

GENERAL LAND OFFICE

REGULATIONS

CONCERNING

RIGHT OF WAY OVER PUBLIC
LANDS AND RESERVATIONS

FOR

CANALS, DITCHES, AND RESERVOIRS

AND

USE OF RIGHT OF WAY FOR VARIOUS PURPOSES

APPROVED JUNE 6, 1908

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(Addenda to Right-of-Way Regulations of June 6, 1908)

DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE

WASHINGTON, D. C., November 16, 1912.

Registers and Receivers,

United States Land Offices.

CIRCULAR No. 108.

ADDENDA TO THE RIGHT OF WAY REGULATIONS FOR CANALS,
DITCHES, AND RESERVOIRS, ETC., OF JUNE 6, 1908.

DEPARTMENT OF THE INTERIOR,

Washington, May 7, 1912.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: In the matter of the regulations approved June 6, 1908, concerning rights of way over public lands and reservations for canals, ditches, and reservoirs, and the use of a right of way for various purposes, I have to direct that modifications be made of paragraphs 38 and 43 thereof. As modified, these paragraphs will read as follows:

38. *Nature of grant.*—It is to be specially noted that this act does not make a grant in the nature of an easement but authorizes a mere permit in the nature of a license, which permit may be revoked by the Secretary, or his successor, at any time in his discretion. Further, it gives no right whatever to take from public lands, reservations, or parks adjacent to the right of way any materials, earth or stone, for construction or other purposes.

43. *National parks.*—Whenever a right of way is through any of the national parks designated in the act, the applicant must show to the satisfaction of the department that the location and use of the right of way for the purposes contemplated will not interfere with the uses and purposes for which the park was originally dedicated, and will not result in damage or injury to the natural conditions of property or scenery existing therein. The applicant must also file the stipulations and bond required by section 6, but, in case of a telephone line, substitute the following: "That upon completion of the telephone lines they shall be subject to the free use of the park officers for all purposes incident to the administration of the park." for stipulation (e) under said section 6.

Whenever right of way within a park is desired for operations in connection with mining, quarrying, cutting timber, or manufacturing lumber, a satisfactory showing must be made of the applicant's right to engage in such operations within the park. If the application and the showing made in support thereof is satisfactory, the Secretary of the Interior will give the required permission in such form as may be deemed proper, according to the features of each case; and any permission granted hereunder is also subject to such further and future regulations as may be adopted by the department.

You will see that these changes are made in an appropriate way in circulars hereafter distributed under this act.

Very respectfully,

SAMUEL ADAMS,
First Assistant Secretary.

REGULATIONS FOR RIGHTS OF WAY OVER PUBLIC LANDS AND RESERVATIONS.

CANALS, DITCHES, AND RESERVOIRS.

1. *General statement.*—Sections 18, 19, 20, and 21 of the act of Congress approved March 3, 1891 (26 Stat., 1095), entitled "An act to repeal timber-culture laws, and for other purposes," grant the right of way through the public lands and reservations of the United States for the use of canals, ditches, or reservoirs heretofore or hereafter constructed by corporations, individuals, or associations of individuals. If the right of way is upon a reservation not within the jurisdiction of the Interior Department, the application must be filed in accordance with these regulations, and will be submitted to the Department having jurisdiction. A map and field notes of the portion within any reservation, except in the case of a national forest, must be submitted in addition to the duplicates required herein. All maps and field notes must conform to the provisions of this circular.

The sections above noted read as follows:

SEC. 18. That the right of way through the public lands and reservations of the United States is hereby granted to any canal or ditch company formed for the purpose of irrigation, and duly organized under the laws of any State or Territory, which shall have filed or may hereafter file with the Secretary of the Interior a copy of its articles of incorporation and due proofs of its organization under the same to the extent of the ground occupied by the water of the reservoir and of the canal and its laterals, and fifty feet on each side of the marginal limits thereof; also the right to take from the public lands adjacent to the line of the canal or ditch, material, earth, and stone necessary for the construction of such canal or ditch: *Provided*, That no such right of way shall be so located as to interfere with the proper occupation by the Government of any such reservation, and all maps of location shall be subject to the approval of the Department of the Government having jurisdiction of such reservation, and the privilege herein granted shall not be construed to interfere with the control of water for irrigation and other purposes under authority of the respective States or Territories.

SEC. 19. That any canal or ditch company desiring to secure the benefits of this act shall, within twelve months after the location of ten miles of its canal, if the same be upon surveyed lands, and if upon unsurveyed lands within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a map of its canal or ditch and reservoir; and upon the approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office, and thereafter all such lands over which such rights of way shall pass shall be disposed of subject to such right of way. Whenever any person or corporation, in the construction of any canal, ditch, or reservoir 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. 20. That the provisions of this act shall apply to all canals, ditches, or reservoirs heretofore or hereafter constructed, whether constructed by corporations, individuals, or association of individuals, on the filing of the certificates and maps herein provided for. If such ditch, canal, or reservoir has been or shall be constructed by an individual or association of individuals, it shall be sufficient for such individual or

association of individuals to file with the Secretary of the Interior and with the register of the land office where said land is located a map of the line of such canal, ditch, or reservoir, as in case of a corporation, with the name of the individual owner or owners thereof, together with the articles of association, if any there be. Plats heretofore filed shall have the benefits of this act from the date of their filing, as though filed under it: *Provided*, That if any section of said canal or ditch shall not be completed within five years after the location of said section the rights herein granted shall be forfeited as to any uncompleted section of said canal, ditch, or reservoir, to the extent that the same is not completed at the date of the forfeiture.

Sec. 21. That nothing in this act shall authorize such canal or ditch company to occupy such right of way except for the purpose of said canal or ditch, and then only so far as may be necessary for the construction, maintenance, and care of said canal or ditch.

2. *Material on adjacent lands.*—The word *adjacent*, as used in section 18 of the act, in connection with the right to take material for construction from the public lands, must be construed according to the conditions of each case (28 L. D., 439). The right extends only to construction, and no public timber or material may be taken or used for repair or improvements (14 L. D., 566). These decisions were rendered under the railroad right-of-way act, and are applied to this act since the words are the same in both.

Section 2 of the act approved May 11, 1898 (30 Stat., 404), entitled "An act to amend an act to permit the use of the right of way through public lands for tramroads, canals, and reservoirs, and for other purposes," authorizes the use of rights of way granted under the act of 1891 for purposes subsidiary to the main purpose of irrigation. The language of said section is as follows:

Sec. 2. That rights of way for ditches, canals, or reservoirs heretofore or hereafter approved under the provisions of sections eighteen, nineteen, twenty, and twenty-one of the act entitled "An act to repeal timber-culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one, may be used for purposes of a public nature; and said rights of way may be used for purposes of water transportation, for domestic purposes, or for the development of power, as subsidiary to the main purpose of irrigation.

3. *Control of water.*—While these acts grant rights of way over the public lands necessary to the maintenance and use of ditches, canals, and reservoirs, the control of the flow and use of the water is, so far as this act is concerned, vested in the States or Territories, the jurisdiction of the Department of the Interior being limited to the approval of maps carrying the right of way over the public lands. If the right of way applied for under this act in any wise involves the appropriation of natural sources of water supply, the damming of rivers, or the use of lakes, the maps should be accompanied by proof that the plans and purposes of the projectors have been regularly submitted and approved in accordance with the local laws or customs governing the use of water in the State or Territory in which such right of way is located. No general rule can be adopted in regard to this matter. Each case must rest upon the showing filed.

4. *Nature of grant.*—The right granted is not in the nature of a grant of lands, but is a base or qualified fee. The possession and right of use of the lands are given for the purposes contemplated by law, but a reversionary interest remains in the United States, to be conveyed by it to the person to whom the land may be patented, whose rights will be subject to those of the grantee of the right of way. All persons settling on a tract of public land, to part of which right of way has attached for a canal, ditch, or reservoir, take the land subject to such right of way, and at the total area of the subdi-

vision entered, there being no authority to make deduction in such cases. If a settler has a valid claim to land existing at the date of the filing of the map of definite location, his right is superior, and he is entitled to such reasonable measure of damages for right of way as may be determined upon by agreement or in the courts, the question being one that does not fall within the jurisdiction of this Department. Section 21 of the act of March 3, 1891, provides that the grant of a right of way for a canal, ditch, or reservoir does not necessarily carry with it a right to the use of land 50 feet on each side, but only such land may be used as is necessary for construction, maintenance, and care of the canal, ditch, or reservoir. The width is not specified.

