in his judgment the public interests will not be injuriously affected thereby.

IV. ACT OF FEBRUARY 15, 1901 (31 Stat., 790).

Authorizes the Secretary of the Interior to permit the use of rights of way through the public lands, forest, and other reservations of the United States and certain national parks for purposes therein specified.

The full text of the act and regulations issued thereunder on July 8, 1901, are contained in the following circular:

[Circular.]

REGULATIONS CONCERNING RIGHT OF WAY OVER PUBLIC LANDS.^a

The following regulations are promulgated under the acts of Congress approved February 15, 1901 (31 Stat., 790), January 21, 1895 (28 Stat., 635), and section 1 of the act of May 11, 1898 (30 Stat., 404). The act of February 15, 1901, *supra*, entitled "An act relating to rights of way through certain parks, reservations, and other public lands," is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of rights of way through the public lands, forest and other reservations of the United States, and the Yosemite, Sequoia, and General Grant national parks, California, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for canals, ditches, pipes, and pipe lines, flumes, tunnels, or other water conduits, and for water plants, dams, and reservoirs used to promote irrigation or mining or quarrying, or the manufacturing or cutting of timber or lumber, or the supplying of water for domestic, public, or any other beneficial uses to the extent of the ground occupied by such canals, ditches, flumes, tunnels, reservoirs, or other water conduits or water plants, or electrical or other works permitted hereunder, and not to exceed fifty feet on each side of the marginal limits thereof, or not to exceed fifty feet on each side of the center line of such pipes and pipe lines, electrical, telegraph, and telephone lines and poles, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted hereunder or any one or more of the purposes herein named: *Provided*, That such permits shall be allowed within or through any of said parks or any forest, military, Indian, or other reservation only upon the approval of the chief officer of the Department under whose supervision such park or reservation falls and upon a finding by him that the same is not incompatible with the public interest: *Provided further*, That all permits given hereunder for telegraph and telephone purposes shall be subject to the provision of title sixty-five of the Revised Statutes of the United States, and amendments thereto, regulating rights of way for telegraph companies over the public domain: *And provided further*, That any permission given by the Secretary of the Interior under the provisions of this act may be revoked by him or his successor, in his discretion, and shall not be held to confer any right, or easement, or interest in, to, or over any public land, reservation or park.

^aCertain of the requirements in these regulations, bearing upon forest reserves, have since been modified, as indicated under the heading "Modification of certain of the requirements in the above circular of July 8, 1901." See page 82.

1. This act, in general terms, authorizes the Secretary of the Interior, under regulations to be fixed by him, to grant permission to use rights of way through the public lands, forest and other reservations of the United States, and the Yosemite, Sequoia, and General Grant national parks in California, for every purpose contemplated by acts of January 21, 1895 (28 Stat., 635), May 14, 1896 (29 Stat., 120), and section 1 of the act of May 11, 1898 (30 Stat., 404), and for other purposes additional thereto, *except for tramroads, the provisions relating to tramroads, contained in the act of 1895 and in section 1 of the act of 1898 aforesaid, remaining unmodified and not being in any manner extended.*

Although this act does not expressly repeal any provision of law relating to the granting of permission to use rights of way, contained in the acts referred to, yet, considering the general scope and purpose of the act, and Congress having, with the exception above noted, embodied therein the main features of the former acts relative to the granting of a mere permission or license for such use, it is evident that, for purposes of administration, the later act should control in so far as the same pertains to the granting of permission to use rights of way for purposes therein specified. Accordingly all applications for *permission* to use rights of way for the purposes specified in this act must be submitted thereunder. Where, however, it is sought to acquire a right of way for the main purpose of irrigation and for public or other purposes as subsidiary thereto, as contemplated by sections 18 to 21 of the act of March 3, 1891 (26 Stat., 1095), and section 2 of the act of May 11, 1898, *supra*, the application must be submitted in accordance with the then existing regulations issued under said acts. (For present regulations, see 30 L. D., 325.)

2. It is to be specially noted that this act does not make a grant in the nature of an easement, but authorizes a mere permission in the nature of a license, revocable at any time, and it gives no right whatever to take from the public lands, reservations, or parks adjacent to the right of way any material, earth, or stone for construction or other purpose.

3. Application for permission to use the desired right of way through the public lands, reservations, and parks designated in the act must be filed and permission granted, as herein provided, before any rights can be claimed thereunder. Such application should be made in the form of a map and field notes, in duplicate, of the center line of the right of way or of the pipe, telegraph, telephone, or electrical line, canal, conduit, or reservoir, and must be filed in the local land office for the district in which the land traversed by the right of way is situate; if in more than one district, duplicate maps and field notes need be filed in only one district and single sets in the others. The maps, field notes, evidence of water rights, etc., and, when the

applicant is a corporation, the articles of incorporation and proofs of organization, must be prepared and filed in accordance with the then existing regulations, under the general right-of-way acts (for present regulations under said acts see 27 L. D., 633, and 30 L. D., 325), appropriate changes being made in the prescribed forms so as to specify and relate to the act under which the application is made. Permission may be given under this act for rights of way upon unsurveyed lands, maps to be prepared in accordance with the requirements of the circulars noted.

4. An affidavit that the applicant is a citizen of the United States must accompany the application, and if the applicant is an association of citizens, each must make affidavit of citizenship, and a complete list of the members thereof must be given in an affidavit by one of them; if not a native-born citizen, the applicant will be required to file the usual proofs of naturalization. The applicant must also set forth in the affidavit the purposes for which the right of way is to be used, and must show that he in good faith intends to utilize the same for such purposes in the event his application therefor is granted.

5. When application is made for right of way for electrical or water plants, the location and extent of ground proposed to be occupied by buildings or other structures necessary to be used in connection therewith must be clearly designated on the map and described in the field notes and forms by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing, on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more of such proposed structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them, provided all the others are connected therewith by course and distance shown on the map. The applicant must also file an affidavit setting forth the dimensions and proposed use of each of the structures, and must show definitely that each one is necessary to a proper use of the right of way for the purposes contemplated in the act.

6. Whenever a right of way is located upon a reservation, the applicant must file a certificate to the effect that the right of way is not so located as to interfere with the proper occupation of the reservation by the Government, and when located upon any of the national parks designated in the act the applicant must show to the satisfaction of the Department that the location and use of the right of way for the purposes contemplated will not interfere with the uses and purposes for which the park was originally dedicated, and will not result in damage or injury to the natural conditions of property or scenery existing therein. When the right of way is located on a forest or

timber reserve, or in any of the designated national parks, the applicant must file a stipulation under seal to take no timber whatever from such reservation or park outside of the right of way and to remove no timber within the right of way except only such as is rendered necessary by the proper use and enjoyment of the privilege for which application is made. The applicant will also be required to give bond to the Government of the United States, to be approved by the Commissioner of the General Land Office, conditioned to the effect that the makers thereof will pay the United States for any and all damage to the public lands, timber, natural curiosities, or other public property on such reservation or park, or upon the public lands of the United States, by reason of such use and occupation of the reserve or park, regardless of the cause or circumstances under which such damage may occur. A bond furnished by any surety company that has complied with the provisions of the act of August 13, 1894 (28 Stat., 279), will be accepted if properly conditioned as aforesaid. The amount of the bond can not be fixed until the application has been submitted to the General Land Office, when a form of bond will be furnished and the amount thereof fixed.

7. Whenever right of way within a reservation or park is desired for operations in connection with mining, quarrying, cutting timber, or manufacturing lumber, a satisfactory showing must be made of the applicant's right to engage in such operations within the reserve or park.

8. Applications for right of way under this act, all or any part of which crosses or is located upon any Indian reservation, before being transmitted to the Department, will be submitted by the Commissioner of the General Land Office to the Office of Indian Affairs for such action and recommendation thereon as that Office may deem proper, in so far as the same pertains to such Indian reservation. Applicants will be required to furnish, in triplicate, so much of the map and field notes as relate to that portion of the right of way applied for, if any, within an Indian reservation; and in the event the application is subsequently granted, one copy of such portion of the map and field notes as pertains to such reservation will be placed on file in the Indian Office. In this connection, attention is directed to the provisions of section 3 of the act of March 3, 1901 (31 Stat., 1083), which authorizes the granting of permanent rights of way, in the nature of easements, for telegraph and telephone purposes only, through Indian reservations and other Indian lands upon payment of proper compensation for the benefit of the Indians interested therein. The provisions of the latter act and the nature and character of the rights authorized to be secured thereunder differ materially from the provisions contained in this act and the rights authorized to be conferred thereunder. Applicants, therefore, desiring to secure permanent rights of way through Indian

reservations or other Indian lands for telegraph and telephone purposes will be required to submit their applications therefor under the act of March 3, 1901, *supra*, in accordance with the then current regulations issued thereunder. (For existing regulations under said act, see regulations approved March 26, 1901.)

9. All applications for the use of a right of way under this act, through any lands designated therein, for telegraph and telephone purposes, must be accompanied by an official statement from the Post-Office Department showing that the applicant has complied with its regulations under title sixty-five of the Revised Statutes of the United States and amendments thereto.

10. Upon the filing of an application under this act, the register will note the same in pencil on the tract books, opposite the tracts traversed, giving date of filing and name of applicant, and also indorse on each map the date of filing over his written signature. If it does not appear that some portion of the public lands, reservations, or parks designated in the act would be affected by the approval of such maps, they will be returned to the applicant with notice of that fact. If vacant public land or lands in any reservation or park so designated are affected by the proposed right of way, the register will so certify on the map and duplicate over his signature, and will promptly transmit the same to the General Land Office with report that the required notations have been made.

11. Upon receipt of applications for right of way by the General Land Office, the same will be examined and then submitted to the Secretary of the Interior with recommendation as to their approval. Permission to use rights of way through a reservation or any park designated in the act will only be granted upon approval of the chief officer of the department under whose supervision such park or reservation falls and upon a finding by him that the same is not incompatible with the public interest. If the application, and the showing made in support thereof, is satisfactory, the Secretary of the Interior will give the required permission in such form as may be deemed proper, according to the features of each case; and it is to be expressly understood, in accordance with the final proviso of the act, that any permission given thereunder may be modified or revoked by the Secretary or his successor, in his discretion, at any time, and shall not be held to confer any right, easement, or interest in, to, or over any public land, reservation, or park. The final disposal by the United States of any tract traversed by the permitted right of way is of itself, without further act on the part of the Department, a revocation of the permission so far as it affects that tract, and any permission granted hereunder is also subject to such further and future regulations as may be adopted by the Department.

