three hundred feet on each side of the middle of the vein at the surface, and that no such surface rights shall be limited by any mining regulations to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the 10th May, 1872, may render such limitation necessary; the end lines of such claims to be in all cases parallel to each other. Said lateral measurements can not extend beyond three hundred feet on either side of the middle of the vein at the surface, or such distance as is allowed by local laws. For example: 400 feet can not be taken on one side and 200 feet on the other. If, however, 300 feet on each side are allowed, and by reason of prior claims but 100 feet can be taken on one side, the locator will not be restricted to less than 300 feet on the other side; and when the locator does not determine by exploration where the middle of the vein at the surface is, his discovery shaft must be assumed to mark such point.

6. By the foregoing it will be perceived that no lode claim located after the 10th May, 1872, can exceed a parallelogram fifteen hundred feet in length by six hundred feet in width, but whether surface ground of that width can be taken depends upon the local regulations or State or Territorial laws in force in the several mining districts; and that no such local regulations or State or Territorial laws shall limit a vein or lode claim to less than fifteen hundred feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than fifty feet in width unless adverse claims existing on the 10th day of May, 1872, render such lateral limitation necessary.

7. Locators can not exercise too much care in defining their locations at the outset, inasmuch as the law requires that all records of mining locations made subsequent to May 10, 1872, shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located, by reference to some natural object or permanent monument, as will identify the claim.

8. No lode claim shall be located until after the discovery of a vein or lode within the limits of the claim, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes, to the exclusion of bona fide prospectors, before sufficient work has been done to determine whether a vein or lode really exists.

9. The claimant should, therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft or run a tunnel or drift to a sufficient depth therein to discover and develop a mineral-bearing vein, lode, or crevice; should determine, if possible, the general course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface. His location notice should give the course and distance as nearly as practicable from the discovery shaft on the claim to some permanent, well-known points or objects, such, for instance, as stone monuments, blazed trees, the confluence of streams, point of intersection of well-known gulches, ravines, or roads, prominent buttes, hills, etc., which may be in the immediate vicinity, and which will serve to perpetuate and fix the locus of the claim and render it susceptible

of identification from the description thereof given in the record of locations in the district, and should be duly recorded.

10. In addition to the foregoing data, the claimant should state the names of adjoining claims, or, if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument of stones at each corner of his surface ground, and at the point of discovery or discovery shaft should fix a post, stake, or board, upon which should be designated the name of the lode, the name or names of the locators, the number of feet claimed, and in which direction from the point of discovery, it being essential that the location notice filed for record, in addition to the foregoing description, should state whether the entire claim of fifteen hundred feet is taken on one side of the point of discovery, or whether it is partly upon one and partly upon the other side thereof, and in the latter case, how many feet are claimed upon each side of such discovery point.

11. The location notice must be filed for record in all respects as required by the State or Territorial laws and local rules and regulations, if there be any.

12. In order to hold the possessory title to a mining claim located prior to May 10, 1872, the law requires that ten dollars shall be expended annually in labor or improvements for each one hundred feet in length along the vein or lode. In order to hold the possessory right to a location made since May 10, 1872, not less than one hundred dollars' worth of labor must be performed or improvements made thereon annually. Under the provisions of the Act of Congress approved January 22, 1880, the first annual expenditure becomes due and must be performed during the calendar year succeeding that in which the location was made. Where a number of contiguous claims are held in common, the aggregate expenditure that would be necessary to hold all the claims, may be made upon any one claim. Cornering locations are held not to be contiguous.

13. Failure to make the expenditure or perform the labor required upon a location made before or since May 10, 1872, will subject a claim to relocation, unless the original locator, his heirs, assigns, or legal representatives have resumed work after such failure and before relocation.

14. Annual expenditure is not required subsequent to entry, the date of issuing the patent certificate being the date contemplated by statute.

15. Upon the failure of any one of several coowners to contribute his proportion of the required expenditures, the coowners, who have performed the labor or made the improvements, as required, may, at the expiration of the year, give such delinquent coowner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for ninety days; and if upon the expiration of ninety days after such notice in writing, or upon the expiration of one hundred and eighty days after the first newspaper publication of notice, the delinquent coowner shall have failed to contribute his proportion to meet such expenditures or improvements, his interest in the claim by law passes to his coowners who have made the expenditures or improvements aforesaid. Where a claimant alleges ownership of a forfeited

interest under the foregoing provision, the sworn statement of the publisher as to the facts of publication, giving dates and a printed copy of the notice published, should be furnished, and the claimant must swear that the delinquent coowner failed to contribute his proper proportion within the period fixed by the statute.

Tunnels.

16. The effect of section 2323, Revised Statutes, is to give the proprietors of a mining tunnel run in good faith the possessory right to fifteen hundred feet of any blind lodes cut, discovered, or intersected by such tunnel, which were not previously known to exist, within three thousand feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on the line thereof and within said distance of three thousand feet, unless such lodes appear upon the surface or were previously known to exist. The term "face," as used in said section, is construed and held to mean the first working face formed in the tunnel, and to signify the point at which the tunnel actually enters cover; it being from this point that the three thousand feet are to be counted upon which prospecting is prohibited as aforesaid.

17. To avail themselves of the benefits of this provision of law, the proprietors of a mining tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location by erecting a substantial post, board, or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right; the actual or proposed course or direction of the tunnel, the height and width thereof, and the course and distance from such face or point of commencement to some permanent well-known objects in the vicinity by which to fix and determine the locus in manner heretofore set forth applicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof, by stakes or monuments placed along such lines at proper intervals, to the terminus of the three thousand feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.

18. A full and correct copy of such notice of location defining the tunnel claim must be filed for record with the Mining Recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or projectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves and their predecessors in interest in prosecufiting work thereon; the extent of the work performed, and that it is bona fide their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode, or for the discovery of mines, or both, as the case may be. This notice of location must be duly recorded,

and, with the said sworn statement attached, kept on the Recorder's files for future reference.

Placer Claims.

19. But one discovery of mineral is required to support a placer location, whether it be of twenty acres by an individual, or of one hundred and sixty acres or less by an association of persons.

20. The Act of August 4, 1892, extends the mineral-land laws so as to bring lands chiefly valuable for building stone within the provisions of said law by authorizing a placer entry of such lands. Registers and Receivers should make a reference to said Act on the entry papers in the case of all placer entries made for lands containing stone chiefly valuable for building purposes. Lands reserved for the benefit of public schools or donated to any State are not subject to entry under said Act.

21. The Act of February 11, 1897, provides for the location and entry of public lands chiefly valuable for petroleum or other mineral oils, and entries of that nature made prior to the passage of said Act are to be considered as though made thereunder.

22. By section 2330 authority is given for subdividing forty-acre legal subdivisions into ten-acre tracts. These ten-acre tracts should be considered and dealt with as legal subdivisions, and an applicant having a placer claim which conforms to one or more of such ten-acre tracts, contiguous in case of two or more tracts, may make entry thereof, after the usual proceedings, without further survey or plat.

23. (Omitted.)

24. A ten-acre subdivision may be described, for instance if situated in the extreme northeast of the section, as the "NE. ¼ of the NE. ¼ of the NE. ¼" of the section, or, in like manner, by appropriate terms, wherever situated; but in addition to this description, the notice must give all the other data required in a mineral application, by which parties may be put on inquiry as to the land sought to be patented. The proofs submitted with applications must show clearly the character and extent of the improvements upon the premises.

25. The proof of improvements must show their value to be not less than five hundred dollars and that they were made by the applicant for patent or his grantors. This proof should consist of the affidavit of two or more disinterested witnesses. The annual expenditure to the amount of $100, required by section 2324, Revised Statutes, must be made upon placer as well as lode locations.

26. Applicants for patent to a placer claim, who are also in possession of a known vein or lode included therein, must state in their application that the placer includes such vein or lode. The published and posted notices must also include such statement. If veins or lodes lying within a placer location are owned by other parties, the fact should be distinctly stated in the application for patent and in all the notices. But in all cases, whether the lode is claimed or excluded, it must be surveyed and marked upon the plat, the field notes and plat giving the area of the lode claim or claims and the area of the placer separately. An application which omits to claim such known vein or lode must be construed as a conclusive

declaration that the applicant has no right of possession to the vein or lode. Where there is no known lode or vein, the fact must appear by the affidavit of two or more witnesses.

27. By section 2330 it is declared that no location of a placer claim, made after July 9, 1870, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys.

28. Section 2331 provides that all placer-mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, and such locations shall not include more than twenty acres for each individual claimant.

29. The foregoing provisions of law are construed to mean that after the 9th day of July, 1870, no location of a placer claim can be made to exceed one hundred and sixty acres, whatever may be the number of locators associated together, or whatever the local regulations of the district may allow; and that from and after May 10, 1872, no location can exceed twenty acres for each individual participating therein; that is, a location by two persons can not exceed forty acres, and one by three persons can not exceed sixty acres.

30. The regulations hereinbefore given as to the manner of marking locations on the ground, and placing the same on record, must be observed in the case of placer locations so far as the same are applicable, the law requiring, however, that all placer mining claims located after May 10, 1872, shall conform as near as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, whether the locations are upon surveyed or unsurveyed lands.

Conformity to the public land surveys and the rectangular subdivisions thereof will not be required where compliance with such requirement would necessitate the placing of the lines thereof upon other prior located claims or where the claim is surrounded by prior locations.

Where a placer location by one or two persons can be entirely included within a square forty-acre tract, by three or four persons within two square forty-acre tracts placed end to end, by five or six persons within three square forty-acre tracts and by seven or eight persons within four square forty-acre tracts, such locations will be regarded as within the requirements where strict conformity is impracticable.

Whether a placer location conforms reasonably with the legal subdivisions of the public surveys is a question of fact to be determined in each case and no location will be passed to patent without satisfactory evidence in this regard. Claimants should bear in mind that it is the policy of the Government to have all entries whether of agricultural or mineral lands as compact and regular in form as reasonably practicable, and that it will not permit or sanction entries or locations which cut the public domain into long strips or grossly irregular or fantastically shaped tracts. (Snow Flake Fraction Placer 37 L. D., 250.)

Regulations Under Saline Act.

31. Under the Act approved January 31, 1901, extending the mining laws to saline lands, the provisions of the law relating to

placer-mining claims are extended to all States and Territories and the district of Alaska, so as to permit the location and purchase thereunder of all unoccupied public lands containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, with the proviso "That the same person shall not locate or enter more than one claim hereunder."

32. Rights obtained by location under the placer-mining laws are assignable, and the assignee may make the entry in his own name; so, under this Act a person holding as assignee may make entry in his own name: Provided, He has not held under this Act, at any time, either as locator or entryman, any other lands; his right is exhausted by having held under this Act any particular tract, either as locator or entryman, either as an individual or as a member of an association. It follows, therefore, that no application for patent or entry, made under this Act, shall embrace more than one single location.

By order dated June 4, 1912, paragraph 33 of the Mining Regulations, approved March 29, 1909, was amended by the Department to read as follows:

In order that the conditions imposed by the proviso, as set forth in the above paragraph, may duly appear, the application for patent must contain or be accompanied by a specific statement under oath by each person whose name appears therein that he never has, either as an individual or as a member of an association, located or entered any other lands under the provisions of this Act. The application for patent should also be accompanied by a showing under oath, fully disclosing the qualifications as defined by the proviso, of the applicants' predecessors in interest.

PROCEDURE TO OBTAIN PATENT TO MINERAL LANDS.

Lode Claims.

34. The claimant is required, in the first place, to have a correct survey of his claim made under authority of the Surveyor-General of the State or Territory in which the claim lies, such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground. Four plats and one copy of the original field notes in each case will be prepared by the Surveyor-General; one plat and the original field notes to be retained in the office of the Surveyor-General; one copy of the plat to be given the claimant for posting upon the claim; one plat and a copy of the field notes to be given the claimant for filing with the proper Register, to be finally transmitted by that officer, with other papers in the case, to this office, and one plat to be sent by the Surveyor-General to the Register of the proper land district, to be retained on his files for future reference. As there is no resident Surveyor-General for the State of Arkansas, applications for the survey of mineral claims in said State should be made to the Commissioner of this office, who, under the law, is ex officio the U. S. Surveyor-General. (See instructions of July 29, 1911, p. 60.)

35. The survey and plat of mineral claims required to be filed in the proper land office with application for patent must be made subsequent to the recording of the location of the claim (if the laws of the State or Territory or the regulations of the mining district

require the notice of location to be recorded), and when the original location is made by survey of a United States mineral surveyor such location survey can not be substituted for that required by the statute, as above indicated.

36. The Surveyors-General should designate all surveyed mineral claims by a progressive series of numbers, beginning with survey No. 37, irrespective as to whether they are situated on surveyed or unsurveyed lands, the claim to be so designated at date of issuing the order therefor, in addition to the local designation of the claim; it being required in all cases that the plat and field notes of the survey of a claim must, in addition to the reference to permanent objects in the neighborhood, describe the locus of the claim with reference to the lines of public surveys by a line connecting a corner of the claim with the nearest public corner of the United States surveys, unless such claim be on unsurveyed lands at a distance of more than two miles from such public corner, in which latter case it should be connected with a United States mineral monument. Such connecting line must not be more than two miles in length, and should be measured on the ground direct between the points, or calculated from actually surveyed traverse lines if the nature of the country should not permit direct measurement. If a regularly established survey corner is within two miles of a claim situated on unsurveyed lands, the connection should be made with such corner in preference to a connection with a United States mineral monument. The connecting line or traverse line must be surveyed by the mineral surveyor at the time of his making the particular survey and be made a part thereof.

37. (a) Promptly upon the approval of a mineral survey the Surveyor-General will advise both this office and the appropriate local land office, by letter (Form 4-286), of the date of approval, number of the survey, name and area of the claim, name and survey number of each approved mineral survey with which actually in conflict, name and address of the applicant for survey, and name of the mineral surveyor who made the survey; and will also briefly describe therein the locus of the claim, specifying each legal subdivision or portion thereof, when upon surveyed lands, covered in whole or in part by the survey; but hereafter no segregation of any such claim upon the official township-survey records will be made until mineral entry has been made and approved for patent, unless otherwise directed by this office.

(b) Upon application to make agricultural entry of the residue of any original lot or legal subdivision of forty acres, reduced by mining claims for which patent applications have been filed and which residue has been already reallotted in accordance therewith, the local officers will accept and approve the application as usual, if found to be regular. When such an application is filed for any such original lot or subdivision, reduced in available area by duly asserted mining claims but not yet reallotted accordingly, the local officers will promptly advise this office thereof; and will also report and identify any pending application for mineral patent affecting such subdivision which the agricultural applicant does not desire to contest. The Surveyor-General will thereupon be advised by this office of such mining claims, or portions thereof, as are proper to be segregated, and directed to at once prepare, upon the usual drawing-

paper township blank, diagram of amended township survey of such original lot or legal forty-acre subdivision so made fractional by such mineral segregation, designating the agricultural portion of appropriate lot number, beginning with No. 1 in each section and giving the area of each lot, and will forthwith transmit one approved copy to the local land office and one to this office. In the meantime the local officers will accept the agricultural application (if no other objection appears), suspend it with reservation of all rights of the applicant if continuously asserted by him, and upon receipt of amended township diagram will approve the application (if then otherwise satisfactory) as of the date of filing, corrected to describe the tract as designated in the amended survey.

(c) The Register and Receiver will allow no agricultural claim for any portion of an original lot or legal forty-acre subdivision, where the reduced area is made to appear by reason of approved surveys of mining claims and for which applications for patent have not been filed, until there is submitted by such agricultural applicant a satisfactory showing that such surveyed claims are in fact mineral in character; and applications to have lands asserted to be mineral, or mining locations, segregated by survey, with the view to agricultural appropriation of the remainder, will be made to the Register and Receiver for submission to the Commissioner of the General Land Office, for his consideration and direction, and must be supported by the affidavit of the party in interest, duly corroborated by two or more disinterested persons, or by such other or further evidence as may be required in any case, that the lands sought to be segregated as mineral are in fact mineral in character; otherwise, in the absence of satisfactory showing in any such case, such original lot or legal subdivision will be subject to agricultural appropriation only. When any such showing shall be found to be satisfactory and the necessary survey is had, amended township diagram will be required and made as prescribed in the preceding section.

38. The following particulars should be observed in the survey of every mining claim:

(1) The exterior boundaries of the claim, the number of feet claimed along the vein, and, as nearly as can be ascertained, the direction of the vein, and the number of feet claimed on the vein in each direction from the point of discovery or other well-defined place on the claim should be represented on the plat of survey and in the field notes.

(2) The intersection of the lines of the survey with the lines of conflicting prior surveys should be noted in the field notes and represented upon the plat.

(3) Conflicts with unsurveyed claims, where the applicant for survey does not claim the area in conflict, should be shown by actual survey.

(4) The total area of the claim embraced by the exterior boundaries should be stated, and also the area in conflict with each intersecting survey, substantially as follows:

	Acres.
Total area of claim	10.50
Area in conflict with survey No. 302	1.56
Area in conflict with survey No. 948	2.33
Area in conflict with Mountain Maid lode mining claim, unsurveyed	1.48

It does not follow that because mining surveys are required to exhibit all conflicts with prior surveys the areas of conflict are to be excluded. The field notes and plat are made a part of the application for patent, and care should be taken that the description does not inadvertently exclude portions intended to be retained. The application for patent should state the portions to be excluded in express terms.

39. The claimant is then required to post a copy of the plat of such survey in a conspicuous place upon the claim, together with notice of his intention to apply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, the number of the survey, the mining district and county, and the names of adjoining and conflicting claims as shown by the plat survey. Too much care can not be exercised in the preparation of this notice, inasmuch as the data therein are to be repeated in the other notices required by the statute, and upon the accuracy and completeness of these notices will depend, in a great measure, the regularity and validity of the proceedings for patent.

40. After posting the said plat and notice upon the premises, the claimant will file with the proper Register and Receiver a copy of such plat and the field notes of survey of the claim, accompanied by the affidavit of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting; a copy of the notice so posted to be attached to and form a part of said affidavit.

41. Accompanying the field notes so filed must be the sworn statement of the claimant that he has the possessory right to the premises therein described, in virtue of a compliance by himself (and by his grantors, if he claims by purchase) with the mining rules, regulations, and customs of the mining district, State, or Territory in which the claim lies, and with the mining laws of Congress; such sworn statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin of his possession and the basis of his claim to a patent. The vein or lode must be fully described, the description to include a statement as to the kind and character of mineral, the extent thereof, whether ore has been extracted and of what amount and value and such other facts as will support the applicant's allegation that the claim contains a valuable mineral deposit.

Circular No. 68, January 9, 1912, amended paragraph No. 42 to read as follows:

42. This sworn statement must be supported by a copy of each location notice, certified by the legal custodian of the record thereof, and also by an abstract of title of each claim certified by the legal custodian of the records of transfers, or by a duly authorized abstracter of titles. The certificate must state that no conveyances affecting, or purporting to affect, the title to the claim or claims appear of record other than those set forth.

Outside of the District of Alaska the application for patent will be received and filed if the abstract is brought to a day reasonably near the date of the presentation of the application and shows full title in the applicant, who must, as soon as practicable thereafter, file a supplemental abstract brought down so as to include the date of the filing of the application. Publication will not be ordered until the showing as to title is thus completed and the local land officers are satisfied that full title was in the applicant on the day of the filing of the application.

In the District of Alaska the application for patent will be received and filed and the order for publication issued if the abstract showing full title

in the applicant is brought down to a day reasonably near the date of the presentation of the application. A supplemental abstract of title brought down so as to include the date of the filing of the application must be furnished prior to the expiration of the sixty-day period of publication.

No certificate from an abstracter, or abstract company, will be accepted until approval by the Commissioner of the General Land Office of a favorable report of the chief of field division, or United States district attorney whose division or district embraces the lands in question, as to the reliability and responsibility of such abstracter.

43. In the event of the mining records in any case having been destroyed by fire or otherwise lost, affidavit of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the affidavit of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, etc.; and in such case of lost records, any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession and tend to establish his claim, should be filed.

Paragraph 44 was amended by circular No. 49, Aug 19, 1911, to read as follows:

"44. Before approving for publication any notice of an application for mineral patent, local officers will be particular to see that it includes no land which is embraced in a prior or pending application for patent or entry, or for any land embraced in a railroad selection, or for which publication is pending or has been made by any other claimants, and if, in their opinion, after investigation, it should appear that notice of a mineral application should not, for this or other reasons, be approved for publication, they should formally reject the same, giving the reasons therefor, and allow the applicant thirty days for appeal to this office under the Rules of Practice."

45. Upon the receipt of these papers, if no reason appears for rejecting the application, the Register will, at the expense of the claimant (who must furnish the agreement of the publisher to hold applicant for patent alone responsible for charges of publication), publish a notice of such application for the period of sixty days in a newspaper published nearest to the claim, and will post a copy of such notice in his office for the same period. When the notice is published in a weekly newspaper, nine consecutive insertions are necessary; when in a daily newspaper, the notice must appear in each issue for sixty-one consecutive issues. In both cases the first day of issue must be excluded in estimating the period of sixty days.

46. The notices so published and posted must embrace all the data given in the notice posted upon the claim. In addition to such data the published notice must further indicate the locus of the claim by giving the connecting line, as shown by the field notes and plat, between a corner of the claim and a United States mineral monument or a corner of the public survey, and thence the boundaries of the claim by courses and distances.

47. The Register shall publish the notice of application for patent in a paper of established character and general circulation, to be by him designated as being the newspaper published nearest the land.

48. The claimant at the time of filing the application for patent, or at any time within the sixty days of publication, is required to file with the Register a certificate of the surveyor-general that not less than five hundred dollars' worth of labor has been expended or improvements made, by the applicant or his grantors, upon each location embraced in the application, or if the application embraces

several contiguous locations held in common, that an amount equal to five hundred dollars for each location has been so expended upon, and for the benefit of, the entire group; that the plat filed by the claimant is correct; that the field notes of the survey, as filed, furnish such an accurate description of the claim as will, if incorporated in a patent, serve to fully identify the premises, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the locus thereof: Provided, That as to all applications for patents made and passed to entry before July 1, 1898, or which are by protests or adverse claims prevented from being passed to entry before that time, where the application embraces several locations held in common, proof of an expenditure of five hundred dollars upon the group will be sufficient, and an expenditure of that amount need not be shown to have been made upon, or for the benefit of, each location embraced in the application.

49. The surveyor-general may derive his information upon which to base his certificate as to the value of labor expended or improvements made from the mineral surveyor who makes the actual survey and examination upon the premises, and such mineral surveyor should specify with particularity and full detail the character and extent of such improvements, but further or other evidence may be required in any case.

50. It will be convenient to have this certificate indorsed by the surveyor-general, both upon the plat and field notes of survey filed by the claimant as aforesaid.

51. After the sixty days' period of newspaper publication has expired, the claimant will furnish from the office of publication a sworn statement that the notice was published for the statutory period, giving the first and last day of such publication, and his own affidavit showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said sixty days' publication, giving the dates.

52. Upon the filing of this affidavit the Register will, if no adverse claim was filed in his office during the period of publication, and no other objection appears, permit the claimant to pay for the land to which he is entitled at the rate of five dollars for each acre and five dollars for each fractional part of an acre, except as otherwise provided by law, the Receiver issuing the usual receipt therefor. The claimant will also make a sworn statement of all charges and fees paid by him for publication and surveys, together with all fees and money paid the Register and Receiver of the land office, after which the complete record will be forwarded to the Commissioner of the General Land Office and a patent issued thereon if found regular.

53. At any time prior to the issuance of patent protest may be filed against the patenting of the claim as applied for, upon any ground tending to show that the applicant has failed to comply with the law in any matter essential to a valid entry under the patent proceedings. Such protest can not, however, be made the means of preserving a surface conflict lost by failure to adverse or lost by the judgment of the court in an adverse suit. One holding a present joint interest in a mineral location included in an application for patent who is excluded from the application, so that his

interest would not be protected by the issue of patent thereon, may protest against the issuance of a patent as applied for, setting forth in such protest the nature and extent of his interest in such location, and such a protestant will be deemed a party in interest entitled to appeal. This results from the holding that a coowner excluded from an application for patent does not have an "adverse" claim within the meaning of sections 2325 and 2326 of the Revised Statutes. (See Turner v. Sawyer, 150 U. S., 578-586.)

54. Any party applying for patent as trustee must disclose fully the nature of the trust and the name of the cestui que trust; and such trustee, as well as the beneficiaries, must furnish satisfactory proof of citizenship; and the names of beneficiaries, as well as that of the trustee, must be inserted in the final certificate of entry.

55. The annual expenditure of one hundred dollars in labor or improvements on a mining claim, required by section 2324 of the Revised Statutes, is solely a matter between rival or adverse claimants to the same mineral land, and goes only to the right of possession, the determination of which is committed exclusively to the courts.

56. The failure of an applicant for patent to a mining claim to prosecute his application to completion, by filing the necessary proofs and making payment for the land, within a reasonable time after the expiration of the period of publication of notice of the application, or after the termination of adverse proceedings in the courts, constitutes a waiver by the applicant of all rights obtained by the earlier proceedings upon the application.

57. The proceedings necessary to the completion of an application for patent to a mining claim, against which an adverse claim or protest has been filed, if taken by the applicant at the first opportunity afforded therefor under the law and departmental practice, will be as effective as if taken at the date when, but for the adverse claim or protest, the proceedings on the application could have been completed.

Placer Claims.

58. The proceedings to obtain patents for placer claims, including all forms of mineral deposits excepting veins of quartz or other rock in place, are similar to the proceedings described for obtaining patents for vein or lode claims; but where a placer claim shall be upon surveyed lands, and conforms to legal subdivisions, no further survey or plat will be required. Where placer claims can not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands.

59. The proceedings for obtaining patents for veins or lodes having already been fully given, it will not be necessary to repeat them here, it being thought that careful attention thereto by applicants and the local officers will enable them to act understandingly in the matter, and make such slight modifications in the notice, or otherwise, as may be necessary in view of the different nature of the two classes of claims; the price of placer claims being fixed, however, at two dollars and fifty cents per acre or fractional part of an acre.

60. In placer applications, in addition to the recitals necessary in and to both vein or lode and placer applications, the placer application should contain, in detail, such data as will support the claim

that the land applied for is placer ground containing valuable mineral deposits not in vein or lode formation and that title is sought not to control water courses or to obtain valuable timber but in good faith because of the mineral therein. This statement, of course, must depend upon the character of the deposit and the natural features of the ground, but the following details should be covered as fully as possible: If the claim be for a deposit of placer gold, there must be stated the yield per pan, or cubic yard, as shown by prospecting and development work, distance to bedrock, formation and extent of the deposit, and all other facts upon which he bases his allegation that the claim is valuable for its deposits of placer gold. If it be a building stone or other deposit than gold claimed under the placer laws, he must describe fully the kind, nature, and extent of the deposit, stating the reasons why same is by him regarded as a valuable mineral claim. He will also be required to describe fully the natural features of the claim; streams, if any, must be fully described as to their course, amount of water carried, fall within the claim; and he must state kind and amount of timber and other vegetation thereon and adaptability to mining or other uses.

If the claim be all placer ground, that fact must be stated in the application and corroborated by accompanying proofs; if of mixed placers and lodes, it should be so set out, with a description of all known lodes situated within the boundaries of the claim. A specific declaration, such as is required by section 2333, Revised Statutes, must be furnished as to each lode intended to be claimed. All other known lodes are, by the silence of the applicant excluded by law from all claim by him, of whatsoever nature, possessory or otherwise.

While this data is required as a part of the mineral surveyor's report under paragraph 167, in case of placers taken by special survey, it is proper that the application for patent incorporate these facts under the oath of the claimant.

Inasmuch as in case of claims taken by legal subdivisions, no report by a mineral surveyor is required, the claimant, in his application in addition to the data above required, should describe in detail the shafts, cuts, tunnels, or other workings claimed as improvements, giving their dimensions, value, and the course and distance thereof to the nearest corner of the public surveys.

As prescribed by paragraph 25, this statement as to the description and value of the improvements must be corroborated by the affidavits of two disinterested witnesses.

Applications awaiting entry, whether published or not, must be made to conform to these regulations, with respect to proof as to the character of the land. Entries already made will be suspended for such additional proofs as may be deemed necessary in each case.

Local land officers are instructed that if the proofs submitted in placer applications under this paragraph are not satisfactory as showing the land as a whole to be placer in character, or if the claims impinge upon or embrace water courses or bodies of water, and thus raise a doubt as to the bona fides of the location and application, or the character and extent of the deposit claimed thereunder, to call for further evidence, or if deemed necessary, request the specific attention of the Chief of Field Service thereto in con-

nection with the usual notification to him under the circular instructions of April 24, 1907, and suspend further action on the application until a report thereon is received from the field officer.

MILL SITES.

61. Land entered as a mill site must be shown to be nonmineral. Mill sites are simply auxiliary to the working of mineral claims, and as section 2337, which provides for the patenting of mill sites, is embraced in the chapter of the Revised Statutes relating to mineral lands, they are therefore included in this circular.

62. To avail themselves of this provision of law, parties holding the possessory right to a vein or lode claim, and to a piece of nonmineral land not contiguous thereto for mining or milling purposes, not exceeding the quantity allowed for such purpose by section 2337, or prior laws, under which the land was appropriated, the proprietors of such vein or lode may file in the proper land office their application for a patent, under oath, in manner already set forth herein, which application, together with the plat and field notes, may include, embrace, and describe, in addition to the vein or lode claim, such contiguous mill site, and after due proceedings as to notice, etc., a patent will be issued conveying the same as one claim. The owner of a patented lode may, by an independent application, secure a mill site if good faith is manifest in its use or occupation in connection with the lode and no adverse claim exists.

63. Where the original survey includes a lode claim and also a mill site the lode claim should be described in the plat and field notes as "Sur. No. 37, A," and the mill site as "Sur. No. 37, B," or whatever may be its appropriate numerical designation; the course and distance from a corner of the mill site to a corner of the lode claim to be invariably given in such plat and field notes, and a copy of the plat and notice of application for patent must be conspicuously posted upon the mill site as well as upon the vein or lode claim for the statutory period of sixty days. In making the entry no separate receipt or certificate need be issued for the mill site, but the whole area of both lode and mill site will be embraced in one entry, the price being five dollars for each acre and fractional part of an acre embraced by such lode and mill-site claim.

64. In case the owner of a quartz mill or reduction works is not the owner or claimant of a vein or lode claim the law permits him to make application therefor in the same manner prescribed herein for mining claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his mill site at said price per acre.

65. In every case there must be satisfactory proof that the land claimed as a mill site is not mineral in character, which proof may, where the matter is unquestioned, consist of the sworn statement of two or more persons capable, from acquaintance with the land, to testify understandingly.

CITIZENSHIP.

66. The proof necessary to establish the citizenship of applicants for mining patents must be made in the following manner: In case of an incorporated company, a certified copy of their char-

acter or certificate of incorporation must be filed. In case of an association of persons unincorporated, the affidavit of their duly authorized agent, made upon his own knowledge or upon information and belief, setting forth the residence of each person forming such association, must be submitted. This affidavit must be accompanied by a power of attorney from the parties forming such association, authorizing the person who makes the affidavit of citizenship to act for them in the matter of their application for patent.

67. In case of an individual or an association of individuals who do not appear by their duly authorized agent, the affidavit of each applicant, showing whether he is a native or naturalized citizen, when and where born, and his residence, will be required.

68. In case an applicant has declared his intention to become a citizen or has been naturalized, his affidavit must show the date, place, and the court before which he declared his intention, or from which his certificate of citizenship issued, and present residence.

69. The affidavit of the claimant as to his citizenship may be taken before the Register or Receiver, or any other officer authorized to administer oaths within the land districts; or, if the claimant is residing beyond the limits of the district, the affidavit may be taken before the clerk of any court of record or before any notary public of any State or Territory.

70. If citizenship is established by the testimony of disinterested persons, such testimony may be taken at any place before any person authorized to administer oaths, and whose official character is duly verified.

71. No entry will be allowed until the Register has satisfied himself, by careful examination, that proper proofs have been filed upon the points indicated in the law and official regulations. Transfers made subsequent to the filing of the application for patent will not be considered, but entry will be allowed and patent issued in all cases in the name of the applicant for patent, the title conveyed by the patent, of course, in each instance inuring to the transferee of such applicant where a transfer has been made pending the application for patent.

72. The mineral entries will be given the current serial numbers according to the provisions of the circular of June 10, 1908, whether the same are of lode or of placer claims or of mill sites.

73. In sending up the papers in a case the Register must not omit certifying to the fact that the notice was posted in his office for the full period of sixty days, such certificate to state distinctly when such posting was done and how long continued. The schedule of papers, form 4-252f, should accompany the returns with all mineral applications and entries allowed.

POSSESSORY RIGHT.

74. The provisions of section 2332, Revised Statutes, will greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire, or lost in other ways during the lapse of time, but concerning the possessory right to which all controversy or litigation has long been settled.

