



United States Department of the Interior
OFFICE OF THE SOLICITOR

SACRAMENTO REGION
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January 11, 1979

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Memorandum

To: State Director, BLM, CA

From: Regional Solicitor

Subject: Reservation of Rights-of-Way in Small Tract Classifications

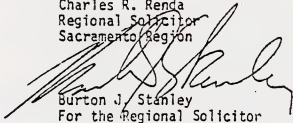
Your memorandum of January 8, 1979 indicates that you are considering the revocation of the small tract classification on certain lands presently classified for disposal under the Small Tract Act, in view of the fact that the Act itself expired with the passage of the Federal Land Policy and Management Act of 1976. You have requested my opinion on the legal effect a revocation order would have on existing roads privately constructed and maintained, and public utility lines across vacant unsold tracts subject to the classification. You indicate that these uses have continued without a formal authorization in view of the fact that each small tract parcel sold would be subject to certain rights-of-way either established in the classification order or provided for by 43 CFR 2731.6-2. You further inquire as to whether users of unauthorized roads across the public lands would be allowed to continue their use without further authorization if the small tract classification was not revoked.

Under the fact situation presented, assuming that the Bureau did not construct the roads in question across unsold parcels classified for small tract disposal, I am of the opinion that privately constructed and maintained roads across vacant unsold public lands and public utility lines across said unsold lands would be in trespass unless authorized by the Bureau. The users should be required to file for a right-of-way under the Federal Land Policy and Management Act. The classification order, in and of itself, does not create a right-of-way. I am therefore of the opinion that the revocation of the small tract classification would have no effect on any rights which a user may have on the public land. Such uses must be authorized whether or not

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the land is subject to the small tract classification. I concur in your belief that termination of the small tract classification will have no adverse effect on existing roads and public utility lines over patented tracts that were constructed within the right-of-way expressly provided in the patent reservation.

Charles R. Renda
Regional Solicitor
Sacramento Region



Burton J. Stanley
For the Regional Solicitor