12. When permission to use the right of way applied for is given by the Secretary of the Interior, a copy of the original map will be

sent to the local officers, who will mark upon the township plats the line of the right of way and will note in pencil, opposite each tract of public land affected, that such permission has been given, the date thereof, and a reference to the act

TRAMROADS.

13. The Secretary of the Interior is authorized to permit the use of rights of way for tramroads through the public lands of the United States, not within the limits of any park, forest, military, or Indian reservation under the provisions of the act of Congress of January 21, 1895 (28 Stat., 635), as amended by section 1 of the act of May 11, 1898 (30 Stat., 404). The act of January 21, 1895, *supra*, entitled "An act to permit the use of the right of way through the public lands for tramroads, canals, and reservoirs, and for other purposes," is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of the right of way through the public lands of the United States, not within the limits of any park, forest, military or Indian reservation, for tramroads, canals or reservoirs to the extent of the ground occupied by the water of the canals and reservoirs and fifty feet on each side of the marginal limits thereof; or fifty feet on each side of the center line of the tramroad, by any citizen or any association of citizens of the United States engaged in the business of mining or quarrying or of cutting timber and manufacturing lumber.

This act was amended by section 1 of the act of May 11, 1898, *supra*, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act to permit the use of the right of way through the public lands for tramroads, canals, and reservoirs, and for other purposes," approved January twenty-first, eighteen hundred and ninety-five, be, and the same is hereby, amended by adding thereto the following:

"That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of right of way upon the public lands of the United States, not within limits of any park, forest, military, or Indian reservations, for tramways, canals, or reservoirs, to the extent of the ground occupied by the water of the canals and reservoirs, and fifty feet on each side of the marginal limits thereof, or fifty feet on each side of the center line of the tramroad, by any citizen or association of citizens of the United States, for the purposes of furnishing water for domestic, public, and other beneficial uses."

14. Applications for permission to use rights of way for tramroads should be prepared and filed in accordance with the regulations hereinbefore prescribed relative to presentation of applications for rights of way under the act of February 15, 1901, and the then current regulations issued under the general railroad right-of-way act of March 3, 1875 (for existing regulations under the latter act, see 27 L. D., 663), the prescribed forms in such regulations being so modified as to specify

and relate to the acts under which the application is made. It is to be specially noted that the acts relating to tramroads do not authorize the granting of permission to use rights of way for such purpose within the limits of any park, forest, military, or Indian reservation, and it is to be further noted that permission to use rights of way for tramroads over public lands, when granted, only confers a right in the nature of a license and is subject to all the conditions and limitations hereinbefore stated in paragraph 11 of these regulations.

BINGER HERMANN,
Commissioner.

Approved, July 8, 1901.

E. A. HITCHCOCK, *Secretary.*

**MODIFICATIONS OF CERTAIN OF THE REQUIREMENTS IN THE
ABOVE CIRCULAR OF JULY 8, 1901.**

The requirements of the circular of July 8, 1901, issued under act of February 15, 1901 (31 Stat., 790), were so modified by the Secretary of the Interior May 10, 1902, in the Luella Deal case, as to dispense with survey and field notes in case of application by an individual for right of way through a forest reserve for short irrigation ditches and small reservoirs needed by ranchers and settlers. The following circular letter of instructions to forest officers has been issued in accordance with this ruling:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 19, 1903.

TO FOREST OFFICERS.

GENTLEMEN: In the matter of constructing ditches and reservoirs upon public lands, forest or other reserves of the United States, the act of February 15, 1901 (31 Stat., 790), requires a right of way therefor from the Secretary of the Interior. Where the project is within the limits of a forest reserve the right of way may be procured by proper application submitted in one of two ways.

First. Through the forest supervisor in cases of individual applications involving small projects of a private and personal character, where the reservoir site will occupy but a few acres, perhaps 5 acres or thereabouts, and the ditch will not be longer than perhaps a half mile, or mile, or thereabouts, and the cross sections not exceeding perhaps 4 square feet or thereabouts. The application must be accompanied by affidavit, certificate, and stipulation as follows:

Affidavit statement by the applicant showing—

1. That he is a citizen of the United States.
2. Setting forth the purpose for which the right of way is to be used.
3. The location of the land to be affected thereby.
4. That he in good faith intends to use the right of way for the purpose stated, in the event his application is granted.
5. If for a reservoir, the location and area of forest-reserve land to be occupied; if for a ditch or ditches, the length and direction thereof:
 - (a) The length which will traverse forest-reserve lands.
 - (b) The length which will traverse private lands within forest-reserve limits.
 - (c) The length which will traverse public lands outside forest-reserve limits.
6. The source of the water supply.
7. How the water is to be conducted on the land to be benefited thereby.

8. Whether there are any other water rights on the stream from which the water is to be taken; and, if so, whether the stream furnishes all the water needed for those rights at all times of the year, and whether the proposed reservoir or ditch would be likely to interfere with those rights, at least during dry seasons.

Certificate required from the applicant must be to the effect that the right of way is not so located as to interfere with the proper occupation of the reserve by the Government.

Stipulation under seal must be filed by the applicant that no timber whatever will be removed from the forest reserve outside of the right of way, and that no timber within the right of way will be removed except only such as is necessary to enable the proper construction and the use and enjoyment of the privilege for which his application is made.

The proper forest supervisor should transmit the application to this Office with his report thereon and recommendation, giving his reasons for such recommendation. (See Forest Reserve Manual, p. 71.)

And, second. For enterprises of greater magnitude than above indicated, whether private or corporate, and which are to be established and maintained by or for the interest and benefit of an individual, or a company or association, application should be made through the proper local land office in accordance with the requirements of the circular of July 8, 1901, issued under the said act of February 15, 1901.

Forest officers are hereby instructed to act in accordance with the above requirements, and to make due effort to have them fully understood within their respective jurisdictions.

Very respectfully,

W. A. RICHARDS,
Commissioner.

The requirements of circular of July 8, 1901 (31 L. D., 13), were so modified by the Secretary of the Interior, November 17, 1902, on Office recommendation of November 3, 1902, as to dispense with survey and field notes, etc., in cases of application by individuals for permission to construct short telephone lines between small hamlets, mining camps, etc., when regular right of way is not required, wires being strung largely on trees, suspended across canyons or streams, and needing posts or poles for only a small portion of the line.

For ruling relative to wagon roads in connection with mining claims, see under the heading "Wagon roads for benefit of mining claims" (p. 38).

For right of way privileges in respect to individual forest reservations, see under the heading "Local Laws" (p. 102).

OCCUPATION OF LANDS FOR SCHOOL AND CHURCH PURPOSES.

ACT OF JUNE 4, 1897 (30 Stat., 36) (see p. 9),

Contains the following provision:

The settlers residing within the exterior boundaries of such forest reservations, or in the vicinity thereof, may maintain schools and churches within such reservation, and for that purpose may occupy any part of said forest reservation, not exceeding two acres for each schoolhouse and one acre for a church. (See regulations in circular of April 4, 1900, p. 14.)

Permission to occupy lands within a forest reserve for church and school purposes, under the provisions of the act of June 4, 1897, asked for on behalf of a corporation, may be granted to the petitioners as individuals, where it appears that they are settlers residing in the vicinity of said reserve. (T. S. C. Lowe et al.; 28 L. D., 89.)

PERMITS FOR SPECIAL PRIVILEGES NOT TRANSFERABLE.

Permits allowed by the Department for special privileges or any occupancy and use of forest-reserve lands, not specifically provided for under the terms of the laws, are not transferable, and may be revoked at any time by the Secretary of the Interior. Should the property on or in which the special privilege is conducted be sold or leased to another, timely application for a permit to continue the privilege, occupancy, or use should be made before the change of occupancy is effected. (Commissioner of the General Land Office to Forest Superintendent F. A. Fenn, December 28, 1901.)

INDIAN ALLOTMENT LANDS WITHIN FOREST RESERVES.

Indian allotment lands within a forest reserve are doubly guarded from unlawful occupancy and use, under the terms of the act of February 8, 1887 (24 Stat., 488), and act of June 4, 1897 (30 Stat., 34-36). (Commissioner of the General Land Office to Forest Supervisor F. N. Haines, February 24, 1902.)

STATUS OF UNAPPROVED SELECTIONS, UNDER RAILROAD OR OTHER GRANTS, WHEN INCLUDED WITHIN A FOREST RESERVE.

A selection made under a railroad or other grant in accordance with existing regulations, and duly accepted or recognized by the local officers, is a "lawful filing" within the meaning of that term as used in the excepting clause of the proclamation of June 29, 1898, creating an addition to the Pine Mountain and Zaca Lake Forest Reserve.

Departmental decision of April 14, 1899 (28 L. D., 281), in the case of Southern Pacific Railroad Company, recalled and vacated. (Southern Pacific Railroad Co.; 32 L. D., 51.)

INJUNCTION GRANTED AGAINST TRESPASSING ON A FOREST RESERVE.

A bill filed by the United States to enjoin the pasturage of sheep in a forest reservation, in violation of the regulations prescribed by the Secretary of the Interior, alleged that the sheep pastured within the reservation were committing great and irreparable injury to the public lands therein, and to the undergrowth, timber, and water supply. Affidavits filed in support of such allegations recited that the sheep of defendants destroyed undergrowth, young and growing trees and seed-

lings, and ate and destroyed the roots of the vegetation and grasses, leaving the ground bare and subject to disastrous washings by the rains, to the irreparable injury of the reservation. *Held*, that such allegation and showing constituted a sufficient ground for the granting of a preliminary injunction. (Dastervignes et al. v. United States. Circuit court of appeals, ninth circuit; 122 Fed. Rep., 30. Syllabus.)

FIRES ON THE PUBLIC DOMAIN.

[Circular—Forest fires.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D. C., June 18, 1900.

For the information of all concerned, attention is called to the following act of Congress, approved May 5, 1900, entitled "An act to amend an act entitled 'An act to prevent forest fires on the public domain,' approved February twenty-fourth, eighteen hundred and ninety-seven."

