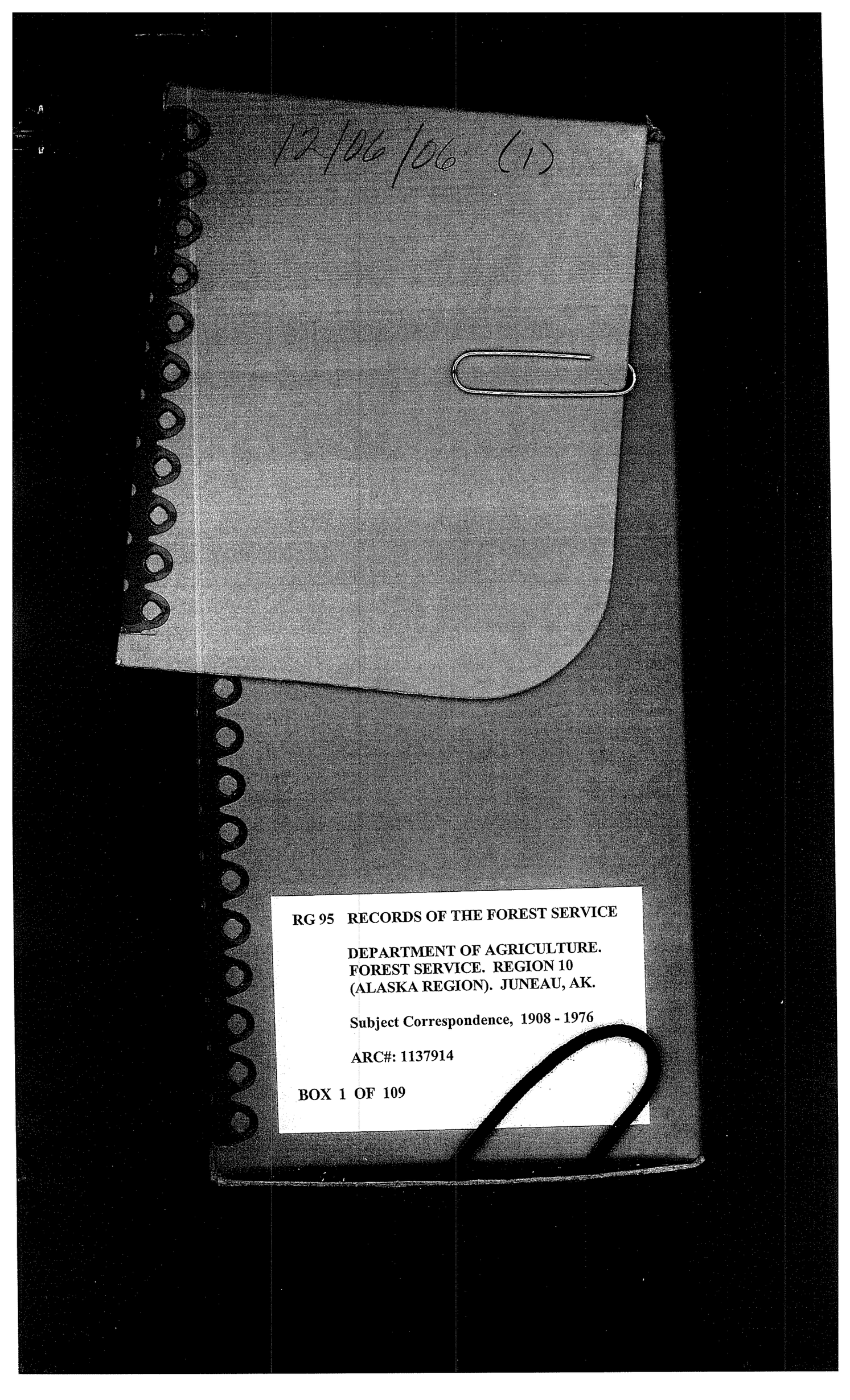
12/106/106 (1)
RG 95 RECORDS OF THE FOREST SERVICE
DEPARTMENT OF AGRICULTURE.
FOREST SERVICE. REGION 10
(ALASKA REGION). JUNEAU, AK.
Subject Correspondence, 1908 - 1976
ARC#: 1137914
BOX 1 OF 109

FOREST SERVICE REGION 10 JUNEAU, ALASKA

June 17, 1959

FOREST SUPERVISOR, Chugach

M. B. BRUCE, Assistant Regional Forester

U-SUPERVISION, General

Mr. Brown has informed me of the good work recently accomplished with Dick Bowe in revising the preliminary plan for the Portage Glacier Recreation Area. It is now up to you to follow through on the remaining details of this comprehensive plan to be sure that it is in form to go ahead with planning of development details. We wish to submit a copy of the comprehensive plan to Washington promptly as a basis for allotment recognition.

Mr. Keathley should not be allowed to enlarge his present building nor should any commitment of approval of his request for a term permit be given until the recreation plan is approved in this office and clearance for the term permit obtained from the Washington office.