75. When an applicant desires to make his proof of possessory right in accordance with this provision of law, he will not be

required to produce evidence of location, copies of conveyances, or abstracts of title, as in other cases, but will be required to furnish a duly certified copy of the statute of limitation of mining claims for the State or Territory, together with his sworn statement giving a clear and succinct narration of the facts as to the origin of his title, and likewise as to the continuation of his possession of the mining ground covered by his application; the area thereof; the nature and extent of the mining that has been done thereon; whether there has been any opposition to his possession, or litigation with regard to his claim, and if so, when the same ceased; whether such cessation was caused by compromise or by judicial decree, and any additional facts within the claimant's knowledge having a direct bearing upon his possession and bona fides which he may desire to submit in support of his claim.

76. There should likewise be filed a certificate, under seal of the court having jurisdiction of mining cases within the judicial district embracing the claim, that no suit or action of any character whatever involving the right of possession to any portion of the claim applied for is pending, and that there has been no litigation before said court affecting the title to said claim or any part thereof for a period equal to the time fixed by the statute of limitations for mining claims in the State or Territory as aforesaid other than that which has been finally decided in favor of the claimant.

77. The claimant should support his narrative of facts relative to his possession, occupancy, and improvements by corroborative testimony of any disinterested person or persons of credibility who may be cognizant of the facts in the case and are capable of testifying understandingly in the premises.

ADVERSE CLAIMS.

78. An adverse claim must be filed with the Register and Receiver of the land office where the application for patent is filed or with the Register and Receiver of the district in which the land is situated at the time of filing the adverse claim. It must be on the oath of the adverse claimant, or it may be verified by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated.

79. Where an agent or attorney in fact verifies the adverse claim, he must distinctly swear that he is such agent or attorney, and accompany his affidavit by proof thereof.

80. The agent or attorney in fact must make the affidavit in verification of the adverse claim within the land district where the claim is situated.

81. The adverse claim so filed must fully set forth the nature and extent of the interference or conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator. If the former, a certified copy of the original location, the original conveyance, a duly certified copy thereof, or an abstract of title from the office of the proper recorder should be furnished, or if the transaction was a merely verbal one he will narrate the circumstances attending the purchase, the date thereof, and the amount paid, which facts should be supported by the affidavit of one or more witnesses, if any were present at the time, and if he claims as

a locator he must file a duly certified copy of the location from the office of the proper recorder.

82. In order that the "boundaries" and "extent" of the claim may be sown, it will be incumbent upon the adverse claimant to file a plat showing his entire claim, its relative situation or position with the one against which he claims, and the extent of the conflict: Provided, however, That if the application for patent describes the claim by legal subdivisions, the adverse claimant, if also claiming by legal subdivisions, may describe his adverse claim in the same manner without further survey or plat. If the claim is not described by legal subdivisions, it will generally be more satisfactory if the plat thereof is made from an actual survey by a mineral surveyor, and its correctness officially certified thereon by him.

83. Upon the foregoing being filed within the sixty days' period of publication, the Register, or in his absence the Receiver, will immediately give notice in writing to the parties that such adverse claim has been filed, informing them that the party who filed the adverse claim will be required within thirty days from the date of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment, and that, should such adverse claimant fail to do so, his adverse claim will be considered waived and the application for patent be allowed to proceed upon its merits.

84. When an adverse claim is filed as aforesaid, the Register or Receiver will indorse upon the same the precise date of filing, and preserve a record of the date of notifications issued thereon; and thereafter all proceedings on the application for patent will be stayed, with the exception of the completion of the publication and posting of notices and plat and the filing of the necessary proof thereof, until the controversy shall have been finally adjudicated in court or the adverse claim waived or withdrawn.

85. Where an adverse claim has been filed and suit thereon commenced within the statutory period and final judgment rendered determining the right of possession, it will not be sufficient to file with the Register a certificate of the clerk of the court setting forth the facts as to such judgment, but the successful party must before he is allowed to make entry, file a certified copy of the judgment roll, together with the other evidence required by section 2326, Revised Statutes.

86. Where such suit has been dismissed, a certificate of the clerk of the court to that effect or a certified copy of the order of dismissal will be sufficient.

87. After an adverse claim has been filed and suit commenced, a relinquishment or other evidence of abandonment of the adverse claim will not be accepted, but the case must be terminated and proof thereof furnished as required by the last two paragraphs.

88. Where an adverse claim has been filed, but no suit commenced against the applicant for patent within the statutory period, a certificate to that effect by the clerk of the State court having jurisdiction in the case, and also by the clerk of the circuit court of the United States for the district in which the claim is situated, will be required.

APPOINTMENT OF SURVEYORS FOR SURVEY OF MINING CLAIMS AND CHARGES.

89. Section 2334 provides for the appointment of surveys to survey mining claims, and authorizes the Commissioner of the General Land Office to establish the rates to be charged for surveys and for newspaper publications. Under this authority of law the following rates have been established as the maximum charges for newspaper publications in mining cases:

(1) Where a daily newspaper is designated the charge shall not exceed seven dollars for each ten lines of space occupied, and where a weekly newspaper is designated as the medium of publication five dollars for the same space will be allowed. Such charge shall be accepted as full payment for publication in each issue of the newspaper for the entire period required by law.

It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and the said rates established upon the understanding that they are to be in the usual body type used for advertisements.

(2) For the publication of citations in contests or hearings involving the character of lands the charges shall not exceed eight dollars for five publications in weekly newspapers or ten dollars for publications in daily newspapers for thirty days.

90. The surveyors-general of the several districts will, in pursuance of said law, appoint in each land district as many competent surveyors for the survey of mining claims as may seek such appointment, it being distinctly understood that all expenses of these notices and surveys are to be borne by the mining claimants and not by the United States. The statute provides that the claimant shall also be at liberty to employ any United States mineral surveyor to make the survey. Each surveyor appointed to survey mining claims before entering upon the duties of his office or appointment shall be required to enter into a bond of not less than $5,000 for the faithful performance of his duties.

91. With regard to the platting of the claim and other office work in the surveyor-general's office, that officer will make an estimate of the cost thereof, which amount the claimant will deposit with any assistant United States treasurer or designated depository in favor of the United States treasurer, to be passed to the credit of the fund created by "individual depositors for surveys of the public lands," and file with the surveyor-general duplicate certificates of such deposit in the usual manner.

92. The surveyors-general will endeavor to appoint surveyors to survey mining claims so that one or more may be located in each mining district for the greater convenience of miners.

93. The usual oaths will be required of these surveyors and their assistants as to the correctness of each survey executed by them.

The duty of the surveyor ceases when he has executed the survey and returned the field notes and preliminary plat thereof with his report to the surveyor-general. He will not be allowed to prepare for the mining claimant the papers in support of an application for patent, or otherwise perform the duties of an attorney before the land office in connection with a mining claim.

The surveyors-general and local land officers are expected to report any infringement of this regulation to this office.

94. Should it appear that excessive or exorbitant charges have been made by any surveyor or any publisher, prompt action will be taken with the view of correcting the abuse.

FEES OF REGISTERS AND RECEIVERS.

95. The fees payable to the Register and Receiver for filing and acting upon applications for mineral-land patents are five dollars to each officer, to be paid by the applicant for patent at the time of filing, and the like sum of five dollars is payable to each officer by an adverse judgment at the time of filing his adverse claim. (Sec. 2238, R. S., par 9.)

[Paragraphs 96, 97, and 98 are superseded by the general circular instructions of June 10, 1908.]

HEARINGS TO DETERMINE CHARACTER OF LANDS.

99. The Rules of Practice in cases before the United States district land offices, the General Land Office, and the Department of the Interior will, so far as applicable, govern in all cases and proceedings arising in contests and hearings to determine the character of lands.

100. Public land returned by the surveyor-general as mineral shall be withheld from entry as agricultural land until the presumption arising from such a return shall be overcome by testimony taken in the manner hereinafter described.

101. Hearings to determine the character of lands:

(1) Lands returned as mineral by the surveyor-general.

When such lands are sought to be entered as agricultural under laws which require the submission of final proof after due notice by publication and posting, the filing of the proper nonmineral affidavit in the absence of allegations that the land is mineral will be deemed sufficient as preliminary requirement. A satisfactory showing as to character of land must be made when final proof is submitted.

In case of application to enter, locate, or select such lands as agricultural, under laws in which the submission of final proof after due publication and posting is not required, notice thereof must first be given by publication for sixty days and posting in the local office during the same period, and affirmative proof as to the character of the land submitted. In the absence of allegations that the land is mineral, and upon compliance with this requirement, the entry, location, or selection will be allowed, if otherwise regular.

(2) Lands returned as agricultural and alleged to be mineral in character.

Where as against the claimed right to enter such lands as agricultural it is alleged that the same are mineral, or are applied for as mineral lands, the proceedings in this class of cases will be in the nature of a contest, and the practice will be governed by the rules in force in contest cases.

[Paragraphs 102 to 104, inclusive, are superseded by appropriate instructions relative to nonmineral proofs in railroad, State, and forest lieu selections contained in separate circulars.]

105. At hearings to determine the character of lands the claim-

ants and witnesses will be thoroughly examined with regard to the character of the land; whether the same has been thoroughly prospected; whether or not there exists within the tract or tracts claimed any lode or vein of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, or other valuable deposit, which has ever been claimed, located, recorded, or worked; whether such work is entirely abandoned, or whether occasionally resumed; if such lode does exist, by whom claimed, under what designation, and in which subdivision of the land it lies; whether any placer mine or mines exist upon the land; if so, what is the character thereof—whether of the shallow-surface description, or of the deep cement, blue lead, or gravel deposits; to what extent mining is carried on when water can be obtained, and what the facilities are for obtaining water for mining purposes; upon what particular ten-acre subdivisions mining has been done, and at what time the land was abandoned for mining purposes, if abandoned at all. In every case, where practicable, an adequate quantity or number of representative samples of the alleged mineral-bearing matter or material should be offered in evidence, with proper identification, to be considered in connection with the record, with which they will be transmitted upon each appeal that may be taken. Testimony may be submitted as to the geological formation and development of mineral on adjoining or adjacent lands and their relevancy.

106. The testimony should also show the agricultural capacities of the land, what kind of crops are raised thereon, and the value thereof; the number of acres actually cultivated for crops of cereals or vegetables, and within which particular ten-acre subdivision such crops are raised; also which of these subdivisions embrace the improvements, giving in detail the extent and value of the improvements, such as house, barn, vineyard, orchard, fencing, etc., and mining improvements.

107. The testimony should be as full and complete as possible; and in addition to the leading points indicated above, where an attempt is made to prove the mineral character of lands which have been entered under the agricultural laws, it should show at what date, if at all, valuable deposits of minerals were first known to exist on the lands.

108. When the case comes before this office, such decision will be made as the law and the facts may justify. In cases where a survey is necessary to set apart the mineral from the agricultural land, the proper party, at his own expense, will be required to have the work done by a reliable and competent surveyor to be designated by the surveyor-general. Application therefor must be made to the Register and Receiver, accompanied by description of the land to be segregated and the evidence of service upon the opposite party of notice of his intention to have such segregation made. The Register and Receiver will forward the same to this office, when the necessary instructions for the survey will be given. The survey in such case, where the claims to be segregated are vein or lode claims, must be executed in such manner as will conform to the requirements in section 2320, Revised Statutes, as to length and width and parallel end lines.

109. Such survey when executed must be properly sworn to by the surveyor, either before a notary public, United States com-

missioner, officer of a court of record, or before the Register or Receiver, the deponent's character and credibility to be properly certified to by the officer administering the oath.

110. Upon the filing of the plat and field notes of such survey with the Register and Receiver, duly sworn to as aforesaid, they will transmit the same to the surveyor-general for his verification and approval, who, if he finds the work correctly performed, will furnish authenticated copies of such plat and description both to the proper local land office and to this office, made upon the usual drawing-paper township blank.

The copy of plat furnished the local office and this office must be a diagram verified by the surveyor-general, showing the claim or claims segregated, and designating the separate fractional agricultural tracts in each 40-acre legal subdivision by the proper lot number, beginning with No. 1 in each section, and giving the area in each lot, the same as provided in paragraph 37 in the survey of mining claims on surveyed lands.

111. The fact that a certain tract of land is decided upon testimony to be mineral in character is by no means equivalent to an award of the land to a miner. In order to secure a patent for such land, he must proceed as in other cases, in accordance with the foregoing regulations.

Blank forms for proofs in mineral cases are not furnished by the General Land Office.

DISTRICT OF ALASKA.

112. Section 13, Act of May 14, 1898, according to native-born citizens of Canada "the same mining rights and privileges" in the district of Alaska as are accorded to citizens of the United States in British Columbia and the Northwest Territory by the laws of the Dominion of Canada, is not now and never has been operative, for the reason that the only mining rights and privileges granted to any person by the laws of the Dominion of Canada are those of leasing mineral lands upon the payment of a stated royalty, and the mining laws of the United States make no provision for such leases.

113. For the sections of the Act of June 6, 1900, making further provision for a civil government for Alaska, which provide for the establishment of recording districts and the recording of mining locations; for the making of rules and regulations by the miners and for the legalization of mining records; for the extension of the mining laws to the district of Alaska, and for the exploration and mining of tide lands and lands below low tide; and relating to the rights of Indians and persons conducting schools or missions, see page 21 of this circular.

MINERAL LANDS WITHIN NATIONAL FORESTS.

114. The Act of June 4, 1897, 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 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.

The Act also 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."

Transfer of National Forests.

Act of February 1, 1905 (33 Stat., 628.).

The Secretary of the Department of Agriculture shall, from and after the passage of this Act, execute or cause to be executed all laws affecting public lands heretofore or hereafter reserved under the provisions of section twenty-four of the Act entitled "An Act to repeal the timber-culture laws, and for other purposes," approved March 3, 1891, and Acts supplemental to and amendatory thereof, after such lands have been so reserved, excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any of such lands.

(For further information see Use Book—Forest Service.)

SURVEYS OF MINING CLAIMS.

General Provisions.

115. Under section 2334, Revised Statutes, the U. S. surveyor-general "may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to surveying mining claims."

116. Persons desiring such appointment should therefore file their applications with the surveyor-general for the district wherein appointment is asked, who will furnish all information necessary.

117. All appointments of mineral surveyors must be submitted to the Commissioner of the General Land office for approval.

118. The surveyors-general have authority to suspend or revoke the commissions of mineral surveyors for cause. Before final action, however, the matter should be submitted to the Commissioner of the General Land Office for approval.

119. Such surveyors will be allowed the right of appeal from the action of the surveyor-general in the usual manner. Such appeal should be filed with the surveyor-general, who will at once transmit the same, with a full report, to the General Land Office.

120. Neither the surveyor-general nor the Commissioner of the General Land Office has jurisdiction to settle differences, relative to the payment of charges for field work, between mineral surveyors and claimants. These are matters of private contract and must be enforced in the ordinary manner, i. e., in the local courts. The Department has, however, authority to investigate charges affecting the official actions of mineral surveyors, and will, on sufficient cause shown, suspend or revoke their appointment.

121. The surveyors-general should appoint as many competent mineral surveyors as apply for appointment, in order that claimants may have a choice of surveyors, and be enabled to have their work done on the most advantageous terms.

122. The schedule of charges for office work should be as low as is possible. No additional charges should be made for orders for amended surveys, unless the necessity therefor is clearly the fault of the claimant, or considerable additional office work results therefrom.

123. [Omitted.]

124. Mineral surveyors will address all official communications to the surveyor-general. They will, when a mining claim is the subject of correspondence, give the name and survey number. In replying to letters they will give the subject-matter and date of the letter. They will promptly notify the surveyor-general of any change in postoffice address.

125. Mineral surveyors should keep a complete record of each survey made by them and the facts coming to their knowledge at the time, as well as copies of all their field notes, reports and official correspondence, in order that such evidence may be readily produced when called for at any future time. Field notes and other reports must be written in a clear and legible hand or typewritten, in non-copying ink, and upon the proper blanks furnished gratuitously by the surveyor-general's office upon application therefor. No interlineations or erasures will be allowed.

126. No return by a mineral surveyor will be recognized as official unless it is over his signature as a United States mineral surveyor, and made in pursuance of a special order from the surveyor-general's office. After he has received an order for survey he is required to make the survey and return correct field notes thereof to the surveyor-general's office without delay.

127. The claimant is required, in all cases, to make satisfactory arrangements with the surveyor for the payment for his services and those of his assistants in making the survey, as the United States will not be held responsible for the same.

128. A mineral surveyor is precluded from acting, either directly or indirectly, as attorney in mineral claims. His duty in any particular case ceases when he has executed the survey and returned the field notes and preliminary plat, with his report, to the surveyor-general. He will not be allowed to prepare for the mining claimant the papers in support of his application for patent, or otherwise perform the duties of an attorney before the land office in connection with a mining claim. He is not permitted to combine the duties of surveyor and notary public in the same case by administering oaths to the parties in interest. It is preferable that both preliminary and final oaths of assistants should be taken before some officer duly authorized to administer oaths, other than the mineral surveyor. In cases, however, where great delay, expense, or inconvenience would result from a strict compliance with this rule, the mineral surveyor is authorized to administer the necessary oaths to his assistants, but in each case where this is done, he will submit to the proper surveyor-general a full written report of the circumstances which required his stated action; otherwise he must have absolutely nothing to do with the case, except in

his official capacity as surveyor. He will not employ chainmen interested therein in any manner.

Method of Survey.

129. The survey made and returned must, in every case, be an actual survey on the ground in full detail, made by the mineral surveyor in person after the receipt of the order, and without reference to any knowledge he may have previously acquired by reason of having made the location survey or otherwise, and must show the actual facts existing at the time. This precludes him from calculating the connections to corners of the public survey and location monuments, or any other lines of his survey through prior surveys made by others and substituting the same for connections or lines of the survey returned by him. The term survey in this paragraph applies not only to the usual field work, but also to the examinations required for the preparation of affidavits of five hundred dollars expenditure, descriptive reports on placer claims, and all other reports.

130. The survey of a mining claim may consist of several contiguous locations, but such survey must, in conformity with statutory requirements, distinguish the several locations, and exhibit the boundaries of each. The survey will be given but one number.

131. The survey must be made in strict conformity with, or be embraced within, the lines of the location upon which the order is based. If the survey and location are identical, that fact must be clearly and distinctly stated in the field notes. If not identical, a bearing and distance must be given from each established corner of survey to the corresponding corner of the location, and the location corner must be fully described, so that it can be identified. The lines of the location, as found upon the ground, must be laid down upon the preliminary plat in such a manner as to contrast and show their relation to the lines of survey.

132. In view of the principle that courses and distances must give way when in conflict with fixed objects and monuments, the surveyor will not, under any circumstances, change the corners of the location for the purpose of making them conform to the description in the record. If the difference from the location be slight, it may be explained in the field notes.

133. No mining claim located subsequent to May 10, 1872, should exceed the statutory limit in width on each side of the center of vein or 1,500 feet in length, and all surveys must close within 50-100 feet in 1,000 feet, and the error must not be such as to make the location exceed the statutory limit, and in absence of other proof the discovery point is held to be the center of the vein on the surface. The course and length of the vein should be marked upon the plat.

134. All mineral surveys must be made with a transit, with or without solar attachment, by which the meridian can be determined independently of the magnetic needle, and all courses must be referred to the true meridian. The variation should be noted at each corner of the survey. The true course of at least one line of each survey must be ascertained by astronomical observations made at the time of the survey; the data for determining the same and details as to how these data were arrived at must be given. Or,

in lieu of the foregoing, the survey must be connected with some line the true course of which has been previously established beyond question, and in a similar manner, and, when such lines exist, it is desirable in all cases that they should be used as a proof of the accuracy of subsequent work.

135. Corner No. 1 of each location embraced in a survey must be connected by course and distance with nearest corner of the public survey or with a United States location monument, if the claim lies within two miles of such corner or monument. If both are within the required distance, the connection must be with the corner of the public survey.

136. Surveys and connections of mineral claims may be made in suspended townships in the same manner as though the claims were upon unsurveyed land, except as hereinafter specified, by connecting them with independent mineral monuments. At the same time, the position of any public-land corner which may be found in the neighborhood of the claim should be noted, so that, in case of the release of the township from suspension, the position of the claim can be shown on the plat.

137. A mineral survey must not be returned with its connection made only with a corner of the public survey, where the survey of the township within which it is situated is under suspension, nor connected with a mineral monument alone, when situated within the limits of a township the regularity and correctness of the survey of which is unquestioned.

138. In making an official survey, corner No. 1 of each location must be established at the corner nearest the corner of the public survey or location monument, unless good cause is shown for its being placed otherwise. If connections are given to both a corner of the public survey and location monument, corners Nos. 1 should be placed at the corner nearest the corner of the public survey. When a boundary line of a claim intersects a section line, courses and distances from point of intersection to the Government corners at each end of the half mile of section line so intersected must be given.

139. In case a survey is situated in a district where there are no corners of the public survey and no monuments within the prescribed limits, a mineral monument must be established, in the location of which the greatest care must be exercised to insure permanency as to site and construction.

140. The site, when practicable, should be some prominent point, visible for a long distance from every direction, and should be so chosen that the permanency of the monument will not be endangered by snow, rock, or landslides, or other natural causes.

141. The monument should consist of a stone not less than 30 inches long, 20 inches wide, and 6 inches thick, set halfway in the ground, with a conical mound of stone 4 feet high and 6 feet base alongside. The letters U. S. L. M., followed by the consecutive number of the monument in the district, must be plainly chiseled upon the stone. If impracticable to obtain a stone of required dimensions, then a post 8 feet long, 6 inches square, set 3 feet in the ground, scribed as for a stone monument, protected by a well-built conical mound of stone of not less than 3 feet high and 6 feet base around it, may be used. The exact point for con-

nection must be indicated on the monument by an X chiseled hereon; if a post is used, then a tack must be driven into the post to indicate the point.

142. From the monument, connections by course and distance must be taken to two or three bearing trees or rocks, and to any well-known and permanent objects in the vicinity, such as the confluence of streams, prominent rocks, buildings, shafts, or mouths of adits. Bearing trees must be properly scribed B. T. and bearing rocks chiseled B. R., together with the number of the location monument; the exact point on the tree or stone to which the connection is taken should be indicated by a cross or other unmistakable mark. Bearings should also be taken to prominent mountain peaks, and the approximate distance and direction ascertained from the nearest town or mining camp. A detailed description of the locating monument, with a topographical map of its location, should be furnished the office of the Surveyor-General by the surveyor.

143. Corners may consist of—

First.—A stone at least 24 inches long set 12 inches in the ground, with a conical mound of stone 1½ feet high, 2 feet base, alongside.

Second.—A post at least 3 feet long by 4 inches square, set 18 inches in the ground and surrounded by a substantial mound of stone or earth.

Third.—A rock in place.

A stone should always be used for a corner when possible, and when so used the kind should be stated.

144. All corners must be established in a permanent and workmanlike manner, and the corner and survey number must be neatly chiseled or scribed on the sides facing the claim. The exact corner point must be permanently indicated on the corner. When a rock in place is used, its dimensions above ground must be stated and a cross chiseled at the exact corner point.

145. In case the point for the corner be inaccessible or unsuitable a witness corner, which must be marked with the letters W. C. in addition to the corner and survey number, should be established. The witness corner should be located upon a line of the survey and as near as possible to the true corner, with which it must be connected by course and distance. The reason why it is impossible or impracticable to establish the true corner must always be stated in the field notes, and in running the next course it should be stated whether the start is made from the true place for corner or from witness corner.

146. The identity of all corners should be perpetuated by taking courses and distances to bearing trees, rocks, and other objects, as prescribed in the establishment of location monuments, and when no bearings are given it should be stated that no bearings are available. Permanent objects should be selected for bearings whenever possible.

147. If an official mineral survey has been made in the vicinity, within a reasonable distance, a further connecting line should be run to some corner thereof; and in like manner all conflicting surveys and locations should be so connected, and the corner with which connection is made in each case described. Such connections

will be made and conflicts shown according to the boundaries of the neighboring or conflicting claims as each is marked, defined, and actually established upon the ground. The mineral surveyor will fully and specifically state in his return how and by what visible evidences he was able to identify on the ground the several conflicting surveys and those which appear according to their returned tie or boundary lines to conflict, if they were so identified, and report errors or discrepancies found by him in any such surveys. In the survey of contiguous claims which constitute a consolidated group, where corners are common, bearings should be mentioned but once.

148. The mineral surveyor should note carefully all topographical features of the claim, taking distances on his lines to intersections with all streams, gulches, ditches, ravines, mountain ridges, roads, trails, etc., with their widths, courses, and other data that may be required to map them correctly. All municipal or private improvements, such as blocks, streets, and buildings, should be located.

149. If, in running the exterior lines of a claim, the survey is found to conflict with the survey of another claim, the distances to the points of intersection, and the courses and distances along the line intersected from an established corner of such conflicting claim to such points of intersection, should be described in the field notes: Provided, That where a corner of the conflicting survey falls within the claim being surveyed, such corner should be selected from which to give the bearing, otherwise the corner nearest the intersection should be taken. The same rule should govern in the survey of claims embracing two or more locations the lines of which intersect.

150. A lode and mill-site claim in one survey will be distinguished by the letters A and B following the number of the survey. The corners of the mill site will be numbered independently of those of the lode. Corner No. 1 of the mill site must be connected with a corner of the lode claim as well as with a corner of the public survey or United States location monument.

151. When a placer claim includes lodes, or when several contiguous placer or lode locations are included as one claim in one survey, there must be given to the corners of each location constituting the same a separate consecutive numerical designation, beginning with corner No. 1 in each case.

152. Throughout the description of the survey, after each reference to the lines or corners of a location, the name thereof must be given, and if unsurveyed, the fact stated. If reference is made to a location included in a prior official survey, the survey number must be given, followed by the name of the location. Corners should be described once only.

153. The total area of each location and also the area in conflict with each intersecting survey or claim should be stated. But when locations embraced in one survey conflict with each other such conflicts should only be stated in connection with the location from which the conflicting area is excluded.

154. It should be stated particularly whether the claim is upon surveyed or unsurveyed public lands, giving in the former case the

quarter section, township, and range in which it is located, and the section lines should be indicated by full lines and the quarter-section lines by dotted lines.

155. The title-page of the field notes must contain the post-office address of the claimant or his authorized agent.

156. In the mineral surveyor's report of the value of the improvements all actual expenditures and mining improvements made by the claimant or his grantors, having a direct relation to the development of the claim, must be included in the estimate.

157. The expenditures required may be made from the surface or in running a tunnel, drifts, or crosscuts for the development of the claim. Improvements of any other character, such as buildings, machinery, or roadways, must be excluded from the estimate, unless it is shown clearly that they are associated with actual excavations, such as cuts, tunnels, shafts, etc., are essential to the practical development of and actually facilitate the extraction of mineral from the claim.

158. All mining and other improvements claimed will be located by courses and distances from corners of the survey, or from points on the center or side lines, specifying with particularity and detail the dimensions and character of each, and the improvements upon each location should be numbered consecutively, the point of discovery being always No. 1. Improvements made by a former locator who has abandoned his claim can not be included in the estimate, but should be described and located in the notes and plat.

159. In case of a lode and mill-site claim in the same survey the expenditure of five hundred dollars must be shown upon the lode claim.

160. If the value of the labor and improvements upon a mineral claim is less than five hundred dollars at the time of survey, the mineral surveyor may file with the Surveyor-General supplemental proof showing five hundred dollars expenditure made prior to the expiration of the period of publication.

161. The mineral surveyor will return with his field notes a preliminary plat on blank sent to him for that purpose, protracted on a scale of two hundred feet to an inch, if practicable. In preparing plats the top is north. Copy of the calculations of areas by double meridian distances and of all triangulations or traverse lines must be furnished. The lines of the claim surveyed should be heavier than the lines of conflicting claims.

162. Whenever a survey has been reported in error the surveyor who made it will be required to promptly make a thorough examination upon the premises and report the result, under oath, to the Surveyor-General's office. In case he finds his survey in error he will report in detail all discrepancies with the original survey and submit any explanation he may have to offer as to the cause. If, on the contrary, he should report his survey correct, a joint survey will be ordered to settle the differences with the surveyor who reported the error. A joint survey must be made within ten days after the date of order unless satisfactory reasons are submitted, under oath, for a postponement. The field work must in every sense of the term be a joint and not a separate survey, and the observations and measurements taken with the same instrument and chain, previously tested and agreed upon.

163. The mineral surveyor found in error, or, if both are in error, the one who reported the same, will make out the field notes of the joint survey, which, after being duly signed and sworn to by both parties, must be transmitted to the Surveyor-General's office.

164. Inasmuch as amended surveys are ordered only by special instructions from the General Land Office, and the conditions and circumstances peculiar to each separate case and the object sought by the required amendment, alone govern all special matters relative to the manner of making such survey and the form and subject-matter to be embraced in the field notes thereof, but few general rules applicable to all cases can be laid down.

165. The amended survey must be made in strict conformity with, or be embraced within, the lines of the original survey. If the amended and original surveys are identical, that fact must be clearly and distinctly stated in the field notes. If not identical, a bearing and distance must be given from each established corner of the amended survey to the corresponding corner of the original survey. The lines of the original survey, as found upon the ground, must be laid down upon the preliminary plat in such manner as to contrast and show their relation to the lines of the amended survey.

166. The field notes of the amended survey must be prepared on the same size and form of blanks as are the field notes of the original survey, and the word "amended" must be used before the word "survey" wherever it occurs in the field notes.

167. Mineral surveyors are required to make full examinations of all placer claims at the time of survey and file with the field notes a descriptive report, in which will be described—

a. The quality and composition of the soil, and the kind and amount of timber and other vegetation.

b. The locus and size of streams, and such other matter as may appear upon the surface of the claims.

c. The character and extent of all surface and underground workings, whether placer or lode, for mining purposes, locating and describing them.

d. The proximity of centers of trade or residence.

e. The proximity of well-known systems of lode deposits or of individual lodes.

f. The use or adaptability of the claim for placer mining, and whether water has been brought upon it in sufficient quantity to mine the same, or whether it can be procured for that purpose.

g. What works or expenditures have been made by the claimant or his grantors for the development of the claim, and their situation and location with respect to the same as applied for.

h. The true situation of all mines, salt licks, salt springs, and mill sites which come to the surveyor's knowledge, or a report by him that none exist on the claim, as the facts may warrant.

i. Said report must be made under oath and duly corroborated by one or more disinterested persons.

168. The employing of claimants, their attorneys, or parties in interest, as assistants in making surveys of mineral claims will not be allowed.

169. The field work must be accurately and properly performed

and returns made in conformity with the foregoing instructions. Errors in the survey must be corrected at the surveyor's own expense, and if the time required in the examination of the returns is increased by reason of neglect or carelessness, he will be required to make an additional deposit for office work. He will be held to a strict accountability for the faithful discharge of his duties, and will be required to observe fully the requirements and regulations in force as to making mineral surveys. If found incompetent as a surveyor, careless in the discharge of his duties, or guilty of a violation of said regulations, his appointment will be promptly revoked.

S. V. Proudfit,
Acting Commissioner.

Approved March 22, 1909
R. A. Ballinger,
Secretary.

AMENDMENTS.

Instructions for Preparation and Disposition of Plats of Survey of Mining Claims

Department of the Interior,
General Land Office,
Washington D. C., July 29, 1911.

United States Surveyors General:

The following instructions are issued in pursuance of a plan for preparation and disposition of plats of survey of mining claims, which was approved by the First Assistant Secretary of the Interior June 6, 1911.

The surveyor general will prepare the original plat on form 4—675. All lines clear and sharp in black. All letters and figures clear and sharp in black.

The original plat, so prepared, will be signed and dated by the surveyor general and forwarded to the General Land Office flat or in tube and unmounted.

The commissioner will have three photolithographic copies made upon drawing paper, which copies, with the original plat, will be forwarded to the surveyor general, the duplicate, triplicate, and quadruplicate to be signed by him, and the four plats to be filed and disposed of in the same manner as provided for in paragraph 34 of the Mining Regulations, viz: One plat and the original field notes to be retained in the office of the surveyor general; one copy of the plat to be given the claimant for posting upon the claim; one plat and a copy of the field notes to be given the claimant for filing with the proper register, to be finally transmitted by that officer, with other papers in the case, to this office, and one plat to be sent by the surveyor general to the register of the proper land district, to be retained on his files for future reference.

A certain number of photolithographic copies will be furnished the surveyor general for sale at a cost of 30 cents each, and a photolithographic copy printed on tracing paper will be furnished the surveyor general, from which blue prints may be made, to be sold at cost.

Very Respectfully,

S. V. Proudfit,
Assistant Commissioner.

Approved, July 29, 1911.
Samuel Adams,
Acting Secretary.

Regulation 44, Mining Regulations.

Department of the Interior,
General Land Office,
Washington, D. C., August 8, 1911.

The Honorable,
The Secretary of the Interior.