Registers and receivers, United States land offices, special agents and forest officers, General Land Office, should promptly report to the proper United States attorney all information they may receive relative to the violation of the provisions of this law.

BINGER HERMANN, *Commissioner.*

Approved, June 18, 1900.

E. A. HITCHCOCK, *Secretary.*

[Act of May 5, 1900 (31 Stat., 169).]

CHAP. 349.—AN ACT to amend an act entitled "An act to prevent forest fires on the public domain," approved February twenty-fourth, eighteen hundred and ninety-seven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an act entitled "An act to prevent forest fires on the public domain," approved February twenty-fourth, eighteen hundred and ninety-seven, be, and the same is hereby, amended so as to read as follows:

"That any person who shall willfully or maliciously set on fire, or cause to be set on fire, any timber, underbrush, or grass upon the public domain, or shall leave or suffer fire to burn unattended near any timber or other inflammable material, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any district court of the United States having jurisdiction of the same shall be fined in a sum not more than five thousand dollars or be imprisoned for a term of not more than two years, or both.

"SEC. 2. That any person who shall build a fire in or near any forest, timber, or other inflammable material upon the public domain shall, before leaving said fire, totally extinguish the same. Any person failing to do so shall be deemed guilty of a misdemeanor, and upon conviction thereof in any district court of the United States having jurisdiction of the same shall be fined in a sum not more than one thousand dollars or be imprisoned for a term of not more than one year, or both.

“SEC. 3. That in all cases arising under this act the fines collected shall be paid into the public school fund of the county in which the lands where the offense was committed are situated.”

PENALTY FOR DESTRUCTION OF FIRE-WARNING NOTICES.

The following instructions have been issued by the General Land Office, under dates of October 19 and 24, 1900, to the several forest officers:

The tearing down of a fire-warning poster is a destruction of Government property and a defiance of the law thereby promulgated to the public. The act is willful and malicious.

The going upon a Government reservation and committing such an act is a willful trespass, and is punishable under the penalty for trespass in the act of June 4, 1897 (30 Stat., 34-36), providing for the administration and protection of forest reserves.

All persons guilty of tearing down or otherwise defacing or destroying fire notices should be prosecuted as above indicated, and you will instruct your men accordingly.

The following notice was prepared for posting generally throughout the forests on the public lands and in forest reserves:

FOREST FIRES! WARNING!

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 26, 1903.

Large areas of forest, public and private, are destroyed each year by fire. This destruction is an injury to everyone, and is a great damage, especially in all mountain countries, where a regular flow of the streams is of vital importance. The forest is the most effective means of preventing floods and producing a more regular flow of water for irrigation and other useful purposes.

To prevent the mischievous forest fires Congress passed the law approved May 5, 1900, which—

Forbids setting fire to the woods, and

Forbids leaving fires—camp fires and others—without first extinguishing the same.

This law provides a maximum punishment in—

A fine of \$5,000 or imprisonment for two years, or both, if a fire is set maliciously, and

A fine of \$1,000 or imprisonment for one year, or both, if fire results from carelessness.

It also provides that the money from such fines be paid to the school fund of the county in which the offense is committed.

Directions.—Since so many fires start from neglected camp fires, the public is requested as follows:

1. Do not build a larger fire than you need.

2. Do not build your fires in dense masses of pine leaves, duff, and other combustible material, where the fire is sure to spread.

3. Do not build your fire against large logs, especially large rotten logs, where it requires much more work and time to put the fire out than you are willing to expend, and where you are rarely quite certain that the fire is really and completely extinguished.

4. In windy weather and in dangerous places dig a fire hole and clear off a place to secure your fire. You will save wood and trouble.

5. Every camp fire should be completely put out before leaving camp.

6. Do not build fires to clear off land and for other similar purposes without informing the nearest ranger or the supervisor, so that he may assist you.

These warning notices are posted for your benefit and the good of every man in and near this forest, and it is hoped, therefore, that everyone will see that they remain intact and useful as long as possible.

W. A. RICHARDS,

Commissioner of the General Land Office.

Approved.

E. A. HITCHCOCK,

Secretary of the Interior.

FOREST-RESERVE BOUNDARIES.

The following notice was prepared for posting along the boundaries of forest reserves:

THIS MARKS THE FOREST-RESERVE BOUNDARY.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., August 18, 1902.

OBJECT OF FOREST RESERVES.

The object of setting this land aside as a forest reserve is:

1. To protect a growth of timber on land which is not fit to grow other kinds of crops.

2. To keep a growth of vegetation, especially of timber, on lands which would otherwise wash and gully.

The timber and other vegetation protects the ground against this washing, and thus it does two things:

It prevents the rain and snow water from rushing off as fast as it otherwise would, and thus prevents floods.

It maintains a pervious layer of earth into which the water can soak and be stored up for the summer months, when, in most Western States, it is needed for irrigation.

3. It is for the welfare of the people of this particular region, more

than that of other localities, that this reserve is created; it is for the settler and home builder of this region that the National Government expends large sums of money to insure to his home the benefit of future supplies of timber and water and a protection against flood and drought.

REGULATIONS.

The following are among the principal regulations governing forest reserves:

1. Agricultural settlement of any kind and under any claim is forbidden.

2. Timber may be obtained as follows:

(a) Under the "free use" permit any settler or prospector can obtain timber free of charge for his own use.

(b) By purchase. Application for timber is made to the supervisor of the reserve.

3. Persons wishing to graze stock other than riding, pack, or team animals, and persons wishing to cross the reserve with herds of sheep, cattle, or horses, should apply for permit to the supervisor.

4. Persons wishing to erect and occupy buildings for purposes of carrying on any kind of business other than mining should apply to the supervisor or to the Secretary of the Interior.

5. Prospecting and mining is permitted anywhere in the reserve, but it is forbidden to take up land as mining ground and use it for other purposes than mining.

6. Rangers and other forest officers are game wardens within the reserve, as the law requires them to assist in the enforcement of the local game laws.

FIRE WARNING.

THE LAW OF MAY 5, 1900:

Forbids setting fire to the woods, and forbids leaving fires, camp fires, and others without first extinguishing the same.

THIS LAW PROVIDES:

A maximum fine of \$5,000, or imprisonment for two years, or both, if the fire is set maliciously, and a fine of \$1,000, or imprisonment one year if the fire is due to carelessness.

It also provides that the money from these fines goes to the school fund of the county in which the offense is committed.

Any person desiring information concerning forest reserves should address "The Commissioner of the General Land Office, Washington, D. C."

W. A. RICHARDS,
Acting Commissioner.

Approved:

THOS. RYAN,
Acting Secretary of the Interior.

FISH AND GAME LAWS.

ENFORCEMENT OF STATE AND TERRITORIAL LAWS.

The act of March 3, 1899 (30 Stat., 1095), "sundry civil;" the act of February 9, 1900 (31 Stat., 21), "urgent deficiency;" the act of June 6, 1900 (31 Stat., 614), "sundry civil;" the act of March 3, 1901 (31 Stat., 1037), "deficiency;" the act of March 3, 1901 (31 Stat., 1158), "sundry civil;" the act of June 28, 1902 (32 Stat., 452), "sundry civil;" and the act of March 3, 1903 (32 Stat., 1115), "sundry civil," contain the following provision:

Provided further, That forest agents, superintendents, supervisors, and all other persons employed in connection with the administration and protection of forest reservations shall, in all ways that are practicable, aid in the enforcement of the laws of the State or Territory in which said forest reservation is situated in relation to the protection of fish and game.

SURVEYS OF FOREST RESERVES AND OF ADJACENT LANDS.

I. ACT OF JUNE 4, 1897; 30 Stat., 34. (See page 9.)

Provides for the survey by the United States Geological Survey of the public lands that have been or may hereafter be designated as forest reserves, under section 24 of the act of March 3, 1891 (26 Stat., 1095), including public lands adjacent thereto; and prescribes requirements respecting the returns to be made of such surveys.

ADJACENT LANDS.

In carrying out the provisions of the act of June 4, 1897, with respect to the survey of forest reservations, the phrase "public lands adjacent thereto" should be construed to mean townships, either fractional or entire, actually adjoining such reservations. (Instructions, 25 L. D., 140.)

II. ACT OF MARCH 3, 1899 (30 Stat., 1097).

Contains the following provision:

"And provided further, That hereafter all standard, meander, township, and section lines of the public land surveys shall, as heretofore, be established under the direction and supervision of the Commissioner of the General Land Office, whether the lands to be surveyed are within or without reservations, except that where the exterior boundaries of public forest reservations are required to be coincident with standard, township, or section lines such boundaries may, if not previously established in the ordinary course of the public land surveys, be established and marked under the supervision of the Director of the United States Geological Survey whenever necessary to complete the survey of such exterior boundaries."

**THE CONSTITUTIONAL POWERS OF CONGRESS TO CONTROL
FEDERAL FOREST RESERVES.**

[House Doc. No. 321, Fifty-seventh Congress, first session.]

FOREST RESERVES.

[January 29, 1902.—Ordered to be printed.]

CORRESPONDENCE IN RELATION TO THE POWERS OF CONGRESS OVER
FOREST RESERVES SITUATED IN THE VARIOUS STATES, PUBLISHED BY
ORDER OF THE HOUSE OF REPRESENTATIVES.

HOUSE OF REPRESENTATIVES,
Washington, December 5, 1901.

MY DEAR SIR: In furtherance of my verbal inquiry in regard to your views upon the subject of forestry legislation, I wish to obtain the benefit of your views upon the constitutional powers of Congress to control the various forest reserves where they are situated in the States.

1. As to those reserves situated in the Territories, it seems to me quite clear that Congress can accept the Territorial laws or can modify or change them at pleasure, and that those reserves are clearly within the jurisdiction of the Congress.

2. As to the enactment of Federal laws to punish the setting out of fires or trespasses in cutting or injuring the timber, I would be pleased to have your views as to what constitutional limitations within the limits of the States would interfere. In view of the permanent withdrawal of these forest lands for a general national purpose, would the powers of regulation and control be greater than those which may be exercised in the preservation and management of ordinary public lands open to entry or settlement where the same are covered with timber?