The permit for this use was never amended to take care of the masonry structure at the present location. At this late date it does not appear worthwhile to make such an amendment in view of the fact that consideration will be given soon to granting a term permit. If and when this permit is granted or the application for it is rejected, careful plans and revised wording of a new term or temporary permit must be undertaken. This will call for a careful layout plan and adequate specifications for the structure or structures. You must make provision to eliminate the possibility of the structure being painted glaring colors or the structure itself having a grotesque appearance. Hamilton will provide you with some design sketches which Keathley's architect can use to arrive at a plan for the building. Such plan must have the approval of the Forest Service and must be followed. Hamilton will try to have these sketches to you by July 1. It will be desirable to go over Hamilton's material with Keathley at this time to obtain his general agreement on overall design. Layout of the special use area and the inclusion of cabins, trailer parking, etc. are special considerations that will have to be worked out before application for a term permit can be considered.

It is reported that use was already under way at existing campgrounds during Bowe's trip but that policing and preseason maintenance were not accomplished as they should be. The funds for this work have been allotted to you and the scheduling of such work is clearly your responsibility. Possibly the snow left and use started sooner than you expected. However, it is your responsibility to watch for and meet such changing conditions. We have committed ourselves firmly to the Chief that policing and maintenance will be done on all our recreation areas to Operation Outdoors standards. We fully expect you to use your funds and manpower wisely and effectively to meet this commitment.

Copy filed in Keathley's folder

FILM COPY

M. B. BRUCE

MBBruce:ksm

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

ADDRESS REPLY TO
CHIEF, FOREST SERVICE
AND REFER TO

COPY

WASHINGTON 25, D.C.

January 24, 1958

U
SUPERVISION
Policy
Rights-of-way

Mr. C. D. Curtiss
Commissioner of Public Roads

Dear Mr. Curtiss:

This is in reply to your letter of January 13, 1958, your file 22-51, requesting clarification of our delegation to regional foresters to act on applications under Section 17 of the Federal Highway Act (42 Stat. 212). That delegation is not confined to Interstate System projects, but applies to all applications under that authority for rights-of-way for Federal-aid highway projects.

Very truly yours,

RICHARD E. McARDLE, Chief

By /s/ Edward P. Cliff

C O P Y

Department of Commerce

BUREAU OF PUBLIC ROADS

Washington 25, D.C.

In your reply please
refer to File No. 22-51

January 13, 1958

Mr. Richard E. McArdle, Chief
Forest Service
Washington 25, D. C.

Dear Mr. McArdle:

Reference is made to your letter of December 12, 1957, your file 6-Supervision, Policy, Rights-of-way, to the Commissioner of Public Roads advising that in the future the regional foresters would handle directly applications for transfer of rights-of-way across Forest Service lands for the Interstate System.

In addition to applications for rights-of-way for highways on the Interstate System we will continue to receive applications for rights-of-way for highways on the primary and secondary systems. It will be appreciated if you will advise whether the delegation of authority to the regional foresters covers applications on all Federal-aid projects or is confined to the Interstate System.

Sincerely yours,

/s/ C. M. Williams

C. M. Williams
Assistant Commissioner
for Engineering

STANDARD FORM NO. 64 U. S. FOREST SERVICE WASHINGTON 25, D. C.

Office Memorandum • UNITED STATES GOVERNMENT

TO : Region 10 DATE: May 3, 1955

FROM : John Sieker, Chief, Division of Recreation and Land Uses

SUBJECT: U-SUPERVISION, General

Action By	Regional Office	Information
	Greeley	
	Rollins	
	Milot	
	Emerson	
	Blackwell	
✓	~~Wenban~~	
	Hayes	
	Danner	
	Scudder	
	Cartmill	
	~~Hobe~~	
	~~Johnson~~	✓
	Blackerby	
	Shields	
	Sandor	
	File	

We are returning your order for a copy of the 1954 bound edition of Title 43, CFR. The publication should be obtained by you direct from the Superintendent of Documents, Government Printing Office, Washington 25, D. C. Our information is that the volume will be available in 6 to 8 weeks for a cost of approximately $5.00. Announcement is usually made in the Federal Register.

BLM has been asked to supply us with copies of amendments and you will be supplied if they are made available.

Enclosure

John Sieker

WHJ

Monica - Better plc to watch Fed. Reg. (Con can be) middle of June on - if we miss announcement give ... order about 6/27 - ...

P/C made by ... to followup.
9-Pubs, Distr.

7514

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

Address Reply to
CHIEF, FOREST SERVICE
and Refer to

U
SUPERVISION
General

WASHINGTON 25, D. C.

January 19, 1955

REPLY DUE MARCH 15, 1955

Regional Forester
All Regions (except Tropical Region)

Dear Sir:

Reference is made to our letter of January 3 calling your attention to Part II of the Federal Register for December 23, 1954. This Part of the issue "constitutes an editorial revision of the regulations in Subtitle A, and the regulations of the Bureau of Land Management, comprising Chapter I of Title 43 of the Code of Federal Regulations." The revised regulations will be printed in the bound 1954 edition of 43 CFR, which we believe should be purchased as a ~~working tool~~ for each Division of Recreation and Land Uses, or its counterpart, in each region. In the meantime no doubt each such division will want to acquire Part II of the December 23, 1954, issue and have it available for reference purposes. Among other things, it contains regulations under the United States mining laws, the mineral leasing acts, Reorganization Plan No. 3 of 1946, Color of Title Act, and regulations relating to public land exchanges, homesteading, Indian allotments, and rights-of-way.