5. *Right of way through national forests.*—Whenever a right of way is through a national forest, the applicant must enter into such stipulation and execute such bond as the Forest Service may require for the protection of such national forest. No construction will be allowed in a national forest until an application for right of way has been regularly filed and approved by the Secretary of the Interior, or unless permission for such construction work has been specifically given.

6. *Right of way through proposed national forest.*—If the right of way is through land within a proposed national forest, the applicant must file the following stipulations under seal:

(a) That the proposed right of way is not so located as to interfere with the proper occupation and use of the reservation by the Government.

(b) That the applicant will cut no timber from the reserve outside the right of way, and will remove no timber from the land within the right of way except such as is rendered necessary for the proper use and enjoyment of the privilege for which application is made.

(c) That he will remove from the reservation, or destroy, under such safeguards as may be deemed necessary by the General Land Office, all standing, fallen, and dead timber, as well as all tops, lops, brush, and refuse cuttings on the right of way, for such distance on each side of the central line as may be required by the General Land Office to protect the forest from fire.

(d) That the applicant will furnish free of charge such assistance in men and material for fighting fires as may be spared without serious injury to the applicant's business.

(e) That should any portion of said right of way be included in a National Forest, the applicant will build new roads, trails, and crossings, as required by the Forest Service, in case any roads or trails are destroyed or intercepted by construction work or flooding upon said right of way.

The applicant will also be required to give bond to be approved by the Commissioner of the General Land Office, stipulating that the United States will be compensated "for any and all damage to the public lands, timber, natural curiosities, or other public property on such reservation, or upon the lands of the United States, by reason of such use and occupation of the reserve, regardless of the cause or circumstances under which such damage may occur." A bond furnished by any surety company that has complied with the provisions of the act of August 13, 1894 (28 Stat., 279), will be accepted. The amount of the bond can not be fixed until the application has been

submitted to the General Land Office, when a form of bond will be furnished and the amount thereof fixed.

7. *Right of way partly on unsurveyed land.*—Canals, ditches, or reservoirs lying partly upon unsurveyed land can be approved if the application and accompanying maps and papers conform to these regulations, but the approval will only relate to that portion traversing the surveyed lands. (For right of way wholly on unsurveyed land, see section 17.)

8. *Application by corporation.*—An incorporated company desiring

RS:

Under date of July 10, 1912, the Department modified paragraphs *a* and *f* of section 8 of the regulations for rights of way over public lands and reservations (L. D., 567), to read as follows:

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(a) A copy of its articles of incorporation duly certified to by the proper officers of the company under its corporate seal, or by the secretary of the State or Territory where organized; also an uncertified copy of the articles of incorporation.

(See paragraph *k* of this section.)

(c) If the State or Territorial law directs that the articles of incorporation or other papers connected with the organization be filed with any State or Territorial officer, there must be submitted the certificate of such officer that the same have been filed according to law, and giving the date of the filing thereof.

(d) When a company is operating in a State or Territory other than that in which it is incorporated, it must submit the certificate of the proper officer of the State or Territory that it has complied with the laws of that State or Territory governing foreign corporations to the extent required to entitle the company to operate in such State or Territory.

No forms are prescribed for the above portion of the "due proofs" required, as each case must be governed to some extent by the laws of the State or Territory.

(e) The official statement, by the proper officer, under the seal of the company, that the organization has been completed, that the company is fully authorized to proceed with construction according to the existing law of the State or Territory in which it is incorporated, and that the copy of the articles filed is true and correct. (See Form 1, p. 95.)

(f) A true list, in duplicate, signed by the president, under the seal of the company, showing the names and designations of its officers at the date of the filing of the proofs.

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needed for its canals, ditches, and reservoirs, certified as required by the State or Territorial laws. If the miner's inch is the unit used in such title, its equivalent in cubic feet per second must be stated. If the right to appropriate the water has not been adjudicated under the local laws, a certified copy of the notice of appropriation will be sufficient. If the notice of appropriation is accompanied by a map of the canal or reservoir it will not be necessary to furnish a copy of the map

where the notice describes the location sufficiently to identify it with the canal or reservoir for which the right-of-way application is made. If the water-right claim has been transferred a number of times it is not necessary to furnish a copy of each instrument of transfer; an abstract of title will be accepted.

(h) A copy of the State or Territorial laws governing water rights and irrigation, with the certificate of the governor or secretary of the State or Territory that the same is the existing law. (See paragraph *k* of this section.)

(i) A separate statement as follows: The amount of water flowing in the stream supplying the canal, ditch, or reservoir, at the point of diversion or damming, during the preceding year or years. For this purpose it will be necessary to give the maximum, minimum, and average flow in cubic feet per second for each month during the period for which records are available. In cases of reservoirs of 5,000 acre-feet capacity, or more, or of ditches of 100 cubic feet per second capacity, or more, the amount of water, in acre-feet, available for storage or diversion, and the amount of water which it is proposed to divert annually from the stream or streams affected, with the period during which the water is to be diverted. The length, cross-section, grade, and capacity of the ditches to be constructed and the character of the flow of water. The surveyor or

On October 8, 1912, the Department added to said section 8 an additional paragraph (*l*), as follows:

(l) A separate statement, describing as near as may reasonably be done legal subdivisions, if practicable, the land to be irrigated by the proposed project; the approximate acreage and general condition and character of the lands; the ownership generally, and whether public or private; such negotiations or arrangements as have been had between the applicant and the owners or occupants of the lands.

Respectfully,

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FRED DENNETT,

Commissioner

10. *Field notes.*—Associations of individuals must, in addition, submit a statement of association; if there be none, the fact must be stated over the signature of each member of the association.

10. *Field notes.*—Field notes of the surveys must be filed in duplicate, separate from the map, and in such form that they may be folded for filing. Complete field notes should not be placed on the map, but the following data should be shown thereon: (a) The station numbers where deflections or changes of numbering occur; (b) station numbers with distances to corners at points where the lines of the public surveys are crossed, and (c) the lines of reference of initial and terminal points, with their courses and distances. Typewritten field notes with clear carbon copies are preferred, as they expedite the examination of applications. The field notes should contain, in addition to the ordinary records of surveys, the data called for in this and in the following sections. They should state which line of the canal

submitted to the General Land Office, when a form of bond will be furnished and the amount thereof fixed.

7. *Right of way partly on unsurveyed land.*—Canals, ditches, or reservoirs lying partly upon unsurveyed land can be approved if the application and accompanying maps and papers conform to these regulations, but the approval will only relate to that portion traversing the surveyed lands. (For right of way wholly on unsurveyed land, see section 17.)

Application by corporation.—An incorporated company desiring

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Under date of July 10, 1912, the Department modified paragraphs *a* and *f* of section 8 of the regulations for rights of way over public lands and reservations (L. D., 567), to read as follows:

(a) A copy of its articles of incorporation duly certified to by the proper officers of the company under its corporate seal, or by the secretary of the State

the company, that the organization has been completed, that the company is fully authorized to proceed with construction according to the existing law of the State or Territory in which it is incorporated, and that the copy of the articles filed is true and correct. (See Form

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(f) A true list, in duplicate, signed by the president, under the seal of the company, showing the names and designations of its officers at the date of the filing of the proofs.

needed for its canals, ditches, and reservoirs, certified as required by the State or Territorial laws. If the miner's inch is the unit used in such title, its equivalent in cubic feet per second must be stated. If the right to appropriate the water has not been adjudicated under the local laws, a certified copy of the notice of appropriation will be sufficient. If the notice of appropriation is accompanied by a map of the canal or reservoir it will not be necessary to furnish a copy of the map

where the notice describes the location sufficiently to identify it with the canal or reservoir for which the right-of-way application is made. If the water-right claim has been transferred a number of times it is not necessary to furnish a copy of each instrument of transfer; an abstract of title will be accepted.