Sir: I hereby respectfully recommend that regulation number 44 of Mining Regulations, approved March 29, 1909 (37 L. D., 728-786), be amended to read as follows:

44. Before approving for publication any notice of an application for mineral patent, local officers will be particular to see that it includes no land which is embraced in a prior or pending application for patent or entry, or for any land embraced in a railroad selection, or for which publication is pending or has been made by other claimants, and if, in their opinion, after investigation, it should appear that notice of a mineral application should not, for this or other reasons, be approved for publication, they should formally reject the same, giving the reasons therefor, and allow the applicant 30 days for appeal to this Office under the Rules of Practice.

Very Respectfully

S. V. Proudfit,
Acting Commissioner.

Approved, August 9, 1911.
Samuel Adams,
Acting Secretary.

APPENDIX A.

Time to Commence Adverse Claims and Suits in Alaska Extended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the district of Alaska adverse claims authorized and provided for in sections twenty-three hundred and twenty-five and twenty-three hundred and twenty-six, United States Revised Statutes, may be filed at any time during the sixty days period of publication or within eight months thereafter, and the adverse suits authorized and provided for in section twenty-three hundred and twenty-six, United States Revised Statutes, may be instituted at any time within sixty days after the filing of said claims in the local land office.

(Public No. 198, Approved June 7, 1910.)

DIGEST.

MINERAL LAND.

Character of Land.

The duties of determining the character of land, whether mineral or non-mineral, and of seeing that the public lands are only disposed of as authorized by law rests upon the Land Department, of which the Secretary of the Interior is the head. The decision, therefore, of the Secretary that a specific tract of land is principally valuable for its mineral deposits while undisturbed is binding upon the officers of the Land Department and prevents disposal of the land in any other way than as prescribed by the laws specifically authorizing the sale or disposal of the lands.

Coleman et al, vs. McKenzie et al., 28 L. D. 348.

A patent is not essential to the enlargement of a mining claim held under a valid location not as to form a material block to prosecute his application for patent, is not in itself an abandonment of the claim.

Coleman et al. vs. McKenzie et al., 28 D. L. 348.

Under the public land laws of the United States, valuable for their mineral deposits can be disposed of only under the mining laws.

Coleman et al. vs. McKenzie et al., L. D. 348.

Classification.

In classifying unsurveyed lands under the Act of February 26th, 1895, where the entire area of the tract is designated by natural or artificial boundaries as to their character, the classification should be made with reference to the particular section.

Instructions, 26 L. D. 423.

The provision of Section five, Act of February 26, 1895, that hearings held under protest filed against the acceptance of the classification of land as returned by the Commission: "The United States shall be represented and defended by the United States District Attorney, etc.," "requires the said Attorney to assist in procuring the mineral classification on the land, wherever the facts show that to be its true character and to that end such officers should endeavor to sustain the mineral classification of the Commission."

Opinion, 28 L. D. 295.

In case of protest filed under the 5th section of the Act of 1895 against the classification of lands under the said Act, the Department will apply substantially the same rules in determining the character of the land that the Classification Commissioners are directed by said Act to apply.

The rules prescribed by the Act of February 26, 1895, differ from those applied by the Department in ordinary contests involving the character of land for mining location made in any section of land, are declared to be by said Act, prima facie evidence of the mineral character of a forty acre subdivision embracing the same.

Holter et al. vs. Northern Pacific R. R. Co., 30 L. D. 442.

To justify a hearing as to the character of land classified under the Act of February 26, 1895, where a protest is not filed until after the prescribed time comes before approval of the classification by the Secretary of the Interior, such as a showing of fraud in the classification must be made as would condemn and avoid it, if sustained by proof produced at the hearing.

Lamb et al. vs. Northern Pacific R. R. Co., 29 L. D. 102.

A protest against the classification of such land justifies a hearing as to

the character of the land where it is shown thereby that the report of the Commissioners which the Secretary of the Interior approved the classification was false and a clear misrepresentation of the character of the land.

Lamb et al. vs. Northern Pacific R. R. Co., 29 L. D. 102.

Luthye et al. vs. Northern Pacific R. R. Co., 675.

Lands valuable on account of limestone deposits contained therein, and more valuable on account of said deposits than for agricultural purposes, are mineral lands within the meaning of the Act of February 26, 1895, provide for the classification of lands within the limits of the Northern Pacific Grant.

Morrill vs. Northern Pacific R. R. Co. et al., 30 L. D. 475.

Section 2333 of the Revised Statutes and the opinion in the case of Becker et al. vs. Sears, 1 L. D. 560, lays down the rules as to what constitutes placer and lode claims.

Whatever is recognized as mineral by the standard authorities, whether of metallic or other substances when found in the public lands in quantities and quality sufficient to render the land more valuable on account thereof than for agricultural purposes, must be treated as coming within the purview of the mining laws.

Pacific Coast Marble Co. vs. Northern Pacific R. R. Co. et al., 25 L. D. 233.

Alldritt vs. Northern Pacific R. R. Co., 25 L. D. 349.

Union Oil Company, 25 L. D. 251, overruling case of Ferrell vs. Hoge et al., 18 L. D. 81.

Borax, soda, alum, oil, fire-clay, kaolin, gypsum, limestone, phosphate, guano, marble, slate, petroleum and asphaltum are mineral lands.

Land more valuable for the deposits of sand-stone therein than for agricultural purposes are to be so classified under the Act of February 26, 1895.

Beaudette vs. Northern Pacific R. R. Co., 29 L. D. 248.

Coal is not mineral within the meaning of the Act of June 3, 1878.

Opinion, 2nd L. D. 857.

On an issue joined as to the character of a tract, the matter to be determined is whether, as a present fact, the land is more valuable for mineral than for agricultural purposes, the mineral claimant for land returned as agricultural land, must show as a present fact, that mineral can be obtained therefrom in such quantities as to make the land more valuable for mineral than agricultural purposes.

Where a mineral entry has been allowed on land returned as agricultural land, the burden of proof will lie upon the one who thereafter alleges the land to be unfit for agricultural land.

On proof of the mineral character of a tract before the allowance of a mineral entry therefor, the burden of the proof is upon the one who asserts the non-mineral character of the tract, even if returned as agricultural.

If the presumptive mineral character of the land is based upon the exploration of only one portion thereof, the burden is assumed by the one who alleges the agricultural character of such land, and is sustained by evidence of exploration on some portion sufficient to demonstrate the fact of its non-mineral character and thereby overcoming the effect of the alleged prior exploration or discovery.

Walton vs. Batton et al., 14 L. D. 54.

Winters et al. vs. Bliss, 14 L. D. 59.

Johns vs. Marsh et al., 15 L. D. 196.

Cutting vs. Reinininghaus, 7 L. D. 265.

Creswell Mining Company vs. Johnson, 8 L. D. 440.

Tinkham vs. McCaffrey, 13 L. D. 517.

Northern Pacific R. R. Co. vs. Marshall, 17 L. D. 545.

John vs. Marsh et al., 15 L. D. 196.

State of Washington vs. McBridge, 25 L. D. 167.

In case of a hearing to determine the mineral or non-mineral character of a tract of land theretofore held by the Department to be particularly valuable for its mineral deposit, the burden of proof is with the agricultural claimants and incumbent upon them to clearly overcome the effect of the former decision.

Coleman et al. vs. McKenzie et al., 28 L. D. 348.

The burden of proof is upon the agricultural claimant for the return of land, to show the fact that it is non-mineral in character, but he is not required to prove affirmatively its agricultural character.

Cutting vs. Reininghaus et al., 7 L. D. 265.

Kane et al. vs. Devine, 7 L. D. 532.

Mulligan vs. Hanson, 10 L. D. 311.

On a hearing to show the alleged agricultural character of a tract, held as a mineral claim, and that has once been adjudged mineral, the agricultural claimant should be required to prove the abandonment of the mining claim.

McCharles vs. Roberts, 20 L. D. 564.

Caldwell vs. Gold Bar Mining Co., 24 L. D. 258.

A final decision in which a tract is held to be mineral, is only conclusive up to the period covered by the inquiry, and will not preclude a subsequent investigation as to the character of said tract on the allegation that the mining claims thereon have been abandoned and that the land is as a present fact, agricultural.

Dargin et al. vs. Koch, 20 L. D. 384.

The final decision of the Department holding land to be non-mineral is conclusive up to the period of the hearing and such consideration will not preclude a further consideration based on subsequent exploration.

Stinchfield vs. Pierce, 19 L. D. 12.

In a hearing ordered to determine the alleged non-mineral character of land embraced in an agricultural entry made at the conclusion of a prior contest involving the character of land, the evidence must be confined to discoveries after the date of the 1st hearing, and prior to the allowance of the entry.

Leach et al. vs. Patten, 24 L. D. 573.

The non-mineral character of a tract of land having been determined, the Department is not justified in ordering another hearing on the same issue on the absence of a clear showing or development made since the prior hearing that clearly demonstrates that since such hearing mineral has been discovered in such quantities as to overcome the effect of the previous judgment as to the character of the land.

Mackal et al. vs. Goodsell, 24 L. D. 553.

A decision that a tract is mineral in character will not prevent a subsequent hearing involving the same question where a change in the character of the land is alleged, but the showing in such cases must be clear and convincing.

Town of Aldridge vs. Craig, 25 L. D. 505.

The existence of gold in non-paying quantities will not preclude an agricultural entry on the land.

Etling et al. vs. Potter, 17 L. D. 424.

The character of land acquired as mineral, must be shown by the actual production from mining, and by satisfactory evidence that mineral exists on the land in sufficient quantity to make the same more valuable for mining than agricultural purposes.

Savage et al. vs. Boynton, 12 L. D. 612.

The location of a mining claim in conformity with law on land returned as agricultural, raises the presumption that the land is mineral in character and the burden of proof is thereafter upon the one alleging the agricultural character of the land.

State of Washington vs. McBridge, 18 L. D. 199.

Sweeney vs. Northern Pacific R. R. Co., 20 L. D. 394.

Land must be held non-mineral where no discoveries of appreciable value have been made, and it does not appear that a further expenditure would develop the presence of mineral in paying quantities.

Reed et al. vs. Lavallee et al., 26 L. D. 100.

Coal lands are mineral lands within the meaning of the laws relating to public lands.

Brown vs. Northern Pacific R. R. Co., 31 L. D. 29.

Lands containing deposits of ordinary brick clay are not mineral within the meaning of the mining laws, although more valuable for such deposit than for agricultural purposes.

King et al. vs. Bradford, 31 L. D. 108.

To sustain an application for mineral patent as against a person alleging land to be non-mineral, it must appear that the mineral exists on the land in quantities and value sufficient to subject it to disposal under the mining laws.

Brophy et al. vs. O'Hare, 34 L. D. 596.

Consult also the following cases:

Jaw Bone Lode vs. Damond Placer, 34 L. D. 72.

Hollman vs. Central Montana Mines Co., 34 L. D. 568.

Richmond and other Lode Claims, 34 L. D. 554.

Pikes Peak and other Lodes, 34 L. D. 281.

Frank G. Peck, 34 L. D. 682.
Laughing Water Placer, 34 L. D. 56.
Alaska Placer Claim, 34 L. D. 41.
Mattes vs. Treasure Tunnel Mining and Reduction Co., modifying 34 L. D. 314. (Citation) 33 L. D. 338.
Beverage et al. vs. Northern Pacific R. R. Co., 36 L. D. 40.
See also 36 L. D. 109.

Deposits of gravel and sand suitable for mixing of cement for concrete construction but having no peculiar property or characteristic, giving them especial value, but deriving their general value from proximity to a town, do not render the land in which they are found mineral in character within the meaning of the land laws to bar their entry under the homestead laws, notwithstanding the fact that they may be more valuable than for agricultural purposes.

Zimmerman & Brunson, 39 L. D. 310.

The fact that a tract of land was, prior to survey, classified as mineral under the Act of February 26, 1895, cannot be considered as a classification of the land as mineral at the time of "Actual Government Survey," within the meaning of the Act of August 5, 1892.

St. Paul, Minneapolis & Manitoba Railway Co., 34 L. D. 211.

Publication.

Land not embraced in an application for patent for a mining claim in a published or posted notice and other proceedings cannot be embraced in the entry. The simplest legal subdivisions of the public survey provided for by the mining laws, as a subdivision of ten acres in square form. Such laws do not contemplate any location and entry or placer mining claims.

Discovery and Expenditure.

See 35 L. D. 361, 35 L. D. 485, 35 L. D. 493, 35 L. D. 617, 35 L. D. 652.

Placer.

The provision of the Statute requires placer claims upon surveyed lands to conform in their exterior limits, to the legal subdivisions, and the public laws furnish no authority in the location of placer claims upon unsurveyed lands for the placing of lines of such locations upon previously patented or entered lands.

35 L. D. 557.

There is no warrant in the mining laws for the extending arbitrarily, and without any bases or fact therefor, the original lines of a location in an irregular or zig-zag manner for the purpose of controlling along the sides any extra lands in the location, to suit the convenience of the locator.

35 L. D. 22.

Development Work.

An applicant for a patent to a mining claim and invoking the provisions of Section 2332 of the Revised Statutes, if it appears that he or his grantors have held and worked the claim for the period of time prescribed by the legal statutes of mining claims, is not required to produce record evidence of his location.

Section 2332 merely declares that the proof shall be sufficient to show possessory title of the applicant.

The absence of any adverse claim does not dispense with the requirements of Section 2325 to the expenditure of $500 in labor and improvements on the claim as a prerequisite to the issuance of patent.

Capital No. 5 Placer Mining Claim, 34 L. D., 462.

The main purpose of Section 2332 of the Revised Statutes is to declare that evidence of the holding and working of a mining claim for a period equal to the time prescribed by the legal Statute of Limitations for mining claims shall be construed as sufficient, establishing the location of the claim and the applicant's right therein, "in the absence of any adverse claim," and there is no authority for restricting the application of the provisions of said section to such cases only, in which the applicant for patent is unable, by reason of the lapse of time or loss of the mining records by fire or otherwise or failure to prove a possessory title required by the mining laws.

Little Emily Mining and Milling Co., 34 L. D., 182.

Payment.

Payment is required by Section 2325 of the Revised Statutes for lands embraced in a mining claim as a condition to the issuance of patent therefor

under the mining laws, and the applicant is not relieved from this payment by the Act of May 27, 1902.

Raven Mining Company, 34 L. D., 306.

Placer mining claims must be located in accordance with Section 2331 of the Revised Statutes.

Rialto No. 2 Placer Mining Claim, 34 L. D., 44.

Mineral lands are exempted from the land grant of the State of South Dakota.

State of South Dakota v. Delicate, 34 L. D., 717.

Verification.

The provision of Section 2325 of the Revised Statutes that the application for patent to a mining claim shall be "under oath" and the provision of Section 2335 for the verification of said application "before any officer authorized to administer oaths within the land department" their observance is essential to the jurisdiction of the legal officers to entertain the patent proceedings.

35 L. D., 455.

Possession.

Owners of unpatented mining claims located upon the mineral lands of the United States are entitled to exclusive and peaceable possession of their claims so long as they continue to comply with the requirements of the laws respecting possessory rights, and are not required to apply for patent at any time in order to preserve such possessory rights.

In the administration of the public land laws, the Land Department has no authority to determine on their behalf, alleged rights of claimants therein, except where such claimants seek to obtain legal or permanent title to the lands claimed. Where claimant seeks to obtain legal title to a tract of public land the inquiry by the Land Department is directed to questions affecting his right to have such legal title conveyed to him, but not to questions relating to possessory or other rights unrelated to and disconnected with his application for legal title.

Nome & Sinook Co. et al. v. Townsite of Nome. § 4 L. D., 274.

Adverse Claims.

In determining whether an adverse judicial proceeding has been instituted within the statute, the Department will not undertake to review the failure of the court of competent jurisdiction, while the suit so begun is pending within said court.

Gypsum Placer Claims, 37 L. D., 484. Section 2325 of the Revised Statutes construed.

E. J. Ritter et al., 37 L. D., 115.

For further information on the subject, consult table of Revised Statutes, cited and construed, and table of Acts of Congress, cited and construed.

See 35 L. D., 304; 35 L. D., 495; 35 L. D., 551.

Mining on Indian Lands.

Valuable mineral deposits which have been found on lands allotted in severalty to an Indian under the Act of June 6, 1900, are not withheld to the allottee or reserved to the United States, and cannot be acquired under the mining laws. But such land may, with the approval of the Secretary of the Interior, be leased by the allottee under the General Statute relating to the giving of a mining lease to the allottees.

Acme Cement Co., 31 L. D., 125.

See in this connection 31 L. D., 154.

Rectangular tracts of five acres may be recognized and treated as legal subdivisions.

Roman Placer Mining Co., 34 L. D., 260.

Consult for this subject the following cases:

Extra Lode Claim, 34 L. D., 591.

Brophy et al. v. O'Hare, 34 L. D., 596.

State of South Dakota v. Walsh, 34 L. D., 723.

Alaska Placer Claim, 34 L. D., 40.

For general discussion of mineral lands and selections, consult the following cases:

Bakersfield Fuel & Oil Co. v. Saaburg, 31 L. D., 312.

And Instructions, 135.

State of Utah, 32 L. D., 117.

Northern Pacific Railroad Co., 32 L. D., 611.

Nome & Sinook Co. et at. v. Townsite of Nome, 34 L. D., 102.

INDEX.

MORTGAGES.

See Alienation.
See Reclamation.
See Water Rights.

The question of a mortgage as applied to public lands, and particularly to the homestead entry, is a very important one. There is no specific law which will permit of mortgages on homesteads prior to issuance of the Register's final certificate.

By the Act of Congress, approved June 6th, 1912, and generally known as the Three-year Homestead Law (see page 303), it is provided:

"That no certificate shall be given, or patent issued, until the expiration of three years from the date of such entry, and not until the entryman (or in case of his death his heirs or devisee, or in case of a widow making such entry, her heirs or devisees in case of her death) makes an affidavit that no part of said land has been alienated, except as provided in Section 2288, and that he, she or they will bear true allegiance to the Government of the United States, then in such case he, she or they, if at that time citizens of the United States, shall be entitled to a patent, as in other cases provided by law."

This statute prohibits alienation of a homestead before submission of final proof. There is no law which will prevent claimant from mortgaging the land after issuance of final certificate.

There is apparently a distinction between absolute alienation and a conditional one through a mortgage which is given for certain purposes. In other words, a distinction is recognized between absolute conveyance of the land and a mortgage given for a specific purpose, not inconsistent with the good faith of the entryman.

The applicant for homestead entry is required to make affidavit, among other things, that he 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 he may acquire from the Government of the United States will inure, in whole or in part, to the benefit of any person except himself.

The principle thus announced was followed in the case of Larson vs. Weisbecker, 1 L. D., 422, Sec. 2262, of the Revised Statutes, was under consideration, in which the Secretary said:

"I am aware that the former rulings of your office (addressing the Commissioner of the General Land Office) and of this department—following the precedent of an early decision—have held that an outstanding mortgage given by a preemptor upon the lands embraced in his filing defeats his right of entry upon the ground that such mortgage is a contract or agreement by which title to the lands might inure to some other person than himself.

"A careful consideration of this section leads me to a different conclusion, and to the opinion that unless it shall appear under the rules of law applicable to the construction of contracts or otherwise, that the title shall inure to another person, it does not debar the right of entry; and that the mere possibility that the title might so result"—as in the case of an ordinary mortgage—"is not sufficient to forfeit the claim."

It was held by the Department in the case of William H. Ray (6 L. D., 340):

"There is no law or ruling of this Department now in force that prohibits a preempter, who has complied with the requirements of the preemption law in good faith, from mortgaging his claim to procure money to prove up and pay for his land."

The department held in the case of Mudgett vs. Dubuque & Iowa City Rd. Co. (8 L. D., 243):

"That the alienation by a mortgage is not an absolute alienation as would defeat the good faith and bona fides of an entryman under the above section."

The section referred to was not changed in this particular by the Act of Congress known as the Three-year Homestead Law.

There seems to be little doubt that an entryman may mortgage the land before proof to secure money with which to pay for the same.

Speaking about the principle as announced in the case of Larson vs. Weisbecker, and Wm. H. Ray, supra, the Secretary said:

"Following the principle thus announced, I see no good reason why a homestead entryman, whose good faith is otherwise apparent, may not mortgage his claim, before final certificate, to procure money with which to improve his land, or for any other purpose, not in itself tending to impeach his bona fides."

Mudgett vs. Dubuque & Iowa City Rd. Co. (8 L. D., 243).

Having the question of a mortgage under consideration, the Secretary in the case af Haling vs. Edy (9 L. D., 337), said:

"A preempter who has, in good faith, complied with the law, may mortgage his claim to procure money for the purpose of making final proof and payment."

It was said in the case of Murdock vs. Ferguson (13 L. D., 198):

"A mortgage given in good faith on the purchase of the improvements and prior possessory right of another, and to secure the repayment of money advanced to pay the Government price of the land, does not defeat the preemptive right."

In a comparatively recent case it was said:

"A charge of abandonment is not supported by showing that the entryman has executed a deed to the land prior to final proof, where it appears that said instrument was intended to serve the purpose of a mortgage to secure the payment of money advanced to the entryman for his pursonal use, and the improvement of his claim." See the case of Kezar v. Horde, 27 L. D., 148.

Mortgages of lands embraced in homestead entries within reclamation projects may file in the local land office for the district within which the land is located a notice of such mortgage, and shall become entitled to receive and be given the same notice of any contest or other proceedings thereafter had affecting the land as is required to be given the entryman in connection with such proceeding. Every such notice of a mortgage received must be forthwith noted upon the records of the local land office and be promptly reported to the General Land Office, where like notation will be made. Relinquishment of a homestead entry within a reclamation project upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted, unless the mortgagee joins therein, nor will an assignment of such an entry or part thereof under the Act of

June 23, 1910 (36 Stat., 592), be recognized or permitted unless the assignment specifically refers to such mortgage and is made and accepted subject thereto.

Confirmation.

"An entry that is fraudulent in its inception, and is transferred and mortgaged by the transferee prior to March 1st, 1888, is not confirmed by Section 7, Act of March 3, 1891, where at the date of said mortgage the entry is under attack, as shown by the records of the local office, on the charge of having been made in the interest of the transferee, and such allegations is duly established by the evidence submitted. See the case of Roberts vs. Tobias, et al., 13 L. D., 556.

Notice.

(1) "A mortgagee who files no notice of his interest in the local office can not call into question the validity of the proceedings against the entry." Roberts v. Tobias et al., 13 L. D., 556.

(2) "If the transferee had on file in the local office a statement showing his interest in the entry, he was entitled to notice of its cancellation; otherwise he is estopped from calling in question the validity of the proceedings against it."

The case of Chas. C. Ferry, 14 L. D., 126, citing the cases of—
Cyrus H. Hill, 5 L. D., 276.
A. Joline, 5 L. D., 589.
American Investment Co., 5 L. D., 603.
Van Brunt v. Hammon et al., 9 L. D., 561.
John J. Dean, 10 L. D., 446.
Otto Soldam, 11 L. D., 194.
Robinson v. Knowles, 12 L. D., 462.

(3) "A transferee is not entitled to be heard on rehearing unless he shows that he can furnish further and better evidence than that produced by the entryman, nor can he question the validity of the proceedings against the entry if notice of his claim was not filed in the local office." See the case of Robinson v. Knowles, 12 L. D., 462.

(4) Any proceeding by the Government against an entry, the local officers and special agents are under no obligation to examine court records to ascertain the interests of transferees."

U. S. v. Lawrence et al., 16 L. D., 47.

(5) "An assignee or mortgagee may file in the local office, under oath, a statement showing his interest in a pending entry, and have the same noted of record, and thereafter he will be entitled to notice of any adverse action on said entry."

American Investment Co., 5 L. D. 603.

(6) "A transferee who has notified the local office of his interest is entitled to notice of all action affecting the entry under which he holds."

(7) "In the absence of an adverse claim, a transferee may submit supplemental proof, where the final proof is found insufficient but bad faith is not apparent."

Daniel R. McIntish, 8 L. D., 641.

(8) "A transferee, holding under a final certificate, is not entitled to be heard in defense of an entry, but if he fails to file a statement in the local office showing his interest under said entry, he can not plead want of notice as against the contest proceedings of another.

"The question of notice is jurisdictional and may be raised any time, and when raised, or apparent on the face of the record, the department is bound to take cognizance thereof.

"In service by notice of publication, posting a copy in the office of the Register, during the period of publication, is an essential without which notice is incomplete."

Van Brunt v. Hammon et al., 9 L. D., 561.

(9) "A mortgagee, or transferee, may file in the local office notice of his interest in any entry pending therein, and when such notice has been filed said mortgagee, or transferee, may be heard to sustain the validity of such

entry, and should be made a party to any proceedings involving the cancellation thereof.

"An entry, however, canceled for bad faith on the part of the entryman without notice to the transferee who has filed a statement of his interest, will not be reinstated unless reversible or prejudicial error is made to appear in the judgment of cancellation.

Manitoba Mtge. & Invest. Co., 10 L. D., 566.

(10) "Where proceedings are reinstated by the Government against a final entry, which has been mortgaged or transferred, and during the pendency of such proceeding the entryman files a relinquishment, the entry should not be canceled until final decision upon the rights of the martgagee or transferee, and no application to another of land should be received until the pending proceedings have been disposed of, and the entry formally canceled upon the records of the local office."

Henry Gimbel et al., 38 L. D., 198.

(11) "The sale or incumbrance of the land after final proof brings no new element into the case when the validity of the entry is under consideration, though the puchaster or mortgagee is accorded the right to show that the entryman had in fact complied with the law.

"There is no authority of law for the substitution of the mortgagee in the place of the entryman."

Geo. B. Thompson, 6 L. D., 263.

(12) "Where one is induced by another to contract for disposal of a part of a homestead entry, ignorant of any violation of law, but on learning the illegality of the contract, voluntarily rescinds it, the entry will not be canceled on a contest charging said fraudulent contract, instituted by the party who induced it."

Blanchard v. Butler, 37 L. D., 677.

(13) "A mortgagee, after final entry, is entitled to be heard on appeal, in case the entry is subsequently held for cancellation. The case of R. M. Chrisinger cited and distinguished."

R. M. Sherman et al., 4 L. D., 544.

(14) "A transferee or entryman has the right to appear and defend in case the entry is attacked."

Windsor v. Sage, 6 L. D., 440.

(15) Section 2288 of the Revised Statutes provides: "Sec. 2288. Any person who has already settled, or hereafter may settle on the public lands, either by permission or by virtue of the homestead law, or any amendments thereto, shall have the right to transfer by warranty against his own acts, any portion of his claim for church, cemetery, or school purposes, or for the right of way of railroads, canals, reservoirs or ditches for irrigation or drainage across such preemption or homestead, and the transfer for such public purposes shall in no way vitiate the right to complete and perfect the title to their preemption or homestead." (Sec. 3 of the Act of March 3, 1891, enacts that Sec. 2288 of the Revised Statutes be amended so as to read as follows:

"Sec. 2288. Any bona fide settler under the preemption homestead or other settlement law shall have the right to transfer, by warranty against his own acts, any portion of his claim for church, cemetery, or school purposes, or for the right of way of railroads, canals, reservoirs or ditches for irrigation or drainage across it; and the transfer for such public purposes shall in no way vitiate the right to complete and perfect title to his claim."

For the right of assignment of lands within a reclamation project, see Circular of September 12, 1910, and December 17, 1910, and April 29, 1912, page 87.

REGULATIONS GOVERNING ENTRIES WITHIN NATIONAL FORESTS, SUPERSEDING CIRCULAR OF JULY 23, 1907.

Department of the Interior,
General Land Office,
Washington, D. C., December 16, 1908.

Registers and Receivers, United States Land Offices.

Sirs: Your attention is called to the Act of June 11, 1906 (34 Stat., 233), the copy of which is hereto attached as Appendix A. This Act authorizes homestead entries for lands within national forests, and you are instructed thereunder as follows:

1. Both surveyed and unsurveyed lands within national forests which are chiefly valuable for agriculture and not needed for public use may, from time to time, be examined, classified, and listed under the supervision of the Secretary of Agriculture, and lists thereof will be filed by him with the Secretary of the Interior, who will then declare the listed lands subject to settlement and entry.

2. Any person desiring to enter any unlisted lands of this character should present an application for their examination, classification, and listing to the district forester for the district in which the land is located in the manner prescribed by regulations issued by the Agricultural Department. (The present regulations are attached as Appendix B.)

3. When any lands have been declared subject to settlement and entry under this Act, a list of such lands, together with a copy of the notice of restoration thereof to entry and authority for publication of such notice, will be transmitted to the Register and Receiver for the district within which the lands are located. Upon receipt thereof the Register will designate a newspaper published within the county in which the land is situated and transmit to the publishers thereof the letter of authority and copy of notice of restoration, said notice to be published in the designated newspaper once each week for four successive weeks. You will also post in your office a copy of said notice, the same to remain posted for a period of sixty days immediately preceding the date when the lands are to be subject to entry. If no paper is published within the county, publication should be made in a newspaper published nearest the land.

4. The cost of publishing the notice mentioned in the preceding paragraph will not be paid by the receiver, but the publisher's vouchers therefor, in duplicate, should be forwarded to the Department of the Interior, Washington, D. C., by the publisher, accompanied by a duly executed proof of publication. The Register will require the publisher to promptly furnish him with a copy of the issue of the paper in which such notice first appears, will compare the published notice with that furnished by this office, and in case of discrepancy or error cause the publisher to correct the printed notice and thereafter publish the corrected notice for the full period of four weeks.

5. In addition to the publication and posting above provided for, you will, on the day the list is filed in your office, mail a copy of the notice to any person known by you to be claiming a preferred right of entry as a settler on any of the lands described therein, and also at the same time mail a copy of the notice to the person on whose application the lands embraced in the list were examined and listed, and advise each of them of his preferred right to make entry prior to the expiration of sixty days from the date upon which the list is filed.

6. Any person qualified to make a homestead entry who, prior to January 1, 1906, occupied and in good faith claimed any lands listed under this Act for agricultural purposes, and who has not abandoned the same, and the person upon whose application such land was listed, has, each in the order named, the preferred right to enter the lands so settled upon or listed at any time within sixty

days from the filing of the list in your office. Should an application be made by such settler during the sixty-day period you will, upon his showing by affidavit the fact of such settlement and continued occupancy, allow the entry. If an application is made during the same period by the party upon whose request the lands were listed, you will retain said application on file in your office until the expiration of the sixty-day period, or until an entry has been made by a claimant having the superior preference right. If no application by a bona fide settler prior to January 1, 1906, is filed within the sixty-day period, you will allow the application of the party upon whose request the lands were listed. If entry by a person claiming a settler's preference right is allowed, other applications should be rejected without waiting the expiration of the preferred-right period. Of the applicants for listing, only the one upon whose request a tract is listed secures any preference right. Other applicants for the listing of the same tract acquire no right by virtue of such applications.

7. The fact that a settler named in the preceding paragraph has already exercised or lost his homestead right will not prevent him from making entry of the lands settled upon if he is otherwise qualified to make entry, but he can not obtain patent until he has complied with all of the requirements of the homestead law as to residence and cultivation and paid $2.50 per acre for the land entered by him.

8. When an entry embraces unsurveyed lands, or embraces an irregular fractional part of a subdivision of a surveyed section, the entryman must cause such unsurveyed lands or such fractional parts to be surveyed at his own expense by a reliable and competent surveyor, to be designated by the United States Surveyor-General, at some time before he applies to make final proof. Survey will not be required when the tracts can be described by legal subdivisions, or as a quarter or a half of a surveyed quarter-section or rectangular lotted tract, or as a quarter or a half of a surveyed quarter-quarter-quarter section or rectangular lotted tract.

9. Application for survey must be made by the homestead claimants or their duly authorized attorneys to the United States Surveyor-General of the State wherein the land is situated. The applications must describe the claim to be surveyed by metes and bounds following the description contained in the listing and entry. The claimant may designate the surveyor he desires to do the work, who will, in the absence of objection, be authorized so to do by the United States Surveyor-General. Surveys will be numbered by the United States Surveyor-General consecutively when the orders for survey are issued, beginning with No. 37, thus "H. E. S. No. —."

The surveys must be actually made on the ground by the surveyor designated by the United States Surveyor-General, must be in strict conformity with or be embraced within the area described in the listing and entry, and the field notes and preliminary plat promptly returned to the Surveyor-General.