A list is attached of the subchapters in which we believe you may be interested and with respect to which we think you may wish to keep currently informed. If you will indicate on one copy of the list and return it to us the number of copies that you need of each BLM circular amending these regulations, we will attempt to make arrangements to obtain and furnish them to you as they are issued. The separate parts are listed only in connection with Subchapter L-Mineral Lands, since with respect to each of those parts your needs may understandably vary. With respect to mineral leases, Parts 191 to 198 (and for Alaska Parts 70 and 71) apply to leases under the 1920 leasing act and, to the extent they are not inconsistent, to the 1947 leasing act. As to any other subchapter not listed or for which breakdowns are not listed, if you desire to receive amendments as to only certain parts, please specify; for instance under Subchapter F--Color of Title and Riparian Claims, Part 141 has only limited applicability for certain States and will not be desired by all regions.

Very truly yours,

John Sieker

JOHN SIEKER, Chief
Division of Recreation and Land Uses

Attachment

CHAPTER I--BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Subchapter A--Alaska, Parts 51-82

Subchapter B--Applications and Entries

Subchapter F--Color of Title and Riparian Claims

Subchapter G--Exchanges, Part 148

Subchapter I--Homesteads, Parts 166 and 170

Subchapter J--Indian Allotments and Indian lands

Subchapter L--Mineral Lands

185 General mining regulations.

187 Leases of gold, silver, and quicksilver.

191 General regulations applicable to mineral permits, leases, and licenses.

192 Oil and gas leases.

193 Coal permits, leases, and licenses.

194 Potassium permits and leases.

195 Sodium permits and leases.

196 Phosphate leases and use permits.

197 Oil shale leases.

198 Sulphur permits and leases.

199 Minerals subject to lease under special laws.

200 Mineral deposits in acquired lands and under rights-of-way.

Subchapter M--National Forests, National Parks, and National Monuments, Part 205

Subchapter N--Officers and Abstracters

Subchapter P--Practice

(Over)

2--Chapter I--Bureau of Land Management, Department of the Interior

Subchapter R--Records

Subchapter S--Rights-of-way

Subchapter U--State and Railroad Grants

Subchapter V--Surveys and Resurveys

Subchapter Z--Withdrawals, Restorations, Classifications, and Executive Orders

FOREST SERVICE, REGION 10, JUNEAU, ALASKA

O F F I C E M E M O R A N D U M UNITED STATES GOVERNMENT

TO : FOREST SUPERVISORS DATE: June 12, 1959

FROM : P. D. HAMSON, Regional Forester, By

SUBJECT: U-SUPERVISION, Regulation U-14

Attached is a copy of a section of the Federal Register announcing a change in Regulation U-14 regarding permits for roads and trails on national-forest land.

Section (c) formerly read: "Trails may be constructed without permit upon consent and under the supervision of a forest officer, except in the national forests of Alaska such consent and supervision will not be required." Manual has been amended to reflect this change.

It may be desirable to arrange for local publicity regarding this requirement particularly if such construction is a problem in your locality.

Attachment

P. D. HAMSON,
Regional Forester

By
F. R. Rolling

RFThaanum:cah

cc: Engineering

Dist 5 R

FILE CC

Friday, May 8, 1959

tion and form in which they have complied with the order to cease and desist.

Issued: April 3, 1959.

By the Commission.

(SEAL) ROBERT M. PARRISH, *Secretary.*

(F.R. Doc. 59-3761; Filed, May 4, 1959; 8:45 a.m.)

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

PART 526—INDUSTRIES OF A SEASONAL NATURE

Miscellaneous Amendments

On April 3, 1959 (24 F.R. 2584) the Administrator of the Wage and Hour and Public Contracts Divisions published a final determination that the storing, and drying before storage, of grain including flaxseed, buckwheat, soybeans, and rough rice in country grain elevators, public terminal and sub-terminal grain elevators, wheat flour mill elevators, non-elevator type bulk grain storing establishments, and flat warehouses constituted an industry of a seasonal nature within the meaning of section 7(b)(3) of the Fair Labor Standards Act of 1938 (52 Stat. 1068, 29 U.S.C. 207) and 29 CFR, Part 526. This determination also consolidated and revoked other seasonal industry determinations.

As a result it is necessary to editorially amend § 526.101 of 29 CFR, Part 526 to change the listings therein of outstanding seasonal industry determinations.

Accordingly, pursuant to section 3 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1002) and under the authority of section 7 of the Fair Labor Standards Act of 1938 (52 Stat. 1063, 29 U.S.C. 207), § 526.101 of 29 CFR, Part 526 is hereby amended as follows:

1. The Industry entitled "Grain, including soybeans flaxseed and buckwheat: Storing", "Date of finding, June 13 1941", the "Citation, 6 F.R. 2889", and the "Correction" for this Industry, "Date of finding, August 25, 1944", and the "Citation, 9 F.R. 10583" are hereby deleted.

2. The Industry entitled "Grain, including rice, flat warehousing in States of California, Washington, Oregon, and Idaho", "Date of finding, December 17, 1941", and the "Citation, 6 F.R. 6778", are hereby deleted.