(h) A copy of the State or Territorial laws governing water rights and irrigation, with the certificate of the governor or secretary of the State or Territory that the same is the existing law. (See paragraph *k* of this section.)

(i) A separate statement as follows: The amount of water flowing in the stream supplying the canal, ditch, or reservoir, at the point of diversion or damming, during the preceding year or years. For this purpose it will be necessary to give the maximum, minimum, and average flow in cubic feet per second for each month during the period for which records are available. In cases of reservoirs of 5,000 acre-foot capacity, or more, or of ditches of 100 cubic feet per second capacity, or more, the amount of water, in acre-feet, available for storage or diversion, and the amount of water which it is proposed to divert annually from the stream or streams affected, with the period during which the water is to be diverted. The length, cross-section, grade, and capacity of the ditches to be constructed and the characteristics of each ditch as affecting the flow of water. The surveyor or engineer of the applicant must certify to the above, and must certify that all available records (specifying them), official and otherwise, have been consulted. If there is no well-defined flow which can be measured, or if there is no record of the flow, the area of the watershed, average annual rainfall, and estimated run-off at the point of diversion or damming must be given.

(j) Maps, field notes, and other papers, as hereinafter required.

(k) If certified copies of the existing laws regarding corporations and irrigation, and of new laws as passed from time to time, be forwarded to the General Land Office by the governor or secretary of the State or Territory, the applicant may file, in lieu of the requirements of paragraphs *b* and *h* of this section, a certificate of the governor or secretary of state, under seal, that no change has been made since a given date, not later than that of the laws last forwarded.

9. *Application by individuals.*—Individuals or associations of individuals making applications for right of way are required to file the information called for in paragraphs *g*, *h*, *i*, and *j* of the preceding section. Associations of individuals must, in addition, file their articles of association; if there be none, the fact must be stated over the signature of each member of the association.

10. *Field notes.*—Field notes of the surveys must be filed in duplicate, separate from the map, and in such form that they may be folded for filing. Complete field notes should not be placed on the map, but the following data should be shown thereon: (a) The station numbers where deflections or changes of numbering occur; (b) station numbers with distances to corners at points where the lines of the public surveys are crossed, and (c) the lines of reference of initial and terminal points, with their courses and distances. Typewritten field notes with clear carbon copies are preferred, as they expedite the examination of applications. The field notes should contain, in addition to the ordinary records of surveys, the data called for in this and in the following sections. They should state which line of the canal

was run—whether middle or a specified side line. The stations or courses should be numbered in the field notes and on the map. The record should be so complete that from it the surveys could be accurately retraced by a competent surveyor with proper instruments. The field notes should show whether the lines were run on the true or the magnetic bearings, and if run on magnetic bearings the declination of the needle and date of determination must be stated. The kind and size of the instrument used in running the lines and its minimum reading on the horizontal circle should be noted. The line of survey should be that of the actual location of the proposed ditch and, as exactly as possible, the water line of the proposed reservoir. The method of running the grade lines of canals and the water lines of reservoirs must be described.

11. *Maps.*—The maps filed must be drawn on tracing linen in duplicate, and must be strictly conformable to the field notes of the survey. They must be filed in the land office for the district in which the right of way is located; but if the right of way is located in more than one district, duplicate maps and field notes need be filed in but one district, and single sets in the others. Other canals, ditches, laterals, or reservoirs with which connections are made must be shown, but distinguished from those for which right of way is desired by ink of a different color.

The scale of the map should be 2,000 feet to the inch in the case of canals or ditches and 1,000 feet to the inch in the case of reservoirs. The scale may, however, be 1,000 feet to the inch in the case of canals or ditches and 500 feet to the inch in the case of reservoirs when such a scale is absolutely necessary to properly show the proposed works.

All subdivisions of the public surveys represented on the map should have their entire boundaries drawn, and on all lands affected by the right of way the smallest legal subdivisions (40-acre tracts and lots) must be shown. The section, township, and range must be clearly marked on the map.

The map must bear a statement of the width of each canal, ditch, or lateral at high-water line. If not of uniform width, the limits of the deviations must be clearly defined on the map. The field notes should record the changes in such a manner as to admit of exact location on the ground. In the case of a pipe line, the diameter of the pipe should be stated. The map must show the source of water supply.

In applications for right of way for a reservoir, the capacity of the reservoir must be stated on the map in acre-feet (i. e., the number of acres that will be covered to a depth of 1 foot by the water that the reservoir will hold; 1 acre-foot is 43,560 cubic feet). The map must show the source of water supply for the reservoir and the location and height of the dam.

12. *Initial and terminal points.*—The termini of a canal, ditch, or lateral should be fixed by reference of course and distance to the nearest existing corner of the public survey. The initial point of the survey of a reservoir should be fixed by reference of course and distance to the nearest existing corner outside the reservoir by a line that does not cross an area that will be covered with water when the reservoir is in use. The map, field notes, engineer's affidavit, and applicant's certificate (Forms 3 and 4) should each show these connections.

13. *Connections on unsurveyed land.*—When either terminal of a canal, ditch, or lateral is upon unsurveyed land, it must be connected

by traverse with an established corner of the public survey, if not more than 6 miles distant, and the single bearing and distance from the terminal point to the corner must be computed and noted on the map, in the engineer's affidavit, and in the applicant's certificate (Forms 3 and 4). The notes and all data for the computation of the traverse must be given in the field notes.

14. *Connections with monuments on unsurveyed land.*—When an established corner of the public survey is more than 6 miles distant this connection will be made with a natural object or a permanent monument which can be readily found and recognized and which will fix and perpetuate the position of the terminal point. The map must show the position of such mark and must give the course and distance to the terminus. The field notes must give an accurate description of the mark and full data of the traverse as required above. The engineer's affidavit and applicant's certificate (Forms 3 and 4) must state the connections. These monuments are of great importance.

15. *Forms for canal, etc., on unsurveyed land.*—When a canal, ditch, or lateral lies partly on unsurveyed land, each portion lying within surveyed and unsurveyed land will be separately described in the field notes and in Forms 3 and 4 by connections of termini, length, and width, as though each portion were independent. (See secs. 12, 13, and 14.)

16. *Forms for reservoir on unsurveyed land.*—When a reservoir lies partly on unsurveyed land its initial point must be noted, as required for the termini of ditches in section 12. The reference line must not cross an area that will be covered with water when the reservoir is in use. The areas of the several parts lying on surveyed and unsurveyed land must be separately noted on the map, in the field notes, and in Forms 3 and 4.

17. *Right of way wholly on unsurveyed land.*—Maps showing canals, ditches, or reservoirs wholly upon unsurveyed lands may be received and placed on file in the General Land Office and the local land office of the district in which the land is located, for general information. The date of filing will be noted thereon; but the maps will not be submitted to nor approved by the Secretary of the Interior, as the act makes no provision for the approval of any but maps showing the location in connection with the public surveys. The filing of such maps will not dispense with the filing of maps after the survey of the lands and within the time specified by the act granting the right of way. If these maps are in all respects regular when filed, they will receive the Secretary's approval. In filing such maps the initial and terminal points will be fixed as indicated in sections 13 and 14.

18. *Connections with public survey corners.*—Whenever the line of survey crosses a township or section line of the public survey, the distance to the nearest existing corner should be ascertained and noted. In the case of a reservoir the distance must not be measured across an area which will be covered with water when the reservoir is in use. The map of the canal, ditch, or reservoir must show these distances, and the field notes must give the points of intersection and the distances. When corners are destroyed by the canal or reservoir, proceed as directed in sections 19 and 20.