The questions involve the general power of enacting statutes punishing the persons who may injure the forests as well as making and enforcing regulations for their care.

3. In these forests the wild game have opportunities to breed and find shelter.

An enlightened public sentiment, though unfortunately too tardy in its development, has finally led to the enactment of very efficient and adequate game protection in nearly all the States and Territories, which laws, if suitably enforced, would in most instances give adequate protection. But unfortunately in many localities these laws are either wholly or in part disregarded. The President in his message has asked for the enactment of laws creating game preserves in these forest reserves.

This recommendation involves the question as to the extent of Congressional power and also the choice of methods.

If Congress has no power or control over the subject within the limits of a State, it has unquestioned authority, in my judgment, to prevent interstate commerce in the dead bodies or living creatures themselves.

This control Congress has already asserted in the Federal law prohibiting transportation from one State to another of such game when killed in violation of State laws.

In the disposition of this question in the forest reserves the custodians of the forests might be directed to make complaints and enforce proceedings under the local statutes, thus supplementing the efforts of the State authorities. On the other hand, special Federal statutes might be framed, if constitutional power exists, to deal directly with the question.

Indirectly, protection might be furnished by preventing trespass of all kinds during certain seasons, and thus give incidental protection to the wild inhabitants of these national forests during certain portions of the year.

In this borderland of State and national authority I regard it as of the utmost importance that the legislative should keep in view the rights and powers of the States and that care should be exercised to avoid conflict of jurisdiction where so much depends upon having the laws backed up by a friendly local public sentiment.

I would be gratified to have the benefits of your judgment as to how far legislation on these various subjects would be within the constitutional domain of the Congress.

Very respectfully,

JOHN F. LACEY.

Hon. P. C. KNOX,

Attorney-General United States.

DEPARTMENT OF JUSTICE,
Washington, D. C., January 3, 1902.

SIR: Complying with the request therefor contained in your note of December 5, 1901, I here transmit to you some of my views upon the questions there suggested. These questions are as to the power of Congress to enact laws for the protection and control of or relating to our national forest reserves when within the limits of a State, and specifically to make such reserves, to some extent, refuges for the preservation of the remnant of the game in those localities. They necessarily involve, also, substantially the same questions as applicable to the general public domain, for so far as concerns the question of Federal legislative power no difference in principle is perceived.

I quite agree with you that as to those reserves situated within a Territory of the United States this Federal legislative power is ample, and the questions are those arising when such reserves are within the

limits of a State; but in order to the determination of those it may be well to refer briefly to the nature and source of this Federal power over the Territories.

As to the source of this power there has been a diversity of opinion, and the power is claimed to have arisen from that provision of the Constitution which gives Congress the "power to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States;" and other sources of this power have been suggested; but, whatever its origin, the existence of this power, as the Supreme Court has several times said, is undoubted.

While in the *Dred Scott* case (19 How., 393) it was held that this constitutional provision applied only to such territory as the United States then had and did not apply to that subsequently acquired by treaty or conquest, this has not been acquiesced in in later cases, several of which point to this provision as at least one of the sources of the power and control which Congress exercises over the various Territories. And I think it may be taken as now settled that this provision confers upon Congress the power stated over all the Territories.

Congress, then, having sovereignty and ample legislative control of the Territories while they are such and of the public lands therein, one important question is how far this sovereignty and right of control is surrendered to the State by its admission into the Union. And here we may look again to the Constitution, then to the acts admitting such States, and to their constitutions when admitted.

And, first, as to the Federal Constitution. Assuming, as I think we may, that the provision above referred to applies to all "territory and other property belonging to the United States," whether then already or subsequently acquired, what was the intended limit of the duration of the power thus conferred? Was it intended to continue only until the new State was admitted, and to then cease and leave Congress and the Government without any power to "dispose of" or to "make needful rules and regulations respecting" the public lands or "other property" belonging to the United States, or was it intended to continue as long as its subject-matter and its necessity continued? If the former, we must look to some other source for the power of Congress to dispose of and regulate the management of the public domain within the limits of a State. If the latter, then this provision is ample.

I do not consider here the case of military forts, posts, dockyards, etc., for which special provision is made in the Constitution, nor sites for post-offices, court-houses, etc., the question of jurisdiction over which is generally settled by convention.

When the Constitution was adopted, we had but one Territory, though it is fair to suppose that others were looked upon as possible; but the

one that we had was acquired under conditions which required its admission into the Union in not less than three nor more than five States, with equal sovereignty with that of the original States, and the Constitution provided for the admission of new States. Thus, with the subject of new States directly in mind, did the framers intend to give Congress power to dispose of and manage the public lands while in a Territory and to leave it without the power to do either after a State was admitted? For it could not have escaped them that to confer this power while the Territory remained such was, by the strongest implication, to deny it afterwards. Did they intend this?

In the first place—and this is quite sufficient for its construction—the provision itself imposes no limitation, either of time or of Territorial or State condition, nor does the nature of the power conferred imply any such limitation. On the contrary, the power is as broad and general as language could make it, with no limitation whatever, either expressed or implied. And the reason and necessity for the power are tenfold stronger after the admission of the State than during the existence of the Territory; and there is no rule of law or of construction which will permit us to impose a limitation which neither the instrument itself nor the nature of the power imposes or implies. And the general rule is that when a power is conferred without limitation, express or implied, it continues as long as the necessity for its exercise. And the Supreme Court has more than once said (as in *Gibson v. Choteau*, 13 Wall., 92, on p. 99) “That power is subject to no limitations.”

The difficulty and misconstruction here arises chiefly from the use, in this clause, of the word “territory.” If, instead, the expression had been that Congress should have power to dispose of and make all needful rules and regulations respecting the land and other property, there could have been no question but that this power of disposition and control continued after statehood as before. But this is exactly what the provision does mean. It does not refer to organized Territories, as to which the term “dispose of,” and make “rules and regulations,” and “other property” are not appropriate; but it refers to land and other property. And this is expressly held in *United States v. Grotiot* (13 Pet., 526), where it is said (p. 536):

The term “territory,” as here used, is merely descriptive of the kind of property, and is equivalent to the word “lands.” And Congress has the same power over it as over any other property belonging to the United States, and this power is vested in Congress without limitation.

This of itself would seem to make the meaning fairly certain. Consider the situation. After a long struggle, which had long delayed the adoption of the Constitution, the people had finally settled the ownership and sovereignty of the lands outside of the States in the General Government. It was claimed that as this territory had been wrested

from Great Britain by the blood and treasure of the people of all the States it should be held for their common benefit, and not for any State, and it was finally so settled and agreed and the whole territory ceded to the United States for the common benefit of all. At that time, next to State jealousy of Federal power—if second to even that—there were mutual State jealousies of the power of each other, and this was one of the causes of the dispute over the public territory, and yet it was certain and well known that on the admission of the expected new States, with their sovereignty within their borders, all of the sovereignty and control of this territory within their borders which was not in the United States would be in those States, respectively, and that that sovereignty and control which they had so long struggled to place in the United States would be passed over to these three to five States as they were admitted. This was certain to be the case, for if Congress did not have this sovereignty and control after a State was admitted, then the State did have it, and no other State could interfere.

These States might then, by unfriendly legislation or by no legislation, or both, so hamper these lands, their sale, occupancy, and control as to render them of little value except to those States and their people. It is simply incredible that this was intended. If it was not, then it was intended that this vital power of disposal and control should continue at a time when, of all others, it was most needed. While the Territory remained such the sovereignty of the United States was complete without any other grant than that contained in the cession, and this special grant of power was not at all necessary. Its chief, if not its only, use and purpose was that, when and after these lands passed into and under the sovereignty of a State, they should do so subject to the paramount sovereignty of the United States so far as was needful.

In framing this dual government, this imperium in imperio in which each State was to be in many respects sovereign in the nation, and the nation in many respects sovereign in each State, the separation of these sovereignties and their lines of demarcation must have received the most careful attention of those statesmen as one of the most important and difficult problems which confronted them. And, as the control and disposal of this territory was one of the most important and burning questions of the time, and had long been such, delaying and, for a time, endangering the adoption of the Constitution, it would seem impossible that when dealing directly with this question provision was made for this control while in a Territorial state, and when it was little needed, and purposely omitted at a period when, of all others, it was most needed. We shall come nearer to the real meaning of this provision by reading it as it is so plainly written, without any limitation, either of time or Territorial or State condition.

If authority for this construction be needed it is not lacking, and in another connection I shall refer to some cases which come first to hand.

Assuming then, as I think we must, that this constitutional provision confers upon Congress the power of disposition and control of the public lands after the admission into the Union of the States containing them, how much, if any, of this power is surrendered to the States by the acts admitting them into the Union as sovereign States? And here the general rule is certain (although questions may arise as to its application to particular cases). So far as its exercise is needful to the disposition and full control and management of these lands, Congress has always been and is incapable of diverting, alienating, or surrendering any part of it. It is uniformly held that while the title of the United States to the public lands is absolute as against every other title, yet it is held in trust for the ultimate benefit of all the people in such manner as may be prescribed by law, and this is peculiarly the case as to the only Territory we had at that time. Congress then, being a trustee of the title, can not divert, alienate, or surrender any power necessary or proper for the disposal, protection, preservation, control, or management of its lands, nor in anyway discharge itself from the duty of executing the trust confided to it.

But while this power to make all needful rules and regulations is also the power to determine what are needful, and while, therefore, this power so conferred is, in terms absolute and unlimited, yet, notwithstanding some general statements of the Supreme Court, it may be well claimed that, after the admission of a State, there is necessarily a limit arising from other portions of the Constitution and the general powers of the State. For example, may Congress continue to legislate for this public land—some of it, perhaps, in small, isolated quantities—upon all subjects of municipal legislation, civil and criminal, and irrespective of the laws of the State upon the same subjects, as it does, for example, in the District of Columbia? Or, on the other hand, is the power of Congress within a State limited to such acts, legislative or otherwise, as are required for the disposal, protection, and control of such lands? Or is there, between these, a limit to Federal power, legislative or executive? It is not necessary to discuss here the first of these questions, for no such general legislation is contemplated, and the other two, and also how far Federal control has been surrendered by acts admitting States into the Union, may be examined in the light of another consideration, viz, the rights incident to ownership.