3. The Industry entitled "Rice, rough southern, drying and storing including receiving", "Date of finding, September 10, 1950", and the "Citation, 15 F.R. 6197", are hereby deleted.

4. The Industry entitled "Rice, rough southern, drying to and receiving in storage", "Date of finding, August 3, 1940", and the "Citation, 5 F.R. 2758", are hereby deleted.

5. The Industry to be entitled "Grain: flaxseed, buckwheat, soybeans, rough rice: storing and drying before storage in country grain elevators, public terminal and sub-terminal grain elevators, wheat flour mill elevators, non-elevator type bulk storage establishments, and flat warehouses", "Date of finding, April 3 1959", and the "Citation, 24 F.R. 2584" are hereby added.

(Sec. 7, 52 Stat. 1063, 29 U.S.C. 207)

This amendment shall take effect upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., this 29th day of April 1959.

CLARENCE T. LUNDQUIST, *Administrator.*

(F.R. Doc. 59-3772; Filed, May 4, 1959; 8:46 a.m.)

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 1840]

[Anchorage 037871]

ALASKA

Withdrawing Lands Additional to Those Withdrawn by Public Land Order No. 1673 for Use of the Department of the Army in Connection With Fort Richardson

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Subject to valid existing rights, the following-described public lands in Alaska are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral-leasing laws, and reserved for use of the Department of the Army for military purposes in connection with operations at Fort Richardson, and as an addition to those withdrawn by Public Land Order No. 1673 of July 2, 1958.

SEWARD MERIDIAN

T. 14 N., R. 2 W.,
Sec. 19, lot 1 that portion lying south of the Alaska Railroad right-of-way.

2. The aggregate area of the lands described in Public Land Order No. 1673 as "1,401 acres" is corrected to read "1,371 acres".

FRED G. AANDAHL, *Assistant Secretary of the Interior.*

APRIL 29, 1959

(F.R. Doc. 59-3773; Filed, May 4, 1959; 8:46 a.m.)

[Public Land Order 1841]

[California 038049]

CALIFORNIA

Partially Revoking the Departmental Order of May 8, 1913, Newlands Project

By virtue of the authority vested in the Secretary of the Interior by section 3 of the act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416), it is ordered as follows:

The departmental order of May 8, 1913, which withdrew lands for reclamation purposes in the first [illegible] section with the Newlands [illegible] California, is hereby revoked so far as it affects the following-described [illegible]:

MOUNT DIABLO MERIDIAN

T. 19 N., R. 19 E.,
Secs. 4 and 5;
Secs. 9 to 36, inclusive.

The areas described aggregate 18,597.24 acres, of which 14,845.01 is national forest land and the remainder is non-public.

The national forest land shall at 10 a.m. on June 4, 1959 be open to such forms of disposition as may [illegible] made of such lands.

FRED G. AANDAHL, *Assistant Secretary of the Interior.*

APRIL 29, 1959.

(F.R. Doc. 59-3774; Filed, May 4, 1959; 8:46 a.m.)

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter II—Forest Service, Department of Agriculture

[Rev. 7, Amdt.]

PART 251—LAND USES

Permits for Roads and Trails

By virtue of the authority vested in the Secretary of Agriculture Regulation U-14 of the rules and regulations governing the occupancy, use, protection and administration of the national forests which constitutes § 251.5, Part 251, Chapter II, Title 36, Code of Federal Regulations, is hereby amended.

Paragraph (e) of § 251.5 is amended to read as follows:

(e) Trails may be constructed without permit upon request and under the supervision of a Forest Officer.

(Sec. 1, 30 Stat. 35, as amended; 16 U.S.C. 551. Interprets or applies sec. 1, 33 Stat. 628; 16 U.S.C. 472)

Done at Washington, D.C. this 30th day of April 1959.

E. T. BENSON, *Secretary of Agriculture.*

(F.R. Doc. 59-3769; Filed, May 4, 1959; 8:45 a.m.)

December 19, 1958

Forest Supervisor, Chugach N. F.

P. D. Hanson, Regional Forester By:

E-ROADS & TRAILS, Policy
U-SUPERVISION, Policy (Regulation U-14)

Reference is made to your U-SUPERVISION, Policy (Regulation U-14) memorandum of October 10.

It would be difficult to set a regional policy as to what constitutes a road and what a trail. To us the question is what is the definition of a road. It is our opinion that when a traveled way becomes defined on the ground by either repeated use or by construction and is useable by a four-wheel automotive vehicle, it is then a road.

A mining claimant can exercise his right of ingress and egress for permission to have access across national forest land. However, to get this right for a road he must subscribe to stipulations to protect the national forests. FSM NF-H5-4(5) & (6) is the reference for exercising this right under Regulation U-14. The stipulations can be varied to fit the need and conditions encountered, such as a driveway or a heavy constructed road.

Present regional policy is that no existing road will be put on our road system and classed as an "existing system road" unless it at least meets "SL" standards, single lane-light traffic, in the present transportation system. We do not have to place a road on our system just because it is on national forest land, especially if it does not meet our minimum standards. We have attached a copy of the current criteria for forest development roads.