10. The corners of each claim muset be numbered consecutively, beginning with No. 1; the corner and survey numbers must be neatly chiseled or scribed on the side (facing the claim) of the stone, post, or rock in place marking the corner. The corners may consist of a stone not less than 24 inches long, set 12 inches in the

ground; a post not less than 3 feet long by 4 inches square, set 18 inches in the ground, or a rock in place. Corner No. 1 of each claim must be connected by course and distance with an established corner of the public surveys, or if there be no corner within a reasonable distance with a United States location monument, which may be established by the surveyor at some prominent point in the vicinity, and may consist of a stone not less than 30 by 20 by 6 inches, set 15 inches in the ground, or a post 8 feet long 6 inches square, set 3 feet in the ground. The letters U. S. L. M. and number of the monument should be chiseled or cut upon the side of the monument and a detailed description thereof furnished the Surveyor-General by the surveyor. Such bearings from the corners of the claims and U. S. L. monument should be taken to near-by prominent objects as will serve to identify the locus of the claim. Upon the return of the field notes of survey, which must be verified by the affidavit of the surveyor, executed before any officer qualified to administer oaths and having a seal, and the preliminary plat, the Surveyor-General will cause same to be examined, and if found regular, approve the same and cause to be prepared three sets of field notes and four plats of the claim, deliver to the claimant one plat to be posted on the claim; transmit two plats and two sets of field notes to the Register and receiver of the local land office, one set to be forwarded to this office, with the final proof of claimant, and one plat and field notes to be retained in the office of the Surveyor-General. Action upon applications for survey and upon the surveys when returned must be promptly had. Surveys of homestead claims heretofore made may be accepted and approved by Surveyors-General if in substantial conformance to the requirements herein set forth.

11. The commutation provisions of the homestead laws do not apply to entries made under this Act, but all entrymen must make final proof of residence and cultivation within the time, in the manner, and under the notice prescribed by the general provisions of the homestead laws, except that all entrymen who are required by the preceding paragraph to have their lands, or any portion of them, surveyed must, within five years from the date of their settlement, present to the Register and Receiver their application to make final proof on all of the lands embraced in their entries, with a certified copy of the plat and field notes of their survey attached thereto.

12. In all cases where a survey of any portion of the lands embraced in an entry under this Act is required, the Register will, in addition to publishing and posting the usual final-proof notices, keep a copy of the final-proof notice, with a copy of the field notes and the plat of such survey attached, posted in his office during the period of publication, and the entryman must keep a copy of the final-proof notice and a copy of the plat of his survey prominently posted on the lands platted during the entire period of publication of notice of intention to submit final proof, and at the same time his final proof is offered he must file an affidavit showing the date on which the copies of the notice and plat were posted on the land and that they remained so posted during such period, giving dates.

13. Section 1 of the said Act of June 11, 1906, having been amended by the Act of May 30, 1908 (35 Stat., 554), the only

counties in southern California in which entries thereunder can not be made are San Luis Obispo and Santa Barbara, to which counties the Act of June 11, 1906, does not apply. Entries made of lands in the Black Hills National Forest can be made only under the terms and upon the conditions prescribed in sections 3 and 4 of the Act of June 11, 1906, as amended by the act of February 8, 1907 (34 Stat., 883).

14. This Act does not authorize any settlements within forest reserves except upon lands which have been listed, and then only in the manner mentioned above, and all persons who attempt to make any unauthorized settlement within such reserves will be considered trespassers and treated accordingly.

Very respectfully,

Fred Dennett, Commissioner.

Approved.

James Rudolph Garfield,
Secretary.

See 38 L. D., 278, for Instructions to Surveyors-General relative to surveys.

APPENDIX A.

An Act to provide for the entry of agricultural lands within forest reserves.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture may in his discretion, and he is hereby authorized, upon application or otherwise, to examine and ascertain as to the location and extent of land within permanent or temporary forest reserves, except the following counties in the State of California: Inyo, Tulare, Kern, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, and San Diego; which are chiefly valuable for agriculture, and which, in his opinion, may be occupied for agricultural purposes without injury to the forest reserves, and which are not needed for public purposes, and may list and describe the same by metes and bounds, or otherwise, and file the lists and descriptions with the Secretary of the Interior, with the request that the said lands be opened to entry in accordance with the provisions of the homestead laws and this act.

Upon the filing of any such list or description the Secretary of the Interior shall declare the said lands open to homestead settlement and entry in tracts not exceeding one hundred and sixty acres in area and not exceeding one mile in length, at the expiration of sixty days from the filing of the list in the land office of the district within which the lands are located, during which period the said list or description shall be prominently posted in the land office and advertised for a period of not less than four weeks in one newspaper of general circulation published in the county in which the lands are situated: Provided, That any settler actually occupying and in good faith claiming such lands for agricultural purposes prior to January first, nineteen hundred and six, and who shall not have abandoned the same, and the person, if qualified to make a homestead entry upon whose application the land proposed to be entered was examined and listed, shall, each in the order named, have a preference right of settlement and entry: Provided further, That any entryman desiring to obtain patent to any lands described by metes and bounds entered by him under the provisions of this Act shall, within five years of the date of making settlement, file, with the required proof of residence and cultivation, a plat and field notes of the lands entered, made by or under the direction of the United States surveyor-general, showing accurately the boundaries of such lands, which shall be distinctly marked by monuments on the ground, and by posting a copy of such plat, together with a notice of the time and place of offering proof, in a conspicuous place on the land embraced in such plat during the period prescribed by law for the publication of his notice of intention to offer proof, and that a copy of such plat and field notes shall also be kept posted in the office of the register of the land office for the land district in which such lands are situated for a like period; and further, that any agricultural lands within forest reserves may, at the discretion of the Secretary, be

surveyed by metes and bounds, and that no lands entered under the provisions of this Act shall be patented under the commutation provisions of the homestead laws, but settlers, upon final proof, shall have credit for the period of their actual residence upon the lands covered by their entries.

Sec. 2. That settlers upon lands chiefly valuable for agriculture within forest reserves on January first, nineteen hundred and six, who have already exercised their lost homestead privilege, but are otherwise competent to enter lands under the homestead laws, are hereby granted an additional homestead right of entry for the purposes of this act only, and such settlers must otherwise comply with the provisions of the homestead law, and in addition thereto must pay two dollars and fifty cents per acre for lands entered under the provisions of this section, such payment to be made at the time of making final proof on such lands.

Sec. 3. That all entries under this act in the Black Hills Forest Reserve shall be subject to the quartz or lode mining laws of the United States, and the laws and regulations permitting the location, appropriation, and use of the waters within the said forest reserves for mining, irrigation, and other purposes; and no titles acquired to agricultural lands in said Black Hills Forest Reserve under this act shall vest in the patentee any riparian rights to any stream or streams of flowing water within said reserve; and that such limitation of title shall be expressed in the patents for the lands covered by such entries.

Sec. 4. That no homestead settlements or entries shall be allowed in that portion of the Black Hills Forest Reserve in Lawrence and Pennington counties in South Dakota except to persons occupying lands therein prior to January first, nineteen hundred and six, and the provisions of this act shall apply to the said counties in said reserve so far as is necessary to give and perfect title of such settlers or occupants to lands chiefly valuable for agriculture therein occupied or claimed by them prior to the said date, and all homestead entries under this act in said counties in said reserve shall be described by metes and bounds survey.

Sec. 5. That nothing herein contained shall be held to authorize any future settlement on any lands within forest reserves until such lands have been open to settlement as provided in this act, or to any way impair the legal rights of any bona fide homestead settler who has or shall establish residence upon public lands prior to their inclusion within a forest reserve.

Approved, June 11, 1906.—(34 Stat., 233.)

An Act Excepting certain lands in Pennington County, South Dakota, from the operation of the provisions of section four of an Act approved June eleventh, nineteen hundred and six, entitled "An Act to provide for the entry of agricultural lands within forest reserves."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following described townships in the Black Hills Forest Reserve, in Pennington County, South Dakota, to wit: Townships one north, one east; two north, one east; one north, two east; two north, two east; one south, one east; two south, one east; one south, two east; and two south, two east, Black Hills meridian, are hereby excepted from the operation of the provisions of section four of an Act entitled "An Act to provide for the entry of agricultural lands within forest reserves," approved June eleventh, nineteen hundred and six. The lands within the said townships to remain subject to all other provisions of said Act.

Approved, February 8, 1907.—(34 Stat., 883.)

An Act To amend an Act approved June eleventh, nineteen hundred and six, entitled "An Act to provide for the entry of agricultural lands within forest reserves."

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 provide for the entry of agricultural lands within forest reserves," approved June eleventh, nineteen hundred and six, be amended by striking out of section one the following words: "Except the following counties in the State of California: Inyo, Tulare, Kern, Ventura, Los Angeles, San Bernardino, Orange, Riverside, and San Diego."

Approved, May 30, 1908.—(35 Stat., 554.)

APPENDIX B.

Regulations Governing Applications Under the Act of June 11, 1906.

U. S. Department of Agriculture,
Forest Service.

1. All applications for the listing of lands under the act of June 11, 1906, must be signed by the person who desires to make entry, and must be mailed to the district forester for the district in which the land is located.

2. The person upon whose application the land is listed has the preference right of entry, unless there was a settler on the land prior to January 1, 1906, in which event the settler has the preference right.

3. Persons having preference rights under the act may file their entries at any time within sixty days after the filing of the list in the local land office. If they do not make entry within that time, the land will be subject to entry by the first qualified person to make application at the local land office.

4. All applications must give the name of the national forest and describe the land by legal subdivisions, section, township, and range, if surveyed, and if not surveyed, by reference to natural objects, streams, or improvements, with sufficient accuracy to identify it.

5. Section 2 of the act gives, within national forests only, an additional homestead right of entry upon lands chiefly valuable for agriculture, to settlers prior to January 1, 1906, who have already exercised or lost their homestead privilege, but who are otherwise competent to enter under the homestead laws. The general act of February 8, 1908, provides that any person who, prior to February 8, 1908, made entry under the homestead laws, but for any cause has lost, forfeited, or abandoned his entry shall be entitled to the benefits of the homestead law as though such former entry had not been made, except when the entry was canceled for fraud or was relinquished for a valuable consideration.

6. The fact that an applicant has settled upon land will not influence the decision with respect to its agricultural character. Settlers must not expect to include valuable timber land in their entries. Settlement made after January 1, 1906, and in advance of opening by the Secretary of the Interior, is not authorized by the act, will confer no rights, and will be trespass.

7. Entry under the act is within the jurisdiction of the Secretary of the Interior, who will determine preference rights of applicants.

8. Applicants who appear to have a preference right under the act of June 11, 1906, will be permitted to occupy so much of the land applied for by them as, in the opinion of the forest supervisor, is chiefly valuable for agriculture.

OFFERING OF NATIONAL FOREST LANDS—PUBLICATION OF NOTICE.

Notice to Publishers.

Department of the Interior,
Washington, October 4, 1911.

The act of June 11, 1906 (34 Stat., 233), requires that the opening of national forest lands thereunder shall be advertised for not less than four weeks in one newspaper of general circulation published in the county in which the lands are situated, except where no newspaper is published in the county wherein the land is situated, in which case the opening should be advertised in the newspaper nearest the land.

Therefore, publishers, before commencing publication of notices under the above-designated act, should determine whether their paper is the proper one in which to make such publication; if not, they should immediately return the notice to the register of the local land office so that publication may be ordered in the proper county and paper.

Publishers are hereby notified that if by any mistake of Land Office officials, or for any other reason, notices above described should erroneously be sent to them and they should publish the same, no compensation will be allowed therefor.

Samuel Adams,
First Assistant Secretary.

INSTRUCTIONS RELATING TO HOMESTEAD ENTRIES ALLOWED IN CONFLICT WITH LANDS WITHDRAWN FOR FORESTRY PURPOSES —RIGHTS OF CONTESTANTS—ACT OF MARCH 3, 1911.

Department of the Interior,
General Land Office,
Washington, April 6, 1911.

Registers and Receivers, United States Land Offices.

Gentlemen: Your attention is directed to the act of Congress approved March 3, 1911 (Public, No. 469), entitled "An Act providing for the validation of certain homestead entries," which reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all homestead entries which have been canceled or relinquished, or are invalid solely because of the erroneous allowance of such entries after the withdrawal of lands for national forest purposes, may be reinstated or allowed to remain intact, but in the case of entries heretofore canceled applications for reinstatement must be filed in the proper local land office prior to July first, nineteen hundred and twelve.

Sec. 2. That in all cases where contests were initiated under the provisions of the act of May fourteenth, eighteen hundred and eighty, prior to the withdrawal of the land for national forest purposes, the qualified successful contestants may exercise their preference right to enter the land within six months after the passage of this act.

1. Applications for the reinstatement of entries coming within the provisions of section 1 of the act must be filed in the proper local land office prior to July 1, 1912. Promptly upon the filing of such applications, you will forward the same to this office by special letter, making such recommendation in the premises as the facts may warrant, and a statement as to the status of the land involved. Each application should be accounted for on your appropriate schedule of serial numbers for the month in which the same was forwarded, showing the date of transmittal.

2. Section 2 has reference only to contests initiated prior to March 3, 1911, and prior to the withdrawal for national forest purposes of the lands involved. You will require applicants under said section to show their qualifications at the time their applications are presented.

3. You will notify the proper forest officer of all action taken by you under this act.

Very Respectfully,

Fred Dennett,
Commissioner.

MINERAL OR AGRICULTURAL CLAIMS WITHIN NATIONAL PARKS.

Department of the Interior,
General Land Office,
Washington, D. C., January 10, 1911.

Registers and Receivers, United States Land Offices; Chiefs of Field Divisions; and Superintendents of National Parks:

Under date of November 12, 1910, the Secretary of the Interior advised this office, among other things, as follows:

It is desirable that in so far as it is possible the title to lands within the limits of National Parks should remain in the Government, so that the parks may be protected, developed, and controlled by the United States. In a number of parks, however, there are claims, mineral or agricultural, upon which possession is being maintained on the ground that the claims were initiated prior to the creation of the parks or the inhibition of further disposition or acquisition of lands therein.

Accordingly, in all cases of applications to make final proof, final entry, or to purchase public lands, under any public-land law, the register and receiver will, where any of said lands are within the limits of National Parks, at once forward a copy thereof to the Chief of Field Division of Special Agents. Such copy, as well as the original application, will be indorsed with the name of the National Park within which the said land, or any portion thereof, is situate. A second copy will also be forwarded to the Superintendent in charge of the National Park.

Valid entries may proceed up to and including the submission of final proof, but no purchase money will be received or final certificate of entry issued until further orders. The record of the entry should be forwarded with

your regular monthly returns, and will be held in this office until receipt of the report of the special agent and the superintendent of the park.

The Chief of Field Division, on receipt of such copy of notice, will make a case thereof on his docket, and will also make a field examination of the lands so sought to be entered, and submit a report thereof direct to this office.

Chiefs of Field Divisions and Superintendents will exert every effort to make the field examination prior to date for final proof.

Where the claim sought to be entered is upon unsurveyed lands the registers and receivers will carefully examine the plat and field notes of survey of such claim, and such other data as may be available, to ascertain the true locus thereof with respect to National Parks; and, if in any doubt as to whether or not the land sought to be purchased is within a National Park, they should call upon the Surveyor-General for a report in the premises.

The attention of local officers, chiefs of field divisions, and superintendents of National Parks, is called especially to the last sentence of the Secretary's order, which reads as follows:

"You will also, upon receipt of report or allegation from special agents or from others, that any locations or claims within National Parks, for which application for patent or entry have not been made, are invalid or are not being maintained as required by law, report such cases to this Department in order that appropriate instructions may be issued and action taken."

As will be observed, this relates to locations or claims, mineral or agricultural, within National Parks, for which no applications for patent or entry have been presented to the local officers. Under these instructions you need not await the presentation of an application for patent for these locations or claims prior to making any investigation or report to this office; but you will promptly, in all such cases as are by you, for any reason, deemed to be invalid (or reported to you as being invalid), submit your report and recommendations with respect thereto, in order that this office may at the earliest possible moment take such steps, through the Department, as may be appropriate and necessary to protect the interests of the Government in the premises.

Fred Dennett,
Commissioner.

Approved January 10, 1911.
R. A. Ballinger,
Secretary.

OIL, GAS AND PETROLEUM.

(See United States Mining Law and Regulations thereunder page 375.)

Lands containing oil, gas and petroleum or other minerals may be entered and patented under the placer mining laws.

February 11, 1897, the following Act was approved:

"An Act to authorize the entry and patenting of lands containing petroleum, and other mineral oils, under the placer mining laws of the United States.

"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, that any person authorized to enter lands under the mining laws of the United States may enter and obtain a patent to lands containing petroleum or other mineral oils, and chiefly valuable therefor, under the provisions of the laws relating to placer mineral claims; Provided, that lands containing such petroleum or other mineral oils which have heretofore been filed upon, claimed or improved as mineral, but not yet patented, may be held and patented under the provisions of this Act the same as if such filing, claim or improvement were subsequent to the date of the passage hereof." (See Circular February 25, 1897, 24 L. D., page 183.)

ASSESSMENT.

The Act of February 12, 1903 (32 Stat., 825), provides:

"That where oil lands are located under the provisions of Title 32, Chapter 6, Revised Statutes of the United States, as placer mining claims, the annual assessment labor upon such claims may be done upon any one of a group of claims lying contiguous and owned by the same person or corporation, not exceeding five claims in all; Provided, that said labor will extend

to the development or to determine the oil-bearing character of such contiguous claims."

The Act approved March 2, 1911, Public No. 450, provides:

"That in no case shall patent be denied to or for any lands heretofore located or claimed under the mining laws of the United States containing petroleum, mineral oil, or gas solely because of any transfer or assignment thereof or of any interest or interests therein by the original locator or locators, or any of them, to any qualified persons or person, or corporation, prior to discovery of oil or gas therein, but if such claim is in all respects valid and regular, patent therefor, not exceeding 160 acres in any one claim, shall issue to the holder or holders thereof, as in other cases: Provided, however, that such lands were not at the time of inception of development on or under such claim withdrawn from mineral entry." (36 Stat., 1015.)

WITHDRAWALS AND EXPLORATION.

"An Act to authorize the President of the United States of America, withdrawals of public lands in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the President may, at any time in his discretion, temporarily withdraw from settlement, location, sale or entry, any of the public lands of the United States, including the District of Alaska, and reserve the same for water power sites; irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an Act of Congress.

Sec. 2. That all lands withdrawn under the provisions of this Act shall at all times be open to exploration, discovery, occupation, and purchase, under the mining laws of the United States, so far as same apply to minerals other than coal, oil, gas and phosphates: Provided, that the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a bona fide occupant or claimant of oil or gas bearing lands, and who, at such date, is in diligent prosecution of work leading to discovery of oil or gas, shall not be affected or impaired by such order, so long as such occupant or claimant shall continue in diligent prosecution of such work; and Provided, further, that this act shall not be construed as a recognition, abridgement or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to the passage of this Act: and Provided, further, that there shall be excepted from the force and effect of any withdrawal made under the provisions of this Act all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was made: and Provided, further, that hereafter no forest reserve shall be created nor shall any additions be made to one heretofore created within the limits of the States of Oregon, Washington, Idaho, Montana, Colorado or Wyoming, except by Act of Congress.

Sec. 3. That the Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of the withdrawals. Approved June 25, 1910."

(36 Stat., 647.)

Department of the Interior,
Washington, March 6, 1911.

The Commissioner of the General Land Office.

Sir: The Act of June 25, 1910 (36 Stat., 847), provides that the President may at any time in his discretion temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States, including Alaska, and reserve the same for water-power sites, irrigation, classification, or other public purposes, to be specified in the orders of withdrawal, such withdrawal to remain in force until revoked by him or by an Act of Congress.

Section two of the Act provides that lands so withdrawn shall at all times be open to exploration, discovery, occupancy and purchase under the mining laws, excepting those relating to coal, oil, gas, and phosphates, there

being a further provision, however, to the effect that the order of withdrawal shall not impair or affect the rights of any person who, prior to the date of the withdrawal, is a bona fide occupant or claimant of oil or gas-bearing lands, and who at such date is in diligent prosecution of work leading to the discovery of oil or gas. No hard or fast rule can be established fixing the amount of work which must have been done by the occupant prosecuting work leading to the discovery of oil or gas. Each case must rest upon its own showing of diligence when application for patent is filed.

The chief of field division should be advised of all such applications and should be prepared to submit showing, if possible, before the issuance of final certificate of entry.

This section contains further provision to the effect that there shall be excepted from the force and effect of any withdrawal all lands which are on the date of withdrawal embraced in any lawful homestead, or desert-land entry theretofore made or upon which any valid settlement has been made, and is at that time being maintained and perfected pursuant to law. Applications to make non-mineral entries by settlers claiming the benefits of the above-mentioned provisions of section two will be referred to the chief of the appropriate field division for investigation and report before final action is taken thereon.

Withdrawals provided for under this Act include those made for the purpose of classifying coal lands, and it seems that after the passage of this Act the previous coal withdrawals were renewed thereunder.

The Act of March 3, 1909 (35 Stat., 844), is for the protection of surface rights of non-mineral entrymen where the lands were subsequently classified, claimed, or reported as being valuable for coal, and the Act of June 22, 1910 (36 Stat., 583), provides for the allowance of certain non-mineral entries for land having been withdrawn or classified as coal lands. These acts have separated the surface from the coal deposits for the purpose of allowance of certain non-mineral entries, and it is not believed that the Act of June 25, 1910, under consideration was intended to repeal said acts. Therefore, where applications are presented to make final proof on non-mineral entries made prior to withdrawal, for the purposes of classifying the coal deposits, the disposition of such applications should be made with especial reference to the provisions of the Act of March 3, 1909, supra, and as to such lands certain non-mineral entries may be allowed, as provided for by the Act of June 22, 1910, supra, notwithstanding their withdrawal under Act of June 25, 1910.

Mineral applications for mining claims perfected upon oil, gas, or phosphate lands prior to withdrawal, or for such claims upon lands chiefly valuable for other minerals, whether perfected before or after withdrawal, or for claims of the latter class within power-site withdrawals, and applications to submit final proof upon homestead, desert-land, and settlement claims initiated prior to a withdrawal, will be referred to the chief of field division, with the appropriate notation of the character of the withdrawal involved, in accordance with the practice under paragraphs five, et seq., of the circular of April 24, 1907, supra, for field examination and full report of all facts touching the character of the land and affecting the validity of the location, claim, or entry, as the case may be, including the possibility of water-power development, if any.

In the administration of the Act hereunder you will also be governed by the circular approved January 27, 1911, relative to co-operation between the Geological Survey and the General Land Office.

It is believed that the foregoing will enable you to properly advise the local officers in all matters necessary to put this Act into operation; and where an application is received not specifically provided for herein, you will act upon the same, affording aggrieved parties the usual right of appeal.

Very respectfully, R. A. Ballinger,
Secretary.

June 15, 1911, Circular No. 24 was issued by the Commissioner of the General Land Office to Registers and Receivers of United States Land Office and Chief of Field Division, in which it is said:

"The Secretary, in a communication to this office, dated May 17, 1911, instructed that the Act of March 2, 1911 (Public No. 450) should be brought to the attention of the local officers with the direction that, upon the presentation of their case within the purview of the Act, they shall

Advise the Chief of Field Division, in order that the latter may make

such field examinations as are advisable or necessary, particularly if the land involved has been embraced in a withdrawal, as to the time when the development work was taken, and be prepared to submit the results, if possible, before entry is allowed. Each case will be considered and adjudged upon its record in the regular manner.

Observing that the operation of the Act is retrospective only, being confined to locations made prior to the date thereof, you will, upon the presentation of any application for patent affected by the provision of said Act, immediately communicate to the proper Chief of Field Division due and full information thereof, to the end that he may procure to be made such investigation as may be necessary to ascertain the facts concerning the inception and subsequent prosecution of development operations, the extent of such works, and any other facts bearing upon and affecting the validity of the claim, including the continuousness and diligence with which development proceeded from the date of inception.

The report made of the results of such examination will be submitted to this office, upon receipt of which the local officers will be advised as to the action to be taken. Very respectfully,

Fred Dennett,
Commissioner."

No special regulations relative to non-mineral applications for lands later withdrawn or classified as oil, have been adopted by the Department, the procedure governing applications for lands subsequently classified or withdrawn as coal, adopted prior to the passage of the Acts of March 20, 1909, and June 22, 1910, permitting the issuance of surface patents should be followed in such cases, so far as applicable, and in case of the protest by a mineral claimant against such non-mineral application, charging the mineral character of the lands, the proceedings thereon should be in accordance with the rules of practice now in effect relative to contests. (See Rules of Practice, page 739.) Kinkade vs. State of California (39 L. D., 491).

LOCATION NOTICES.

The procedure in the matter of location of lands claimed for oil, gas or petroleum or oil minerals, is that followed in cases of location of placer mine, and is regulated by the mining laws and regulations thereunder and the statutes of the particular State or Territory in which the lands are situated.

It was said by the Department in the case of Rupp v. Heirs of Healey et al., 38 L. D., p. 392.

DISCOVERY.

"Discovery is indispensable to the validity of a mining location, and necessarily must precede or be coincident with the perfection thereof. The ultimate right to a patent must always rest upon the basis of a lawful location; and if the assignment of discovery be drawn in question so as to involve the right of possession as between rival claimants, the land department can not ignore an alleged absence of discovery by the application for patent in time to have enabled a court of competent jurisdiction, pursuant to an adverse claim and suit, to determine respective rights of the parties."

"Where, however, by a protest it is charged that no discovery, within the limits of the claim, was made at or prior to the beginning of the period of notice of an application for patent, which, if true, would dispose the absence of a seasonable and essential basis for a judgment in favor of the applicant, or the adverse claimant, the land department will take jurisdiction to determine that question, to the end that, should the charge be sustained, the patent application will be dismissed, and the application remitted to the prosecution of patent proceedings anew in order that due opportunity may be given for the litigation of the controverted questions properly cognizable before the local courts in adverse proceedings." (Id. 387.)

"A corporation, regardless of the number of its stockholders, may lawfully locate no greater placer area under the mining laws than is allowable in the case of a single, natural person, viz.: 20 acres." (Igo Bridge Extension Placer, 38 L. D., 281.)

"A placer location for 160 acres, made by eight persons and subsequently transferred to another individual, invalid because not preceded by discovery, cannot be perfected by the transferee upon a subsequent discovery." (H. H. Yard et al., 38 L. D., 59.)

"A placer location of oil lands for 160 acres made by eight persons and subsequently transferred to a single individual is invalid because not preceded by discovery, cannot be perfected by the transferee upon a subsequent discovery to the full area so located but only as to 20 acres thereof."

"Discovery of mineral is an essential prerequisite to the initiation of title under the mining laws. While discovery of mineral subsequent to location of a mining claim is sometimes held by the Land Department to relate back to the date of location, where there was no precedent discovery, the doctrine of relation cannot be invoked to the disadvantage of intervening adverse claims, nor to permit anyone to secure more land by indirect means than may be done directly." (Bakersfield Fuel & Oil Co., 39 L. D., 460.)

"A small seepage of oil upon the surface of a spring of water, and a slight flow of natural gas, insufficient for commercial purposes and without value, from a drilled well which failed to develop oil, are not sufficient to constitute a discovery of oil as a basis for a placer mining location under the Act of February 11, 1897."

Butte Oil Company, 40 L. D., 602.

"The disclosure of a stratum of bituminous sandstone or shale from which a small quantity of oil seeps, nor sufficient to impress the land with any value for mining purposes, does not constitute a sufficient discovery to support a valid mining location."

Southwestern Oil Co. v. Atlantic & Pacific R. R. Co., 39 L. D., 335.

IMPROVEMENTS.

Where a placer claim or group of claims held in common (25) contains deposits of such character and extent that they can be most economically worked by means of a mining dredge, and the owner of such claim or group has in good faith purchased and actually placed in good working order thereon, a dredge, for the exclusive purpose of working such deposits, which dredge has not theretofore been used as the basis for patent for any other area, it is entitled to be regarded as a mining improvement, so far as that particular claim or group is concerned, and to have its cost accredited thereto. (Garden Gulch Bar Placer, 38 L. D., 28.)

MAXIMUM QUANTITY BY SEVERAL PERSONS.

"A placer mining location made by several persons for a maximum quantity of land that may lawfully be entered in a single location by that number of persons, cannot be amended to include a larger area." (Garden Gulch Bar Placer, 38 L. D., 28.)

OWNER OF PLACER.

"The owner of two or more continguous placer mining locations cannot, under the guise of amending one of them, substitute therefor a single location." (Garden Gulch Bar Placer, 38 L. D., 28.)

Section 2331 of the Revised Statutes limits the acreage to be included in an individual placer claim to twenty acres. The word "claimant" is construed to mean locator. (Garden Gulch Bar Placer, 38 L. D., 31.)

"A corporation, regardless of the number of its stockholders, may lawfully locate no greater placer area under the mining laws than is allowable in the case of a single natural person, namely, 20 acres."

LOCATION AND NATIONAL FORESTS.

"The land department has followed, throughout, of its own motion, or at the instance of others, to inquire into and determine whether mining locations within national forests were preceded by the requisite discovery of mineral,

and whether the lands are of the character subject to occupation and purchase under the mining laws, notwithstanding the locator has applied for patent; and if the locations be found to be invalid the lands covered thereby will be administered as part of the public domain, subject to the reservation for forest purposes, without regard to the locations." (H. H. Yard, 38 L. D., 59.)

"A corporation in acquiring title under the public land laws must be regarded as an entity, with no greater right than an individual." (Bakersfield Fuel & Oil Co., 39 L. D., 460.)

(See Mineral or Agricultural Claims within National Forests.)

DISCOVERY.

"No title is acquired under or by virtue of a school indemnity selection until the same has been duly approved and served, and prior thereto a disclosure that the land is mineral will defeat the selection." (Kinkade v. State of California, 39 L. D., 491.)

The regulations of June 23, 1910, concerning the selection of lands by the State, the last paragraph, Section 11, provides—

"Where lands sought to be selected are alleged by way of protest, to be mineral, or where applications for patent therefor are presented under the mining laws, or are other adversely claimed, proceedings in such cases will be in the nature of a contest and will be governed by the rules of practice in force in such cases." (39 L. D., 41.)

Pipe Line (See Right of Way, Canal, Ditches, and Reservoirs.)

Attorneys cannot take acknowledgments in matters concerning applications and proofs.

(El Paso Brick Co., 37 L. D., 155, overruled in so far as the same may conflict.)

Stock Oil Co., 40 L. D., 198.

[In reply please refer to Circular No. 24.]

OIL LOCATIONS MADE PRIOR TO MARCH 2, 1911.

Department of the Interior,
General Land Office,
Washington, June 15, 1911.

Registers and Receivers, United States Land Offices,
and Chiefs of Field Division.

Sirs: The Secretary in a communication to this office dated May 17, 1911, instructed that the Act of March 2, 1911 (Public, No. 450), should be brought to the attention of the local officers with the direction that, upon the presentation of every case within the purview of the Act, they shall—

"Advise the chiefs of field division, in order that the latter may make such field examinations as are advisable or necessary, particularly if the land involved has been embraced in a withdrawal, as to the time when the development work was begun, and be prepared to submit the results, if possible, before entry is allowed. Each such case will be considered and adjudicated upon its record in the regular manner."

Observing that the operation of the act is retrospective only, being confined to locations made prior to the date thereof, you will, upon the presentation of any application for patent affected by the provisions of said Act, immediately communicate to the proper chief of field division due and full information thereof, to the end that he may procure to be made such investigations as may be necessary to ascertain the facts concerning the inception and subsequent prosecution of development operations, the extent and character of such works, and any other facts bearing upon and affecting the validity of the claim, including the continuousness and diligence with which development proceeded from the date of inception.

Report made of the results of such examinations will be submitted to this office, upon receipt of which the local officers will be advised as to the action to be taken.

Very respectfully,

Fred Dennett,
Commissioner.

WITHDRAWALS.

Temporary, by President for Water-Power Sites, Irrigation, Classification—Rights of Miners Excepted—Claimants of Oil and Gas Lands—Must Be Reported to Congress—No New Forest Reserves in Certain States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States including the District of Alaska and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an Act of Congress.

Sec. 2. That all lands withdrawn under the provisions of this Act shall at all times be open to exploration, discovery, occupation, and purchase, under the mining laws of the United States, so far as the same apply to minerals other than coal, oil, gas, and phosphates: Provided, That the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a bona fide occupant or claimant of oil or gas bearing lands, and who, at such date, is in diligent prosecution of work leading to discovery of oil or gas, shall not be affected or impaired by such order, so long as such occupant or claimant shall continue in diligent prosecution of said work: And provided further, That this Act shall not be construed as a recognition, abridgement, or enlargement of any asserted rights or claims initiated upon any oil or gas-bearing lands after any withdrawal of such lands made prior to the passage of this Act: And provided further, That there shall be excepted from the force and effect of any withdrawal made under the provisions of this Act all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was made; And provided further, That hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created within the limits of the States of Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by Act of Congress.

Sec. 3. That the Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of the withdrawals.

(Public No. 303, Approved June 25, 1910.)

LAND PATENTS.

All patents issuing from the General Land Office are issued in the name of the United States, are signed by the President, and countersigned by the recorder of the General Land Office, and are recorded in the office in books kept for the purpose. (Sec. 458, Rev. Stat.)

Patents for lands entered or located under general laws can be issued only in the name of the party making the entry or location, or, in case of his

death before making proof, to the statutory successor making the proof, as provided by law.

The recitals and description of land in patents will in all cases follow the register's certificate of entry or location, as prescribed by law.