Subject to the eminent domain of the State, the collection of taxes, the service of process, and other kindred superior rights, the ownership of land carries with it, as incident to and a part of such ownership, the right of exclusive possession and control, which includes the right to forbid and prevent intrusion thereon for any purpose and to prevent and remove trespassers. The owner may forcibly prevent such intrusions if he can, or he may apply to the courts for relief or to recover

damages. But a private individual may not himself enact laws for the protection of his property or to punish trespassers upon his lands. Is the United States in the same situation as to its lands within a State? Is it without power to itself enact laws for the disposal or management of its public lands within a State, or for their protection from fires, or the preservation of its timber or minerals thereon? This is undoubtedly the case if the United States, as to such lands, has no other rights than those of an ordinary proprietor.

And it must be admitted that much that is said by the court in *Fort Leavenworth Railroad Company v. Lowe* (114 U. S., 525) is directly to the effect that as to lands within a State, unless jurisdiction is reserved in admitting a State, or the land is acquired by the United States with the consent of the State for military purposes, etc., as provided in the Constitution, the United States has no other rights than those of an ordinary proprietor, and that, like other lands, they are subject to the sole jurisdiction and sovereignty of the State. And it is in view of this that I discuss this question more elaborately than I otherwise would. But, if what is there said is to be considered as a denial of all legislative power of Congress over such lands, not only is it opposed to the uniform practice of the Government from the beginning, with the frequent approval of that court, and to many contrary declarations of that court, but the contrary is directly held in later cases.

But what is said in that case must be read with reference to and in the light of the case then before the court. The question in that case was that of the exclusive jurisdiction, or not, of the United States over that part of the reservation not used for military purposes. Upon the admission of Kansas no reservation of Federal jurisdiction was made, but later the State ceded that jurisdiction to the United States with this saving clause, viz, the right to serve civil and criminal State processes therein, and "saving further to said State the right to tax railroad, bridge, and other corporations, their franchises and property on said reservation." The State levied a tax on a railroad on this reservation, and the question of its power to do so depended upon whether the reservation was in the exclusive jurisdiction of the United States. The court held that, inasmuch as it was not purchased with the consent of the State "for the erection of forts, magazines, arsenals, dockyards, and other needful buildings," under clause 17, section 8, Article I, of the Constitution, the United States had no such exclusive jurisdiction, and that, under this saving clause, the State had power to tax the railroad property; and that the only way by which the United States could acquire this exclusive jurisdiction within a State was that provided by the Constitution, viz, by purchase with the consent of the State.

The question of concurrent jurisdiction or of Federal jurisdiction for some purposes, was not discussed nor even mentioned, for it was

not involved. Nor was any allusion made to that other constitutional provision giving to Congress the power to make needful rules, etc., which certainly gave to Congress much greater power than is possessed by an ordinary proprietor. And, if the court decided that it did not do so, or did not apply to lands within a State, or decided anything else upon a question of such vast importance, it did so sub silentio by saying nothing about it. That is not the way in which that court settles questions of such importance.

From the beginning the whole policy and practice of the Government in respect of its public lands has been based upon the generally unquestioned power of Congress to legislate for their disposal, management, and protection, in both Territories and States, and with the frequent approval of the Supreme Court. It is needless to refer to these various acts of legislation as to lands in States and Territories. Their name is legion, but each and every one of these acts was the assertion and the exercise of Federal jurisdiction and sovereignty, and of a right far superior to that of any mere proprietor as to lands within a State.

This must have been either because, in the admission of the State, the jurisdiction necessary for that purpose was either expressly or impliedly reserved—the latter of which is not probable—or because the constitutional provision referred to confers that power, and this would seem a quite sufficient source of power.

In *Gibson v. Choteau* (13 Wall., 92) it is said in the syllabus that “the power of Congress in the disposal of the public domain can not be interfered with or its exercise embarrassed by any State legislation.” And on page 99, “With respect to the public domain, the Constitution vests in Congress the power of disposition and of making all needful rules and regulations. That power is subject to no limitations.” Nothing could be more conclusive that this constitutional provision applies also to lands within a State, and that the legislative power thus conferred is paramount.

In *Jorden v. Bennett* (4 How., 169) it is said (p. 184):

By the Constitution Congress is given power to dispose of and make all needful rules and regulations respecting the territory and other property of the United States for the disposal of the public lands. Therefore, in the new States where such lands be Congress may provide by law, and having the constitutional power to pass the law, it is supreme. So Congress may prohibit and punish trespassers on the public lands. Having the power of disposal and of protection, Congress alone can deal with the title, and no State law, whether of limitation or otherwise, can defeat such title.

This was the holding of the Supreme Court up to the time when the Fort Leavenworth case was decided, and it is not supposable that that court intended to then overrule these cases and deny this legislative power of Congress, and all other powers save such as belong to an ordinary individual proprietor, while making no reference whatever

to its previous holdings. That it did not so intend is manifest from the only other case which I shall cite upon this question, that of *Camfield v. United States* (167 U. S., 518), where it is said in the syllabus:

The Government of the United States has, with respect to its own lands within the limits of a State, the rights of an ordinary proprietor to maintain its possession and to prosecute trespassers; and may legislate for their protection, though such legislation may involve the exercise of the police power.

And on pages 524, 525, the powers of the Government, both as an individual proprietor and as a sovereign, are well stated.

The lands in question are all within the State of Colorado. The Government has, with respect to its own lands, the rights of an ordinary proprietor to maintain its possession and to prosecute trespassers. It may deal with such lands precisely as any private individual may deal with his farming property. It may sell or withhold them from sale. It may grant them in aid of railways or other public enterprises. It may open them to preemption or homestead settlement, but it would be recreant to its duties as trustee for the people of the United States to permit any individual or private corporation to monopolize them for private gain and thereby practically drive intending settlers from the market.

And on page 525:

The General Government doubtless has a power over its own property analogous to the police power of the several States, and the extent to which it may go in the exercise of such power is measured by the exigencies of the particular case. If it be found to be necessary for the protection of the public or of intending settlers to forbid all inclosures of public lands, the Government may do so, though the alternate sections of private lands are thereby rendered less valuable for pasturage. The inconvenience, or even damage, to the individual proprietor does not authorize an act which is in its nature a purpresture of Government lands. While we do not undertake to say that Congress has the unlimited power to legislate against nuisances within a State which it would have within a Territory, we do not think the admission of a Territory as a State deprives it of the power of legislating for the protection of the public lands, though it may thereby involve the exercise of what is ordinarily known as the police power, so long as such power is directed solely to its own protection. A different rule would place the public domain of the United States completely at the mercy of State legislation.

This, so manifestly the correct doctrine, would seem to cover and to settle the whole question and to authorize the proposition that, as to public lands within a State, the Government has all the rights of an individual proprietor, supplemented with the power to make and enforce its own laws for the assertion of those rights and for the disposal and full and complete management, control, and protection of its lands.

Among these undoubted rights is the right of absolute or partial exclusion, either at all or at special times and for any or for special purposes.

While Congress certainly may by law prohibit and punish the entry upon or use of any part of these forest reserves for the purpose of the killing, capture, or pursuit of game, this would not be sufficient. There are many persons now on these reserves by authority of law,

and people are expressly authorized to go there, and it would be necessary to go further and to prohibit the killing, capture, or pursuit of game, even though the entry upon the reserve is not for that purpose. But the right to forbid intrusion for the purpose of killing game is one thing, and the right to forbid and punish the killing, per se, and without reference to any trespass on the property, is another. The first may be forbidden as a trespass and for the protection of the property; but when a person is lawfully there and not a trespasser or intruder the question is different.

But I am decidedly of opinion that Congress may forbid and punish the killing of game on these reserves, no matter that the slayer is lawfully there and is not a trespasser. If Congress may prohibit the use of these reserves for any purpose, it may for another; and while Congress permits persons to be upon and use them for various purposes, it may fix limits to such use and occupation and prescribe the purpose and objects for which they shall not be used, as for the killing, capture, or pursuit of specified kinds of game. Generally, any private owner may forbid, upon his own land, any act that he chooses, although the act may be lawful in itself; and certainly Congress, invested also with legislative power, may do the same thing, just as it may prohibit the sale of intoxicating liquors, though such sale is otherwise lawful.

After considerable attention to the whole subject, I have no hesitation in expressing my opinion that Congress has ample power to forbid and punish any and all kinds of trespass upon or injury to the forest reserves, including the trespass of entering upon or using them for the killing, capture, or pursuit of game.

The exercise of these powers would not conflict with any State authority. Most of the States have laws forbidding the killing, capture, or pursuit of different kinds of game during specified portions of the year. This makes such killing, etc., lawful at other times, but only lawful because not made unlawful. And it is lawful only when the State has power to make it lawful by either implication or direct enactment. But, except in those cases already referred to, such as eminent domain, service of process, etc., no State has power to authorize or make lawful a trespass upon private property. So that, though Congress should prohibit such killing, etc., upon its own lands at all seasons of the year, this would not conflict with any State authority or control. That the preservation of game is part of the public policy of those States and for the benefit of their own people is shown by their own legislation, and they can not complain if Congress upon its own lands goes even further in that direction than the State so long as the open season of the State law is not interfered with in any place where such law is paramount.

It has always been the policy of the Government to invite and induce the purchase and settlement of its public lands, and as to the existence

of game thereon and in their localities adds to the desirability of the lands and is a well-known inducement to their purchase, it may well be considered whether, for this purpose alone and without reference to the protection of the lands from trespass, Congress may not, on its own lands, prohibit the killing of such game.

Your other questions relate to the method of enforcing these Federal powers, if they exist, to the nature and kind of laws therefor. While such questions are peculiarly for Congress, yet, as you request it, I will suggest what occurs to me.

You very properly suggest the power of Congress over interstate commerce as tending indirectly to this end, by prohibiting interstate transportation of game, living or dead, or of the skins or any part thereof. There is some legislation upon that subject. I do not take the pains to examine this to see how sufficient it is, but if not already done something to the end desired may be accomplished in this way, but as a remedy this would fall far short of what is required.