19. *Witness monuments for destroyed public survey corners.*—Whenever a corner of the public survey will be covered by earth or water, or otherwise rendered useless, marked monuments (one on each side of destroyed corner) must be set on each township or section line passing

through, or one on each line terminating at, said corner. These monuments must comply with the requirements for witness corners of the Manual of Surveying Instructions issued by the General Land Office, and must be at such distance from the works as to be safe from interference during the construction and operation of the same. If two or more consecutive corners on the same line are destroyed, the monument shall be set as required in the Manual for the nearest corner on that line to be covered.

20. *Method of establishing witness monuments.*—The line on which such monument is set will be determined by running a random line from the corner to be destroyed to the first existing corner on the line to be marked by the monument, a temporary mark being set on the random line at the distance of the proposed monument. If the random line strikes the corner run to, the monument will be established at the place marked; if the random line passes to one side of the corner, the north and south or east and west distance to it will be measured and the true course calculated. The proper correction of the temporary mark will then be computed and a permanent monument set in the proper place. The field notes for the surveys establishing the monuments must be in duplicate and separate from those of the canal or reservoir, and must be certified by the surveyor under oath. They must comply with the form of field notes prescribed in the Manual of Surveying Instructions issued by the General Land Office.

When application is made for a canal or reservoir which is constructed and in operation, the method to be adopted in setting the monuments must be governed by the special features of each case and left to the judgment of the surveyor. No field notes will be accepted unless the lines on which the monuments are set conform to the lines shown by the field notes of the survey as made originally under the direction of this office, and unless the notes are in such form that the computation can be verified and the lines retraced on the ground.

21. *Affidavit and certificate required.*—The engineer's affidavit and applicant's certificate must both designate by termini (as in sections 12 to 17, inclusive) and length each canal, ditch, or lateral, and by initial point and area each reservoir shown on a map, for which right of way is asked. This affidavit and this certificate (changed where necessary when an application is made by an individual or association of individuals) must be written on the map in duplicate. Applicants under the act of March 3, 1891, must include in the certificate (Form 4) the statement: "And I further certify that the right of way herein described is desired for the main purpose of irrigation." (See Forms 3 and 4, pages 25 and 26.) No changes or additions are allowable in the substance of these forms, except when the facts differ from those assumed therein.

22. *Notation on maps and records.*—When maps are filed, the register will note on each the name of the land office and the date of filing over his written signature. Notations will also be made on the records of the local land office, as to each *unpatented* tract affected, that application for right of way for a canal (or reservoir) is pending, giving date of filing and name of applicant. The register will certify on each map, over his written signature, that unpatented land is affected by the proposed right of way. The maps and field notes in duplicate, and any other papers filed in connection with the applica-

tion, will then be promptly transmitted to the General Land Office with report that the required notations have been made on the records of the local land office. Any valid right existing at the date of the filing of the right of way application will not be affected by the filing or approval thereof. (See sec. 4.) If no unpatented land is involved in the application, the local officers will reject it, allowing the usual right of appeal.

Upon the approval of a map of location by the Secretary of the Interior, the duplicate copy will be sent to the local officers, who will mark upon the township plats the lines of the canals, ditches, or reservoirs, as laid down on the map. They will also note the approval in ink, on the tract books, opposite each tract marked as required above and report to the General Land Office that notations have been made and the applicant notified of approval.

23. *Evidence of construction.*—When the canal, ditch, or reservoir is constructed, an affidavit of the engineer and certificate of the applicant (Forms 5 and 6) must be filed in the local office, in duplicate, for transmission to the General Land Office. No new map will be required, unless there are deviations from the right of way previously approved, either before or after construction, when there must be filed new maps and field notes in full, as herein provided, bearing proper forms, changed to agree with the facts in the case. The map must show clearly the portions amended or bear a statement describing them, and the location must be described in the forms as the *amended* survey and the *amended* definite location. In such cases the applicant must file a relinquishment, under seal, of all rights under the former approval as to the portions amended, said relinquishment to take effect when the map of amended definite location is approved by the Secretary of the Interior. If the canal or reservoir has been constructed on the location originally approved, and is to be used until the canal or reservoir on the amended location is ready for use, the relinquishment may be made to take effect upon the completion of the canal or reservoir on the amended location.

24. *Right of way on segregated reservoir sites.*—The act approved February 26, 1897 (29 Stat., 599), entitled "An act to provide for the use and occupation of reservoir sites reserved," permits the approval of applications under the above act of 1891 for right of way upon reservoir sites reserved under authority of the acts of October 2, 1888 (25 Stat., 505, 526), and August 30, 1890 (26 Stat., 371, 391). The text of the act is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all reservoir sites reserved or to be reserved shall be open to use and occupation under the right-of-way act of March third, eighteen hundred and ninety-one. And any State is hereby authorized to improve and occupy such reservoir sites to the same extent as an individual or private corporation, under such rules and regulations as the Secretary of the Interior may prescribe: *Provided,* That the charges for water coming in whole or part from reservoir sites used or occupied under the provisions of this act shall always be subject to the control and regulation of the respective States and Territories in which such reservoirs are in whole or part situate.

When an application is made under this act a reference to it should be added to Forms 4 and 6. In other respects the application should be prepared according to the preceding regulations.

OIL PIPE LINES IN COLORADO AND WYOMING.

25. *Requirements.*—The act approved May 21, 1896 (29 Stat., 127), entitled "An act to grant right of way over the public domain for pipe lines in the States of Colorado and Wyoming," is similar in its requirements to the right-of-way act of March 3, 1891, and the preceding regulations furnish full information as to the preparation of the maps and papers. Applicants will be governed thereby so far as they are applicable.

The text of the act is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of way through the public lands of the United States situate in the State of Colorado and in the State of Wyoming outside of the boundary lines of the Yellowstone National Park is hereby granted to any pipe-line company or corporation formed for the purpose of transporting oils, crude or refined, which shall have filed or may hereafter file with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of the ground occupied by said pipe line and twenty-five feet on each side of the center of line of the same; also the right to take from the public lands adjacent to the line of said pipe line material, earth, and stone necessary for the construction of said pipe line.

SEC. 2. That any company or corporation desiring to secure the benefits of this act shall within twelve months after the location of ten miles of the pipe line if the same be upon surveyed lands; and if the same be upon unsurveyed lands, within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a map of its line, and upon the approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office, and thereafter all such lands over which such right of way shall pass shall be disposed of subject to such right of way.

SEC. 3. That if any section of said pipe line shall not be completed within five years after the location of said section the right herein granted shall be forfeited, as to any incomplete section of said pipe line, to the extent that the same is not completed at the date of the forfeiture.

SEC. 4. That nothing in this act shall authorize the use of such right of way except for the pipe line, and then only so far as may be necessary for its construction, maintenance, and care.

RESERVOIRS FOR WATERING STOCK.

26. *General provisions.*—The act approved January 13, 1897 (29 Stat., 484), entitled "An act providing for the location and purchase of public lands for reservoir sites," is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person, live-stock company, or transportation corporation engaged in breeding, grazing, driving, or transporting live stock may construct reservoirs upon unoccupied public lands of the United States, not mineral or otherwise reserved, for the purpose of furnishing water to such live stock, and shall have control of such reservoir, under regulations prescribed by the Secretary of the Interior, and the lands upon which the same is constructed, not exceeding one hundred and sixty acres, so long as such reservoir is maintained and water kept therein for such purposes: *Provided,* That such reservoir shall not be fenced and shall be open to the free use of any person desiring to water animals of any kind.

SEC. 2. That any person, live-stock company, or corporation desiring to avail themselves of the provisions of this act shall file a declaratory statement in the United States land office in the district where the land is situated, which statement shall describe the land where such reservoir is to be or has been constructed; shall state what business such corporation is engaged in; specify the capacity of the reservoir in gallons, and whether such company, person, or corporation has filed upon other reservoir sites within the same county; and if so, how many.