We are asking the Chief's Office to change U-14 (e) to read as you have suggested. Should the Chief make this suggested change, our job should become easier in administering this type of use.

Attachment

CAMiller:psw

John S. Emerson

FOREST SERVICE ANCHORAGE, ALASKA

~~Fremming~~
~~Mitchell~~
Oater—~~Bowe~~

District Rangers, Cordova and Kenai April 9, 1958

M. E. Hardy, Forest Supervisor

U-SUPERVISION, Policy (Roads & Trails)

<u>REPLY DUE SEPTEMBER 30, 1958</u>

Regulation U-14 outlines the Chief's policy with respect to roads and trails. In brief, this requires a permit for all roads on the national forest except roads on the system or those constructed and used under timber sale contracts, or where there is a statutory right of ingress and egress, in which cases supervision is provided for by the Forest Service. For Alaska only, consent and supervision over trail construction by the forest officer is waived, though required in the States. This important exception makes it mandatory that we settle on a clearcut dividing line between roads and trails.

Assistant Regional Forester Mitchell has approved classification as a trail of any route which does not meet single lane light duty standards as to grade and alinement. This will be our definition of a trail until further notice.

You are asked to report on mining, trapping and other ways on your districts on which automotive equipment is used, and which are not now covered by any permit or authority for use. Bob, examples would be Mathison's snowmobile trails, Crown Point Mine Road, and there are probably others.

What I want is to be sure that all such ways as should be classed as roads are covered by a permit or other authority and also that we recognize sub-standard roads (trails) as public hazards and systematically sign them as not being public roads.

In my opinion, there is no longer any justification for a waiver on supervision over trails in Alaska. What are your ideas on this?

Keep this project in mind. I will expect a reply by September 30, 1958.

cc: RO for info ✓

M. E. HARDY

FOREST SERVICE ANCHORAGE, ALASKA

District Rangers, Cordova and Kenai August 1, 1958

M. F. Hardy, Forest Supervisor

U-SUBJECT: Policy

Your attention is directed to memorandum from Mr. Bruce of July 16, copy of which was sent you last week or is attached.

It is important that we all understand fully the implications of this instruction, interpreting R10 Supplements 3-21 and 3-25, (1) to (8), and Chief's instructions in 2720 (20c-22), concerning need for Chief's prior approval of groups for homesites and recreational residences, waterfront zone requirements to be applied in all cases involving lakes and streams in the future, and roadside zone policy.

I believe that our main development roads are adequately protected by the minimum of 50 feet to lot lines, with 100' setback for buildings, but would like your comments on any cases where this may not appear to you to be enough.

The standards of lot size and frontage on water for all uses issued from now on should also be pointed out.

As a general rule, no lot for a single family cabin, residence, or homesite will be larger than 1 acre.

No cabin, residence, or homesite will be laid out without at least a 33-foot reserve strip between the lot line and high tide or high water mark on saltwater or lake or stream. Only very minor streams such as regularly dry up or are so steep as to support no fish are excluded. In all cases where at all possible, this reserve strip shall be increased in width to 100 feet.

If you have any question as to the application of the above standards or those outlined in Mr. Bruce's memorandum, please ask for clarification at once.

cc: All for info ✓

M F H

FOREST SERVICE JUNEAU, ALASKA

Forest Supervisor, Chugach July 16, 1958

M. B. Bruce, Assistant Regional Forester

U-SUPERVISION, Policy (Set-back distances)

Reference is made to your letter of July 1, 1958, regarding set-back distances along highways.

The instructions given in the manual and road classifications in the R-10 amendment will govern in planning or issuing future special uses. Special use permits now in effect and commitments made in their regard should be honored and may remain. Authorization for new construction on existing permits, when practicable, or on newly established lots should conform to the manual instructions.

With respect to Eyak Lake, these special use permits cannot be converted to homesite permits if such permit would invade the 100 foot withdrawal so long as the withdrawal is in effect since a homesite permit is a form of land entry which a regular permit is not. We do not know what commitments you have made but we do know that the 100 foot withdrawal on each side of the road was discussed at the group meeting in Cordova last fall. It was cited as one reason for the small number of lots that could be made available between the road and the lake.

As previously stated, you should submit tract plans for the homesite and residence groups around Eyak Lake. If they are approved by the Chief, we could then, if necessary to protect the buildings in group 1, ask for a revocation of the withdrawal for the portion included in the lot.

The manual appears to be perfectly clear in establishing the class of each Forest Highway. The Chief's instructions are specific regarding set-back distance for each class.

We were in error in quoting a hundred foot set-back for the Copper River Highway in our previous letter since the new highway classification requires two hundred feet. The new manual amendment removes any question as to the proper current classification.

You will be called upon to designate the preliminary location of the Johnson Pass Road. Actual engineering is planned for a contract engineer crew. In making the preliminary location do not fail to give full consideration to manual directives on set-back distance and shore line zones. The limitation expressed in these regards will influence the amount of recreation residence use you may wish to plan, if any, between the road and lake shore. As a matter of comment, do not fail to consider that the Chief's policy very definitely gives public recreation use first priority.

