



United States Department of the Interior  
OFFICE OF THE SOLICITOR

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April 2, 1979

Memorandum

To: State Director, BLM, Nevada  
From: Regional Solicitor  
Subject: Small Tract Act Classifications

Your memorandum of March 8, 1979 presents certain questions regarding classifications made under the Small Tract Act, now repealed.

You first inquire as to whether the segregative effect of Small Tract Act classifications would continue in view of the Act's repeal. Section 701(c) of the Federal Land Policy and Management Act, 43 U.S.C. § 1701, et seq., provides as follows:

"All withdrawals, reservations, classifications, and designations in effect as of the date of the approval of this Act shall remain in full force and effect until modified under the provisions of this Act or other applicable law."

I am of the opinion that the Small Tract classification remains as a valid classification until the subject land has been reclassified and it retains its segregative effect.

You next inquire as to the status of legal access across public lands to lands patented under the Small Tract Act if the Small Tract classifications are revoked or declassified. The regulations issued under the Small Tract Act provide that the classification order may provide for rights-of-way and if the classification order does not so provide the right-of-way will be 50 feet along the boundaries of the tract. This provision

in the regulations was inserted clearly, for the mutual benefit of the Small Tract patentees and lessees, i.e. to give patentees and lessees the same ready access from area to area (see the opinion of the Associate Solicitor, Division of Public Lands, dated August 5, 1957, entitled "Elimination of a Right-of-Way Reservation from Patent", holding that the rights-of-way in connection with Small Tracts are common law dedications). Moreover, Part 5 of the Federal Land Policy and Management Act provides in § 509(a):

"Nothing in this title shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted, or permitted. However, with the consent of the holder thereof, the Secretary concerned may cancel such a right-of-way or right-of-use and in its stead issue a right-of-way pursuant to the provisions of this title (43 U.S.C. § 1769)."

There can be no question that purchasers of Small Tracts did, in fact, rely upon the right-of-way provisions contained in the regulations and classification order providing them access to their lands. I am of the opinion that Small Tract patentees retain legal access or "a right-of-use" over the public lands identified in the classification order which provide legal access to their property. See also § 701(a) of the Federal Land Policy and Management Act which provides:

"Nothing in this Act or in any amendment made by this Act shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act."

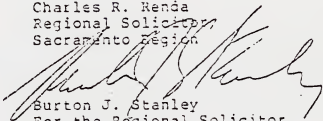
This right-of-use would also apply to utility companies servicing the patented Small Tract parcels.

You further inquire as to new construction of a road by a Small Tract Act patentee across public land and within the stated reservation for a right-of-way. Since the Small Tract patentee retains a right of access to his Small Tract, as provided in the classification order, new construction within the right-of-way would not require authorization from the Bureau.

In view of the fact that the rights-of-way provided in the Small Tract Act regulations, 43 U.S.C. § 2731.6-2, remain valid rights-of-way and are a common law dedication to the public, the remaining questions posed by your opinion request need not be considered at this time.

Should you have further questions regarding the Small Tract Act and the classifications thereunder, please advise.

Charles R. Renda  
Regional Solicitor  
Sacramento Region



Burton J. Stanley  
For the Regional Solicitor

cc:  
William Kelly, Division of Energy & Resources  
State Director, BLM, CA