SEC. 3. That at any time after the completion of such reservoir or reservoirs which, if not completed at the date of the passage of this act, shall be constructed and completed within two years after filing such declaratory statement, such person, company, or corporation shall have the same accurately surveyed, as hereinafter provided, and shall file in the United States land office in the district in which such reservoir is located a map or plat showing the location of such reservoir, which map or plat shall be

transmitted by the register and receiver of said United States land office to the Secretary of the Interior and approved by him, and thereafter such land shall be reserved from sale by the Secretary of the Interior so long as such reservoir is kept in repair and water kept therein.

SEC. 4. That Congress may at any time amend, alter, or repeal this act.

27. *No lands sold.*—Although the title indicates that lands are to be sold for reservoir sites, the act does not provide for the sale of any lands, and therefore no lands can be sold under its provisions. The act, however, directs the Secretary of the Interior to reserve the lands from sale after the approval of the map showing the location of the reservoir. Homestead entries are allowed for lands embraced in reservoir declaratory statements, prior to the completion of the reservoir and the approval of the map, subject, however, to cancellation if the reservoir is completed within the time specified by the act.

28. *Declaratory statement.*—Any person, live-stock company, or transportation corporation engaged in breeding, grazing, driving, or transporting live stock, desiring to obtain the benefits of the act must file a declaratory statement in the United States land office in the district in which the land is located.

29. *Application by corporation.*—When the applicant is a corporation there should be filed a copy of its articles of incorporation and proofs of its organization, as required in section 8, paragraphs *a, b, c, d, e, f,* and *k* of these regulations. If these papers are filed with the first declaratory statement made by the company, a reference thereto by its number will be sufficient in any subsequent application by the company.

The declaratory statement must be made under oath and should be drawn in accordance with Form 9 (page 27), and must contain the following:

(a) The post-office address of the applicant; the name of the county in which the reservoir is to be or has been constructed; the description by the smallest legal subdivision (40-acre tracts or lots) of the land sought to be reserved which under no circumstances must exceed 160 acres; certificate that the land is not occupied or otherwise claimed; certificate that to the best of the applicant's knowledge and belief the land is not mineral or otherwise reserved; statement of the business of the applicant, which statement shall include full and minute information concerning the extent to which he is engaged in breeding, grazing, driving, or transporting live stock, the number and kinds of such stock, the place where they are being bred or grazed, whether within an inclosure or upon uninclosed lands, and also the points from which and to which they are being driven or transported; description of the land owned or claimed by the applicant in the vicinity of the proposed reservoir and statement of its amount; certificate that no part of the land sought to be reserved is or will be fenced, that all the land will be kept open to the free use of any person desiring to water animals of any kind; and that the lands so sought to be reserved are not, by reason of their proximity to other lands reserved for reservoirs, excluded from reservation by the regulations and rulings of the Land Department.

(b) The location of the reservoir described by the smallest legal subdivisions (40-acre tracts or lots), its area in acres, its capacity in gallons, the source from which water is to be obtained for such reservoir, whether there are any streams or springs within 2 miles of the land sought to be reserved; and if so, where.

(e) The numbers, locations, and areas of all other reservoir sites filed upon by the applicant, especially designating those in the county in which the proposed reservoir is located.

30. *Action by the Land Department on declaratory statements, and size, location, and number of reservoir sites.*—When such declaratory statement is filed, the date of filing will be noted thereon over the signature of the officer receiving it, and the statements will be numbered according to order of June 1, 1908. The register will make the usual notations on the records, in pencil, under the designation of "Reservoir declaratory statement, No. —," adding the date of the act. For the filing of such reservoir declaratory statement the local officers will be authorized to charge the usual fees. (Sec. 2238, U. S. Rev. Stat.) The local officers will forward the declaratory statement with the regular monthly returns, with abstracts, in the usual manner. In acting upon these statements the following general rules will be applied:

(a) No reservation will be made for a reservoir of less than 250,000 gallons capacity, and for a reservoir of less than 500,000 gallons capacity not more than 40 acres can be reserved. For a reservoir of 500,000 gallons and less than 1,000,000 gallons capacity not more than 80 acres can be reserved. For a reservoir of 1,000,000 gallons and less than 1,500,000 gallons capacity not more than 120 acres can be reserved. For a reservoir of 1,500,000 gallons capacity or more 160 acres may be reserved.

(b) Not more than 160 acres shall be reserved for this purpose in any section.

(c) Not more than 160 acres shall be reserved for this purpose in one group of tracts adjoining or cornering upon each other.

(d) A distance of one-half mile must be left between any two groups of tracts which aggregate more than 160 acres.

(e) The local officers will reject any reservoir declaratory statement not in conformity with these rules.

(f) Lands so reserved shall not be fenced, but shall be kept open to the free use of any person desiring to water animals of any kind. If lands so reserved are at any time fenced or otherwise inclosed, or if they are not kept open to the free use of any person desiring to water animals of any kind, or if the reservoir applicant attempts to use them for any other purpose, or if the reservation is not obtained for the bona fide and exclusive purpose of constructing and maintaining a reservoir thereon according to law, the declaratory statement, upon any such matter being made to appear, will be canceled and all rights thereunder be declared at an end.

(g) Notwithstanding the action of the local officers in accepting any such declaratory statement, the Commissioner of the General Land Office will reject the same if upon considering the matters set forth therein it appears that the declaratory statement is not filed in good faith for the sole purpose of accomplishing what the law authorizes to be done.

31. *Construction.*—The reservoir must be completed and constructed within two years after the filing of the declaratory statement; otherwise the declaratory statement will be subject to cancellation.

32. *Map and field notes of constructed reservoir.*—After the construction and completion of the reservoir the applicant shall have the same accurately surveyed and mapped, in accordance with the instructions of sections 10 to 22, inclusive, so far as they are appli-

cable. The map and field notes, which are not to be prepared in duplicate, must be filed in the proper local office. The map must bear Forms 10 and 11 (p. 29), and the field notes must be sworn to by the surveyor.

33. *Notations by local land officers.*—When the map, field notes, and other papers have been filed in the local office, the date of filing will be noted thereon and the proper notations will be made on the local office records, as in the case of the declaratory statement. Local officers will then promptly forward the maps and papers to the General Land Office.

34. *Approval.*—The map and papers will be examined in the General Land Office to determine whether they comply with the law and the regulations, and whether the amount of land desired is warranted by the showing made in the application. If found satisfactory they will be submitted to the Secretary of the Interior, and upon approval the lands shown to be necessary for the proper use and enjoyment of the reservoir will be reserved from other disposition so long as the reservoir is maintained and water kept therein for the purposes named in the act. Upon the receipt of notice of such reservation from the General Land Office the local officers will make the proper notations on their records and report the making thereof promptly to the General Land Office.

35. *Annual proof of maintenance.*—In order that this reservation shall be continued it is necessary that the reservoir "shall be kept in repair and water kept therein." For this reason the owner of the reservoir will be required during the month of January of each year to file in the local office an affidavit to the effect that the reservoir has been kept in repair and water kept therein during the preceding year, and that all the provisions of the act have been complied with. Form 12 (p. 29) will be used for this affidavit. Upon failure to file such affidavit steps will be taken looking to the revocation of the reservation of the lands.

36. *Reservoir on unsurveyed land.*—If the reservoir is located on unsurveyed land, the declaratory statement may be filed, the lands being described as closely as practicable.

The widely different conditions to be considered in the operations proposed by the applicants make it impossible to formulate regulations that will furnish the data necessary in all cases. Additional information will be called for whenever necessary for the proper consideration of any particular case.

TELEGRAPH AND TELEPHONE LINES, ELECTRICAL PLANTS, CANALS, AND RESERVOIRS.