You allude also to the aid and cooperation of forest rangers and those in charge for the enforcement of State laws. This would be well and especially so in the way of securing good feeling and harmonious action between Federal and State authorities. There is a provision for that in the act of March 3, 1899 (2 Sup. Rev. Stats., 993), but it simply imposes a very general duty, and should be more specific as to what acts are required to be done.

In this connection, and with reference also to the general protection of these reserves and the other public lands from fires, cutting timber, killing game, and other depredations, I would suggest, in view of the existing law as to arrest without a warrant, whether it would not be well to give marshals and their deputies, and the superintendents, supervisors, rangers, and other persons charged with the protection of these reserves, power on the public lands, in certain cases approaching "hot pursuit," to arrest without warrant.

Complaints come to this Department that very often the place of illegal acts is so far from the office of any magistrate and the means of communication such that before formal complaint can be made and an officer with a warrant sent there the offenders are beyond successful pursuit. I commend this to your consideration. No matter what laws we may have for the protection of these reserves, the public lands generally, or the game, they would be in a very great many cases wholly inefficient, owing to the impossibility, under the present law as to arrests, of their enforcement.

There are already many statutes against setting fires and trespassing upon the public lands. Perhaps these are sufficient, so far as laws go. I do not examine this; but as to the protection of game on forest reserves drastic laws for that purpose, together with better means, as above suggested, for their enforcement, are required.

I would suggest the making it an offense to enter or be upon or use

any portion of a forest reserve for the purpose or with the intent to kill, capture, or pursue (certain specified kinds of) game, or to kill, capture, or pursue with intent to kill or capture such game on any portion of such reserve, and I would do this for the whole year as to some kinds of game, at least, and make such killing, capture, or pursuit the evidence of such purpose or intent. The latter clause, as you will see, proceeds against the act itself, irrespective of any trespass upon the lands, if, indeed, such act does not necessarily involve a technical legal trespass. But this may be questionable in case, for example, when one who is properly there kills game. I would insert it, at any rate, and it will, with the other, operate as a preventive.

Respectfully,

P. C. KNOX, *Attorney-General.*

Hon. JOHN F. LACEY,

House of Representatives.

REGULATIONS BY THE INTERIOR DEPARTMENT UNDER THE ACT OF JUNE 4, 1897 (30 STAT., 34-36), HAVE THE FORCE OF LAW.

UNITED STATES *v.* DASTERVIGNES ET AL.

(Circuit court, N. D. California. August 18, 1892.)

No. 13259.

[118 Fed. Rep., 199.]

1. FORESTS—REGULATIONS—RULES—DELEGATION OF LEGISLATIVE AUTHORITY.

The act of Congress approved June 4, 1897 (30 Stat., 35), authorized the Secretary of the Interior, in his superintendence of all forest reservations, to “make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction.” *Held*, that the authority given the Secretary is not unconstitutional as a delegation of authority.

* * * * *

DASTERVIGNES ET AL. *v.* UNITED STATES.

(Circuit court of appeals, ninth circuit. March 2, 1893.)

No. 893.

[122 Fed. Rept., 30.]

1. CONSTITUTIONAL LAW—DELEGATION OF LEGISLATIVE POWER—ACT AUTHORIZING REGULATIONS FOR FOREST RESERVATIONS.

The provision of the sundry civil appropriation act of June 4, 1897, relating to forest reservations (30 Stat., 35 [U. S. Comp. St. 1901, p. 1540]), which authorizes the Secretary of the Interior to “make such rules and regulations and establish

such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction," and which itself prescribes the penalty for violation of such regulations, is not unconstitutional as delegating legislative power to an administrative officer, but is a valid delegation of power to make administrative regulations in relation to details necessary to carry out the purpose of the act.

* * * * *

UNITED STATES *v.* EDWARD H. HOLDEN, SR.

(U. S. district court, district of Wyoming.)

In the case of *United States v. Edward H. Holden, sr.*, United States district court, district of Wyoming, Judge Riner held as follows:

There is no provision in the statute (act of June 4, 1897; 30 Stat., 34-36) limiting the amount of timber which may be taken free of charge, but the limitation of the amount is found in the regulations issued by the Interior Department. This regulation, under the statute, has the force of law. While the statute authorizes the use of timber on these reservations free of charge to the bona fide settlers and residents, yet it does so under such regulations as may be prescribed by the Secretary of the Interior, and nowhere do these regulations relieve the party desiring to take timber from obtaining a permit.

LOCAL LAWS.

RIGHTS OF WAY ACROSS FOREST RESERVES.

I. GRAND CANYON FOREST RESERVE.

[Act of May 18, 1898 (30 Stat., 418).]

CHAP. 343.—AN ACT granting the Santa Fe and Grand Canyon Railroad Company right of way for railroad purposes through the Grand Canyon Forest Reserve in northern Arizona.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Santa Fe and Grand Canyon Railroad granted right of way through Grand Canyon Forest Reserve. That the Santa Fe and Grand Canyon Railroad Company, a corporation created and existing under the laws of the Territory of Arizona, is authorized to construct and maintain a railroad over and through the Grand Canyon Forest Reserve (heretofore reserved from entry or settlement and set apart as a public reservation by Benjamin Harrison, President of the United States, by proclamation of date the twentieth day of February, eighteen hundred and ninety-three), said railroad to enter the said Grand Canyon Forest Reserve at such a point on the southern boundary of said reserve in Coconino County, Arizona, as may be found to be the most feasible for the route of said railroad, running in a northerly direction from Williams, Arizona;

Vol. 27, p. 1064.

Location.

thence proceeding by the most practicable route through a point at or near Lombard and the Bright Angel trail to the Indian Gardens, and from said Bright Angel trail in an easterly direction to the Little Colorado River; also to proceed by such side tracks, extensions, switches, and spurs as may be necessary to reach the various groups of mines in said forest reserve, all in said Coconino County; said right of way being granted subject to the rules and restrictions and carrying all the rights and privileges of an act entitled "An act granting to railroads the right of way through the public lands of the United States," approved March third, eighteen hundred and seventy-five, said act being hereby made applicable to the right of way hereby granted: *Provided*, That no timber shall be cut by said railroad company for any purpose outside of the rights of way herein granted.

Restrictions,
etc.
Chap. 152, vol.
18, p. 482, made
applicable.

Proviso.
Timber.

II. PIKE'S PEAK TIMBER LAND RESERVE.

[Act of June 27, 1898 (30 Stat., 493).]

CHAP. 501.—AN ACT granting right of way through the Pikes Peak Timber Land Reserve and the public lands to the Cripple Creek District Railway Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the Cripple Creek District Railway Company, a corporation created and existing under the laws of the State of Colorado, be, and it hereby is, authorized to construct and maintain a railway over and through the Pikes Peak Timber Land Reserve (heretofore reserved from entry or settlement and set apart as a public reservation by Executive order), said railway to enter said Pikes Peak Timber Land Reserve at such a point on the eastern or northern boundary thereof in El Paso County, Colorado, as may be found to be the most feasible for the route of said railway, running in a westerly direction from Colorado Springs, Colorado, thence proceeding by the most practicable route through the reserve to the western boundary thereof; also, to proceed by such side tracks, extensions, switches, and spurs as may be necessary to reach any groups of mines in said forest reserve, all in said El Paso County; and the said railway company is hereby also granted right of way through the public lands to the town of Cripple Creek, in the said State of Colorado; said right of way being granted subject to the rules and restrictions and carrying all the rights and privileges of an act entitled "An act granting

Cripple Creek
District Railway
granted right of
way through
Pikes Peak Tim-
ber Land Re-
serve.

Location.

Right of way
to Cripple Creek,
Colo.

Vol. 18, p. 482.

Proviso.
Cutting of tim-
ber limited.

to railroads the right of way through the public lands of the United States," approved March third, eighteen hundred and seventy-five, said act being hereby made applicable to the right of way hereby granted: *Provided*, That no timber shall be cut by said railroad company for any purpose outside of the rights of way herein granted.

[Act of July 8, 1898 (30 Stat., 729).]

CHAP. 645.—AN ACT granting right of way through the Pike's Peak Timber Land Reserve and the public lands to the Cripple Creek Short-Line Railway Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Cripple Creek
Short-Line Rail-
way granted
right of way
through Pikes
Peak Timber
Land Reserve.
Vol. 27, p. 1006,
etc.

That the Cripple Creek Short-Line Railway Company, a corporation created and existing under the laws of the State of Colorado, be, and it hereby is, authorized to construct and maintain a railway over and through the Pikes Peak Timber Land Reserve (heretofore reserved from entry or settlement and set apart as a public reservation by Executive order), said railway to enter said Pikes Peak Timber Land Reserve at such a point on the eastern or northern boundary thereof in El Paso County, Colorado, as may be found to be the most feasible for the route of said railway, running in a westerly direction from Colorado Springs, Colorado, thence proceeding by the most practicable route through the reserve to the western boundary thereof; also, to proceed by such side tracks, extensions, switches, and spurs as may be necessary to reach any groups of mines in said forest reserve, all in said El Paso County; and the said railroad company is hereby also granted right of way through the public lands to the town of Cripple Creek, in the said State of Colorado; said right of way being granted subject to the rules and restrictions and carrying all the rights and privileges of an act entitled "An act granting to railroads the right of way through the public lands of the United States," approved March third, eighteen hundred and seventy-five, said act being hereby made applicable to the right of way hereby granted: *Provided*, That no timber shall be cut by said railroad company for any purpose outside of the rights of way herein granted: *And provided further*, That the right of way herein granted shall not interfere with the right of way on Government land through the Pikes Peak Timber Land Reserve, granted by act of Congress entitled: "An act granting right of way through the Pikes Peak Timber Land Reserve and the public lands to

Location.

Right of way
to Cripple Creek,
Colo.

Vol. 18, p. 482.

Provisos.
Timber.

the Cripple Creek District Railway Company," approved June twenty-seventh, eighteen hundred and ninety-eight.

Cripple Creek District Railway. *Ante*, p. 493.

III. SAN FRANCISCO MOUNTAINS FOREST RESERVE.

[Act of January 10, 1899 (30 Stat., 783).]