M. B. BRUCE

RWFremming:akh

FILE COPY

STANDARD FORM NO. 64 FOREST SERVICE ANCHORAGE, ALASKA

Office Memorandum • UNITED STATES GOVERNMENT

DATE: July 1, 1958

TO : Regional Forester

FROM : M. E. Hardy, Forest Supervisor

SUBJECT: U-SUPERVISION, Policy (Set-back distances)

As I read the new R-10 Supplement (NF-G3(7)), the Copper River and Cordova Highways have been classified as "Class 2--Not Part of Interstate Highway System." The Chief's policy for this class of highway calls for a 200-foot set-back line. We cannot reconcile this with your statements in your letter U-PLANS, Tract of May 23.

It is apparent that a 200-foot set-back line around Eyak Lake would eliminate all lots on the lake side. Even a 100-foot set-back would interfere with lots in Group 1.

We have given assurance to the permittees on certain residence groups along Eyak Lake that their lots will be recommended for homesite classification, (under manual instructions calling for a 50-foot set-back line).

I feel very strongly that we have a responsibility to make good on our promises, and am confident that we can do this without any sacrifice of forest values. Public relations in Cordova are greatly improved, but I feel that insistence on 100 feet from centerline for Group 1 and 200 feet for other groups along Eyak Lake would bring on serious repercussions.

The 200-foot Copper River Highway right-of-way was withdrawn for the benefit of the Department of Agriculture. Only this spring the region approved reduction of this width to 100 feet between Cordova and the forest boundary. If we ask for a comparable exception for Group 1, it will surely be granted, and this is the action I recommend.

For our guidance, please list for us the specific standards of width referred to in Supplement 3-25 and how they comply with the Chief's policy as expressed in NF-G3 (20d). Also please give serious and sympathetic attention to the special problems with which we are confronted in the Eyak Lake area.

We will delay action on survey requests for homesites along Eyak Lake pending your reply.

cc: Cordova

ME Hardy

Filed in open file

UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF THE SOLICITOR

FOREST SERVICE BRANCH
DISTRICT No. 6

Portland, Oregon,

December 16, 1932

DL(L)
Uses

L
Claims

Regional Forester,

Juneau, Alaska.

Dear Mr. Flory:

Mr. Merritt's letter of December 7 is received.

The question submitted is whether in the event special uses issued for water supply, pipe lines, intakes, etc., and the land is subsequently eliminated and patented under the homestead law, a patentee could interfere with the rights of the special use permittee. Secs. 151 and 152 of the Compiled Laws of Alaska read as follows:

> Sec. 151. Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler, on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.
>
> Sec. 152. All patents granted, or preemption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by the preceding section.

Regional Forester, Juneau.

The Act of August 30, 1890, (26 Stat. 371-391) states that in all patents for lands hereafter taken under any of the land laws of the United States or on entries or claims validated by this act west of the 100th meridian, it shall be expressed that there is a reservation from the land in said patent describing a right of way thereon for ditches or canals constructed by the authority of the United States. (U.S. Code, Title 43, Sec. 945).

The special use permits issued by your office are under authority of law and any pipe lines constructed thereunder would also be constructed under authority of the United States, and in my opinion would be protected from persons subsequently acquiring title to the land. This view is strengthened by the decision of Judge Borquin, United States District Court, of Montana, under date of October 16, 1922, in which he granted an injunction against the locator of a millsite from interfering with possession of a prior special use permittee.

A permittee should also acquire title to that portion of the water to be transported by his pipe line.

Another method of protecting a permittee would be to eliminate by survey the area covered by his special use permit when the land is surveyed for homestead entry; the elimination to cover not only the permitted land but the source of the water supply.

I note in looking up the Alaska decisions that I do not have a copy of the 1929 Session Laws. Mr. Sperling secured a copy of the 1931 Session Laws when I was in Juneau last year, at which time I thought I had the 1929 Laws. I wish you would secure a copy of the latter and forward to me.

Very sincerely yours,

M F Staley

Assistant to the Solicitor.

L
Uses

L
Claims

December 7, 1932

Assistant to the Solicitor

Portland, Oregon

Dear Mr. Staley:

We have had several inquiries lately by holders of special use permits for permits authorizing construction of domestic water supply pipe lines from sources off of their special use tracts. The sources from which the water is obtained are from land which will probably be surveyed later into homesites and eventually patented to some other parties.

If special use permits are granted for these water supply pipe lines, covering intake dams and iron pipe lines on land which is later eliminated from the National Forest and patented, what will be the rights of the water supply permittees after the land is patented to other parties? They are of course vitally interested in having their source of domestic water protected permanently. I told them that I thought prior appropriation and continuous use would be sufficient protection, but I am not sure just what the practical result would be if the source of the water were later patented and I shall appreciate your advice.

Very truly yours,

M. L. MERRITT
Assistant Regional Forester

L
Claims, Mineral

L
Uses

August 8, 1929.

Mr. W. F. Staley,
U. S. Forest Service,
Portland, Oregon.