When patents are ready for delivery, they will in all cases be transmitted to the local office at which the location or entry was made, where they can be obtained by the party entitled thereto, upon surrender of the duplicate receipt, or certificate, as the case may be, unless the duplicate shall have been previously filed in this office with a request that the patent be delivered as requested by the person sending the same; and in no case will the patent be delivered, either from this or the local office, except upon receipt of such duplicate, or, in case of its loss from any cause, upon the filing in lieu of the same of an affidavit made by the present owner of the land, accounting for the loss of the same, and also showing ownership of the tracts or a portion thereof embraced in the patent.

It is provided in Section 8 of the Act of March 3, 1891 (26 Stat. L., 1093), that suits by the United States to vacate and annul any patent previously issued shall be brought within five years from the passage of said Act, and suits to vacate and annul patents thereafter issued shall only be brought within six years after the date of the issue of such patents.

By Act of March 2, 1896 (29 Stat., 42), the time within which such suits might be brought, so far as regards patents issued under a railroad or wagon road grant, was extended so as to admit of bringing suit in such cases within five years from the passage of the Act in cases of patents issued prior thereto, and in cases of patents issued thereafter within six years after the date of the issuance of the patents, with a provision protecting the titles of bona fide purchasers of such lands.

With reference to furnishing certified copies of patents—

THE RECLAMATION OF ARID LANDS BY THE UNITED STATES.

A. An Act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands.

B. An Act authorizing the use of earth, stone, and timber on the public lands and forest reserves of the United States in the construction of works under the national irrigation law.

C. An Act to provide for the covering into the reclamation fund certain proceeds of sales of property purchased by the reclamation fund.

D. An Act providing for the withdrawal from public entry of lands needed for townsite purposes in connection with irrigation projects under the reclamation Act of June seventeenth, nineteen hundred and two, and for other purposes.

E. An Act to extend the irrigation act to the State of Texas.

F. An Act providing for the subdivision of lands under the reclamation act, and for other purposes.

G. An Act providing for the reappraisement of unsold lots in the town sites on reclamation projects, and for other purposes.

H. An Act providing that entrymen for homesteads within reclamation projects may assign their entries upon satisfactory proof of residence, improvement, and cultivation for five years, the same as though said entry had been made under the original homestead act.

I. An Act to authorize advances to the "reclamation fund," and for the issue and disposal of certificates of indebtedness in reimbursement therefor, and for other purposes.

J. An Act granting leaves of absence to homesteaders on lands to be irrigated under the provisions of the Act of June seventeenth, nineteen hundred and two.

K. An Act to provide for the sale of lands acquired under the provisions of the reclamation act and which are not needed for the purposes of that act.

L. An Act to authorize the Secretary of the Interior to withdraw public notices issued under Section four of the reclamation act, and for other purposes.

M. An Act to amend Section five of the Act of Congress of June twenty-fifth, nineteen hundred and ten, entitled "An Act to authorize advances to

the 'reclamation fund,' and for the issue and disposal of certificates of indebtedness in reimbursement therefor, and for other purposes."

N. An Act to authorize the Government to contract for impounding, storing, and carriage of water, and to co-operate in the construction of reservoirs and canals under reclamation projects, and for other purposes.

O. An Act to amend an Act entitled "An Act providing for the withdrawal from public entry of lands needed for town-site purposes in connection with irrigation projects under the reclamation act of June seventeenth, nineteen hundred and two, and for other purposes," approved April sixteenth, nineteen hundred and six.

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[Circular No. 102.]

(Approved April 29, 1912. Former Circular, May 31, 1910.)

LAWS AND REGULATIONS RELATING TO THE RECLAMATION OF ARID LANDS BY THE UNITED STATES.

Department of the Interior,
General Land Office,
Washington, D. C., April 29, 1912.

STATUTES.

General Acts.

(A) An Act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all moneys received from the sale and disposal of public lands in Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming, beginning with the fiscal year ending June thirtieth, nineteen hundred and one, including the surplus of fees and commissions in excess of allowances to Registers and Receivers, and excepting the five per centum of the proceeds of the sales of public lands in the above States set aside by law for educational and other purposes, shall be, and the same are hereby, reserved, set aside, and appropriated as a special fund in the Treasury to be known as the "reclamation fund," to be used in the examination and survey for and the construction and maintenance of irrigation works for the storage, diversion, and development of waters for the reclamation of arid and semiarid lands in the said States and Territories, and for the payment of all other expenditures provided for in this Act: Provided, That in case the receipts from the sale and disposal of public lands other than those realized from the sale and disposal of lands referred to in this section are insufficient to meet the requirements for the support of agricultural colleges in the several States and Territories, under the Act of August thirtieth, eighteen hundred and ninety, entitled "An Act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an Act of Congress approved July second, eighteen hundred and sixty-two," the deficiency, if any, in the sum necessary for the support of the said colleges shall be provided for from any moneys in the Treasury not otherwise appropriated.

Sec. 2. That the Secretary of the Interior is hereby authorized and directed to make examinations and surveys for, and to locate and construct, as herein provided, irrigation works for the storage,

diversion, and development of waters, including artesian wells, and to report to Congres at the beginning of each regular session as to the results of such examinations and surveys, giving estimates of cost of all contemplated works, the quantity and location of the lands which can be irrigated therefrom, and all facts relative to the practicability of each irrigation project; also the cost of works in process of construction as well as of those which have been completed.

Sec. 3. That the Secretary of the Interior shall, before giving the public notice provided for in section four of this Act, withdraw from public entry the lands required for any irrigation works contemplated under the provisions of this act, and shall restore to public entry any of the lands so withdrawn when, in his judgment, such lands are not required for the purposes of this Act; and the Secretary of the Interior is hereby authorized, at or immediately prior to the time of beginning the surveys for any contemplated irrigation works, to withdraw from entry, except under the homestead laws, any public lands believed to be susceptible of irrigation from said works: Provided, That all lands entered and entries made under the homestead laws within areas so withdrawn during such withdrawal shall be subject to all the provisions, limitations, charges, terms, and conditions of this Act; that said surveys shall be prosecuted diligently to completion, and upon the completion thereof, and of the necessary maps, plans, and estimates of cost, the Secretary of the Interior shall determine whether or not said project is practicable and advisable, and if determined to be impracticable or unadvisable he shall thereupon restore said land to entry; that public lands which it is proposed to irrigate by means of any contemplated works shall be subject to entry only under the provisions of the homestead laws in tracts of not less than forty nor more than one hundred and sixty acres, and shall be subject to the limitations, charges, terms, and conditions herein provided: Provided, That the commutation provisions of the homestead laws shall not apply to entries made under this Act.

Sec. 4. That upon the determination by the Secretary of the Interior that any irrigation project is practicable, he may cause to be let contracts for the construction of the same, in such portions or sections as it may be practicable to construct and complete as parts of the whole project, providing the necessary funds for such portions or sections are available in the reclamation fund, and thereupon he shall give public notice of the lands irrigable under such project, and limit of area per entry, which limit shall represent the acreage which, in the opinion of the Secretary, may be reasonably required for the support of a family upon the lands in question; also of the charges which shall be made per acre upon the said entries, and upon lands in private ownership which may be irrigated by the waters of the said irrigation project, and the number of annual installments, not exceeding ten, in which such charges shall be paid and the time when such payments shall commence. The said charges shall be determined with a view of returning to the reclamation fund the estimated cost of construction of the project, and shall be apportioned equitably: Provided, That in all construction work eight hours shall constitute a day's work, and no Mongolian labor shall be employed thereon.

Sec. 5. That the entryman upon lands to be irrigated by such works shall, in addition to compliance with the homestead laws, reclaim at least one-half of the total irrigable area of his entry for agricultural purposes, and before receiving patent for the lands covered by his entry shall pay to the Government the charges apportioned against such tract, as provided in section four. No right to the use of water for land in private ownership shall be sold for a tract exceeding one hundred and sixty acres to any one landowner, and no such sale shall be made to any landowner unless he be an actual bona fide resident of such land, or occupant thereof residing in the neighborhood of said land, and no such right shall permanently attach until all payments therefor are made. The annual installments shall be paid to the Receiver of the local land office of the district in which the land is situated, and a failure to make any two payments when due shall render the entry subject to cancellation, with the forfeiture of all rights under this Act, as well as of any moneys already paid thereon. All moneys received from the above sources shall be paid into the reclamation fund. Registers and Receivers shall be allowed the usual commissions on all moneys paid for lands entered under this act.

Sec. 6. That the Secretary of the Interior is hereby authorized and directed to use the reclamation fund for the operation and maintenance of all reservoirs and irrigation works constructed under the provisions of this Act: Provided, That when the payments required by this Act are made for the major portions of the lands irrigated from the waters of any of the works herein provided for, then the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby, to be maintained at their expense under such form of organization and under such rules and regulations as may be acceptable to the Secretary of the Interior: Provided, That the title to and the management and operation of the reservoirs and the works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress.

Sec. 7. That where in carrying out the provisions of this act it becomes necessary to acquire any rights or property, the Secretary of the Interior is hereby authorized to acquire the same for the United States by purchase or by condemnation under judicial process, and to pay from the reclamation fund the sums which may be needed for that purpose, and it shall be the duty of the Attorney-General of the United States upon every application of the Secretary of the Interior, under this Act, to cause proceedings to be commenced for condemnation within thirty days from the receipt of the application at the Department of Justice.

Sec. 8. That nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this Act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: Provided, That the right to the use of

water acquired under the provisions of this Act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right.

Sec. 9.* That it is hereby declared to be the duty of the Secretary of the Interior in carrying out the provisions of this Act, so far as the same may be practicable and subject to the existence of feasible irrigation projects, to expend the major portion of the funds arising from the sale of public lands within each State and Territory hereinbefore named for the benefit of arid and semiarid lands within the limits of such State or Territory: Provided, That the Secretary may temporarily use such portion of said funds for the benefit of arid or semiarid lands in any particular State or Territory hereinbefore named as he may deem advisable, but when so used the excess shall be restored to the fund as soon as practicable, to the end that ultimately, and in any event, within each ten-year period after the passage of this Act, the expenditures for the benefit of the said States and Territories shall be equalized according to the proportions and subject to the conditions as to practicability and feasibility aforesaid.

Sec. 10. That the Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this Act into full force and effect.

Approved, June 17, 1902 (32 Stat., 388).

(B) An Act authorizing the use of earth, stone, and timber on the public lands and forest reserves of the United States in the construction of works under the national irrigation law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in carrying out the provisions of the national irrigation law, approved June seventeenth, nineteen hundred and two, and in constructing works thereunder, the Secretary of the Interior is hereby authorized to use and to permit the use by those engaged in the construction of works under said law, under rules and regulations to be prescribed by him, such earth, stone, and timber from the public lands of the United States as may be required in the construction of such works, and the Secretary of Agriculture is hereby authorized to permit the use of earth, stone, and timber from the forest reserves of the United States for the same purpose, under rules and regulations to be prescribed by him.

Approved February 8, 1905 (33 Stat., 706).

(C) An Act to provide for the covering into the reclamation fund certain proceeds of sales of property purchased by the reclamation fund.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be covered into the reclamation fund established under the Act of June seventeenth, nineteen hundred and two, known as the reclamation Act, the proceeds of the sales of material utilized for temporary work and structures in connection with the operations under the said Act, as well as of the sales of all other condemned property which had been purchased under the provisions thereof, and also

* Sec. 9 of this act repealed by Act of June 25, 1910.

any moneys refunded in connection with the operations under said reclamation act.

Approved, March 3, 1905 (33 Stat., 1032).

-(D) An Act providing for the withdrawal from public entry of lands needed for townsite purposes in connection with irrigation projects under the reclamation act of June seventeenth nineteen hundred and two, and for other purposes. Approved April 16, 1906 (34 Stat., 116). See page 358.

(E) An Act to extend the irrigation act to the State of Texas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the Act entitled "An Act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," approved June seventeenth, nineteen hundred and two, be, and the same are hereby, extended so as to include and apply to the State of Texas.

Approved June 12, 1906 (34 Stat., 259).

(F) An Act providing for the subdivision of lands under the reclamation act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever in the opinion of the Secretary of the Interior, by reason of market conditions and the special fitness of the soil and climate for the growth of fruit and garden produce, a lesser area than forty acres may be sufficient for the support of a family on lands to be irrigated under the provisions of the Act of June seventeenth, nineteen hundred and two, known as the Reclamation Act, he may fix a lesser area than forty acres as the minimum entry and may establish farm units of not less than ten nor more than one hundred and sixty acres. That whenever it may be necessary, for the purpose of accurate description, to further subdivide lands to be irrigated under the provisions of said Reclamation Act, the Secretary of the Interior may cause subdivision surveys to be made by the officers of the Reclamation Service, which subdivisions shall be rectangular in form, except in cases where irregular subdivisions may be necessary in order to provide for practicable and economical irrigation. Such subdivisions surveys shall be noted upon the tract books in the General Land Office, and they shall be paid for from the reclamation fund: Provided, That an entryman may elect to enter said Reclamation Act a lesser area than the minimum limit in any State or Territory.

Sec. 2. That wherever the Secretary of the Interior, in carrying out the provisions of the Reclamation Act, shall acquire by relinquishment lands covered by a bona fide unperfected entry under the land laws of the United States, the entryman upon such tract may make another and additional entry, as though the entry thus relinquished had not been made.

Sec. 3. That any townsite heretofore set apart or established by proclamation of the President, under the provisions of sections twenty-three hundred and eighty and twenty-three hundred and eighty-one of the Revised Statutes of the United States, within or in the vicinity of any reclamation project, may be appraised and disposed of in accordance with the provisions of the Act of Con-

gress approved April sixteenth, nineteen hundred and six, entitled "An Act providing for the withdrawal from public entry of lands needed for townsite purposes in connection with irrigation projects under the Reclamation Act of June seventeenth, nineteen hundred and two, and for other purposes;" and all necessary expenses incurred in the appraisal and sale of lands embraced within any such townsite shall be paid from the reclamation fund, and the proceeds of the sales of such lands shall be covered into the reclamation fund.

* * * * * *

Sec. 5. That where any bona fide desert-land entry has been or may be embraced within the exterior limits of any land withdrawal or irrigation project under the Act entitled "An Act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," approved June seventeenth, nineteen hundred and two, and the desert-land entryman has been or may be directly or indirectly hindered, delayed, or prevented from making improvements or from reclaiming the land embraced in any such entry by reason of such land withdrawal or irrigation project, the time during which the desert-land entryman has been or may be so hindered, delayed, or prevented from complying with the desert-land law shall not be computed in determining the time within which such entryman has been or may be required to make improvements or reclaim the land embraced within any such desert-land entry: Provided, That if after investigation the irrigation project has been or may be abandoned by the Government, time for compliance with the desert-land law by any such entryman shall begin to run from the date of notice of such abandonment of the project and the restoration to the public domain of the lands withdrawn in connection therewith, and credit shall be allowed for all expenditures and improvements heretofore made on any such desert-land entry of which proof has been filed; but if the reclamation project is carried to completion so as to make available a water supply for the land embraced in any such desert-land entry, the entryman shall thereupon comply with all the provisions of the aforesaid Act of June seventeenth, nineteen hundred and two, and shall relinquish all land embraced within his desert-land entry in excess of one hundred and sixty acres, and as to such one hundred and sixty acres retained, he shall be entitled to make final proof and obtain patent upon compliance with the terms of payment prescribed in said Act of June seventeenth, nineteenth hundred and two, and not otherwise. But nothing herein contained shall be held to require a desert-land entryman who owns a water right and reclaims the land embraced in his entry to accept the conditions of said Reclamation Act.

Approved, June 27, 1906 (34 Stat., 519).

(G) An Act providing for the reappraisement of unsold lots in the townsites on reclamation projects, 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 Secretary of the Interior is hereby authorized, whenever he may deem it necessary, to reappraise all unsold lots within town sites on pro-

jects under the reclamation Act heretofore or hereafter appraised under the provisions of the Act approved April sixteenth, nineteen hundred and six, entitled "An Act providing for the withdrawal from public entry of lands needed for town site purposes in connection with irrigation projects under the Reclamation Act of June seventeenth, nineteen hundred and two, and for other purposes," and the Act approved June twenty-seventh, nineteen hundred and six, entitled "An Act providing for the subdivision of lands entered under the Reclamation Act, and for other purposes;" and thereafter to proceed with the sale of such town lots in accordance with such Acts.

Sec. 2. That in the sale of town lots under the provisions of the said Acts of April sixteenth and June twenty-seventh, nineteen hundred and six, the Secretary of the Interior may, in his discretion, require payment for such town lots in full at time of sale or in annual installments, not exceeding five, with interest at the rate of six per centum per annum on deferred payments.

Approved, June 11, 1910 (36 Stat., 465).

(H) An Act providing that entrymen for homesteads within reclamation projects may assign their entries upon satisfactory proof of residence, improvement, and cultivation for five years, the same as though said entry had been made under the original homestead act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the filing with the Commissioner of the General Land Office of satisfactory proof of residence, improvement, and cultivation for the five years required by law, persons who have, or shall make, homestead entries within reclamation projects under the provisions of the Act of June seventeenth, nineteen hundred and two, may assign such entries, or any part thereof, to other persons, and such assignees, upon submitting proof of the reclamation of the lands and upon payment of the charges apportioned against the same as provided in the said Act of June seventeenth, nineteen hundred and two, may receive from the United States a patent for the lands: Provided, That all assignments made under the provisions of this Act shall be subject to the limitations, charges, terms, and conditions of the Reclamation Act.

Approved, June 23, 1910 (36 Stat., 592).

(I) An Act to authorize advances to the "reclamation fund," and for the issue and disposal of certificates of indebtedness in reimbursement therefor, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to enable the Secretary of the Interior to complete Government reclamation projects heretofore begun, the Secretary of the Treasury is authorized, upon request of the Secretary of the Interior, to transfer from time to time to the credit of the reclamation fund created by the the Act entitled "An Act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," approved June seventeenth, nineteen hundred and two, such sum or sums, not exceeding in the aggregate twenty million dollars, as the Secretary of the Interior may deem necessary to

complete the said reclamation projects, and such extensions thereof as he may deem proper and necessary to the successful and profitable operation and maintenance thereof or to protect water rights pertaining thereto claimed by the United States, provided the same shall be approved by the President of the United States; and such sum or sums as may be required to comply with the foregoing authority are hereby appropriated out of any money in the Treasury not otherwise appropriated: Provided, That the sums hereby authorized to be transferred to the reclamation fund shall be so transferred only as such sums shall be actually needed to meet payments for work performed under existing law: And provided further, That all sums so transferred shall be reimbursed to the Treasury from the reclamation fund, as hereinafter provided: And provided further, That no part of this appropriation shall be expended upon any existing project until it shall have been examined and reported upon by a board of engineer officers of the Army, designated by the President of the United States, and until it shall be approved by the President as feasible and practicable and worthy of such expenditure; nor shall any portion of this appropriation be expended upon any new project.

Sec. 2. That for the purpose of providing the Treasury with funds for such advances to the reclamation fund, the Secretary of the Treasury is authorized to issue certificates of indebtedness of the United States in such form as he may prescribe and in denomitions of fifty dollars, or multiples of that sum; said certificates to be redeemable at the option of the United States at any time after three years from the date of their issue and to be payable five years after such date, and to bear interest, payable semiannually, at not exceeding three per centum per annum; that principal and interest to be payable in gold coin of the United States. The certificates of indebtedness herein authorized may be disposed of by the Secretary of the Treasury at not less than par, under such rules and regulations as he may prescribe, giving all citizens of the United States an equal opportunity to subscribe therefor, but no commission shall be allowed and the aggregate issue of such certificates shall not exceed the amount of all advances made to said reclamation fund, and in no event shall the same exceed the sum of twenty million dollars. The certificates of indebtedness herein authorized shall be exempt from taxes or duties of the United States as well as from taxation in any form by or under State, municipal, or local authority; and a sum not exceeding one-tenth of one per centum of the amount of the certificates of indebtedness issued under this Act is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay the expenses of preparing advertising, and issuing the same.

Sec. 3. That beginning five years after the date of the first advance to the reclamation fund under this Act, fifty per centum of the annual receipts of the reclamation fund shall be paid into the general fund of the Treasury of the United States until payment so made shall equal the aggregate amount of advances made by the Treasury to said reclamation fund, together with interest paid on the certificates of indebtedness issued under this Act and any expense incident to preparing, advertising, and issuing the same.

Sec. 4. That all money placed to the credit of the reclamation fund in pursuance of this Act shall be devoted exclusively to the completion of work on reclamation projects heretofore begun as hereinbefore provided, and the same shall be included with all other expenses in future estimates of construction, operation, or maintenance, and hereafter no irrigation project contemplated by said Act of June seventeenth, nineteen hundred and two, shall be begun unless and until the same shall have been recommended by the Secretary of the Interior and approved by the direct order of the President of the United States.

"Sec. 5. That no entry shall be hereafter made and no entryman shall be permitted to go upon lands reserved for irrigation purposes until the Secretary of the Interior shall have established the unit of acreage and fixed the water charges and the date when the water can be applied and make public announcement of the same: Provided, That where entries made prior to June twenty-fifth, nineteen hundred and ten, have been or may be relinquished in whole or in part, the lands so relinquished shall be subject to settlement and entry under the homestead law as amended by an Act entitled 'An Act appropriating the receipts from the sale and disposal of the public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands,' approved June seventeenth, nineteen hundred and two (Thirty-second Statutes at Large, page three hundred and eighty-eight)."

(Public No. 386, Approved, February 18, 1911.)

Sec. 6. That section nine of said Act of Congress, approved June seventeenth, nineteen hundred and two, entitled "An Act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," is hereby repealed.

Approved, June 25, 1910 (36 Stat., 835).

(I) An Act granting leaves of absence to homesteaders on lands to be irrigated under the provisions of the Act of June seventeenth, nineteen hundred and two.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all qualified entrymen who have heretofore made bona fide entry upon lands proposed to be irrigated under the provisions of the Act of June seventeenth, nineteen hundred and two, known as the National Irrigation Act, may, upon application and a showing that they have made substantial improvements, and that water is not available for the irrigation of their said lands, within the discretion of the Secretary of the Interior, obtain leave of absence from their entries until water for irrigation is turned into the main irrigation canals from which the land is to be irrigated: Provided, That the period of actual absence under this Act shall not be deducted from the full time of residence required by law.

Approved June 25, 1910 (36 Stat., 864).

(K) An Act to provide for the sale of lands acquired under the provisions of the reclamation act and which are not needed for the purposes of that act.

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

ever in the opinion of the Secretary of the Interior any lands which have been acquired under the provisions of the Act of June seventeenth, nineteen hundred and two (Thirty-second Statutes, page three hundred and eighty-eight), commonly called the "Reclamation Act," or under the provisions of any Act amendatory thereof or supplemental thereto, for any irrigation works contemplated by said Reclamation Act are not needed for the purposes for which they were acquired, said Secretary of the Interior may cause said lands, together with the improvements thereon, to be appraised by three disinterested persons, to be appointed by him, and thereafter to sell the same for not less than the appraised value at public auction to the highest bidder, after giving public notice of the time and place of sale by posting upon the land and by publication for not less than thirty days in a newspaper of general circulation in the vicinity of the land.

Sec. 2. That upon payment of the purchase price, the Secretary of the Interior is authorized by appropriate deed to convey all the right, title, and interest of the United States of, in, and to said lands to the purchaser of said sale, subject, however, to such reservations, limitations, or conditions as said Secretary may deem proper: Provided, That not over one hundred and sixty acres shall be sold to any one person.

Sec. 3. That the moneys derived from the sale of such lands shall be covered into the reclamation fund and be placed to the credit of the project for which such lands had been acquired.

Approved, February 2, 1911 (36 Stat., 895).

(L) An Act to authorize the Secretary of the Interior to withdraw public notices issued under section four of the reclamation act, 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 Secretary of the Interior may, in his discretion, withdraw any public notice heretofore issued under section four of the Reclamation Act of June seventeenth, nineteen hundred and two, and he may agree to such modification of water-right applications heretofore duly filed or contracts with water users' associations and others, entered into prior to the passage of this Act, as he may deem advisable, or he may consent to the abrogation of such water-right applications and contracts, and proceed in all respects as if no such notice had been given.

Approved, February 13, 1911 (36 Stat., 902).

(M) An Act to amend section five of the Act of Congress of June twenty-fifth, nineteen hundred and ten, entitled "An Act to authorize advances to the 'reclamation fund,' and for the issue and disposal of certificates of indebtedness in reimbursement therefor, and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section five of an Act entitled "An Act to authorize advances to the 'reclamation fund,' and for the issue and disposal of certificates of indebtedness in reimbursement therefor, and for other purposes," approved June twenty-fifth, nineteen hundred and ten (Thirty-sixth Statutes at Large, page eight hundred and thirty-five), be, and the same hereby is, amended as follows:

"Sec. 5. That no entry shall be hereafter made and no entryman shall be permitted to go upon lands reserved for irrigation purposes until the Secretary of the Interior shall have established the unit of acreage and fixed the water charges and the date when the water can be applied and make public announcement of the same: Provided, That where entries made prior to June twenty-fifth, nineteen hundred and ten, have been or may be relinquished in whole or in part, the lands so relinquished shall be subject to settlement and entry under the homestead law as amended by an Act entitled 'An Act appropriating the receipts from the sale and disposal of the public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands,' approved June seventeenth, nineteen hundred and two (Thirty-second Statutes at Large, page three hundred and eighty-eight)."

Approved, February 18, 1911 (36 Stat., 917).

(N) **An Act to authorize the Government to contract for impounding, storing, and carriage of water, and to co-operate in the construction and use of reservoirs and canals under reclamation projects, and for other purposes.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever in carrying out the provisions of the reclamation law, storage or carrying capacity has been or may be provided in excess of the requirements of the lands to be irrigated under any project, the Secretary of the Interior, preserving a first right to lands and entrymen under the project, is hereby authorized, upon such terms as he may determine to be just and equitable, to contract for the impounding, storage, and carriage of water to an extent not exceeding such excess capacity with irrigation systems operating under the Act of August eighteenth, eighteen hundred and ninety-four, known as the Carey Act, and individuals, corporations, associations, and irrigation districts organized for or engaged in furnishing or in distributing water for irrigation. Water so impounded, stored, or carried under any such contract shall be for the purpose of distribution to individual water users by the party with whom the contract is made: Provided, however, That water so impounded, stored, or carried shall not be used otherwise than as prescribed by law as to lands held in private ownership within Government reclamation projects. In fixing the charges under any such contract for impounding, storing, or carrying water for any irrigation system, corporation, association, district, or individual as herein provided, the Secretary shall take into consideration the cost of construction and maintenance of the reservoir by which such water is to be impounded or stored and the canal by which it is to be carried, and such charges shall be just and equitable as to water users under the Government project. No irrigation system, district, association, corporation, or individual so contracting shall make any charge for the storage, carriage, or delivery of such water in excess of the charge paid to the United States except to such extent as may be reasonably necessary to cover cost of car-

Sec. 2. That in carrying out the provisions of said Reclamation Act and Acts amendatory thereof or supplementary thereto, the Secretary of the Interior is authorized, upon such terms as may riage and delivery of such water through their works.

be agreed upon, to cooperate with irrigation districts, water users, associations, corporations, entrymen or water users for the construction or use of such reservoirs, canals, or ditches as may be advantageously used by the Government and irrigation districts, water users associations, corporations, entrymen or water users for impounding, delivering and carrying water for irrigation purposes: Provided, That the title to and management of the works so constructed shall be subject to the provisions of section six of said Act: Provided further, That water shall not be furnished from any such reservoir or delivered through any such canal or ditch to any one landowner in excess of an amount sufficient to irrigate one hundred and sixty acres: Provided, That nothing contained in this Act shall be held or construed as enlarging or attempting to enlarge the right of the United States, under existing law, to control the waters of any stream in any State.

Sec. 3. That the moneys received in pursuance of such contracts shall be covered into the reclamation fund and be available for use under the terms of the Reclamation Act and the Acts amendatory thereof or supplementary thereto.

Approved, February 21, 1911 (36 Stat., 925).

(O) An Act to amend an act entitled "An Act providing for the withdrawal from public entry of lands needed for town-site purposes in connection with irrigation projects under the reclamation act of June seventeenth, nineteen hundred and two, and for other purposes," approved April sixteenth, nineteen hundred and six.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section five of an Act entitled "An Act providing for the withdrawal from public entry of lands needed for townsite purposes in connection with irrigation projects under the Reclamation Act of June seventeenth, nineteen hundred and two, and for other purposes," approved April sixteenth, nineteen hundred and six, be amended so as to read as follows:

"Sec. 5. That whenever a development of power is necessary for the irrigation of lands, under any project undertaken under the said Reclamation Act, or an opportunity is afforded for the development of power under any such project, the Secretary of the Interior is authorized to lease for a period not exceeding ten years, giving preference to municipal purposes, any surplus power or power privilege, and the money derived from such leases shall be covered into the reclamation fund and be placed to the credit of the project from which such power is derived: Provided, That no lease shall be made of such surplus power or power privileges as will impair the efficiency of the irrigation project: Provided further, That the Secretary of the Interior is authorized, in his discretion, to make such a lease in connection with Rio Grande project in Texas and New Mexico for a longer period not exceeding fifty years, with the approval of the water users' association or associations under any such project, organized in conformity with the rules and regulations prescribed by the Secretary of the Interior in pursuance of section six of the Reclamation Act approved June seventeenth, nineteen hundred and two."

Approved, February 24, 1911 (36 Stat., 931).

(P) Special Acts.

The Act of April 23, 1904 (33 Stat., 302), as amended by section 15 of the Act of May 29, 1908 (35 Stat., 448), provides for the disposition and irrigation of lands within the limits of the Flathead Indian Reservation, Mont.

Section 25 of the Act approved April 21, 1904 (33 Stat., 224), provides for the reclamation, allotment, and disposal of surplus irrigable lands in the Yuma and Colorado River Indian Reservations in California and Arizona.

Section 26 of the Act of April 21, 1904, supra, provides for the reclamation, allotment, and disposal of surplus irrigable lands in the Pyramid Lake Indian Reservation, Nev.

The Act of March 27, 1904 (33 Stat., 357), authorizes the reclamation and disposition of irrigable lands in the ceded Crow Indian Reservation, in Montana.

Section 12 of the Act of March 22, 1906 (34 Stat., 80), provides for the disposition, under the Reclamation Act, of lands in the diminished Colville Indian Reservation, Wash.

The Act of June 9, 1906 (34 Stat., 228), authorizes the disposition of lands in the abandoned Fort Shaw Military Reservation, Mont., under the Reclamation Act.

The Act of March 6, 1906 (34 Stat., 53), authorizes the reclamation and disposal of surplus irrigable lands in the Yakima Indian Reservation, Wash.

The Act of June 21, 1906 (34 Stat., 327), authorizes the sale of allotted Indian lands on reclamation projects, and the Act of March 3, 1909 (35 Stat., 782), authorizes the Secretary of the Interior to make allotments of such lands in such areas as he may deem proper, not exceeding the amount therein named.

The Act of March 1, 1907 (34 Stat., 1037), provides for the disposition of irrigable lands in the Blackfeet Indian Reservation, Mont.

The Act of April 30, 1908 (35 Stat., 85), provides for the irrigation of Indian lands.

Sections 1 and 10 of the Act of Congress approved May 30, 1908, provide for the reclamation of lands on the Fort Peck Indian Reservation, Mont.

Section 1 of the Act of June 22, 1910 (36 Stat., 583), authorizes the withdrawal and reclamation of classified coal land, patents for such lands to reserve to the United States the coal deposits therein.

An Act February 2, 1911 (Public, 338), land acquired by Government not needed to be appraised and sold at auction, not over 160 acres to each person.

Surplus power to be leased for 10 years, preference for municipal purposes, 50 years on Rio Grande Project. Approved, February 27, 1911 (Public, 417).

Secretary of the Interior authorized to contract with individuals, corporations, for supplying water storage, constructing reservoirs, canals, etc. Approved, February 21 1911 (Public, 406).

REGULATIONS.

General Information.

1. Section 3 of the Act of June 17, 1902 (32 Stat., 388), provides for the withdrawal of lands from all disposition other than

that provided for by said Act. Lands withdrawn as susceptible of irrigation (usually referred to as withdrawn under the second form) are subject to entry under the provisions of the homestead law only, and since the passage of the Act of June 25, 1910 (36 Stats., 835), are open to settlement or entry only when approved farm unit plats have been filed and public notice has been issued in connection therewith, fixing the water charges and the date when water can be applied, except as provided by the Act of February 18, 1911 (36 Stat., 917). Where settlements had been effected in good faith prior to June 25, 1910, on lands embraced within second form withdrawals, persons showing such settlement are entitled to complete entry in the manner and within the time provided by law.