CHAP. 44.—AN ACT granting the Saginaw Southern Railroad Company a right of way for railroad purposes through the San Francisco Mountains Forest Reserve.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

the Saginaw Southern Railroad Company, a corporation created and existing under the laws of the Territory of Arizona, is authorized to construct and maintain a railroad over and through the San Francisco Mountains Forest Reserve (heretofore reserved from entry and settlement and set apart as a public reserve by William McKinley, President of the United States, by proclamation dated the seventeenth day of August, eighteen hundred and ninety-eight). Said railroad to be constructed upon and across the said San Francisco Mountains Forest Reserve from a point on the line of the Santa Fe Pacific Railroad Company at the town of Williams, in the county of Coconino, Territory of Arizona, thence in a southerly direction by the most practical route to the town of Jerome, in the county of Yavapai, Territory of Arizona; also to construct and maintain such side tracks, extensions, switches, and spurs as may be necessary to the convenient construction and maintenance of said railroad in the said counties of Coconino and Yavapai; said right of way being granted subject to the rules and restrictions and carrying all the rights and privileges of an act entitled "An act granting to railroads the right of way through the public lands of the United States," approved March third, eighteen hundred and seventy-five, said act being hereby made applicable to the right of way hereby granted: *Provided*, That no timber shall be cut by said railroad company for any purpose outside of the right of way herein granted.

Saginaw Southern Railroad granted right of way through San Francisco Mountains Forest Reserve.

Post, proclamations, p. 136 Location.

Vol. 18, p. 482.

Proviso. Cutting timber limited.

[Act of June 6, 1900 (31 Stat., 657).]

CHAP. 794.—AN ACT to grant right of way over Government lands for a pipe line for the conveyance of water to Flagstaff, Arizona.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

a right of way for a pipe line through sections twenty-six, thirty-six, township twenty-three north; sections two, twelve, fourteen, twenty-two, and twenty-eight, township twenty-two north, and sections four and sixteen, township

Flagstaff, Ariz., granted right of way through San Francisco Forest Reserve, etc., for pipe line.

twenty-one north, all in range seven east, Gila and Salt River meridian, in the San Francisco Forest Reserve, in the county of Coconino and Territory of Arizona, is hereby granted to the town of Flagstaff, a municipal corporation in said county and Territory, to the extent of the ground occupied by said pipe line and twenty-five feet on each side of the center line of the same.

Use of materials.

Also the right to take from the lands adjacent to the lands hereby granted material, earth, stone, and timber necessary for the construction, maintenance, repair, and control of said pipe line.

Control.

SEC. 2. That said pipe line when constructed shall be maintained and controlled exclusively for the use and benefit of the said town of Flagstaff by the municipal authorities thereof, and for the purpose only of conveying water through said pipe line to said town for its exclusive use and benefit.

Effect.

SEC. 3. That this act shall take effect and be in force from and after its passage.

IV. SAN GABRIEL FOREST RESERVE.

[Act of February 28, 1899 (30 Stat., 910).]

CHAP. 223.—AN ACT to grant to the Pasadena and Mount Wilson Railway Company right of way and certain lands for railroad purposes through the San Gabriel Forest Reserve.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Pasadena and Mount Wilson Railway granted right of way through San Gabriel Forest Reserve.

That there is hereby granted to the Pasadena and Mount Wilson Railway Company, a corporation organized and existing under the laws of the State of California, and to its successors and assigns, authority to construct, maintain, and operate a railway for a distance of nine miles, more or less, over and through the San Gabriel Forest Reserve (heretofore reserved from entry and settlement and set apart as a public reservation by Benjamin Harrison, President of the United States, by proclamation of date the twentieth day of December, anno Domini eighteen hundred and ninety-two), from the place in said forest reserve known as Rubio to the summit of the mountain known as Mount Lowe, in the Sierra Madre Mountains, in the county of Los Angeles and State of California, the course of said railway to be the same as that of the railroad now operated by said railway company from Rubio aforesaid to Alpine Tavern, the present terminus of said railroad, and from thence to the summit of said Mount Lowe, by the most practicable route; said right of way being hereby

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Location.

granted to said Pasadena and Mount Wilson Railway Company, but subject to the rights, privileges, rules, and restrictions of an act entitled "An act granting to railroads the right of way through the public lands of the United States," approved March third, anno Domini eighteen hundred and seventy-five, said act being hereby made applicable to the right of way hereby granted: *Provided*, That no timber shall be cut by said railway company for any purpose outside of the right of way herein granted: *And provided further*, That said company shall give bond as provided by the regulations of the Secretary of the Interior prescribed under the law relating to forest reserves.

Vol. 18, p. 482.

Provisos.
Timber cutting restricted.

Bond.

SEC. 2. That in addition to such of the public ground as said railway company will be entitled to take, under and in accordance with the provisions of the said act entitled "An act granting to railroads the right of way through the public lands of the United States," approved March third, anno Domini eighteen hundred and seventy-five, for station buildings, depots, machine shops, side tracks, turn-outs, and water stations, the Secretary of the Interior is hereby authorized to sell, at the rate of one dollar and twenty-five cents per acre, to the said Pasadena and Mount Wilson Railway Company, its successors and assigns, for stations, hotels, astronomical observatories, seminaries of learning, and such other buildings and purposes as may be required in connection with said railway line, the following-described parcels of land along said right of way, to wit: The unsurveyed land described as the west half of the northwest quarter of the northwest quarter of section two, when regularly protracted, in township one north, range twelve west, San Bernardino meridian, containing twenty acres, more or less.

Sale to company of additional land for hotels, etc.

Also the tract or parcel of land described as follows, to wit: Beginning at a point in the easterly line of the two-hundred-foot right of way of the Pasadena and Mount Wilson Railway Company, which point is north twenty-seven degrees thirty minutes west nine hundred feet from the point where said right-of-way line crosses the north line of section three, township one north, range twelve west; running thence north sixty-two degrees forty minutes east five hundred feet; thence north twenty-seven degrees thirty minutes west one thousand eight hundred and fifty feet; thence west three hundred and fifty feet, more or less, to the easterly line of the right of way aforesaid; thence southeasterly along said right of way to the place of beginning, containing twenty acres, more or less.

Also the unsurveyed lands described as the west half of the west half of the southeast quarter and the east half of the east half of the southwest quarter of section twenty-six, township two north, range twelve west, San Bernardino meridian, when regularly protracted, containing eighty acres, more or less.

Also a tract of land consisting of forty acres at the terminus of said right of way at Mount Lowe: *Provided*, That all minerals, including coal, in all of said right of way and lands hereby granted are reserved to the United States.

Minerals, etc.,
excepted.

Right of way,
etc., to vest in
successor, etc.

SEC. 3. That the said right of way and lands for stations, hotels, astronomical observatories, seminaries of learning, and other purposes granted hereby are intended for the use of said Pasadena and Mount Wilson Railway Company, its successors and assigns, and in case of the sale of said Pasadena and Mount Wilson Railway and its appurtenances by act of the corporation or under decree of court, all of the rights and benefits hereby granted shall vest in the owner or owners for the time being of said railway line and appurtenances.

V. SAN FRANCISCO MOUNTAINS FOREST RESERVE.

[Act of February 25, 1903 (32 Stat., 907).]

CHAP. 757.—AN ACT granting the Central Arizona Railway Company a right of way for railroad purposes through the San Francisco Mountains Forest Reserve, in the Territory of Arizona.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That upon the conditions herein named the Central Arizona Railway Company, a corporation existing under the laws of the Territory of Arizona, is hereby granted a right of way conformably to the act entitled "An Act granting to railroads a right of way through the public lands of the United States," approved March third, eighteen hundred and seventy-five, and the existing regulations adopted thereunder, over and through the San Francisco Mountains Forest Reserve, in the Territory of Arizona, for a line of railroad from a point at or near Flagstaff, in the county of Coconino, Territory of Arizona, in a south-westerly direction by the most practicable route to the town of Jerome, in the county of Yavapai, Territory of Arizona, and thence in a southeasterly direction to the town of Globe, in the county of Gila, Territory of Arizona, with the right to construct and maintain all necessary side tracks, extensions, switches, spurs, and water

San Francisco
Mountains For-
est Reserve, Ari-
zona.

Central Ari-
zona Railway
Company grant-
ed right of way
through.

Vol. 18, p. 482.

Location.

stations: *Provided*, That as a condition to obtaining such right of way the said company shall be required to agree, in writing, to conform to such further regulations as may be prescribed by the Secretary of the Interior for the purpose of protecting the said forest reserve and conserving the purposes for which the reserve was established and is maintained; but said company shall not be authorized to take or cut any timber within the limits of said forest reserve outside of its said right of way.

Proviso.
Protection to
forest reserve.

HOMESTEAD ENTRIES IN THE BLACK HILLS FOREST RESERVE.

SPECIAL PRIVILEGES ALLOWED.

The act of March 3, 1899 (30 Stat., 1095), contains the following provisions:

Provided further, That any person who made actual, bona fide settlement and improvement and established residence thereon in good faith for the purpose of acquiring a home upon lands more valuable for agriculture than for any other purpose, within the boundaries of the Black Hills Forest Reservation, in the State of South Dakota, prior to September nineteen, eighteen hundred and ninety-eight, may enter, under the provisions of the homestead law, the lands embracing his or her improvements, not to exceed one hundred and sixty acres; and if the lands are so situated that the entry of a legal subdivision, according to existing law, will not embrace the improvements of such settler or claimant, he or she may make application to the surveyor-general of the State of South Dakota to have said tract surveyed at the expense of the claimant by metes and bounds and a plat made of the same and filed in the local land office, showing the land embraced in his original settlement which he desires to enter, not to exceed one hundred and sixty acres, and thereupon he shall be allowed to enter said land, as per said plat and survey, as a homestead; and the Secretary of the Interior shall make the necessary rules and regulations to carry this act into effect: *Provided*, That in any case where, upon investigation by a special agent of the Interior Department and after due and proper hearing it shall be established that an entry interfered with the general water supply or was detrimental in any way to the public interests or infringed upon the rights and privileges of other citizens, the Secretary of the Interior shall have authority to cause said entry to be modified or amended or in his discretion to finally cancel the same.

Black Hills
Forest Reserva-
tion, S. Dak.
Certain settlers
granted home-
stead entries.

—surveys.

Proviso.
Not to preju-
dice public inter-
ests.

INSTRUCTIONS.