Dear Mr. Staley:

Reference is made to your letters of July 16 and 29:

I discussed this situation with Major Stuart when he was at Juneau the other day and he agreed with us that the present legal rights of special use permittees are rather precarious. As you know, we have a large number of permittees who have made substantial investments and who should be sure of the status of their land occupancy. Among these are 55 areas occupied by canneries, the investments of which run up to $200,000 or more. There are also 278 residences, 176 fur farms, one railroad, 5 resorts and 322 other permits. A number of these, probably most of those on which the greatest amount of money has been spent, are apparently not of the class intended in the Act of March 4, 1915, which, according to the Manual, applies to lands used for summer homes, hotels, stores or other structures needed for public recreation or convenience. For example, I doubt if a cannery, which is purely an industrial enterprise, could be regarded as qualifying under this Act. Neither could a fur farm, a yearlong residence, or a number of the other items.

If I am correct in my interpretation that the Act is not properly applicable to many of these cases, it is evident that they should be given better protection than the present special use permits, which are subject to mining locations.

I suggested to Major Stuart that remedial legislation is necessary and he requested that we prepare a draft of legislation that would meet the situation in Alaska. I would appreciate it very much if you would study the problem and prepare this. I have in mind simply a brief act that would authorize the Forest Service

Mr. W. F. S.

in Alaska to issue special use permits for occupancy of National Forest land for industrial sites, residence or other uses, or acceptance of the above or similar classes. In support of this we would not make specific reference to the mining laws but would state that since by far the major portion of Southeastern Alaska is included within the National Forest boundaries that legal authority should be given for the issuance of permits authorizing temporary occupancy of National Forest areas for industrial sites, residence or any other uses for which there may be a demand. In case these uses should prove to be permanent I have in mind that we would eventually eliminate the areas from the Forests so that the permittees may secure patent under appropriate land laws.

Very sincerely yours,

M. L. MERRITT
Assistant District Forester.

UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF THE SOLICITOR

F. S.

FOREST SERVICE BRANCH
DISTRICT No. 6

Portland, Oregon
April 8, 1929

L
Uses

District Forester,

Juneau, Alaska.

Dear Mr. Flory:

Mr. Merritt's letter of April 2 is received.

The Solicitor in his circular letter of June 13, 1917, held in effect that actual occupancy and use of lands under special permit, would constitute a valid appropriation of the land under authority of Congress, which so long as continued would be as effective toward taking the land out of the operation of the other public land laws as would an actual appropriation of the land under any one of the different laws concerning rights to be acquired in and to the public land; also that when lands are appropriated under authority of law, such appropriation prevents appropriation under any other public land law so long as prior appropriation continues. The Solicitor therefore concluded that land embraced in a valid special use permit is not subject to location or entry under the mining laws.

The only question to be considered in connection with a special use permit issued on lands which have been listed under the Act of June 11, 1906, and not filed on at the time special use permit is issued, is whether the latter is a valid appropriation under authority of law. The Solicitor in his opinion held that a special use permit on lands not listed is such a valid appropriation.

While the act of June 11, 1906, authorized the listing of lands chiefly valuable for agriculture to be open to homestead entry, this act was amended by the act of August 10, 1912 (37 Stat. 287) which is the appropriation act for the fiscal year 1913, in which act the following provision was incorporated:

"No lands listed under the Act of June eleventh, 1906, shall pass from the Forest until patent issues."

District Forester, Juneau.

In view of this provision, lands which have been listed under the act of June 11 and not yet filed upon are in my opinion in the same category as lands which have not been listed, so far as the authority of the Secretary of Agriculture is concerned in the administration thereof, including the issuance of a special use permit. Therefore, a special use permit on lands which have been listed under the Act of June 11, 1906, but not filed upon is of the same force and effect as though the lands had not been listed, and in my opinion the issuance of such a permit removes the land from appropriation under any other public land laws in the United States including the mining laws.

Very truly yours,

W. G. Hailey

Assistant to the Solicitor.

L
Uses

April 2, 1929.

Mr. W. F. Staley,
U. S. Forest Service,
Portland, Oregon.

Dear Mr. Staley:

Reference is made to your letter of March 27, with copy of of enclosed letter dated June 13 from the Solicitor:

The Solicitor's letter raises a question in regard to the rights of special use permittees on areas of land that have been listed under the Act of June 11, 1906, but not filed on at the time the special use permit is issued. We had an instance recently where a local hunting club had been given a special use permit on a tract of land so listed but not filed upon. The hunting club occupied it for several years without question regarding title, but last year some local man took a notion to file on the tract and established his residence in the hunting cabin prior to filing. The matter was adjusted satisfactorily and permanently after considerable negotiation, but in view of Mr. Williams' statement it would appear that possibly the special use permit issued the gun club in this case could have been interpreted as an occupancy of the land authorized by Act of Congress and that the land so occupied was not thereafter subject to entry under any other land law.

I would be glad to know if we could have taken such a position in the case described above, or would the land remain subject to listing? I might add that when the permit was issued to the gun club the fact that the tract of land was listed for homestead entry was overlooked and not stated in the permit as is customary in such cases.

Very sincerely yours,

M. L. MERRITT,
Assistant District Forester.

C's sent Supervisors

UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF THE SOLICITOR

FOREST SERVICE BRANCH
DISTRICT No. 6

Portland, Oregon

March 27, 1929

F. S.

DL(L)
Uses

District Forester,

Juneau, Alaska.

