

## INSTRUCTIONS.

August 31, 1915.

## TELEPHONE LINES ON PUBLIC LANDS—EXCEPTIONS IN PATENTS.

Where telephone lines have been actually constructed upon public lands of the United States, including national forest lands, and are being maintained and operated by the United States, appropriate maps or field notes thereof should be furnished the Commissioner of the General Land Office and notation thereof made upon the tract-books of that office; and if the lands be thereafter disposed of under any of the public land laws the final certificate and patent should except the telephone line and appurtenances with the right of the United States to maintain and operate the same.

*SWEENEY, Assistant Secretary:*

The Secretary of Agriculture has forwarded to this Department copies of tracings and field notes of constructed Forest Service telephone lines crossing lands within national forests and listed and entered under the homestead law of June 11, 1906 (34 Stat., 233), requesting that reservations of rights of way covering said lines be inserted in patents when issued.

In the case of M. R. Hibbs (42 L. D., 408), the Department held that it is without authority to insert in patents issued reservations of easements where not specifically authorized by law. The present cases involve telephone lines constructed over public lands of the United States under the authority of the appropriation acts of May 26, 1910 (36 Stat., 431), and March 4, 1911 (36 Stat., 1253), making appropriations

to be expended as the Secretary of Agriculture may direct for the construction and maintenance of . . . telephone lines . . . necessary for the proper and economical administration, protection, and development of the national forests.

The lands having been so devoted to a public purpose, pursuant to a law of Congress, subsequent disposition thereof will not, in the absence of an express conveyance by the United States, operate to pass title to the patentee to such telephone lines or the right of the United States to operate and maintain the same. On the other hand, under the circumstances of these cases, it seems unnecessary and inadvisable to reserve from disposition and eliminate from the entries and patents definite tracts or areas of land for the protection of such lines. It is believed that the solution of the matter is to convey all of the lands included within the area described in any such homestead entry, and all rights appurtenant thereto, except the property of the United States, namely, telephone line and appurtenances and the right of the United States to maintain and operate the same so long as it shall be necessary. This may be accomplished by excepting the aforesaid property of the United States and the rights necessary and incident thereto from the conveyance. In other words, instead

of conveying the property subject to an easement, no conveyance should be made of the telephone line or rights appurtenant thereto.

You [Commissioner of the General Land Office] are accordingly advised as follows: in cases where telephone lines or like structures have been actually constructed upon the public lands of the United States, including national forest lands, and are being maintained and operated by the United States, and your office is furnished with appropriate maps or field notes by the Department of Agriculture so prepared as to enable you to definitely locate the constructed line, proper notation thereof should be made upon the tract books of your office and if the land be thereafter listed or disposed of under any applicable public-land law, you should insert in the register's final certificate and in the patent when issued the following exception:

Excepting, however, from this conveyance that certain telephone line and all appurtenances thereto, constructed by the United States through, over, or upon the land herein described, and the right of the United States, its officers, agents, or employees to maintain, operate, repair, or improve the same so long as needed or used for or by the United States.

The papers transmitted by the Secretary of Agriculture are herewith inclosed.

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**LANDS WITHIN NATIONAL FORESTS—PRACTICE—JOINT  
REGULATIONS.**

CIRCULAR.

[No. 435.]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., September 4, 1915.*

TO REGISTERS AND RECEIVERS AND CHIEFS OF FIELD DIVISIONS:

The appended regulations will be effective on and after October 1, 1915.

Very respectfully,

CLAY TALLMAN,  
*Commissioner.*

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*WASHINGTON, D. C., August 5, 1915.*

To the Commissioner, Chief of Field Service, Chiefs of Field Divisions, Registers and Receivers, General Land Office, Department of the Interior; the Forester, District Foresters, Forest Service, the Solicitor, and District Assistants to the Solicitor, Department of Agriculture.

GENTLEMEN: Better to effectuate cooperation in protecting the interests of the Government and settlers and other claimants to lands