Under the above provisions in the act of March 3, 1899 (30 Stat., 1095), instructions were addressed to the local officers at Rapid City, S. Dak., by the General Land Office, and approved by the Department on September 22, 1899, as follows:

“Until the system of public surveys is extended over a township, and a plat thereof duly filed in your office in accordance with the circular of October 21, 1885 (4 L. D., 202), the notice given to be modified, however, and to state that entries will be allowed only under said act of March 3, 1899, no entries can be allowed for lands in the Black Hills Forest Reservation, S. Dak.

“A party desiring to enter land in said reservation will be required to file, in addition to the usual application (Form 4-007) and affidavits (Forms 4-062 and 4-063), his affidavit, corroborated by that of two other persons, showing that he is entitled to the benefits of the act cited. He will be required to state the date of his actual bona fide settlement, the date he established residence on the land for the purpose of acquiring a home thereon, for what period of time he has maintained a residence on the land, the character and value of his improvements, and the extent of his cultivation of the land, as well as for what the land is principally valuable. Such additional affidavit, as well as the affidavits of the corroborating witnesses, may be made before any officer qualified to administer oaths in homestead cases.

“Should it satisfactorily appear that an applicant is entitled to the benefits of said act, you will allow his entry to go to record.

“Before an entry can be allowed for a claim which can not be adjusted to the existing legal subdivisions without detriment to the interests of the settler, it will be necessary to have the claim surveyed in accordance with the instructions for that purpose (approved by the honorable Secretary of the Interior, September 22, 1899, a copy of which is hereto attached), and the plat thereof filed in your office.”

SURVEY SETTLERS' CLAIMS IN BLACK HILLS FOREST RESERVATION, S. DAK.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *September 7, 1899.*

The UNITED STATES SURVEYOR-GENERAL,

Huron, S. Dak.

SIR: The act of March 3, 1899, making appropriation for sundry civil expenses of the Government for the fiscal year ending June 30, 1900, under the head of “Protection and administration of forest reserves” (Pamphlet Laws, page 1095), contains the following:

“*Provided further,* That any person who made actual, bona fide settlement and improvement and established residence thereon in good

faith, for the purpose of acquiring a home, upon lands more valuable for agriculture than for any other purpose, within the boundaries of the Black Hills Forest Reservation, in the State of South Dakota, prior to September nineteenth, eighteen hundred and ninety-eight, may enter, under the provisions of the homestead law, the lands embracing his or her improvements, not to exceed one hundred and sixty acres; and if the lands are so situated that the entry of a legal subdivision, according to existing law, will not embrace the improvements of such settler or claimant, he or she may make application to the surveyor-general of the State of South Dakota to have said tract surveyed at the expense of the claimant by metes and bounds and a plat made of the same and filed in the local land office, showing the land embraced in his original settlement which he desires to enter, not to exceed one hundred and sixty acres, and thereupon he shall be allowed to enter said land, as per said plat and survey, as a homestead; and the Secretary of the Interior shall make the necessary rules and regulations to carry this act into effect: *Provided*, That in any case where, upon investigation by a special agent of the Interior Department, and after due and proper hearing, it shall be established that an entry interfered with the general water supply, or was detrimental in any way to the public interests, or infringed upon the rights and privileges of other citizens, the Secretary of the Interior shall have authority to cause said entry to be modified or amended or in his discretion to finally cancel the same."

By said act settlements within the Black Hills Forest Reservation, in the State of South Dakota, made prior to September 19, 1898, upon lands which are more valuable for agricultural than for any other purpose, are protected by extending to the settlers the privilege of entering the land so settled upon under the provisions of the homestead law. As an entry can not be made under the homestead law prior to the Government survey of the land desired to be entered, an entry can not be made under this law prior to the extension of the Government survey over the lands thus settled upon. By such survey it will be disclosed whether the improvements of the settler can be protected by entry according to legal subdivisions without a special survey, and until such time a special survey will not be ordered. Where upon the Government survey, however, it is discovered that an entry according to legal subdivisions will not include the improvements of the settler, he may adjust his claim to the legal subdivisions established by the Government survey or apply to the surveyor-general of South Dakota for a special survey of his claim. When an application is made for the survey of a claim under the provisions of this act, the settler may designate a surveyor, to whom the requisite instructions will be issued from your office, for the survey and marking of the boundaries of his claim and such connections with prior surveys as may be necessary to a proper platting of the claim and of the frac-

tions of public lands surrounding the same, consequent upon the survey of such claim.

Under the law a special survey is required to be at the expense of the settler, and the surveyor performing the work must look to the settler for his compensation, without recourse to the United States, and a provision to that effect should be embodied in the instructions issued to such surveyor by your office. The amount of compensation to the surveyor will be left to private arrangement between the settler and the surveyor.

Where the surveyor designated by the settler is not a United States deputy surveyor or a United States deputy mineral surveyor, it will be necessary to submit with the application satisfactory evidence of the professional skill and ability of such surveyor. Such surveyor will be required to furnish a bond in the penal sum of \$500 for the faithful execution of the work.

The application for survey should contain a complete description of the claim, date of settlement, improvement, and established residence, character, extent, and approximate value of improvements, character of the land, and location by township, range, and section (or sections) of the public land surveys. The application should be accompanied by a diagram showing as accurately as practicable the contour of the claim. The statements contained in the application for survey should be verified under oath.

It is not the intention of this act to permit any one settler to take long and narrow strips of land on both sides of a stream, and thus monopolize the water privileges to the detriment of other settlers, and claims should be taken in square form, *as nearly as it is practicable to do so*, and include the improvements of the settlers. In no case should the claims be of less width than that of the smallest legal subdivision (20 chains). Whenever an application shall be received for the survey of a settler's claim in such shape as appears to you to be detrimental to the public interests or to infringe upon possible rights of other citizens, you will, if in doubt as the propriety of making a survey in the shape applied for, forward the application for the consideration of this office, stating the reasons why, in your opinion, the survey should not be allowed as applied for.

The necessary office work connected with these surveys will be performed by the regular clerical force of your office.

Your office is regarded as being particularly conversant with the varied requirements and details pertaining to the public land surveys, and I therefore desire that you prepare and submit for my consideration a draft of general instructions for the execution of surveys under the above-quoted provisions of law, prescribing the method of running and marking the boundaries of settlers' claims and their connection with and closings on the lines of the prior surveys in the townships in which such claims are located.

As this law provides that the lands to be surveyed and entered thereunder must be "more valuable for agriculture than for any other purpose," it is expressly desired that the instructions to surveyors making surveys under this act require such surveyors to embody in their field notes an accurate description of the character of the lands surveyed with regard to their value for any purpose other than agriculture.

The plats of these surveys will be prepared in triplicate, as usual with public land surveys, and the duplicate plats for the files of this office will be accompanied by duly authenticated transcripts of the field notes of the surveys.

Very respectfully,

BINGER HERMANN,
Commissioner.

DEPARTMENT OF THE INTERIOR,
September 22, 1899.

Approved.

E. A. HITCHCOCK, *Secretary.*

The act of March 3, 1899, relating to lands in the Black Hills Forest Reservation did not abrogate and annul that portion of the executive order creating said reservation which prescribed what lands are excepted from the operation of that order, but merely provided that entries might be made so as to include the improvements of settlers regardless of legal subdivisions of the land.

Lands within said reservation which at the date of the Executive order creating the same were covered by a valid settlement for which filing was not made within three months after the filing of the township plat do not come within the exception mentioned in said Executive order and are therefore not subject to entry under said act of March 3, 1899. (Joshua L. Smith, 31 L. D., 57.)

TIMBER ON MINING CLAIMS IN CERTAIN FOREST RESERVATIONS IN COLORADO.

[Act of February 20, 1896; 29 Stat., 11.]

AN ACT to open forest reservations in the State of Colorado for the location of mining claims.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the forest reservations in the State of Colorado, known as the Pikes Peak Forest Reserve, the Plum Creek Forest Reserve, and the South Platte Forest Reserve, established by Executive proclamations dated, respectively, March eighteenth, eighteen hundred and ninety-two, June twenty-third, eighteen hundred and ninety-two, and December ninth, eighteen hundred and ninety-two, in the State of Colorado, in accordance with section twenty-four of the act of March third, eighteen hundred and ninety-one, from and after the passage of this act shall be open to the location of mining claims thereon for gold, silver, and cinnabar, and

that title to such mining claims may be acquired in the same manner as it may be acquired to mining claims upon the other mineral lands of the United States for such purposes: *Provided*, That all locations of mining claims heretofore made in good faith within said reservations, and which have been held and worked in the same manner as mining claims are held and worked under existing law upon the public domain, are validated by this act.

SEC. 2. That owners of valid mining locations made and held in good faith under the terms of this act shall be, and are hereby, authorized and permitted to fell and remove from such mining claims any timber growing thereon, for actual mining purposes in connection with the particular claim from which the timber is felled or removed, but no other timber shall be felled or removed from any other portions of said reservations by private parties for any purpose whatever.

EXTENT OF TIMBER PRIVILEGES UNDER ACT OF FEBRUARY 20, 1896.

[29 Stat., 11.]

Commissioner of the General Land Office to the Secretary of the Interior, October 16, 1896, in the timber trespass case of Kendall, Townsend, and Walter.

* * * * *

Inasmuch as the act of February 20, 1896 (29 Stat., 11), opening the Pikes Peak Forest Reserve for the location of mining claims, confines the felling and removing of timber from mining claims to "actual mining purposes in connection with the particular claim from which the timber is felled or removed," it appears that Townsend and Walter, in cutting timber on their claims for sale for the purpose of raising money for the development of the claims, exceeded the privileges allowed in said act.

A reasonable construction of the wording of this act appears to confine the use of timber on such claims within a limit directly similar to that defined by the United States Supreme Court in dealing with the question whether timber might be taken from an unperfected homestead claim and sold for the purpose of expending the money derived from the sale in improvements on the claim; upon which point it was held that, while, perhaps, timber might be taken from such claims to be exchanged for timber or lumber to be applied direct to improvements thereon, yet it could not be sold to raise money with which to make improvements on the land. (Case of *Shiver v. United States*, 159 U. S., 491.)

It accordingly appears that the timber taken from said mining claims, for use as stated, was procured in trespass.

* * * * *

Approved by the Secretary of the Interior November 5, 1896.

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