2. Under the provisions of the Act of February 18, 1911 (36 Stat., 917), the prohibition contained in section 5 of the Act of Congress approved June 25, 1910, forbidding settlement on or entry of lands reserved for irrigation purposes prior to the approval of farm unit plats and the issuance of public notice fixing the water charges and the date when water can be applied, is withdrawn and set aside as to lands included in entries made prior to June 25, 1910, where such entries have been or may be relinquished in whole or in part.

3. Settlement and entry on such lands will be allowed subject to the provisions of the homestead law and the Reclamation Act of June 17, 1902, supra, in the same manner as for other lands subject to entry within reclamation projects. The lands must have been covered by a valid entry prior to June 25, 1910, and shall only be subject to entry under the provisions of the present Act in cases where a relinquishment of the former entry has been or shall be filed. Registers and Receivers in their action on applications to make homestead entry under the provisions of this Act will be governed by the records of their office, and will note on all entries allowed hereunder the homestead number and date of the relinquishment entry, and the fact that the new entry is allowed subject to the provisions of the Act of February 18, 1911.

4. Entry under this Act is permitted only after relinquishment of an entry made prior to June 25, 1910, and therefore the relinquishment of an entry made under this Act, even though it covers lands which were the subject of another entry made prior to June 25, 1910, would not permit a third entry to be made. Lands entered under this Act will be held subject to the prohibition contained in section 5 of the Act of June 25, 1910, upon the relinquishment of an entry made under the Act of February 18, 1911.

5. Homestead entries of lands shown on the farm unit plats are made in practically the same manner as the usual homestead entry, but they are subject to all the provisions, limitations, charges, terms, and conditions of the Reclamation Act.

6. Registers and Receivers will indorse across the face of each homestead application, when allowed under the Reclamation Act, the following: "This entry allowed subject to the provisions of the Act of June 17, 1902 (32 Stat., 388);" and will advise each entryman of the provisions of the Act by furnishing him with a copy of this circular.

7. These entries are not subject to the commutation provisions

of the homestead law, and on the determination by the Secretary of the Interior that the proposed irrigation project is practicable, the entries hitherto made and not conforming to an established farm unit may be reduced in area to the limit representing the acreage which, in the opinion of the Secretary, may be reasonably required for the support of a family upon the lands in question, and the lands within a project are platted to farm units representing such areas. The farm units may be as small as 10 acres where the lands are suitable for fruit raising, etc., but on most projects, so far, they have been fixed at from 40 to 80 acres each. These areas are announced on farm unit plats, and public notice stating the amount of the charges and other details concerning payment, is issued by the Secretary of the Interior, shortly before the Government is ready to furnish water. Until this public notice is issued it will be impossible in most respects to give definite information as to any particular tract or as to the details intended to be covered by such notice; but Registers and Receivers will, upon inquiry, give all general information relative to the public lands included in reclamation projects, and will keep the engineers of the Reclamation Service fully informed, by correspondence, as to conditions affecting the same.

Withdrawals and Restorations.

8. The withdrawal of these lands at first is principally for the purpose of making surveys and irrigation investigations in order to determine the feasibility of the plans of irrigation and reclamation proposed. Only a portion of the lands will be irrigated even if the project is feasible, but it will be impossible to decide in advance of careful examination what lands may be watered, if any, and the mere fact that surveys are in progress is no indication whatever that the works will be built. It can not be determined how much water there may be available, or what lands can be covered, or whether the cost will be too great to justify the undertaking until the surveys and the irrigation investigations have been completed.

9. There are two classes of withdrawals authorized by the act: One commonly known as "Withdrawals under the first form," which embraces lands that may possibly be needed in the construction and maintenance of irrigation works, and the other commonly known as "Withdrawals under the second form," which embraces lands not supposed to be needed in the actual construction and maintenance of irrigation works, but which may possibly be irrigated from such works.

10. After lands have been withdrawn under the first form they can not be entered, selected, or located in any manner so long as they remain so withdrawn, and all applications for such entries, selections, or locations should be rejected and denied, regardless of whether they were presented before or after the date of such withdrawal. (See John J. Maney, 35 L. D., 250.)

11. Lands withdrawn under the second form and subject to entry can be entered only under the homestead laws and subject to the provisions, limitations, charges, terms, and conditions of the Reclamation Act, and all applications to make selections, locations, or entries of any other kind on such lands should be rejected, regardless of whether they are presented before or after the lands

are withdrawn, except that where settlement rights were acquired prior to the withdrawal and have been diligently prosecuted and the homestead law fully complied with, the settler will be entitled to make and complete his entry as if it had been made before the withdrawal. (See Wm. Boyle, 38 L. D., 603.)

12. Withdrawals made under either of these forms do not defeat or adversely affect any valid entry, location or selection which segregated and withheld the lands embraced therein from other forms of appropriation at the date of such withdrawal; and all entries, selections, or locations of that character should be permitted to proceed to patent or certification upon due proof of compliance with the law in the same manner and to the same extent to which they would have proceeded had such withdrawal not been made, except as to lands needed for construction purposes. All lands, however, taken up under any of the land laws of the United States subsequent to October 2, 1888, are subject to right of way for ditches or canals constructed by authority of the United States (Act of August 30, 1890, 26 Stat., 391; circular approved by Department July 25, 1903). All entries made upon the lands referred to are subject to the following proviso of the Act cited:

> That in all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this Act west of the one hundredth meridian it shall be expressed that there is reserved from lands in said patent described a right of way thereon for ditches or canals constructed by the authority of the United States.

13. Should a homestead entry embrace land that is needed in whole or in part for purposes contemplated by said proviso the land would be taken for such purpose, and the entryman would have no claim against the United States for the same.

14. All withdrawals become effective on the date upon which they are ordered by the Secretary of the Interior, and all orders for restorations on the date they are received in the local land office unless otherwise specified in the order. (George B. Pratt et al., 38 L. D., 146.)

15. Upon the cancellation of a homestead entry covering lands embraced within a withdrawal under the Reclamation Act such withdrawal becomes effective as to such lands without further order. (See Cornelius J. MacNamara, 33 L. D., 520.)

16. Where the Secretary of the Interior by the approval of farm-unit plats has determined, or may determine, that the lands designated thereon are irrigable, the filing of such plats in the General Land Office and in the local land offices is to be regarded as equivalent to an order withdrawing such lands under the second form, and as an order changing to the second form any withdrawals of the first form then effective as to any such tracts. This applies to all areas shown on the farm-unit plats as subject to entry under the provisions of the Reclamation Act or as subject to the filing of water-right applications. Upon receipt of such plats appropriate notations of the change of form of withdrawals are to be made in accordance therewith upon the records of the General Land Office and of the local land offices.

In the event any lands embraced in any entry on which final proof has not been offered, or in any unapproved or uncertified selection, are needed in the construction and maintenance of any

irrigation works (other than for right of way for ditches or canals reserved under Act of Aug. 30, 1890) under the Reclamation Act, the Government may cancel such entry or selection and appropriate the lands embraced therein to such use, after paying the value of the improvements thereon and the enhanced value of such lands caused by such improvements.

18. Uncompleted claims to lands withdrawn under the provisions of the Reclamation Act and determined to be needed for construction of irrigation works in connection with a project that has been found practicable should not be allowed to be perfected, but should remain in the same status as existed at the time the determination was made, and the rights of the claimants adjusted upon the basis of that status. (Opinion of Asst. Atty. General, 34 L. D., 421.)

19. Where the owners of the improvements mentioned in paragraph 17 shall fail to agree with the representative of the Government as to the amount to be paid therefor, the same shall be acquired by condemnation proceedings under judicial process, as provided by section 7 of the Reclamation Act.

20. Inasmuch as every entry within the limits of a withdrawal under the Reclamation Act is subject to conformation to an established farm unit, improvements placed upon the different subdivisions by the entryman prior to such conformation are at his risk. (Jerome M. Higman, 37 L. D., 718.) They should be confined to one legal subdivision until the entry is conformed. In readjusting such an entry the Secretary is not required to confine the farm unit to the limits of the entry, but may combine any legal subdivision thereof with a contiguous tract lying outside of the entry so as to equalize in value the several farm units. (Idem.) The Act of June 27, 1906, supra, authorizes the Secretary of the Interior to fix a lesser area than 40 acres as a farm unit when, "by reason of market conditions and special fitness of the soil and climate for the growth of fruit and garden produce, a lesser area than forty acres may be sufficient for the support of a family" or when necessary "in order to provide for practical and economical irrigation."

Additional Entries.

21. A person who has entered a farm unit within a project can not make an additional homestead entry. One who has made homestead entry for less than 160 acres outside of a reclamation project is disqualified from making an additional entry of a farm unit within a reclamation project, which farm unit is the equivalent of a homestead entry of 160 acres of land outside of the reclamation project.

22. Where, however, the first or original homestead entry was made subject to the restrictions and conditions of the Reclamation Act, any entry additional thereto would be likewise subject to the same restrictions and conditions, and in such cases additional entries may be allowed within reclamation projects under Acts authorizing additional entries, except where farm units have been established prior to the filing of the applications. Both entries so allowed are subject to the same adjustment to one farm unit as if the entire tract had been included in the first entry. (Henry W. Williamson, 38 L. D., 233.)

Contests.

23. No private contest will be allowed against any entry embracing land included within the area of any first form withdrawal or land reserved for irrigation purposes, commonly known as land under the second form of withdrawal, until the Secretary of the Interior shall have established the unit of acreage and fixed the water charges, and the date when the water can be applied and made public announcement of the same. In cases where contest has been allowed as to entries on second form lands, the Act of Congress approved June 25, 1910 (36 Stats., 835), precludes entry by successful contestants until the lands are restored to the public domain or platted to farm units and covered by public notice under section 4 of the Reclamation Act. In all cases where a contest has been allowed prior to the withdrawal of the lands, or in the case of entries on second form lands, prior to the approval of the Act of June 25, 1910, the withdrawal attaches to the lands involved immediately on cancellation of the entry and no rights can be obtained by the contestant in the event that the entry is canceled under the contest proceedings prior to the vacation of the order of withdrawal and opening of the lands to entry. In all cases where a preference right has been gained by virtue of a successful contest, terminated before the withdrawal of the land or the passage of the said Act, the successful contestant may exercise his right and make entry at any time within thirty days from notice that the lands involved have been restored to the public domain or covered by public notice and made subject to entry, but, in the latter event, his entry must be made subject to the limitations, charges, and conditions imposed by the Reclamation Act.

24. Any entry of land embraced within the area of a second form withdrawal may be contested after farm units have been established covering such entry and public notice has issued in connection with the same, fixing the water charges and the date when water can be applied, and if at the date of entry by the successful contestant the lands have not been released from the withdrawal under the provisions of the Reclamation Act, his entry will be subject to the limitations, charges, and conditions imposed by that Act.

Leave of Absence.

25. When homestead entrymen within irrigation projects file in the local land office applications for leave of absence under the provisions of the Act of June 25, 1910, the Register and Receiver will make proper notation of the same on their records and, at once, by special letter, forward the application, together with their recommendation thereon, to the General Land Office for action.

26. These applications for leave of absence should be in the form of an affidavit, duly corroborated by two witnesses, contain a specific description of the land, show the good faith of the applicant, and set forth in detail the character, the extent, and the approximate value of the improvements placed on the lands, which must be such as to satisfy the requirements of the law that the entryman has made substantial improvements, and the applicant must show, as a matter of fact, that water is not available for the irrigation thereof.

27. When sufficient showing is made in cases coming within the provisions of the law, leave of absence will be granted until such time as water for irrigation is turned into the main irrigation canals from which the land is to be irrigated or, in the event that the project is abandoned by the Government, until the date of notice of such abandonment and the restoration to the public domain of the lands embraced in the entry.

28. Attention is directed to the provision that "the period of actual absence shall not be deducted from the full time of residence required by law." The effect of the granting of leave of absence under this Act is to protect the entry from contest for abandonment and, by the necessary implication of the Act, the period of seven years within which the entryman is required to submit final five-year proof will be extended and the entry will not be subject to cancellation for failure to submit proof until seven years from the date of entry, exclusive of the period for which leave of absence may be granted. (See Three-Year Homestead Law.)

Assignments.

29. Under the provisions of the Act of June 23, 1910 (36 Stat., 592) persons who have made or may make homestead entries subject to the Reclamation Act may assign their entries in their entirety at any time after filing in this office satisfactory proof of residence, improvements, and cultivation for the five years required by the ordinary provisions of the homestead law. The Act also provides for the assignment of homestead entries in part, but such assignments, if made prior to the establishment of farm units, must be made in strict accordance with the legal subdivisions of the public survey, and if made after such units are established must conform thereto, except as hereinafter provided.

30. In cases where the entry involves two or more farm units, the entryman may file an election as to which farm unit he will retain, and he may assign and transfer to a qualified assignee any farm unit or farm units entirely embraced within the original entry. He may also assign parts of farm units included in his entry, provided the assignee has an entry covering or obtains an assignment of the remainder of such unit. If an election by the entryman to conform to a farm unit be filed and no assignment made of the remainder of the entry, the entry will be conformed to the farm unit selected for retention and canceled as to the remainder.

31. Where it is desired to assign a part of an established farm unit, an application for the amendment and subdivision of such unit should be filed with the project engineer, and the assignment, with accompanying affidavit and supplemental water right application, should be filed in the local land office.

32. If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit, or the division of the irrigable area, a deposit equal to the estimated cost of such survey must be made with the special fiscal agent, Reclamation Service, on the project by or on behalf of the parties concerned. Any excess over the actual cost will be returned to the depositor or depositors after completion of the survey and they will also be required to make good any deficiency in their deposit.

33. When the plats describing the amended farm units are

approved by the engineer in charge of the project he will forward a copy of the amended plat to the local land office where the same will be treated as an official amendment of the farm unit plat, which will thereafter be formally approved in the usual manner by authority of the Secretary.

34. No assignment of any portion of any farm unit will be accepted by the Commissioner of the General Land Office or recognized as modifying any approved water right application or releasing any part of the farm unit as originally established from any portion of the charges announced against it until after the filing in the local land office of evidence of the qualifications of the assignee, and a proper water right application with payment of all amounts due upon the land included in the assignment.

35. Assignments under this Act must be made expressly subject to the limitations, charges, terms, and conditions of the Reclamation Act, and, inasmuch as that Act limits the right of entry to one farm unit, the assignee must present a showing in the form of an affidavit duly corroborated, that he has not acquired title to and is not claiming any other farm unit or entry under the Reclamation Act, and has no other existing water right applications covering an area of land which added to that taken by assignment will exceed one hundred and sixty acres, or the maximum limit of area fixed by the Secretary.

36. Assignments made and filed in accordance with these regulations must be noted on the local office record and at once forwarded to the General Land Office for immediate consideration, and, if approved, the assignees in each case will be required to make payment of the water right charges and submit proof of reclamation as would the original entryman, and, after proof of full compliance with the law, may receive a patent for the land.

Mortgages.

37. Mortgages of lands embraced in homestead entries within reclamation projects may file in the local land office for the district within which the land is located a notice of such mortgage, and shall become entitled to receive and be given the same notice of any contest or other proceedings thereafter had affecting the land as is required to be given the entryman in connection with such proceeding. Every such notice of a mortgage received must be forthwith noted upon the records of the local land office and be promptly reported to the General Land Office, where like notation will be made. Relinquishment of a homestead entry within a reclamation project upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted, unless the mortgagee joins therein, nor will an assignment of such an entry or part thereof under the Act of June 23, 1910 (36 Stat., 592), be recognized or permitted unless the assignment specifically refers to such mortgage and is made and accepted subject thereto.

Cancellation.

38. All persons holding land under homestead entries made under the Reclamation Act must, in addition to paying the water right charges, reclaim at least one-half of the total irrigable area of

their entries as finally adjusted for agricultural purposes, and reside upon, cultivate, and improve the lands embraced in their entries for not less than the period required by the homestead laws. Any failure to make any two payments when due or to reclaim the lands as above indicated, or any failure to comply with the requirements of the homestead laws and the Reclamation Act as to residence, cultivation, and improvement, will render their entries subject to cancellation and the money already paid by them subject to forfeiture, whether they have filed water right application or not.

Widows and Heirs of Entrymen.

39. The widows or heirs of persons who make entries under the Reclamation Act will not be required both to reside upon and cultivate the lands covered by the entry of the person from whom they inherit, but they must reclaim at least one-half of the total irrigable area of the entry for agricultural purposes as required by the Reclamation Act and make payment of all unpaid charges when due and before either final certificate or patent can be issued.

40. Upon the death of a homesteader having an entry within an irrigation project, leaving no widow and only minor heirs, his right may, under section 2292, Revised Statutes, be sold for the benefit of such heirs. (See heirs of Frederick C. De Long, 36 L. D., 332.) If in such case the land has been divided into farm units the purchaser takes title to the particular unit to which the entry has been limited, but if subdivision has not been made he will acquire an interest only in the land which would have been allotted to the entryman as his farm unit, in either case taking subject to the payment of the charges authorized by the Reclamation Act and regulations thereunder and free from all requirements as to residence and cultivation (idem).

Final Proof.

GENERAL INFORMATION.

41. All persons who apply to make entry of lands within the irrigable area of any project commenced or contemplated under the Reclamation Act will be required to comply fully with the homestead law as to residence, cultivation, and improvement of the land, and the failure to supply water from such works in time for use upon the land entered will not justify a failure to comply with the law and to make proof thereof within the time required by the statutes, except in cases where leave of absence is granted under the Act of June 25, 1910 (supra).

42. Persons who have resided upon, cultivated and improved their lands for the length of time prescribed by the homestead laws will not thereafter be required to continue such residence and cultivation, and they may make final proof of reclamation at any time when they can also make proof of the necessary residence, cultivation, and improvement for five years, but no final certificate or patent will issue until all fees, commissions, and construction charges, including operation and maintenance charges due at the time of payment, have been paid in full. The entire building charge and such installments of the operation and maintenance charges as are then due may be paid at any time after the entry has been conformed to a farm unit, and prior to the time on which they otherwise fall due under the terms of the public notice.

43. Soldiers and sailors of the war of the rebellion, the Spanish-American War, or the Philippine insurrection, and their widows and minor orphan children who are entitled to claim credit for the period of the soldier's service under the homestead laws, will be allowed to claim credit in connection with entries made under the Reclamation Act, but will not be entitled to receive final certificate of patent until all the water-right charges have been paid in full and the requirements as to reclamation have been met.

44. Upon the tendering to Registers and Receivers of homestead proofs in entries subject to the Reclamation Act, they will accept only the testimony fees for "reducing testimony to writing and examining and approving testimony," and will not accept final commissions payable under such entries until proof is submitted showing full compliance with all requirements of the Act of June 17, 1902, including the payment of all reclamation charges.

45. On September 9, 1910, the Acting Secretary of the Interior approved a form of water-right certificate to be signed by the Commissioner of the General Land Office and given to water-right applicants upon submission of satisfactory proof of full compliance with the requirements of the Reclamation Act, and two forms of final affidavit, corroborated, to be submitted, the first by the owner of private land reclaimed under the Act of June 17, 1902 (32 Stat., 388), and the second by the homestead entrymen under the provisions of said Act (38 L. D., 197). These forms have been printed as forms 4-193, 4-068, and 4-073, respectively, and a supply of the last two forms has been furnished Registers and Receivers, who will require all water users desiring to make final proof of compliance with the requirements of the Reclamation Act as to reclamation of one-half of the irrigable lands in their entries or water rights and the payment of the estimated building charges and assessed operation and maintenance charges, to submit affidavit, duly corroborated by two witnesses, on the appropriate form.

46. To establish compliance with the clause of the Reclamation Act that requires reclamation of at least one-half of the irrigable area of an entry made subject to the provisions of the act, entrymen will be required to make proof showing that the land has been cleared of sagebrush or other incumbrance and leveled, that sufficient laterals have been constructed to provide for the irrigation of the required area, that the land has been put in proper condition and has been watered and cultivated, and that the growth of at least one satisfactory crop has been secured thereon, but the securing of an actual and satisfactory growth of orchard trees shall likewise be regarded as satisfactory reclamation. When proof of reclamation of one-half the irrigable area is made in advance of full payment of the charges, evidence of satisfactory proof thereof will be issued by the General Land Office.

47. Upon the filing of affidavit on form 4-068 or 4-073 as proof of compliance with the requirements of the Reclamation Act the Register and Receiver will forward copy thereof to the engineer in charge of the project, who will make prompt report thereon. Upon receipt of such report in case of homestead entries upon which final proof has been accepted by this office, the Register and Receiver will issue final certificate of compliance with the homestead laws and forward the same with the affidavit and engineer's report to

this office with such recommendations as they deem proper. When such affidavit appears sufficient, and the case is otherwise regular, final water-right certificate (Form 4-193) will issue and the case will be approved for patent. In the case of water-right contracts for lands in private ownership, final water-right certificate will be issued by this office where the final affidavit is found to be sufficient, and the certificate so issued will constitute full evidence of the water user's right to the use of water appurtenant to the lands covered by his contract.

REPORTS ON FINAL PROOF NOTICES.

48. Registers and Receivers are directed to furnish chiefs of field divisions with copies of notices of application to make proof, noting on each application the particular project wherein the land lies. When the notice involves any lands withdrawn under the first form withdrawal authorized by the Reclamation Act, they will indorse on the back of the notice mailed to the chief of field division: "For report by indorsement hereon as to whether the described lands, or any of them, are needed for construction purposes." In all cases as soon as such notice is received by the chief of field division, he will refer the same to the project engineer, who will make report by indorsement on the notice as to whether the lands are needed for construction purposes and as to any other matters as he may be instructed to report on by special instructions. This notice should be returned by the engineer to the chief of field division in sufficient time to enable that officer to return the same to the local land officers prior to the date fixed for proof.

49. If the lands covered by the final proof notice were entered prior to withdrawal for reclamation purposes, and the project engineer reports that they are not needed for construction purposes, final certificate will be issued upon submission of final proof as on entries not subject to the Reclamation Act. In all cases where the lands are entered prior to reclamation withdrawal and the project engineer reports that they are needed for construction purposes, and in all cases where the entry was made after withdrawal of the lands for reclamation purposes, whether or not they are needed for construction purposes, the Register and Receiver will forward the proof, if found to be regular, to the General Land Office without issuance of final certificate.

50. If any final proof offered under this Act be irregular or insufficient, the Register and Receiver will reject it and allow the entryman the usual right of appeal; and if the General Land office finds any proof forwarded to be insufficient or defective in any respect, it may be rejected and the entryman will be notified of that fact, or he may be given an opportunity to cure the defect or to present acceptable proof

NOTICE TO CONFORM.

51. The Registers and Receivers are directed to notify, in writing, every person who makes final proof on a homestead entry which is subject to the limitations and conditions of the Act of June 17, 1902, embracing land included in an approved farm-unit plat, where the entry does not conform to an established farm unit, and conformation notice has not already been issued, that thirty days

from notice is allowed such entryman to elect the farm unit he desires to retain, in default of which the entry will be conformed by the General Land Office.

ACTION ON PROOFS.

52. Homesteaders who have resided on, cultivated, and improved their lands for the time required by the homestead laws, and have submitted proof which has been found satisfactory thereunder by the General Land Office, but who are unable to furnish proof of reclamation because water has not been furnished to the lands or farm units not established, will be excused from further residence on their lands and will be given a notice reciting that further residence is not required, but that final certificate and patent will not issue until proof of reclamation of one-half of the irrigable area of the entry as finally adjusted and payment of all charges imposed by the public notice issued in pursuance of section 4 of the Reclamation Act.

Control of Sublaterals.

53. The control of operation of all sublaterals constructed or acquired in connection with projects under the Reclamation Act is retained by the Secretary of the Interior to such extent as may be necessary or reasonable to assure to the water users served therefrom the full use of the water to which they are entitled. (See 37 L. D., 468.)

Water Rights.

WATER RIGHTS FOR LANDS IN PRIVATE OWNERSHIP.

54. Lands which have been patented or which were entered before the reclamation withdrawal may obtain the benefit of the Reclamation Act, but water-right contracts may not be held for more than 160 acres by any one landowner, and such landowner must be an actual bona fide resident on such land or occupant thereof residing in the neighborhood. The Secretary of the Interior has fixed the limit of residence in the neighborhood at a maximum of 50 miles. This limit of distance may be varied, depending on local conditions. A landowner may, however, be the purchaser of the use of water for more than one tract in the prescribed neighborhood at one time, provided that the aggregate area of all the tracts involved does not exceed the maximum limit established by the Secretary of the Interior nor the limit of 160 acres fixed by the Reclamation Act; and a landowner who has made contract for the use of water in connection with 160 acres of irrigable land and sold the same together with the water right, can make other and successive contracts for other irrigable lands owned or acquired by him. Holders of more than 160 acres of irrigable land within a reclamation project must sell or dispose of all in excess of that area before they can receive water. If the holder of a greater area desires, he can subscribe for stock in the local water users' association (if there be one) for his entire holding, executing a trust deed, giving the association power to ultimately sell the excess area to actual settlers who are qualified to comply with the Reclamation Act, unless the land has been sold by the owner when the Government is ready to furnish water thereon.

55. The purpose of the Reclamation Act is to secure the reclamation of arid or semiarid lands and to render them productive, and section 8 declares that the right to the use of water acquired under this Act shall be appurtenant to the land irrigated and that "beneficial use shall be the basis, the measure, and the limit of the right." There can be no beneficial use of water for irrigation until it is actually applied to reclamation of the land. The final and only conclusive test of reclamation is production. This does not necessarily mean the maturing of a crop, but does mean the securing of actual growth of a crop. The requirement as to reclamation imposed upon lands under homestead entries shall therefore be imposed likewise upon lands in private ownership and land entered prior to the withdrawal—namely, that the landowner shall reclaim at least one-half of the total irrigable area of his land for agricultural purposes, and no right to the use of water will permanently attach until such reclamation has been shown. (See 37 L. D., 468.)

56. The provisions of section 5 of the Reclamation Act relative to cancellation of entries with forfeiture of rights for failure to make any two payments when due evidently states the rule to govern all who receive water under any project, and accordingly a failure on the part of any water-right applicant to make any two payments when due shall render his water-right application subject to cancellation with the forfeiture of all rights under the Reclamation Act as well as of any moneys already paid to or for the use of the United States upon any water right sought to be acquired under said Act. (37 L. D., 468.)

VESTED WATER RIGHTS.

57. The provision of section 5 of the Reclamation Act limiting the area for which the use of water may be sold does not prevent the recognition of a vested right for a larger area and protection of the same by allowing the continued flowing of the water covered by the right through the works constructed by the Government under appropriate regulations and charges.

CORPORATION LANDS.

58. Under dates of February 2, 1909 (37 L. D., 428), and March 3, 1909, the department held that under section 5, Act of June 17, 1902, a corporation, otherwise competent, is entitled to take water under the statute, provided its home office is on or in the neighborhood of the land for which it seeks water service.

59. Further, that the corporation must show its stockholders, and that as individuals they have not in the aggregate taken water rights that, with that claimed by the corporation, will amount to more than 160 acres or the maximum limit of area established by the Secretary of the Interior. Registers and Receivers are accordingly instructed to be guided by the rulings of the department, as set forth above, in their action on water-right applications by corporations when presented.

TOWNSITE SUBDIVISIONS.

60. Where water-right application has been made and accepted for land in private ownership, no new water-right application by any purchaser of part of the irrigable area of such private land will

be accepted for land so purchased, if the same is subdivided into lots of such form and area as to indicate a use thereof for townsite rather than for agricultural or horticultural purposes. In such case, no notation shall be made of such transfer on the original water-right application, but water will be furnished such land on the original application, and the water-right charges collected thereunder, as if no such sale or sales had been made.

61. Water for land subdivided into such form and areas as to indicate a use thereof for townsite rather than for agricultural or horticultural purposes may be procured for the entire acreas so subdivided, by contract with the Reclamation Service through the proper representatives of the landowners, as authorized by the Secretary of the Interior under the Acts of April 16 and June 27, 1906 (34 Stat., 116 and 519).

62. Where separate water-right applications, otherwise valid, have been accepted for lands subdivided into such form and areas as indicate a use thereof for townsite rather than for agricultural and horticultural purposes, such water-right applications and the corresponding subscriptions to the stock of the water users association may be surrendered and canceled, and water supplied to such lands under the provisions of the said Acts of April 16 and June 27, 1906, upon such terms and conditions as will return to the Reclamation Service an amount not less than the charges due under such water-right-applications. Similar adjustment by cancellation and new contract may be made where water-right application has been accepted and the land has been subsequently subdivided into tracts of form and area as above.

WATER-RIGHT APPLICATION.

63. The department has adopted three forms of applications for water rights, viz., Form A (4-021) for homesteaders who have made entries of lands withdrawn under the second form of withdrawal; Form B (4-020) for private owners of lands embraced within said project; and Form C (4-019) for Indian allottees. Copies of these forms have been furnished Registers and Receivers, and they will be used in all applications for water rights in any of the reclamation projects.

64. Upon notice issued by the Secretary of the Interior that the Government is ready to receive applications for water right for described lands under a particular project, all persons who have made entries of lands under the provisions of the Act of June 17, 1902 (32 Stat., 388), will be required to file application for water rights on Form A for the number of acres of irrigable land in the farm unit entered, as shown by the plats of farm units approved by the Secretary of the Interior.

65. Upon the issuance of such notice private landowners and entrymen whose entries were made prior to withdrawal may, in like manner, apply on forms B or C for water rights for tracts not containing more than 160 acres of irrigable land, according to the approved plats, unless a smaller limit has been fixed as to lands in private ownership by the Secretary of the Interior.

66. Each application on Form B or Form C must contain a statement as to the distance of the applicant's residence from the land for which a water right is desired.

67. If a greater distance than that fixed for the project is shown in any application, the case should be reported to the Commissioner of the General Land Office for special consideration upon the facts shown. If the applicant is an actual bona fide resident on the land for which water-right application is made, the clause in parentheses of Form B or Form C, regarding residence elsewhere, must be stricken out.

68. The applicant on Form B or Form C must state accurately the nature of his interest in the land. If this interest is such that it can not ripen into a fee-simple title at or before the time when the last annual installment for water right is due, the Register and Receiver must reject the application.

69. Form B (4-020) is intended for use by owners of private land and entrymen whose entries were made prior to the withdrawal of the land within reclamation projects in entering into contracts with the United States for the purchase of a water right, and must be signed and sealed in duplicate and acknowledged before a duly authorized officer in the manner provided by local law. A space is provided on the blank for evidence of the acknowledgment, which should be in exact conformity to that required by the statutes of the State in which the lands covered by the contract lie for the execution of mortgages or deeds of trust. When so executed both originals must be filed in the local land office together with three complete copies, either in person or by mail. If the application is regular and sufficient in all respects, duly approved by the project engineer, and bears the certificate of the secretary of the local water users' association, if there be one, and is accompanied by the proper payments required by the provisions of the public notices issued in connection with the local reclamation project, the Register will accept the same by filling out the blank provided at the bottom of the third page and attach his signature and seal by placing a scroll around the word "Seal."

70. Attention is especially called to sections 3743 and 3747, inclusive, of the Revised Statutes, relative to the deposit and execution of public contracts. The Register will immediately after execution of the contract execute the oath of disinterestedness required by section 3745, Revised Statutes, before a duly authorized officer on the blank form provided on the last page of the water-right contract.

No funds are available for the payment by the Government of any fees in connection with this oath, and the Register should therefore take such oath before the Receiver of public moneys, who is precluded by section 2246, Revised Statutes, from charging or receiving directly or indirectly any compensation for the administering of such oath. In the event that it becomes necessary to take this oath before any other authorized officer, the fee due such officer must be paid to him by the water-right applicant, and Registers are authorized to refuse to accept the water-right application on failure of the applicant to make such payment.

71. Section 3744, Revised Statutes, makes it the duty of a public officer executing a contract on behalf of the United States to file a copy of the same in the returns office of this department as soon as possible and within thirty days after the making of the contract, and Registers will therefore forward to that office one of

the original copies of each contract as soon as possible after the execution of the same. The provision of said section requiring that all papers in relation to each contract shall be attached together by a ribbon and seal, and marked by numbers in regular order, according to the number of papers composing the whole return, does not apply to the contracts for the purchase of water rights, because of the fact that only one paper is used.

72. As stated in the instructions for the execution of the blank upon the third page thereof, the contract must be duly recorded in the records of the county in which the lands are situated, and therefore immediately upon execution of the contract the second original copy will be returned to the applicant, and he will be required to have the contract duly recorded by the proper recording officer, at his own expense, and return the contract to the local land office within thirty days, in default of which the Register and Receiver will make report to the General Land Office and the contract will be canceled without further notice for failure to comply with the regulations.

73. Upon return of the original copy of the contract to the local land office bearing certificate at the bottom of the last page, executed by the recording officer showing the recordation of the instrument, the Register will fill out the same blank on the three copies held in his office, signing the name of the recording officer with the word "signed" in parentheses, preceding such name. The second original copy, when thus completed, is to be forwarded to the Auditor of the Treasury Department for the Interior Department, and one of the other copies will be forwarded to the applicant, one to the project engineer and the last copy must be forwarded to this office with the regular monthly returns.