37. *General statement.*—The act of February 15, 1901 (31 Stat., 790), entitled "An act relating to rights of way through certain parks, reservations, and other public lands," is as follows:

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 be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of rights of way through the public lands, forest and other reservations of the United States, and the Yosemite, Sequoia, and General Grant national parks, California, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for canals, ditches, pipes and

pipe lines, flumes, tunnels, or other water conduits, and for water plants, dams, and reservoirs used to promote irrigation or mining or quarrying, or the manufacturing or cutting of timber or lumber, or the supplying of water for domestic, public, or any other beneficial uses to the extent of the ground occupied by such canals, ditches, flumes, tunnels, reservoirs, or other water conduits or water plants, or electrical or other works permitted hereunder, and not to exceed fifty feet on each side of the marginal limits thereof, or not to exceed fifty feet on each side of the center line of such pipes and pipe lines, electrical, telegraph, and telephone lines and poles, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted hereunder or any one or more of the purposes herein named: *Provided*, That such permits shall be allowed within or through any of said parks or any forest, military, Indian, or other reservation only upon the approval of the chief officer of the Department under whose supervision such park or reservation falls and upon a finding by him that the same is not incompatible with the public interest: *Provided further*, That all permits given hereunder for telegraph and telephone purposes shall be subject to the provision of title sixty-five of the Revised Statutes of the United States, and amendments thereto, regulating rights of way for telegraph companies over the public domain: *And provided further*, That any permission given by the Secretary of the Interior under the provisions of this act may be revoked by him or his successor in his discretion, and shall not be held to confer any right, or easement, or interest in, to, or over any public land, reservation, or park.

This act, in general terms, authorizes the Secretary of the Interior, under regulations to be fixed by him, to grant permission to use rights of way through the public lands, forest and other reservations of the United States, and the Yosemite, Sequoia, and General Grant national parks in California, for every purpose contemplated by acts of January 21, 1895 (28 Stat., 635), May 14, 1896 (29 Stat., 120), and section 1 of the act of May 11, 1898 (30 Stat., 404), and for other purposes additional thereto, *except for tramroads, the provisions relating to tramroads, contained in the act of 1895 and in section 1 of the act of 1898, aforesaid remaining unmodified and not being in any manner extended.*

Although this act does not expressly repeal any provision of law relating to the granting of permission to use rights of way contained in the acts referred to, yet in view of the general scope and purpose of the act, and of the fact that Congress has, with the exception above noted, embodied therein the main features of the former acts relative to the granting of a mere permission or license for such use, it is evident that, for purposes of administration, the later act should control in so far as it pertains to the granting of permission to use rights of way for purposes therein specified. Accordingly all applications for *permission* to use rights of way for the purposes specified in this act must be submitted thereunder. Where, however, it is sought to acquire a right of way for the main purpose of irrigation, as contemplated by sections 18 to 21 of the act of March 3, 1891 (26 Stat., 1095), and section 2 of the act of May 11, 1898, *supra*, the application must be submitted in accordance with the regulations issued under said acts. (See pp. 4 to 14, inclusive.)

Application for permission to use the desired right of way through the public lands and parks designated in the act must be filed and permission must be granted, as herein provided, before any rights can be claimed thereunder.

38. *Nature of grant.*—It is to be specially noted that this act does not make a grant in the nature of an easement, but authorizes a mere permission in the nature of a license, revocable at any time, and it gives no right whatever to take from the public lands, reservations, or parks, adjacent to the right of way, any material, earth, or stone for construction or other purpose.

CIRCULAR No. 5.

ADDENDA TO RIGHT-OF-WAY REGULATIONS.

Application for Easements for Power-Transmission Lines, etc.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *April 14, 1911.*

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: Your attention is called to that part of the act of March 4, 1911 (Public, No. 478), which reads as follows:

That the head of the department having jurisdiction over the lands be, and he hereby is, authorized and empowered, under general regulations to be fixed by him, to grant an easement for rights of way, for a period not exceeding fifty years from the date of the issuance of such grant, over, across, and upon the public lands, national forests, and reservations of the United States for electrical poles and lines for the transmission and distribution of electrical power, and for poles and lines for telephone and telegraph purposes, to the extent of twenty feet on each side of the center line of such electrical, telephone and telegraph lines and poles, to any citizen, association, or corporation of the United States, where it is intended by such to exercise the right of way herein granted for any one or more of the purposes herein named: *Provided*, That such right of way shall be allowed within or through any national park, national forest, military, Indian, or any other reservation only upon the approval of the chief officer of the department under whose supervision or control such reservation falls, and upon a finding by him that the same is not incompatible with the public interest: *Provided*, That all or any part of such right of way may be forfeited and annulled by declaration of the head of the department having jurisdiction over the lands for nonuse for a period of two years or for abandonment.

That any citizen, association, or corporation of the United States to whom there has heretofore been issued a permit for any of the purposes specified herein under any existing law, may obtain the benefit of this act upon the same terms and conditions as shall be required of citizens, associations, or corporations hereafter making application under the provisions of this statute.

It will be observed that this act, which authorizes the granting of easements for electrical power transmission, and telephone and telegraph lines for stated periods not to exceed 50 years, follows, as closely as is possible in the accomplishment of its purposes, the language of the act of February 15, 1901 (31 Stat., 790), which authorizes mere revocable permits or licenses for such lines, and for other purposes. This act, therefore, merely authorizes additional or larger grants and does not modify or repeal the act of 1901, and should be construed and applied in harmony with it.

It is not believed that it would be either advisable or feasible to definitely fix at this time the periods for which the authorized easements should be granted, since it will be wiser and more practical to

leave that question to be determined in each particular case from its attendant facts and circumstances at the time the application is presented. Where the application involves transmission and distribution of electrical power a detailed statement of the power plant with which the transmission lines are connected should accompany the application; also a statement as to whether the power plant is located on public or private land, and whether any part of the system affects lands in reservations other than those under the jurisdiction of the Secretary of the Interior.

The regulations issued under the act of February 15, 1901, in so far as they are applicable, will control in the presentation, consideration, and granting of applications for easements under this act.

Very respectfully,

WALTER L. FISHER, *Secretary.*

39. *Applications for right of way through national forests.*—By section 1 of the act of February 1, 1905 (33 Stat., 628), it is provided:

That 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 third, eighteen hundred and ninety-one, 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 such lands.

Under this provision it has been determined that the Department of Agriculture is invested with jurisdiction to pass upon all applications under any law of the United States providing for the granting of a permission to occupy and use lands in a national forest, provided this occupation or use is temporary, and will in no wise affect the fee or cloud the title of the United States should the reserve be discontinued.

Therefore, when it is desired to obtain permission to use a right of way over public lands wholly within a national forest, an application should be prepared in accordance with the instructions issued by the Department of Agriculture, and the same filed with the officer in charge of such national forest.

In case the application involves rights and privileges upon public lands partly within and partly without a national forest, separate applications must be prepared, and the one affecting lands within the national forest filed with the forest officer and the other filed in the local land office.

40. *Applications for right of way through land outside of national forests.*—Where permission to use a right of way over lands wholly outside of national forests is desired, the application must be prepared and filed in accordance with sections 4 to 22, inclusive, appropriate changes being made in the prescribed forms so as to specify and relate to the act under which the application is made.

An affidavit by the applicant that he is a citizen of the United States must accompany the application. If the applicant is an association of citizens, each member must make affidavit of citizenship, and a complete list of the members must be given in an affidavit by one of them. If he is not a native-born citizen he must file the usual proofs of naturalization. The applicant must also set forth in the affidavit the purposes for which the right of way is to be used, and must show that he in good faith intends to utilize the same for such purposes.

41. *Buildings to be platted on map in main drawing and in separate drawing.*—When application is made for right of way for electrical or water plants, the location and extent of ground proposed to be occupied by buildings or other structures necessary to be used in connection therewith must be clearly designated on the map and described in the field notes and forms (7 and 8, p. 27) by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more of such proposed structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them, provided all the others are

connected therewith by course and distance shown on the map. The applicant must also file an affidavit setting forth the dimensions and proposed use of each of the structures, and must show definitely that each one is necessary for a proper use of the right of way for the purposes contemplated in the act.

42. *Unsurveyed lands.*—Permission may be given under this act (February 15, 1901) for rights of way upon unsurveyed lands, maps to be prepared in accordance with the requirements of this circular.