Dear Mr. Flory:

Mr. Merritt's letter, "L, Uses," of March 20 is received.

In reply thereto I am enclosing herewith a copy of letter of the Solicitor to the District Assistants of June 13, 1917, in which it is held that lands embraced in a special use are not subject to appropriation under any of the public land laws. There is also a court decision in Superior Court for a county in Colorado (which decision I do not at present find reference to) in which was held the same effect. It is therefore my opinion that the areas embraced in the special use homesites along Glacier Highway, being an appropiation of the land authorized by Congress, the granting of such special use permits would withdraw the land from location or entry under any of the public land laws of the United States.

If the mining locator persists in interfering with the rights acquired by the permittees, an injunction proceeding in the local courts would probably be the proper method of protecting the permittees' rights.

Very sincerely yours,

W E Staty

Assistant to the Solicitor.

Enclosure.

Copy

Department of Agriculture

Office of the Solicitor

Washington

June 13, 1917

District Assistant to the Solicitor,

Dear Sir:

During the course of the conference held at Denver last June, the question arose as to whether additional regulations should be promulgated for the purpose of affording greater protection to special use permittees against the location of mining claims over lands occupied under permit from the Forest Service.

Mr. Lawson suggested that a regulation be made to the effect that all mining locations shall be subject to the right of a prior special use permittee to occupy the land for the purposes of his permit. (Page 127, Minutes of Conference).

Mr. McGowan suggested (Ibid p. 128) that a regulation be made prohibiting the location of mining claims on land covered by a special use permit.

Mr. Lawson's suggestion, at least, implies that a lawful mining location may be made of land held and occupied by one under authority of a permit from the Forest Service prior in time to the mining location; that this mining location may be prosecuted to patent; but that, prior to such patent, the mining locator will possess and enjoy the land subject to the right of the permittee to occupy and use the land for the purposes specified in his permit.

Mr. McGowan's suggestion implies that such a location could be made in the absence of such a regulation as he suggests. With regard to Mr. Lawson's suggested regulation, the question at once presents itself whether, in the great majority of cases, the two uses of the land would not be so utterly inconsistent as to preclude either the permittee or the mining locator from enjoying the benefits of the permit or the location. Clearly a resident or agricultural permit could not fully be enjoyed, if the locator of a placer claim were to develop the land as a placer mine.

Regardless of this, however, if land occupied under a permit may be lawfully located as a mining claim, either the permit would, by operation of law, be terminated <u>ipso facto</u>, or the locator would, also by operation of law, take, prior to patent, subject to the prior rights of the permittee. In the first case, the permit could not be continued by mere force of the regulation. In the latter case, the regulation suggested would be merely declaratory of a principle of law, and would be of no added benefit or protection to the permittee, and would effect no limitation of

the rights of the mining locator.

But may a mining location lawfully be made of lands occupied under such a permit?

Congress has authorized the Secretary to make rules and regulations as to the use and occupancy of the National Forests, and the authority so granted is a constitutional exercise of its power.

The Secretary having exercised the authority vested in him by Congress, and authorized the use and occupancy of certain lands under permit, it would seem that actual occupancy and use of the lands under such a permit would constitute a valid appropriation of the land under authority of Congress, which, so long as continued, would be as effective toward taking the land out of the operation of the other public land laws, as would an actual appropriation of the land under any one of the different laws authorizing rights to be acquired in or to the public lands.

It is well settled that a valid appropriation by one of land under authority of law takes the land out of the category of public lands, so that subsequent claimants under the same or any other law can acquire no rights therein inconsistent with that of the prior appropriation. Where two persons are claiming possessory rights to the public land, it has invariably been held by the courts, the one first in time has the better right.

It would, therefore, seem to follow by analogy that the land being appropriated under authority of an act of Congress, it could not, so long as the prior appropriation continued, be appropriated by another under the mining laws, and that the permittee would have a right in equity or at law to defend an invasion of his right of exclusice possession of the land.

This being so, the regulation suggested by Mr. McGowan would be of no substantial value, except possibly to form the basis for a criminal proceeding against the mining locator, and it is, at least, a very questionable policy to adopt regulations which are merely declaratory of the law for the sole purpose of affording a means of prosecuting, by a criminal action, one who has acted in violation of such regulations.

It is believed, therefore, that, in the absence of other reasons which would make it administratively advisable, there would be no gain in having either of the regulations suggested promulgated.

Very truly yours,

(Sgd) R. W. WILLIAMS,

Acting Solicitor.

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Uses

March 20, 1929.

Mr. W. F. Staley,
U. S. Forest Service,
Portland, Oregon.

Dear Mr. Staley:

We have been letting out a number of special use areas along the Glacier Highway north of Juneau, many of which are now occupied and improved with good houses. Some of them are used as yearlong residences. Recently a prospector operating in the vicinity of a group of these claims intimated to two of the claimants that he might wish to extend his mining operations upon their special use areas. Whether or not he meant that he would wish to file an adverse mining claim I do not know, but this is what the permittees are fearing.

I would be glad to be advised, therefore, what rights special use permittees have as against subsequent mining locations. No doubt this question has come up before and is definitely settled.

Very sincerely yours,

M. L. MERRITT,
Assistant District Forester.

C's sent Supervisors