74. No new forms of water-right application carrying assignments of credit (4-020a and 4-021a) have been prepared, and the use of the old forms bearing these numbers has been abandoned, and where application is filed by an assignee either of an entryman under the Reclamation Act or a private landowner, the new forms 4-020 or 4-021 should be used, and at the bottom of the last page, without the use of any additional papers, the prior applicant should execute the following form, either written in ink or typewritten:

I, ——— ———, for value received, hereby sell and assign to ——— all my right, title and interest in and to any credits heretofore paid on water-right application No. ——— for the above-described land, together with all interests possessed by me under said application.

——— ———,
Assignor.

——— ———,
Witness.

75. Action on cases bearing such assignment will be the same as on other cases, except that the assignment must be permissible under the provisions of existing public notices and departmental regulations.

76. In order to avoid discrepancies in areas and resulting payments and the acceptance of applications for tracts not designated as lands for which water can be furnished, the following instructions are issued:

I. When practicable, all applications for water rights, both by

homesteaders who have made entries of lands withdrawn and by private owners of lands embraced within a reclamation project, should be submitted by the applicants to the project engineer, United States Reclamation Service, for his examination and approval, before the applications are filed in the local land offices. In such cases the project engineers will indorse their approval upon the application forms if found correct, or point out defects and suggest corrections if any are required.

II. Where, because of lack of time, distance, or necessity of submitting the water-right applications with applications to make original homestead entries, etc., it is not practicable to have the water-right applications examined and approved by the project engineer prior to the filing in the local land office, the water-right applications must be filled out and filed in the local land office accompanied by an extra copy. Registers and Receivers will suspend action in such cases and daily forward to the proper project engineer one copy of each of such water-right applications for examination and return by the engineer within fifteen days, approved by him, or with defects indicated and corrections suggested if not in form for approval. In the latter case the applicant should be promptly advised and allowed thirty days to make the necessary amendments, in default of which the application will be rejected.

III. The Reclamation Service will advise its project engineers that their approval will be regarded as certifying to the correctness of the following matters: (a) That the land described is subject to water-right application under the project; (b) that the irrigable acreage shown is correct in accordance with the public notices, the official plats, and instructions approved by the Secretary of the Interior; (c) that the number of acre-feet per annum to be furnished is correctly stated; (d) that the amount of the building charge is correctly stated; (e) that the number of annual installments is correctly stated. Before certifying any water-right application for private lands the local engineer of the Reclamation Service shall see that it includes all the land owned by the applicant within the subdivision in addition to the other irrigable lands owned by him on the project and open to application for a water right, not exceeding the limit of area fixed by the Reclamation Act and the public notice in pursuance of which the application is presented.

IV. These regulations are designed to aid the applicants in presenting water-right applications which will be correct in form, and which contain matters essential to the approval of their applications; also, to aid the Registers and Receivers of local land offices in the consideration of such application; and Registers and Receivers are, therefore, enjoined to use both care and diligence in enforcing the above requirements.

V. If the Secretary of the Interior has made a contract with a water users' association organized under the project, due notice thereof will be given to the Registers and Receivers, and applications for water rights should not be accepted in such cases unless the certificate at the end thereof has been duly executed by the said association.

77. The following rules are laid down with reference to water-

right applications for land in private ownership, including entries not subject to the Reclamation Act:

I. Where water-right application is presented covering only part of the irrigable area of a subdivision in private ownership, not subdivided into lots and blocks for townsite purposes, the Register and Receiver will accept it, provided it bears the usual certificates of the project engineer and the local water users' association (where such association has been formed and contract entered into with the Secretary of the Interior).

II. In case of sale by a private owner of part of the irrigable land covered by a subsisting water-right application, the vendor, in order to have his water-right charges adjusted to the reduced acreage retained by him, will be required to present the following evidence:

a. Certificate of the proper officer having charge of the county records, showing record of a subscription for stock in the local water users' association covering the land in question and that the land has been duly conveyed by the subscriber at a time subsequent to the recording of the stock subscription.

b. The certificate of the local water users' association, if one has been organized on the project, under corporate seal, to the effect that proof has been presented to the association of the transfer of the land to the person named and that appropriate transfer has been made on its books of the shares of stock appurtenant to said land.

c. The vendor should also so arrange that his vendee shall promptly make a water-right application for the irrigable land within the tract conveyed to him, and upon presentation and acceptance of such application appropriate notation of such transfer, with a reference to the new water-right application, will be made on the original or prior water-right application.

III. In case of relinquishment by an entryman, whose entry is not subject to the Reclamation Act, of a part of the land included in his entry, appropriate notation will be made on his water-right application, showing such relinquishment, and his charges will be reduced accordingly.

IV. Where an entryman relinquishes a part of his entry under conditions described in Rule III hereof, and the next person who enters the land so relinquished claims credit for installments paid by the first entryman, he must at the time of such entry file with his application to enter an assignment in writing of the water-right credits of the prior entryman; also a water-right application covering the land entered.

78. In order that there may be no unnecessary delay in the obtaining of water by entrymen and landowners in reclamation projects, after they have filed water-right applications and made the required preliminary payment, the Register and Receiver are directed to issue in triplicate certificates of water-right applications accepted in connection with homestead entries made subject to the Reclamation Act. Certificate of filing water-right application will not be issued hereafter in connection with the new Form B (4—020), inasmuch as the acceptance of the contract is equivalent to such certificate. One copy of each certificate of filing

water-right application issued and of each water-right contract for lands in private ownership executed will be forwarded to the applicant and one copy to the engineer in charge of the project. At the end of each month the Register and Receiver are to prepare a schedule, Form 4—115b, of certificates issued upon water-right applications accepted during the month, showing also contracts executed, and an abstract, Form 4—105b, of collections of charges made during the month, forwarding the original in triplicate to this office and furnishing the Director of the Reclamation Service and the project engineer with copies of each monthly schedule of certificates and abstract of collections made. Receipts made from the sale of townsite lots should be reported separately on Form 4—105 for payment into the reclamation fund as original receipts on account thereof.

79. The copies of certificates of water-right applications and contracts must be forwarded, on the day issued, to the engineer in charge of the reclamation project wherein the lands are situated, and the monthly abstract of collections must be prepared and copy forwarded to him immediately after the close of the month during which the collections were made.

80. As above indicated, prompt action is essential in these matters in order that the applicants who are entitled to water may receive same at the earliest possible moment; and any dereliction in furnishing the copies of certificates and abstracts above indicated will be considered a failure of satisfactory performance of duty.

WATER-RIGHT CHARGES.

81. The Secretary of the Interior will at the proper time, as provided in section 4 of the Reclamation Act, fix and announce the area of lands which may be embraced in any entry thereafter made or which may be retained in any entry theretofore made under the Reclamation Act; the amount of water to be furnished per annum per acre of irrigable land and the charges which shall be made per acre for the irrigable lands embraced in such entries and lands in private ownership, for the estimated cost of building the works and for operation and maintenance, and prescribe the number and amount and the dates of payment of the annual installment thereof.

82. Under the Act of February 13, 1911 (36 Stats., 902) the Secretary is authorized in his discretion to withdraw any public notice issued prior to the passage of the Act.

83. If any entry subject to the Reclamation Act of June 17, 1902 (32 Stat., 388) is canceled or relinquished, the payment for water-right charges already made and not assigned in writing to a prospective or succeeding entryman under the provisions of paragraph 85 hereof are forfeited. All water-right charges which remain unpaid are canceled by the relinquishment or cancellation of the entry, except as provided by the specific provisions of public notices applicable to particular projects.

84. Any person who thereafter enters the same land must, in the absence of an assignment in writing or public notice to the contrary, pay the water-right charges as if the land had never been previously entered. No credit will be allowed in such cases for the

payment made by the prior entryman, and the new entryman must pay at the time of filing his homestead application and water-right application, such charges for building and operation and maintenance as are required by the public notice in force at the time on the particular project.

85. A person who has entered lands under the Reclamation Act, and against whose entry there is no pending charge of noncompliance with the law or regulations, or whose entry is not subject to cancellation under this Act, may relinquish his entry to the United States and assign to a prospective or succeeding entryman any credit he may have for payments already made under this Act on account of said entry, and the party taking such assignment may, upon making proper entry of the land and proving the good faith of the prior entryman to the satisfaction of the Commissioner of the General Land Office, receive full credit for all payments thus assigned to him, but must otherwise comply in every respect with the homestead law and the Reclamation Act.

86. The transfer of lands in private ownership covered by water-right contract before cancellation of the contract carries with it the burden of water-right charges and credit for the payments made by the prior owner. (See Dept. decision Mar. 20, 1911, in case of Fleming McLean and Thomas Dolf, 39 L. D., 580.)

87. All charges due for operation and maintenance of the irrigation system for all the irrigable land included in any water-right application must be paid on or before April 1 of each year, except where a different date is specified in the orders relating to the particular project, and in default of such payment no water will be furnished for the irrigation of such lands.

REGULATIONS AS TO THE COLLECTION OF RECLAMATION WATER-RIGHT CHARGES BY RECEIVERS OF PUBLIC MONEYS.

88. In accordance with the provisions of section 5 of the Reclamation Act, all payments of the annual installments of reclamation water-right charges, including the portions for building charges and operation and maintenance charges on reclamation water-right applications, shall be made to the Receivers of public moneys of the respective local land districts, but, for the convenience of the water-right applicants, the charges provided may be tendered to and received by the designated special fiscal agents for the several irrigation projects for transmission by them to the proper Receivers of public moneys. The acceptance of these water-right charges by the fiscal agents of the Reclamation Service can not be held to be a payment to the United States in accordance with the requirements of section 5 of the Reclamation Act until the moneys are actually in the hands of the proper Receivers of Public moneys. The permission granted above is only for the convenience of water-right applicants, but care will be taken to properly safeguard the handling of such funds until their receipt by the respective Receivers of public moneys. Notice of overdue water-right charges will be sent to water users by the Registers and Receivers whenever directed by the General Land Office and a press copy of every such notice must be sent to the project engineer in charge of the project on the same day without waiting for the end of the month.

89. Where payment is tendered for a part only of either an annual installment of water-right building charges or an annual operation and maintenance charge, Receivers may hereafter accept the same if the insufficient tender is, in the opinion of the Receiver, caused by misunderstanding as to the amount due and approximates the same.

90. In all cases of insufficient payment accepted in accordance with the provisions of the foregoing paragraph, receipts must issue for the amount paid and the money be deposited to the credit of the "Reclamation Fund," and the water user shall be immediately notified by registered letter that the payment is insufficient and allowed a period of thirty days to make payment of the balance due to complete the charge on which a part payment has been made. If the balance is paid within this period additional receipt must issue therefor, but if not paid within thirty days, report shall be made to the Commissioner of the General Land Office.

91. In all other cases where insufficient tenders are made Receivers will issue receipts therefor and return the money by their official check, with notice to the water user as to the reason for its return and properly report the transaction in their accounts.

92. When full payment is tendered direct to the Receiver of public moneys, and upon examination is found to be correct, the Receiver will issue the usual receipt, and send a press copy to the project engineer on the day issued.

93. Where payment is tendered through special fiscal agents of the Reclamation Service, and, upon examination, the amounts so transmitted by the special fiscal agent are found to be correct, the Receiver will then issue the usual receipt and transmit the same to the water-right applicant at his record post-office address. The Receiver will receipt to such special fiscal agent upon one copy (and retain the other copy) of the "Abstract of receipts of reclamation water-right charges (R. S., Form 7—406)" received from the special fiscal agent at the end of each month. See section 8 of instructions of May 27, 1908, to special fiscal agents, by the United States Reclamation Service.

94. Attention is invited to paragraph 4 of "Circular of instructions to special fiscal agents by the United States Reclamation Service," dated May 27, 1908, and in accordance therewith Receivers of public moneys will require payment direct to themselves in all matters involving tenders for fees on homestead entries; tenders for first installments on water-right applications, including both the portion for building and the portion for operation, and maintenance charges where the public notices require the first installment to be paid at the time of filing homestead entries, and tenders upon water-right applications where a notice of contest against the entry upon which the water-right application rests, has been reported by the Register of the land office. In all such cases payments must be made direct to the Receiver of public moneys.

95. All moneys collected in connection with water-right applications, both those received direct from water-right applicants and through special fiscal agents, must be deposited in Receivers' designated depositories to the credit of the Treasurer of the United States "on account of reclamation fund, water-right charges"

96. By section 5 of the Act of June 27, 1906 (34 Stat., 519), it is provided that any desert-land entryman who has been or may be directly or indirectly hindered or prevented from making improvements on or from reclaiming the lands embraced in his entry, by reason of the fact that such lands have been embraced within the exterior limits of any withdrawal under the Reclamation Act of June 17, 1902, will be excused during the continuance of such hindrance from complying with the provisions of the desert-land laws.

97. This Act applies only to persons who have been, directly or indirectly, delayed or prevented, by the creation of any reclamation project or by any withdrawal of public lands under the Reclamation Act, from improving or reclaiming the lands covered by their entries.

98. No entryman will be excused under this Act from a compliance with all of the requirements of the desert-land law until he has filed in the local land office for the district in which his lands are situated an affidavit showing in detail all of the facts upon which he claims the right to be excused. This affidavit must show when the hindrance began, the nature, character, and extent of the same, and it must be corroborated by two disinterested persons, who can testify from their own personal knowledge.

99. The Register and Receiver will at once forward the application to the engineer in charge of the reclamation project under which the lands involved are located and request a report and recommendation thereon. Upon the receipt of this report the Register and Receiver will forward it, together with the applicant's affidavit and their recommendation, to the General Land Office, where it will receive appropriate consideration and be allowed or denied, as the circumstances may justify.

100. Inasmuch as entrymen are allowed one year after entry in which to submit the first annual proof of expenditures for the purpose of improving and reclaiming the land entered by them, the privileges of this Act are not necessary in connection with annual proofs until the expiration of the years in which such proofs are due. Therefore, if at the time that annual proof is due it can not be made, on account of hindrance or delay occasioned by a withdrawal of the land for the purpose indicated in the Act, the applicant will file his affidavit explaining the delay. As a rule, however, annual proofs may be made, notwithstanding the withdrawal of the land, because expenditures for various kinds of improvements are allowed as satisfactory annual proofs. Therefore an extension of time for making annual proof will not be granted unless it is made clearly to appear that the entryman has been delayed or prevented by the withdrawal from making the required improvements; and, unless he has been so hindered or prevented from making the required improvements, no application for extension of time for making final proof will be granted until after all the yearly proofs have been made.

101. An entryman will not need to invoke the privileges of this Act in connection with final proof until such final proof is due, and if at that time he is unable to make the final proof of reclamation and cultivation, as required by law, and such inability is due, directly or indirectly, to the withdrawal of the land on account of

a reclamation project, the affidavit explaining the hindrance and delay should be filed in order that the entryman may be excused for such failure.

102. When the time for submitting final proof has arrived, and the entryman is unable, by reason of the withdrawal of the land, to make such proof, upon proper showing, as indicated herein, he will be excused, and the time during which it is shown that he has been hindered or delayed on account of the withdrawal of the land will not be computed in determining the time within which final proof must be made.

103. If after investigation the irrigation project has been or may be abandoned by the Government, the time for compliance with the law by the entryman will begin to run from the date of notice of such abandonment of the project and of the restoration to the public domain of the lands which had been withdrawn in connection with the project. If, however, the reclamation project is carried to completion by the Government and a water supply has been made available for the land embraced in such desert-land entry, the entryman must comply with all the provisions of the Act of June 17, 1902, and must relinquish all the land embraced in his entry in excess of 160 acres; and upon making final proof and complying with the terms of payment prescribed in said Act of June 17, 1902, he shall be entitled to patent. The area of the entry in excess of 160 acres must be relinquished to the United States and entrymen will not be permitted to assign such excess. See departmental decision of January 20, 1912 (40 L. D., 386).

104. Special attention is called to the fact that nothing contained in the Act of June 27, 1906, shall be construed to mean that a desert-land entryman who owns a water right and reclaims the land embraced in his entry must accept the conditions of the Reclamation Act of June 17, 1902, but he may proceed independently of the Government's plan of irrigation and acquire title to the land embraced in his desert-land entry by means of his own system of irrigation.

105. Desert-land entrymen within exterior boundaries of a reclamation project who expect to secure water from the Government must relinquish to the Government all of the lands embraced in their entries in excess of 160 acres whenever they are required to do so through the local land office, and must reclaim one-half of the irrigable area covered by their water right in the same manner as private owners of land irrigated under a reclamation project.

Townsites in Reclamation Projects.

106. Withdrawal, Survey, Appraisement, and Sale.—Townsites in connection with irrigation projects may be withdrawn and reserved by the Secretary of the Interior under the Acts approved April 16 and June 27, 1906 (34 Stat., 116, secs. 1, 2, and 3; and 519, sec. 4, respectively), and thereafter will be surveyed into town lots with appropriate reservations for public purposes, and will be appraised and sold from time to time in accordance with special regulations provided under section 2381, United States Revised Statutes, governing reclamation townsites.

107. Survey and Appraisal.—Townsites under any law direct-

ing their disposition under section 2381, will be surveyed, when ordered by the department, under the supervision of this office, into urban, or urban and suburban, lots and blocks, and thereafter the lots and blocks will be appraised by such disinterested person or persons as may be appointed by the Secretary of the Interior. Each appraiser must take his oath of office and transmit the same to this office before proceeding with his work. This office must be notified by wire of the time when such appraiser or appraisers enter on duty. They will examine each lot to be appraised and determine the fair and just cash value thereof. Improvements on such lots, if any, must not be considered in fixing such value. Lots or blocks reserved for public purposes will not be appraised.

108. The schedule of appraisement must be prepared in duplicate on forms furnished by this office, and the certificates at the end thereof must be signed by each appraiser, and on being so completed they must be immediately transmitted to this office, and when approved by the Secretary of the Interior one copy will be sent to the local officers.

109. Notices of sale will be published for thirty days (unless a shorter time be fixed in a special case) by advertisement in such newspapers as the department may select and by posting a copy of the notice in a conspicuous place in the Register's office.

110. How Sold.—Beginning on the day fixed in the notice and continuing thereafter from day to day (Sundays and legal holidays excepted) as long as may be necessary, each appraised lot will be offered for sale at public outcry to the highest bidder for cash, at not less than its appraised value.

111. Qualifications and Restrictions.—No restriction is made as to the number of lots one person may purchase. Bids and payments may be made through agents, but not by mail or at any time or place other than that fixed in the notice of sale.

112. Combinations in restraint of the sale are forbidden by section 2373 of the Revised Statutes of the United States, which reads as follows:

> Every person who, before or at the time of the public sale of any of the lands of the United States, bargains, contracts, or agrees, or attempts to bargain, contract, or agree with any other person, that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof, or who by intimidation, combination, or unfair management, hinders or prevents, or attempts to hinder or prevent any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

113. Suspension or postponement of the sale may be made for the time being, to a further day, or indefinitely, in case of any combination which effectually suppresses competition or prevents the sale of any lot at its reasonable value, or in case of any disturbance which interrupts the orderly progress of the sale.

114. Payments and Forfeitures.—If any bidder to whom a lot has been awarded fails to make the required payment therefor to the Receiver, before the close of the office on the day the bid was accepted, the right thereafter to make such payment will be deemed forfeited, and the lot will be again offered for sale on the following day, or if the sale has been closed, then such lot will be considered as offered and unsold, and all bids thereafter by the de-

faulting bidder may, in the discretion of the local officers, be rejected.

115. Lots Offered and Unsold.—Each lot offered and remaining unsold at the close of the sale will thereafter be and remain subject to private sale and entry, for cash, at the appraised value of such lot.

116. Certificates.—All lots purchased at the same time, in the same manner, in the same townsite, and by the same person should be included in one certificate, in order to prevent unnecessary multiplicity of patents. Lots sold at private sale should be accompanied by an application therefor, signed by the applicant. Certificates will be issued upon payment of the purchase price, as in other cases.

117. In all cases where the Secretary of the Interior shall direct the reappraisement of unsold lots under the first section of the Act of June 11, 1910 (36 Stats., 465), the reappraisement will be conducted under the regulations provided for under the original appraisement of lots in townsites created under the laws in said Act mentioned. The lots to be reappraised will not, from the date of the order therefor, be subject to disposal until offered at public sale at the reappraised value, which offering will be conducted under the regulations providing for the public sale of lots in such townsites. The lots so offered at public sale will then become subject to private sale at the reappraised price.

118. Whenever the Secretary of the Interior, in the exercise of the discretion conferred upon him by section 2 of said Act, shall order the payment of the purchase price of lots, sold in townsites created under the laws in said Act mentioned, to be made in annual installments, the same will be done under such regulations as may be issued in each particular instance. Transfers of lots will not be recognized, but entries and patents must be issued in the name of the original purchasers.

Fred Dennett,
Commissioner.

Approved, April 29, 1912.
Samuel Adams,
First Assistant Secretary of the Interior.

[Circular No. 110.]

Department of the Interior,
General Land Office,
Washington, May 10, 1912.

SPECIAL INSTRUCTIONS RELATIVE TO ASSIGNMENT OF RECLAMATION HOMESTEAD ENTRIES.

Registers and Receivers, United States Land Offices.

Sirs: Your attention is directed to the provisions of departmental circular approved April 29, 1912, relative to assignments of homestead entries under the Act of June 23, 1910, reading as follows:

Under the provisions of the Act of June 23, 1910 (36 Stats., 592), persons who have made or may make homestead entries subject to the Reclamation Act may assign their entries in their entirety at any time after filing in this office satisfactory proof of residence, improvements, and cultivation for the five years required by the ordinary provisions of the homestead law. The Act also provides for the assignment of homestead entries in part, but such assignments, if made prior to the establishment of farm units, must be made in strict accordance with the legal subdivisions of the public survey, and if made after such units are established must conform thereto, except as hereinafter provided.

In cases where the entry involves two or more farm units, the entryman may file an election as to which farm unit he will retain, and he may assign and transfer to a qualified assignee any farm unit or farm units entirely embraced within the original entry. He may also assign parts of farm units included in his entry, provided the assignee has an entry covering or obtains an assignment of the remainder of such unit. If an election by the entryman to conform to a farm unit be filed and no assignment made of the remainder of the entry, the entry will be conformed to the farm unit selected for retention and canceled as to the remainder.

Where it is desired to assign a part of an established farm unit, an application for the amendment and subdivision of such unit should be filed with the project engineer, and the assignment, with accompanying affidavit and supplemental water-right application, should be filed in the local land office.

If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit, or the division of the irrigable area, a deposit equal to the estimated cost of such survey must be made with the special fiscal agent, Reclamation Service, on the project by or on behalf of the parties concerned. Any excess over the actual cost will be returned to the depositor or depositors after completion of the survey and they will also be required to make good any deficiency in their deposit.

When the plats describing the amended farm units are approved by the engineer in charge of the project he will forward a copy of the amended plat to the local land office, where the same will be treated as an official amendment of the farm-unit plat, which will thereafter be formally approved in the usual manner by authority of the Secretary.

No assignment of any portion of any farm unit will be accepted by the Commissioner of the General Land Office or recognized as modifying any approved water-right application or releasing any part of the farm unit as originally established from any portion of the charges announced against it until after the filing in the local land office of evidence of the qualifications of the assignee, and a proper water-right application with payment of all amounts due upon the land included in the assignment.

Assignments under this Act must be made expressly subject to the limitations, charges, terms, and conditions of the Reclamation Act, and, inasmuch as that Act limits the right of entry to one farm unit, the assignee must present a showing in the form of an affidavit, duly corroborated, that he has not acquired title to and is not claiming any other farm unit or entry under the Reclamation Act, and has no other existing water-right applications covering an area of land which added to that taken by assignment will exceed one hundred and sixty acres, or the maximum limit of area fixed by the Secretary.

Assignments made and filed in accordance with these regulations must be noted on the local office record and at once forwarded to the General Land Office for immediate consideration, and, if approved, the assignees in each case will be required to make payment of the water-right charges and submit proof of reclamation as would the original entryman, and, after proof of full compliance with the law, may receive a patent for the land.

Mortgages.

Mortgages of lands embraced in homestead entries within reclamation projects may file in the local land office for the district within which the land is located a notice of such mortgage, and shall become entitled to receive and be given the same notice of any contest or other proceedings thereafter had affecting the land as is required to be given the entryman in connection with such proceeding. Every such notice of a mortgage received must be forthwith noted upon the records of the local land office and be promptly reported to the General Land Office, where like notation will be made. Relinquishment of a homestead entry within a reclamation project upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted unless the mortgagee joins therein, nor will an assignment of such an entry or part thereof under the Act of June 23, 1910 (36 Stats., 592), be recognized or permitted unless the assignment specifically refers to such mortgage and is made and accepted subject thereto.

Very respectfully,

S. V. Proudfit,
Assistant Commissioner.

RECLAMATION ENTRY—CANCELLATION OR RELINQUISHMENT—WATER RIGHT PAYMENTS.

[Circular.]

Department of the Interior,
General Land Office,
Washington, February 2, 1912.

Registers and Receivers, United States Land Offices.

Sirs: Paragraph 61 of the circular of May 31, 1910 (38 L. D., 620), is hereby amended to read as follows:

If any entry subject to the Reclamation Act of June 17, 1902 (32 Stat., 388), is canceled or relinquished, the payment for water right charges already made and not assigned in writing to a prospective or succeeding entryman under the provisions of paragraph 62 of the circular of May 31, 1910, are forfeited. All water-right charges which remain unpaid are canceled by the relinquishment of cancellation of the entry except as provided by the specific provisions of public notices applicable to particular projects.

Any person who thereafter enters the same land must, in the absence of an assignment in writing or public notice to the contrary, pay the water-right charges as if the land had never been previously entered. No credit will be allowed in such cases for the payment made by the prior entryman, and the new entryman must pay at the time of filing his homestead application and water-right application, such charges for building and operation and maintenance as are required by the public notice in force at the time on the particular project.

Very respectfully,

Fred Dennett,
Commissioner.

Approved:
Samuel Adams,
First Assistant Secretary.

[In reply please refer to Circular No. 137.]

Department of the Interior,
General Land Office,
Washington, June 25, 1912.

RELATIVE TO RELINQUISHMENTS OF PARTS OF FARM UNITS.

Registers and Receivers, United States Land Offices.

Sirs: Your attention is directed to department regulations approved December 18, 1911, on recommendation of the Director of the Reclamation Service, dated November 28, 1911, reading as follows:

"1. A homestead entryman subject to the Reclamation Act of June 17, 1902 (32 Stat., 388), may relinquish a part of his farm unit and have the payments which had been made on the relinquished part credited on the charges against the retained part, provided that the amendment in question may be

allowed without jeopardizing the interests of the Government in the collection of the charges against the portion of the tract relinquished.

"2. The entryman desiring to make such relinquishment shall submit his application therefor to the Project Engineer, who will transmit the same with his recommendation through the proper channel to the Director, who, if he finds no objection, will proceed as in other cases of proposed amendments of farm units."

When you are advised of the amendment of an established farm unit and its division into two or more farm units, and the entryman of the original farm unit files a relinquishment of all the lands in his entry outside of one of the newly established farm units and also files an application for readjustment of his water-right payments, so that the payments which had been made on the relinquished area may be credited on the irrigable area of the lands retained, you will make proper notation of such relinquishment on your records in the usual manner and will immediately readjust the water-right accounts in connection with such entry, and you will apply all moneys previously collected for water-right building charges toward the reduced area. The payments made for operation and maintenance charges for years prior to the relinquishment would not be subject to reduction.

Advise this office in every case where charges are so adjusted, transmitting the application of the entryman by special letter.

Very respectfully.

S. V. Proudfit,
Assistant Commissioner.

RULES OF PRACTICE IN CASES BEFORE THE UNITED STATES DISTRICT LAND OFFICES, THE GENERAL LAND OFFICE, AND THE DEPARTMENT OF THE INTERIOR—APPROVED DECEMBER 9, 1910. (SEE INDEX PAGE 251.)

IMPORTANCE NOTICE.

These Rules of Practice materially change those previously in force in respect to a number of important matters.

Note.—Where the old and new rules are substantially the same the decisions under former rules have been noted under proper section in these rules.

PROCEEDINGS BEFORE REGISTERS AND RECEIVERS.

Annotations refer to decisions of the Department of the Interior relating to Public Lands.

Initiation of Contests.

Rule 1. Contests may be initiated by any person seeking to acquire title to, or claiming an interest in, the land involved, against a party to any entry, filing, or other claim under laws of Congress relating to the public lands, because of priority of claim, or for any sufficient cause affecting the legality or validity of the claim, not shown by the records of the Land Department.

Any protest or application to contest filed by any other person shall be forthwith referred to the Chief of the Field Division, who will promptly investigate the same and recommend appropriate action.

(See vol. 40, L. D., 557.)

Application to Contest.

Rule 2. Any person desiring to institute contest must file, in duplicate, with the Register and Receiver, application in that behalf, together with statement under oath containing:

a. Name and residence of each party adversely interested, including the age of each heir of any deceased entryman.

b. Description and character of the land involved.

c. Reference, so far as known to the applicant, to any proceedings pending for the acquisition of title to or the use of such lands.

d. Statement, in ordinary and concise language, of the facts constituting the grounds of contest.

e. Statement of the law under which applicant intends to acquire title and facts showing that he is qualified to do so.

f. That the proceeding is not collusive or speculative, but is instituted and will be diligently pursued in good faith.

g. Application that affiant be allowed to prove said allegations and that the entry, filing, or other claim be canceled.

h. Address to which papers shall be sent for service on such applicant.

(Vol. 40-555 and 557.)

Rule 3. The statements in the application must be corroborated by the affidavit of at least one witness.

Land decisions: Vol. 2, page 57, 213; vol. 8, page 446; vol. 11, page 326; vol. 13, 333; vol. 14, 588; vol. 15, 300; vol. 16, 395; vol. 17, 99; vol. 19, 445; vol. 22, 189, 209, 468, 629; vol. 23, 314; vol. 27, 54; vol. 40, 496.

Rule 4. The Register and Receiver may allow any application to contest without reference thereof to the Commissioner; but they must immediately forward copy thereof to the Commissioner of the General Land Office, who will promptly cause proper notations to be made upon the records, and no patent or other evidence of title shall issue until and unless the case is closed in favor of the contestee.

Contest Notice.

Rule 5. The Register and Receiver shall act promptly upon all applications to contest and, upon the allowance of any such application, shall issue notice, directed to the persons adversely interested, containing:

a. The names of the parties, description of the land involved, and identification, by appropriate reference, of the proceeding against which the contest is directed.

b. Notice that unless the adverse party appears and answers the allegation of said contest within 30 days after service of notice the allegations of the contest will be taken as confessed.

(For contents of notice when publication is ordered, see Rule 9.)

Service of Notice.

Rule 6. Notice of contest may be served on the adverse party personally or by publication.

Rule 7. Personal service of notice of contest may be made by any person over the age of 18 years, or by registered mail; when served by registered mail, proof thereof must be accompanied by post-office registry return receipt, showing personal delivery to the party to whom the same is directed; when service is made personally, proof thereof shall be by written acknowledgment of the person served, or by affidavit of the person serving the same, showing personal delivery to the party served; except when service is

Circular No. 196—Nov. 9, 1912, Amended Rule 8 of Rules of Practice, as follows:

Rule 8. Unless notice of contest is personally served within 30 days after issuance of such notice and proof thereof made not later than 30 days after such service, or if service by publication is ordered, unless publication is commenced within 20 days after such order and proof of publication is made not later than 20 days after the fourth publication, as specified in Rule 10, the contest shall abate; Provided, That if the defendant makes answer without questioning the service or the proof of service of said notice, the contest will proceed without further requirement in those particulars.

made by publication, copy of the affidavit of contest must be served with such notice.

For the information of those who find it necessary to make service by registered mail, the following regulation of the Post Office Department is printed below:

Office of Third Assistant Postmaster General,
Washington, D. C., October 25, 1910.

To those concerned:

Sufficient time having elapsed since the issuance of the Postmaster General's Order No. 3276, amending sections 811, 852, and 855 of the Postal Laws and Regulations, providing that return receipts for registered mail shall be furnished only when the sender shall make request therefor by an indorsement upon the article, it is believed that the majority of the patrons of the registry service are now familiar with this requirement. Therefore, that part of the instructions from this office dated July 12, 1910, printed on pages 12 and 13 of the August, 1910, Postal Guide, requiring that "until further notice postal employees accepting mail for registration must in every case if a return receipt is desired," is hereby revoked, effective December 1, 1910.

A. M. Travers.

8. (Amended Mar. 11, 1912.) Unless notice of contest is personally served within 30 days after issuance of such notice and proof thereof made not later than 30 days after such service, or if service by publication is ordered, unless publication is commenced within 10 days after such order and proof of publication is made not later than 20 days after the fourth publication, as specified in rule 10, the contest shall abate: Provided, That if the defendant makes answer without questioning the service or the proof of service of said notice, the contest will proceed without further requirement in those particulars.