43. *National parks.*—Whenever a right of way is through any of the national parks designated in the act, the applicant must show to the satisfaction of the Department that the location and use of the right of way for the purposes contemplated will not interfere with the uses and purposes for which the park was originally dedicated, and will not result in damage or injury to the natural conditions of property or scenery existing therein. When the right of way is through any of the national parks designated in the act, the applicant must file the stipulations and bond required by section 6, but, in case of a telephone line, substitute the following: "That upon completion of the telephone lines they shall be subject to the free use of the park officers for all purposes incident to the administration of the park," for stipulation (e) under said section 6.

Whenever right of way within a park is desired for operations in connection with mining, quarrying, cutting timber, or manufacturing lumber, a satisfactory showing must be made of the applicant's right to engage in such operations within the park. If the application and the showing made in support thereof is satisfactory, the Secretary of the Interior will give the required permission in such form as may be deemed proper, according to the features of each case; and it is to be expressly understood, in accordance with the final proviso of the act, that any permission given thereunder may be modified or revoked by the Secretary or his successor, in his discretion, at any time, and shall not be held to confer any right, easement, or interest in, to, or over any public land or park. The final disposal by the United States of any tract traversed by the permitted right of way is of itself, without further act on the part of the Department, a revocation of the permission so far as it affects that tract; and any permission granted hereunder is also subject to such further and future regulations as may be adopted by the Department.

44. *Indian reservations.*—Applications for right of way under this act, all of which is located upon land within an Indian reservation, must be filed with the Commissioner of Indian Affairs. Applications for right of way affecting lands within and without Indian reservations must be filed in the local land office for forwarding to the Commissioner of the General Land Office. Before such applications are transmitted to the Department they will be submitted by the Commissioner of the General Land Office to the Commissioner of Indian Affairs for such action and recommendation as that officer may deem proper in so far as the same pertains to such Indian reservation. Applicants will be required to furnish, in triplicate, so much of the map and field notes as relate to that portion of the right of way within an Indian reservation; and if the application is subsequently granted, one copy of such portion of the map and field notes as pertains to such reservation will be placed on file in the Indian Office. In this connection, attention is directed to the provisions of

section 3 of the act of March 3, 1901 (31 Stat., 1083), which authorizes the granting of permanent rights of way, in the nature of easements, for telegraph and telephone purposes only, through Indian reservations and other Indian lands, upon payment of proper compensation for the benefit of the Indians interested therein. The provisions of the act of March 3, 1901, and the nature and character of the rights authorized to be secured thereunder differ materially from the provisions of the act on which these regulations are based and the rights authorized to be conferred thereunder. Applicants, therefore, desiring to secure permanent rights of way through Indian reservations or other Indian lands for telegraph and telephone purposes will be required to submit their applications therefor under the act of March 3, 1901, supra, in accordance with the then current regulations issued thereunder. (For existing regulations under said act, see regulations approved March 26, 1901.)

45. *Notations and procedure.*—Upon the filing of an application under this act, the register will note the same in pencil on the tract books, opposite the tracts traversed, giving date of filing and name of applicant, and also indorse on each map, over his written signature, the date of filing. If it appears that no portion of the public lands or parks designated in the act would be affected by the approval of such maps, they will be returned to the applicant with notice of that fact. If vacant public land or lands in any park so designated are affected by the proposed right of way, the register will so certify on the map and duplicate over his signature, and will promptly transmit the same to the General Land Office with report that the required notations have been made.

When permission to use the right of way applied for is given by the Secretary of the Interior, a copy of the original map will be sent to the local officers, who will mark upon the township plats the line of the right of way and will note in pencil, opposite each tract of public land affected, that such permission has been given, the date thereof, and a reference to the act.

TRAMROADS.

46. *Rights of ways for tramroads.*—The Secretary of the Interior is authorized to permit the use of rights of way for tramroads through the public lands of the United States, not within the limits of any park, national forest, or military or Indian reservation under the provisions of the act of Congress of January 21, 1895 (28 Stat., 635), as amended by section 1 of the act of May 11, 1898 (30 Stat., 404). The act of January 21, 1895, entitled "An act to permit the use of the right of way through the public lands for tramroads, canals, and reservoirs, and for other purposes," is as follows:

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 be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of the right of way through the public lands of the United States, not within the limits of any park, forest, military, or Indian reservation, for tramroads, canals, or reservoirs to the extent of the ground occupied by the water of the canals and reservoirs and fifty feet on each side of the marginal limits thereof; or fifty feet on each side of the center line of the tramroad, by any citizen or any association of citizens of the United States engaged in the business of mining or quarrying or of cutting timber and manufacturing lumber.

This act was amended by section 1 of the act of May 11, 1898, *supra*, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act to permit the use of the right of way through the public lands for tramroads, canals, and reservoirs, and for other purposes," approved January twenty-first, eighteen hundred and ninety-five, be, and the same is hereby, amended by adding thereto the following:

"That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of right of way upon the public lands of the United States, not within limits of any park, forest, military, or Indian reservations, for tramways, canals, or reservoirs, to the extent of the ground occupied by the water of the canals and reservoirs, and fifty feet on each side of the marginal limits thereof, or fifty feet on each side of the center line of the tramroad, by any citizen or association of citizens of the United States, for the purposes of furnishing water for domestic, public, and other beneficial uses."

Applications for permission to use rights of way for tramroads should be prepared and filed in accordance with the regulations hereinbefore prescribed relative to presentation of applications for rights of way under the act of February 15, 1901, and the then current regulations issued under the general railroad right-of-way act of March 3, 1875 (for existing regulations under the latter act see 32 L. D., 481), the prescribed forms in such regulations being so modified as to specify and relate to the acts under which the application is made. It is to be specially noted that the acts relating to tramroads do not authorize the granting of permission to use rights of way for such purpose within the limits of any park, national forest, or military or Indian reservation, and it is to be further noted that permission to use rights of way for tramroads over public lands, when granted, only confers a right in the nature of a license and is subject to all the conditions and limitations hereinbefore stated in section 43 of these regulations.

RIGHT OF WAY THROUGH NATIONAL FORESTS FOR DAMS, RESERVOIRS, WATER PLANTS, DITCHES, FLUMES, PIPES, TUNNELS, AND CANALS FOR MUNICIPAL OR MINING PURPOSES.

47. *General statement*.—Section 4, of the act of Congress approved February 1, 1905 (33 Stat., 628), reads as follows:

SEC. 4. That rights of way for the construction and maintenance of dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals, within and across the forest reserves of the United States, are hereby granted to citizens and corporations of the United States for municipal or mining purposes, and for the purposes of the milling and reduction of ores, during the period of their beneficial use, under such rules and regulations as may be prescribed by the Secretary of the Interior, and subject to the laws of the State or Territory in which said reserves are respectively situated.

This act grants rights of way through national forests to citizens and corporations of the United States for the objects therein specified, during the period of their beneficial use, under rules and regulations to be prescribed by the Secretary of the Interior, and subject to the laws of the State or Territory in which said forests are situated.

All applications for the right of way for the purposes set forth in said act must be submitted in accordance herewith.

No construction will be allowed in national forests until an application for right of way has been regularly filed in accordance with these regulations and has been approved by the Secretary of the Interior, or unless permission has been specifically given.

48. *Nature of grant*.—The right granted is not in the nature of a grant of lands, but is a base or qualified fee, giving the possession and right of use of the land for the purposes contemplated by the act, during the period of the beneficial use. When the use ceases the right terminates, and thereupon proper steps will be taken to revoke the grant.

No right, whatever, is given to take any material, earth, or stone for construction or other purposes, nor is any right given to use any land outside of what is actually necessary for the construction and maintenance of the works.

49. *Preparation of applications*.—Applications for right of way under this act should be made in the form of a map and field notes, in duplicate, and must be filed in the local land office for the district in which the land traversed by the right of way is situated; if the land is in more than one district, duplicate maps and field notes need be filed in only one district and single sets in the others. The maps, field notes, evidence of water rights, etc., and, when the applicant is a corporation, the articles of incorporation and proofs of organization must be prepared and filed in accordance with sections 7 to 21, inclusive, appropriate changes being made in the prescribed forms so as to specify and relate to the act under which the application is made.