Circular No. 150.

Serving Notice by Publication.

Rule 9. Notice of contest may be given by publication only when it appears, by affidavit by or on behalf of the contestant, filed within thirty days after the allowance of application to contest and within ten days after its execution, that the adverse party can not be found, after due diligence and inquiry, made for the purpose of obtaining service of notice of contest within fifteen days prior to the presentation of such affidavit, of the postmaster at the place of address of such adverse party appearing on the records of the land office, and of the postmaster nearest the land in controversy and also of named persons residing in the vicinity of the land.

Such affidavit must state the last address of the adverse party as ascertained by the person executing the same.

The published notice of contest must give the names of the parties thereto, description of the land involved, identification, by appropriate reference, of the proceeding against which the contest is directed, the substance of the charges contained in the affidavit of contest, and a statement that, upon failure to answer within twenty days after the completion of publication of such notice, the allegations of said affidavit of contest will be taken as confessed.

The affidavit of contest need not be published.

There shall be published with the notice a statement of the dates of publication.

10. (Amended Mar. 7, 1911.) Service of notice by publication shall be made by publishing notice at least once a week for four successive weeks in some newspaper published in the county wherein the land in contest lies; and if no newspaper be printed in such county, then in a newspaper printed in the county nearest to such land.

Copy of the notice, as published, together with copy of the affidavit of contest, shall be sent by the contestant, within 10 days after the first publication of such notice, by registered mail, directed to the party for service upon whom such publication is being made, at the last address of such party as shown by the records of the land office, and also at the address named in the affidavit for publication, and also at the post office nearest the land.

Copy of the notice, as published, shall be posted in the office of the register, and also in a conspicuous place upon the land involved, such posting to be made within 10 days after the first publication of notice as hereinabove provided.

Circular No. 150.

Rule 11. Proof of publication of notice shall be by copy of the notice as published, attached to and made a part of the affidavit of the publisher, or foreman, of the newspaper publishing the same, showing the publication thereof in accordance with these rules.

Proof of posting shall be by affidavit of the person who posted notice on the land, and the certificate of the Register as to posting in the local land office.

Defective Service of Notice.

Rule 12. No contest proceeding shall abate because of any defect in the manner of service of notice in any case where copy of the notice or affidavit of contest is shown to have been received by the person to be served; but, in such case, the time to answer may be extended in the discretion of the Register and Reeeiver.

Answers by Contestee.

Rule 13. Within thirty days after personal service of notice and affidavit of contest as above provided, or, if service is made by publication, within twenty days after the fourth publication, as prescribed by these rules, the party served must file with the Register and Receiver answer, under oath, specifically meeting and responding to the allegations of the contest, together with proof of service of a copy thereof upon the contestant by delivery of such copy at the address designated in the application of contest, or personally in the manner provided for the personal service of notice of contest.

Such answer shall contain or be accompanied by the address at which all notices or other papers shall be sent for service upon the party answering.

Failure to Answer.

14. (Amended July 24, 1912.) Upon the failure to serve and file answer as provided by rule 13, the allegations of the contest

affidavit will, on motion of contestant made within 20 days after the date the answer is required to be filed and before any answer is filed, be taken as confessed, or in case of failure of contestee to file answer and of contestant to file motion within the time prescribed, the allegation of the contest affidavit may be taken as confessed and judgment entered by the Commissioner of the General Land Office without the award of preference right to contestant. Due service of notice, either personally or by publication, as provided by rule 8, must appear in all such cases. At the end of the period herein prescribed the register and receiver will forthwith forward the case with recommendation thereon to the General Land Office, and notify the parties by registered mail of the action taken.

Circular No. 150.

Date and Notice of Trial.

Rule 15. Upon the filing of answer and proof of service thereof, the Register and Receiver will forthwith fix time and place for taking testimony, and notify all parties thereof by registered letter mail not less than twenty days in advance of the date fixed.

Place of Service of Papers.

Rule 16. Proof of delivery of papers required to be served upon the contestant at the place designated under clause (h) of Rule 2, in the application to contest, and upon any adverse party at the place designated in the answer, or at such other place as may be designated in writing by the person to be served, shall be sufficient for all purposes; and, where notice of contest has been given by registered mail, and the registry return receipt shows the same to have been received by the adverse party, proof of delivery at the address at which such notice was so received, shall, in the absence of other direction by such adverse party, be sufficient.

Where a party has appeared and is represented by counsel, service of papers upon such counsel shall be sufficient.

Continuance.

Rule 17. Hearing may be postponed because of absence of a material witness when the party applying for continuance makes affidavit, and it appears to the satisfaction of the officer presiding at such hearing, that—

(a) The matter to which such witness would testify if present is material.

(b) That proper diligence has been exercised to procure his attendance, and that his absence is without procurement or consent of the party on whose behalf continuance is sought.

(c) That affiant believes the attendance of said witness can be had at the time to which continuance is sought.

(d) That the continuance is not sought for mere purposes of delay.

Rule 18. One continuance only shall be allowed to either party on account of absence of witnesses, unless the party applying for further continuance shall, at the same time, apply for order to take the testimony of the alleged absent witnesses by deposition.

Rule 19. No continuance shall be granted if the opposite party shall admit that the witness, on account of whose absence continuance is desired, would, if present, testify as stated in the application for continuance.

Continuances will be granted on behalf of the United States when the public interest requires the same, without affidavit on the part of the Government.

Depositions and Interrogatories.

Rule 20. Testimony may be taken by deposition when it appears by affidavit that—

(a) The witness resides more than 50 miles, by the usual traveled route, from the place of trial.

(b) The witness resides without, or is about to leave, the State or Territory, or is absent therefrom.

(c) From any cause it is apprehended that the witness may be unable to, or will refuse to, attend the hearing, in which case the deposition will be used only in the event personal attendance of the witness can not be obtained.

Land decisions: Vol. 2, page 235; vol. 3, 584; vol. 4, 208; vol. 8, 199; vol. 11, 576; vol. 15, 263; vol. 16, 98, 296; vol. 17, 324; vol. 22, 532; vol. 26, 198; vol. 31, 68.

Rule 21. The party desiring to take deposition must serve upon the adverse party and file with the Register and Receiver, affidavit setting forth the name and address of the witness and one or more of the above-named grounds for taking such deposition, and that the testimony sought is material; which affidavit must be accompanied by proposed interrogatories to be propounded to the witness.

Land decisions: Vol. 3, page 584; vol. 4, 208; vol. 8, 199; vol. 9, 137; vol. 10, 480; vol. 11, 576; vol. 16, 296, 362; vol. 17, 324; vol. 22, 532.

Rule 22. The adverse party will, within 10 days after service of affidavit and interrogatories, as provided in the preceding rule, serve and file cross-interrogatories.

Vol. 16, 296, 362.

Rule 23. After the expiration of 10 days from the service of affidavit for the taking of deposition and direct interrogatories, commission to take the deposition shall be issued by the Register and Receiver directed to any officer authorized to administer oaths within the county where such deposition is to be taken, which commission shall be accompanied by a copy of all interrogatories filed.

Ten days' notice of the time and place of taking such deposition shall be given, by the party in whose behalf such deposition is to be taken, to the adverse party.

Rule 24. The officer before whom such deposition is taken shall cause each interrogatory to be written out, and the answer thereto inserted immediately thereafter, and said deposition, when completed, shall be read over to the witness and by him subscribed and sworn to in the usual manner before the witness is discharged, and said officer will thereupon attach his certificate to said deposition, stating that the same was subscribed and sworn to at the time and place therein mentioned.

Vol. 25, 143.

Rule 25. The deposition, when completed and certified as aforesaid, together with the commission and interrogatories, must be inclosed in a sealed package, indorsed with the title of the proceeding in which the same is taken, and returned by mail or express to the Register and Receiver, who will indorse thereon the date of reception thereof, and the time of opening said deposition.

Vol. 10, page 340; vol. 11, 183.

Rule 26. If the officer designated to take the deposition has no official seal, certificate of his official character under seal must accompany the return of the deposition.

Rule 27. Deposition may, by stipulation filed with the Register and Receiver, be taken before any officer authorized to administer oaths, and either by oral examination or upon written interrogatories.

Vol. 1, 132; vol. 16, 98; vol. 15, 263, 34, 180.

Rule 28. Testimony may, by order of the Register and Receiver and after such notice as they may direct, be taken by deposition before a United States commissioner, or other officer authorized to administer oaths near the land in controversy, at a time and place to be designated in a notice of such taking of testimony. The officer before whom such testimony is taken will, at the completion of the taking thereof, cause the same to be certified to, sealed, and transmitted to the Register and Receiver in the like manner as is provided with reference to depositions.

Rule 29. No charge will be made by the Register and Receiver for examining testimony taken by deposition.

Rule 30. Officers designated to take testimony will be allowed to charge such fees as are chargeable for similar services in the local courts, the same to be taxed in the same manner as costs are taxed by Registers and Receivers.

Rule 31. When the officer designated to take deposition can not act at the time fixed for taking the same, such deposition may be taken at the same time and place before any other qualified officer designated for that purpose by the officer named in the commission or by agreement of the parties.

Rule 32. No order for the taking of testimony shall be issued until after the expiration of time allowed for the filing of answer.

Vol. 1, page 132, 474; vol. 2, 66, 231, 234, 235; vol. 3, 112, 145, 194, 333; vol. 4, 91, 440, 541; vol. 5, 365; vol. 7, 315; vol. 9, 209, 273; vol. 10, 433, 480; vol. 11, 418, 539; vol. 12, 30; vol. 13, 203; vol. 14, 700; vol. 15, 289, 436; vol. 16, 88, 360, 511; vol. 17, 4, 321; vol. 18, 78; vol. 20, 18; vol. 23, 140; vol. 24, 564; vol. 25, 466; vol. 28, 301.

Trials.

Rule 33. The Register and Receiver and other officers taking testimony may exclude from the trial all witnesses except the one testifying and the parties to the proceeding.

Rule 34. The Register and Receiver will be careful to reach, if possible, the exact condition and status of the land involved in any contest, and will ascertain all the facts having any bearing upon the rights of parties in interest; to this end said officers should, whenever necessary, personally interrogate and direct the examination of a witness.

Vol 2, 234, 235; vol. 3, 86; vol. 16, 511.

Rule 35. In preemption cases the Register and Receiver will particularly ascertain the nature, extent, and value of alleged improvements; by whom made, and when; the true date of the settlement of persons claiming; the steps taken to mark and secure the claim; and the exact status of the land at that date as shown upon the records of their office.

Vol. 3, 86.

Rule 36. In like manner, under the homestead and other laws, the conditions affecting the inception of the alleged right, as well as the subsequent acts of the respective claimants, must be fully and specifically examined.

Rule 37. Due opportunity will be allowed opposing claimants to cross-examine witnesses.

Vol. 11, 421; vol. 14, 472.

Rule 38. Objections to evidence will be duly noted, but not ruled upon, by the Register and Receiver, and such objections will be considered by the Commissioner. Officers before whom testimony is taken will summarily stop examination which is obviously irrelevant.

Land decisions: Vol. 1, page 107; vol. 2, 232, 581; vol. 4, 386; vol. 9, 131, 134; vol. 10, 628, 680; vol. 11, 461; vol. 12, 109; vol. 18, 560; vol. 21, 55, 480; vol. 22, 314.

Rule 39. At the time set for hearing, or at any time to which the trial may be continued, the testimony of all the witnesses present shall be taken and reduced to writing.

When testimony is taken in shorthand the stenographic notes must be transcribed, and the transcription subscribed by the witness and attested by the officer before whom the testimony was taken: Provided, however, That when the parties shall, by stipulation, filed with the record, so agree, or when the defendant has failed to appear, or fails to participate in the trial, and the contestant shall in writing so request, such subscription may be dispensed with.

The transcript of testimony shall, in all cases, be accompanied by certificate of the officer or officers before whom the same was taken showing that each witness was duly sworn before testifying, and, by affidavit of the stenographer who took the testimony, that the transcription thereof is correct.

Vol. 2, page 581; vol. 4, 541; vol. 7, 292; vol. 12, 186; vol. 17, 135; vol. 19, 339; vol. 28, 301.

Rule 40. If a defendant demurs to the sufficiency of the evidence, the Register and Receiver will forthwith rule thereon. If such demurrer is overruled, and the defendant elects to introduce no evidence, no further opportunity will be afforded him to submit proofs.

When testimony is taken before an officer other than the Register and Receiver, demurrer to the evidence will be received and noted, but no ruling made thereon, and the taking of evidence on behalf of the defendant will be proceeded with; the Register and Receiver will rule upon such demurrer when the record is submitted for their consideration.

If said demurrer is sustained, the Register and Receiver will not be required to examine the defendant's testimony. If, however, the demurrer be overruled, all the evidence will be considered and decision rendered thereon.

Upon the completion of the evidence in a contest proceeding, the Register and Receiver will render joint report and opinion thereon, making full and specific reference to the posting and annotations upon their records.

Rule 41. The Register and Receiver will, in writing, notify the parties to any proceeding of the conclusion therein, and that fifteen days will be allowed from the receipt of such notice to move for new trial upon the ground of newly discovered evidence, and that if no motion for new trial is made, thirty days will be allowed from the receipt of such notice within which to appeal to the Commissioner.

Vol. 1, page 117, 118, 472, 479; vol. 2, 387; vol. 3, 184; vol. 5, 246; vol. 6, 765; vol. 7, 388; vol. 28, 317; vol. 29, 142; vol. 30, 622.

New Trial.

Rule 42. The decision of the Register and Receiver will be vacated and new trial granted only upon the ground of newly discovered evidence, in accordance with the practice applicable to new trials in courts of justice: Provided, however, That no such application shall be granted except upon showing that the substantial rights of the applicant have been injuriously affected.

No appeal will be allowed from an order granting new trial, but the Register and Receiver will proceed at the earliest practicable time to retry the case, and will, so far as possible, use the testimony theretofore taken without reexamination of same witnesses, confining the taking of testimony to the newly discovered evidence.

Rule 43. Notice of motion for new trial, setting forth the grounds thereof, and accompanied by copies of all papers not already on file to be used in support of such motion, shall be served upon the adverse party, and, together with proof of service, filed with the Register and Receiver not more than fifteen days after notice of decision; the adverse party shall, within ten days after such notice, serve and file affidavits or other papers to be used by him in opposition to such motion.

Rule 44. Motions for new trial will not be considered or decided in the first instance by the Commissioner or the Secretary of the Interior, or otherwise than on review of the decision thereof by the Register and Receiver.

Rule 45. If motion for new trial is not made, or if made and not allowed, the Register and Receiver will, at the expiration of the time for appeal, promptly forward the same, with the testimony and all papers in the case, to the Commissioner, with letter of transmittal, describing the case by its title, nature of the contest, and the land involved.

The local officers will not, after forwarding of decision, as above provided, take further action in the case unless so instructed by the Commissioner.

Final Proof Pending Contest.

Rule 46. Where a trial of a contest brought against any entry or filing has taken place, the entryman may submit final proof and

complete the same, with the exception of payment of the purchase money or commission, as the case may be; such final proof will be retained in the local office, and, should the entry be adjudged valid, will, if satisfactory, be accepted upon payment of the purchase money or commissions, and final certificate will issue without further action on the part of the entryman, except the furnishing by him, or in case of his death by his legal representatives, of non-alienation affidavit.

In such cases the party making the proof will at the time of submitting same be required to pay the fees for reducing the testimony to writing.

Appeals to Commissioner.

Rule 47. No appeal from the action or decision of the Register and Receiver will be considered unless notice thereof is served and filed with the local officers in the manner and within the time specified in these rules.

Vol. 1, page 472; vol. 11, 408; vol. 14, 702; vol. 18, 421; vol. 2, 169; vol. 3, 184, 608; vol. 4, 277, 571.

Rule 48. Notice of appeal from the decision of the Register and Receiver shall be served and filed with such Register and Receiver within thirty days after receipt of notice of decision: Provided, however, That when motion for new trial is presented and denied, notice of such appeal shall be served within fifteen days after receipt of notice of the denial of said motion.

Rule 49. No person who has failed to answer the contest affidavit, or, having answered, has failed to appear at the hearing, shall be allowed an appeal from the final action or decision of the Register and Receiver.

Rule 50. Such notice of appeal must be in writing, and set forth in clear, concise language, the grounds of the appeal; if such appeal be taken upon the ground of insufficiency of the evidence to justify the decision, the particulars of such insufficiency must be specifically set forth in the notice, and, if error of law is urged as a ground for such appeal, the alleged error must be likewise specified.

Upon failure to serve and file notice of appeal as herein provided the case will be closed.

Rule 51. When any party fails to move for a new trial or to appeal from the decision of the Register and Receiver within the time specified, such decision shall, as to such party, be final and will not be disturbed except in case of—

(a) Fraud or gross irregularity.

(b) Disagreement in the decision between the Register and Receiver.

No case will be remanded for any defect which does not materially affect the aggrieved party.

Vol. 5, page 212, 246, 448, 585, 624; vol. 6, 99, 359, 391, 426; vol. 7, 20, 98; vol. 9, 389, 627; vol. 10, 680, 690; vol. 11, 260, 300, 400, 407, 631; vol. 12, 421; vol. 13, 495, 605, 686; vol. 14, 238; vol. 15, 37, 291, 400; vol. 17, 145; vol. 18, 153, 306, 401, 431, 594; vol. 19, 572; vol. 20, 41, 456, 516; vol. 21, 281, 295, 307, 523; vol. 22, 6, 16, 67, 512, 641; vol. 23, 562; vol. 24, 244, 385; vol. 25, 305, 315, 345; vol. 27, 143; vol. 28, 317.

Rule 52. All documents received by the local officers must be kept on file and the date of filing noted thereon; no papers will,

under any circumstances, be removed from the files or from the custody of the Register and Receiver, but access to the same, under proper regulations, and so as not to interfere with transaction of public business, will be permitted to the parties or their attorneys.

Vol. 4, 246; vol. 40, 130.

Costs and Apportionment Thereof.

Rule 53. A contestant claiming preference right of entry under the second section of the Act of May 14, 1880 (21 Stat., 140), must pay the costs of contest; in other cases each party must pay the cost of taking the direct examination of his own witnesses and the cross-examination on his behalf of other witnesses. The cost of noting motions, objections, and exceptions must be paid by the party on whose behalf the same are made.

Vol. 4, page 207; vol. 6, 600, 765; vol. 8, 494; vol. 10, 628, 680; vol. 11, 389; vol. 12, 109; vol. 13, 290; vol. 14, 92; vol. 19, 383, 428, 445; vol. 20, 153, 197, 276; vol. 22, 189, 248, 314, 420; vol. 24, 90; vol. 25, 13; vol. 26, 211, 384; vol. 30, 12.

Rule 54. Accumulation of excessive costs will not be permitted. When the officer before whom testimony is being taken shall rule that a course of examination is irrelevant, the same will not proceed except at the sole cost of the party insisting thereon and upon his depositing the amount reasonably sufficient to pay therefor.

Land decisions: Vol. 3, page 52; vol. 4, 207; vol. 9, 134; vol. 10, 628, 680; vol. 12, 109; vol. 18, 560.

Rule 55. Where a party contesting a claim shall by virtue of actual settlement and improvement establish his right of entry of the land in contest under the preemption, homestead, or desert-land laws by virtue of settlement and improvement without reference to the Act of May 14, 1880, the costs of contest will be imposed as prescribed in the second clause of Rule 53.

Vol. 6, page 661; vol. 26, 211.

Rule 56. The only cost of contest chargeable by Registers and Receivers are the legal fees for reducing testimony to writing. No other contest fees or costs will be allowed to or charged by those officers, directly or indirectly.

Rule 57. Registers and Receivers may at any time require either party to give security for costs, including expense of taking and transcribing testimony.

Vol. 2, page 223; vol. 6, 599; vol. 8, 494; vol. 20, 276.

Rule 58. Upon the filing of the transcript of the testimony in the local office, any excess in the sum deposited as security for costs of transcribing testimony will be returned to the parties depositing the same.

Rule 59. When hearings are ordered on behalf of the Government, all costs incurred on its behalf will be paid from the proper appropriation, and when, upon the discovery of reason for suspension in the usual course of examination of entries and contest, hearings are ordered between contending parties, the costs will be paid as required by Rule 53.

Rule 60. The costs provided for by the preceding rules will be

collected by the receiver when the parties are brought before him in obedience to the order for hearing.

Rule 61. The Receiver will append to the report in each case a statement of costs, the amount actually paid by each of the parties, and the disposition thereof.

Rule 62. All notices and other papers not required to be served by the Register and Receiver must be prepared and served by the respective parties.

Rule 63. The Register and Receiver will require proper provision to be made for such notices not specifically provided for in these rules as may become necessary in the usual progress of the case to final decision.

Appeal from Decision Rejecting Application to Enter Public Lands.

Rule 64. To facilitate appeals from the action of local officers relative to applications to file, enter, or locate upon the public lands, the Register and Receiver will—

(a) Indorse upon every rejected application the date of presentation and reasons for rejection.

(b) Promptly advise the party in interest of their action and of his right of appeal.

(c) Note upon their records a memorandum of the transaction.

Vol. 2, page 278, 280; vol. 3, 281; vol. 4, 9; vol. 5, 380; vol. 12, 235, 684; vol. 14, 661; vol. 16, 112; vol. 18, 8; vol. 20, 537; vol. 22, 25.

Rule 65. The party aggrieved will be allowed 30 days from receipt of notice in which to file notice of appeal in the local land office. The notice of appeal, when filed, will be forwarded to the General Land Office with full report upon the case, which should recite all the facts and proceedings had, and must embrace the following particulars:

(a) The original application, with reasons for the rejection thereof.

(b) Description of the tract involved and statement of its status, as shown by the records of the local office.

(c) Reference to all entries, filings, annotations, memorandum, and correspondence shown by the record relating to said tract and to the proceedings had.

Vol. 2, page 80; vol. 7, 388; vol. 13, 250; vol. 16, 112; vol. 20, 386.

II.

PROCEEDINGS BEFORE SURVEYORS GENERAL.

Rule 66. The proceedings in hearings and contests before surveyors general shall, as to notices, depositions, and other matters, be governed as nearly as may be by the rules prescribed for proceedings before Registers and Receivers, unless otherwise provided by law.

III.

PROCEEDINGS BEFORE THE COMMISSIONER OF THE GENERAL LAND OFFICE AND SECRETARY OF THE INTERIOR.

Examination and Argument.

Rule 67. The Commissioner will cause notice to be given to each party in interest whose address is known of any order or

decision affecting the merits of the case or the regular order of proceedings therein.

Rule 68. No additional evidence will be admitted or considered by the Commissioner unless offered under stipulations of the parties or in support of a mineral application or protest; provided, however, that the Commissioner may order further investigation made or evidence submitted upon particular matters to be by him specifically designated.

Affidavits or other ex parte statements filed in the office of the Commissioner will not be considered in finally determining any controversy upon the merits.

Rule 69. After receipt of the record by the Commissioner thirty days will be allowed to expire before any action is taken thereon, unless, in the judgment of the Commissioner, public policy or private necessity shall require summary action, in which event he will proceed at his discretion, first notifying the attorneys of record of his intention so to do; provided, that where no appeal has been filed the case may be immediately considered and disposed of.

Rule 70. If brief is not filed before a case is reached in its order for examination, the argument will be considered closed, and no further argument or motion of any kind will be entertained, except upon application and upon good cause appearing to the Commissioner therefor.

Rule 71. In the discretion of the Commissioner, oral argument may be presented, at a time to be fixed by him and upon notice to opposing counsel, which notice shall specify the time for such argument and the specific matter to be discussed. Except as herein provided, oral hearings or suggestions will not be allowed.

Rehearings.

Rule 72. No motion for rehearing of any decision rendered by the Commissioner of the General Land Office will be allowed.

Motions.

Rule 73. No motion shall be entertained or considered in any case after the record has been transmitted to a reviewing officer.

In ex parte cases, where the entryman has been allowed by the Commissioner to furnish additional evidence or to show cause, or, in the alternative, to appeal, both the evidence or showing and the appeal are filed, the Commissioner shall pass upon the evidence or showing submitted, and, if found sufficient, note the appeal as closed. If such evidence or showing be found insufficient, the appeal will be forwarded to the Secretary as in other cases.

Appeal from the Commissioner to the Secretary.

Rule 74. Except as herein otherwise provided, an appeal may be taken to the Secretary of the Interior from the final decision of the Commissioner in any proceeding relating to the disposal of the public lands and private claims.

Rule 75. No appeal shall be had from the action of the Commissioner affirming the decision of the local officers in any case where the party adversely affected shall have failed to appeal from the decision of said local officers,

Vol. 4, page 559, 162, 270, 277, 285, 314; vol. 5, 59, 175, 253, 625; vol. 6, 772, 804; vol. 7, 358, 405; vol. 8, 373; vol. 9, 389; vol. 10, 252; vol. 13, 279, 348, 707, 721; vol. 14, 698; vol. 15, 188; vol. 17, 509, 578; vol. 18, 419; vol. 19, 34, 382; vol. 21, 555; vol. 22, 641.

Rule 76. Notice of appeal from the Commissioner's decision must be served upon the adverse party and filed in the office of the Register and Receiver or in the General Land Office within thirty days from the date of service of notice of such decision.

Vol. 1, page 464, 473; vol. 2, 375, 715, 719; vol. 3, 135; vol. 4, 226, 244, 551; vol. 6, 124, 240; vol. 9, 189, 265, 278; vol. 10, 409; vol. 13, 697; vol. 14, 428; vol. 16, 125; vol. 17, 146, 482; vol. 18, 138, 411; vol. 19, 34, 295; vol. 20, 89, 411; vol. 23, 413; vol. 24, 277; vol. 25, 417; vol. 27, 54, 33, 40.

Rule 77. When the Commissioner considers an appeal defective he will notify the party thereof; and if the defect be not cured within 15 days from the date of receipt of such notice, the appeal may be dismissed and the case closed.

Rule 78. In proceedings before the Commissioner in which he shall decide that a party has no right to appeal to the secretary, such party may apply to the secretary for an order directing the Commissioner to certify said proceedings to the secretary and suspend action until the secretary shall pass upon the same; such application shall be in writing, under oath, and fully and specifically set forth the grounds upon which the same is made.

Vol. 1, page 570, 628; vol. 2, 68, 419, 769; vol. 4, 53, 226, 314, 558; vol. 5, 255, 507, 673; vol. 10, 252, 690; vol. 11, 260; vol. 12, 259, 397, 478, 635, 722; vol. 14, 176; vol. 15, 191, 244, 527; vol. 16, 125; vol. 17, 100; vol. 18, 420; vol. 19, 32, 333; vol. 20, 178, 287; vol. 21, 122; vol. 30, 17; vol. 33, 40, 517; vol. 40, 87, 299.

Rule 79. When the Commissioner shall decide against the right of appeal he will suspend action on the case for 20 days from service of notice of such decision to enable the party against whom the decision is rendered to apply to the secretary for an order certifying the record as hereinabove provided.

Vol. 10, page 690; vol. 15, 244, 527; vol. 18, 41; vol. 19, 333; vol. 20, 287; vol. 24, 385.

Rule 80. The appellant will be allowed 20 days after service of notice of appeal within which to serve and file brief and specification of error, as provided by Rule 50, the adverse party 20 days after service of such within which to serve and file reply thereto; appellant will be allowed 10 days after service of such reply within which to serve and file response: Provided, however, That if either party is not represented by counsel having offices in the city of Washington, 10 days in addition to each period above specified will be allowed within which to serve and file the respective briefs.

No arguments otherwise than above provided shall be made or filed without permission of the secretary or Commissioner granted upon notice to the adverse party.

Vol. 40, page 131.

Rule 81. Examination of cases will be facilitated by filing arguments in printed form.

Oral Argument Before the Secretary.

1. Rule 82 is hereby amended to read as follows:

Rule 82. Oral argument in any case pending before the Secretary of the Interior will be allowed, on motion, in the discretion of the Secretary, at a time to be fixed by him, after notice to the parties. The counsel for each party will be allowed only one-half an hour unless an extension of time is ordered before the argument begins.

Rule 83 of the rules of practice in cases before the United States district land offices, General Land Office, and the Department of the Interior, approved December 9, 1910, as amended November 6, 1911, is hereby amended to read as follows:

Rule 83. A motion for rehearing of a cause by the Secretary of the Interior, together with all papers used in connection therewith, must be in writing, and must, together with evidence of service thereof on the adverse party, be filed with the Secretary of the Interior within 30 days after service of notice of the decision in said cause.

Said motion must state concisely and specifically the grounds upon which such rehearing is asked and may be accompanied by written argument in support thereof. No matters other than those specified will be considered.

The adverse party will be allowed 15 days after the service of the motion upon him in which to serve and file with the Secretary of the Interior a reply to the motion.

In case no such motion be filed within the period above prescribed the record will at once be transmitted to the Commissioner of the General Land Office for execution of the judgment of the Secretary. Like action will be taken immediately after the judgment of the Secretary on any motion for rehearing.

No oral argument will be allowed on any such motion, and this rule will be strictly adhered to. If the motion be granted, the Secretary will at once proceed to dispose of the case, or, in his discretion, if the motion, or the reply thereto, has been accompanied by a request for oral argument in the event of its being granted, will set the cause down for oral argument. In any case, however, if the motion be granted, the Secretary may set the cause down for oral argument.

Rule 83, as hereby amended, will take effect and be in full force on and after December 15, 1911.

Dated this 16th day of November, A. D. 1911.

Vol. 4, pages 53, 275, 314, 495, 508; vol. 5, 235, 422; vol. 6, 6, 796; vol. 12, 423; vol. 13, 34; vol. 14, 683; vol. 16, 261; vol. 17, 194; vol. 19, 104, 584; vol. 20, 407, 419; vol. 22, 671; vol. 23, 244, 406; vol. 26, 443; vol. 34, 573.

Motions for Review and Rereview.

Rule 84. Motions for review and rereview are hereby abolished.

Supervisory Power of Secretary.

Rule 85. Motion for the exercise of supervisory power will be considered only when accompanied by positive showing of extraordinary emergency or exigency demanding the exercise of such authority.

In proceedings before the Secretary of the Interior the same rules shall govern, in so far as applicable, as are provided for proceedings before the Commissioner of the General Land Office.

Rule 86. No rule here prescribed shall be construed to deprive the Secretary of the Interior of any direct or supervisory power conferred upon him by law.

Attorneys.

Rule 87. Every attorney before practicing before the Department of the Interior must first file the oath prescribed by section 3478 of the Revised Statutes.

Vol. 1, page 120; vol. 3, 18, 409, 608; vol. 4, 9; vol. 11, 395, 441; vol. 15, 308; vol. 16, 261; vol. 20, 89; vol. 25, 36; vol. 39, 161.

Rule 88. In all cases where any party is represented by attorney such attorney will be recognized as fully controlling the same on behalf of his client, and service of any notice or other paper relating to such proceedings upon such attorney will be deemed notice to the party in interest.

Where a party is represented by more than one attorney service of notice or other papers upon one of said attorneys shall be sufficient.

Rule 89. No person hereafter appearing as a party or attorney in any case shall be entitled to notice of any proceeding therein who does not, at the time of appearance, file in the office in which the case is pending a statement showing his name and postoffice address and the name and postoffice address of the party whom he represents.

Rule 90. Any attorney in good standing employed, and whose appearance is regularly entered in any case pending before the Department, will be allowed full opportunity to consult the records therein, together with abstracts, field notes, tract books, and correspondence which is not deemed privileged and confidential.

Vol. 1, page 120; vol. 3, 18, 409, 608; vol. 4, 9; vol. 11, 441; vol. 15, 308; vol. 16, 261; vol. 20, 89; vol. 25, 36, 39, 161.

Rule 91. Verbal or other inquiries by parties or counsel directed to any employee of the Department, except the Commissioner, Assistant Commissioner, or Chief of Division of the General Land Office, of the Secretary and Assistant Secretary, the Assistant Attorney General, or the first assistant attorney in the offices of the Secretary of the Interior, or with the consent of one or more of said officers, is expressly forbidden.

Rule 92. Abuse of the privilege of examining records of the Department or violation of the foregoing rule by any attorney will be treated as sufficient cause for institution of disbarment proceedings.

Service of Notices.

Rule 94. Fifteen days, exclusive of the day of mailing, will be allowed for the transmission of notice or other papers by mail from the General Land Office, except in case of notice of resident attorneys, in which case one day will be allowed.

In computing time for service of papers under these rules of practice the first day shall be excluded and the last day included; provided, however, that where the last day falls on Sunday or a legal holiday, such time shall include the next following business day.

Rule 95. Notice of all motions and proceedings before the Commissioner or Secretary shall be served upon parties or counsel personally or by registered mail, and no motion will be entertained except on proof of service of notice thereof.

Rule 96. Ex parte proceedings and proceedings in which the adverse party does not appear will, as to notice of decision, time for appeal, and filing of exceptions and arguments, be governed by the rules prescribed in other cases, so far as the same are appli-