An affidavit by the applicant that he is a citizen of the United States must accompany the application. If the applicant is an association of citizens, each member must make affidavit of citizenship, and a complete list of the members must be given in an affidavit of one of them. A copy of their articles of association must also be furnished, or if there be none, the fact must be stated over the signature of each member of the association.

If the applicant is not a native-born citizen, he must file the usual proof of naturalization. The applicant must set forth in the affidavit the purposes for which the right of way is desired.

50. *Water-plant structures*.—When application is made for right of way for water plants, the location and extent of ground proposed to be occupied by buildings, or other structures necessary to be used in connection therewith, must be clearly designated on the map and described in the field notes and forms (7 and 8, p. 27) by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more of such structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them, provided all others are connected therewith by course and distance shown on the map.

The applicant must also file an affidavit setting forth the dimensions and proposed use of each of the structures, and must show definitely that each is necessary to a proper enjoyment of the right of way granted by the act.

51. *Stipulation and bond*.—The applicant must enter into such stipulation and execute such bond as the Forest Service may require for the protection of the national forest.

52. *Notation by register*.—Upon the filing of an application under this act, the register will note the same in pencil on the tract books,

opposite the tracts traversed, giving date of filing and name of applicant, and also indorse on each map over his written signature the name of the land office and the date of filing.

If it appears that no portion of the public lands in a national forest would be affected by the approval of such maps, they will be returned to the applicant with notice of that fact. If unpatented lands are affected by the proposed right of way, the register will so certify on the map and duplicate, over his signature, and will promptly transmit the same to the General Land Office, with report that the required notations have been made.

Upon the approval of a map of location by the Secretary of the Interior, the duplicate copy will be sent to the local officers, who will mark upon the township plats the lines of the right of way as laid down on the map. They will also note the approval in ink on the tract books, opposite each legal subdivision affected, with a reference to the act mentioned on the map.

53. *Right of way through unsurveyed land.*—Maps showing reservoirs, canals, water plants, etc., wholly upon unsurveyed lands will be received and placed on file in the General Land Office and the local land office of the district in which the same is located, for general information, and the date of filing will be noted thereon.

FRED DENNETT,
Commissioner.

Approved June 6, 1908.

FRANK PIERCE,
Acting Secretary.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

Addenda to Regulations of June 6, 1908.

Section 8, circular of June 6, 1908, governing applications for rights of way over public lands and reservations of the United States for canals, ditches, reservoirs, etc., is hereby modified so as to add thereto the following paragraph:

(1) A separate statement, describing as near as may reasonably be done, by legal subdivisions, if practicable, the land to be irrigated by the proposed project; the approximate acreage and general condition and character of the lands; their ownership generally, and whether public or private; such negotiations or arrangements as have been had between the applicant and the owners or occupants of the lands.

Approved October 8, 1912, by acting secretary.

63148—12

FORMS FOR "DUE PROOFS" AND VERIFICATION OF MAPS OF
RIGHT OF WAY FOR CANALS, DITCHES, AND RESERVOIRS.

FORM 1.

I, _____, secretary (or president) of the _____ Company, do hereby certify that the organization of said company has been completed; that the company is fully authorized to proceed with construction, according to the existing laws of the State (or Territory) of _____, and that the copy of the articles of association (or incorporation) of the company filed in the Department of the Interior is a true and correct copy of the same.

In witness whereof I have hereunto set my name and the corporate seal of the company this _____ day of _____, in the year 19—.

[Seal of company.]

— of the _____ Company.

FORM 2.

I, _____, do certify that I am the president of the _____ Company, and that the following is a true list of the officers of the said company, with the full name and official designation of each, to wit: (Here insert the full name and official designation of each officer.)

In witness whereof I have hereunto set my name and the corporate seal of the company this _____ day of _____, in the year 19—.

[Seal of company.]

President of the _____ Company.

FORM 3.

STATE OF _____,
County of _____, ss:

_____ being duly sworn, says he is the chief engineer of (or the person employed to make the survey by) the _____ Company; that the survey of said company's (canals, ditches, and reservoirs), described as follows: (Here describe each canal, ditch, lateral, and reservoir for which right of way is asked, as required by section 21, being a total length of canals, ditches, and laterals of _____ miles, and a total area of reservoirs of _____ acres), was made by him (or under his direction) as chief engineer of the company (or as surveyor employed by the company) and under its authority, commenced on the _____ day of _____, 19—, and ending on the _____ day of _____, 19—, ^a[and that the survey of the said (canal, ditches, laterals, and reservoirs) accurately represents (a proper grade line for the flow of water, and accurately represents a level line, which is the proposed water line of the said reservoir)], and that such survey is accurately represented upon this map and by the accompanying field notes. ^a[And no lake or lake bed, stream or stream bed, is used for the said (canals, ditches, laterals, and reservoirs) except as shown on this map.]

Sworn and subscribed to before me this _____ day of _____, 19—.

[SEAL.]

Notary Public.

^a This clause to be omitted in applications for telephone and telegraph lines.

FORM 4.

I, _____, do hereby certify that I am president of the _____ Company; that _____, who subscribed the accompanying affidavit, is the chief engineer of (or was employed to make the survey by) the said company; that the survey of the said (canals, ditches, laterals, and reservoirs), as accurately represented on this map and by the accompanying field notes, was made under authority of the company; that the company is duly authorized by its articles of incorporation to construct the said (canals, ditches, laterals, and reservoirs) upon the location shown upon this map; that the said (canals, ditches, laterals, and reservoirs), as represented on this map and by said field notes, was adopted by the company, by resolution of its board of directors, on the _____ day of _____, 19____, as the definite location of the said (canals, ditches, laterals, and reservoirs) described as follows—(describe as in Form 3)—^a[and that no lake or lake bed, stream or stream bed, is used for the said (canals, ditches, laterals, and reservoirs) except as shown on this map]; and that the map has been prepared to be filed for the approval of the Secretary of the Interior, in order that the company may obtain the benefits of ^b(sections 18 to 21, inclusive, of the act of Congress approved March 3, 1891, entitled "An act to repeal timber-culture laws, and for other purposes," and section 2 of the act approved May 11, 1898); and I further certify that the right of way herein described is desired for the main purpose of irrigation.^c

Attest:

[Seal of company.]

President of the _____ Company,

Secretary.

FORM 5.

STATE OF _____,
 County of _____, ss:

_____, being duly sworn, says that he is the chief engineer of (or was employed to construct) the (canals, ditches, laterals, and reservoirs) of the _____ Company; that said (canals, ditches, laterals, and reservoirs) have been constructed under his supervision, as follows: (Describe as required in section 21) a total length of constructed (canals, ditches, and laterals) of _____ miles, and a total area of constructed reservoirs of _____ acres; that construction was commenced on the _____ day of _____, 19____, and completed on the _____ day of _____, 19____; that the constructed (canals, ditches, laterals, and reservoirs), as aforesaid, conform to the map and field notes which received the approval of the Secretary of the Interior on the _____ day of _____, 19____.

Sworn and subscribed to before me this _____ day of _____, 19____.
 [SEAL.] _____

Notary Public.

FORM 6.

I, _____, do certify that I am the president of the _____ company; that the (canals, ditches, laterals, and reservoirs) described as follows (describe as in Form 5) were actually constructed as set forth in the accompanying affidavit of _____, chief engineer (or the person employed by the company in the premises), and on the exact location represented on the map and by the field notes approved by the Secretary of the Interior, on the _____ day of _____, 19____; and that the company has in all things complied with the requirements of the act of Congress^d (March 3, 1891, grant-

^a This clause to be omitted in applications for telephone and telegraph lines.

^b Here insert the description of the act of Congress under which the application is made when filed under some other act than that of 1891 and 1898.

^c Or, where filed under other acts than that of 1891 and 1898, state the purposes for which right of way is applied for.

^d Here insert the description of the act of Congress under which the application is made when filed under some other act than that of 1891.

ing right of way for canals, ditches, and reservoirs through the public lands of the United States).

[Seal of company.]
 Attest:

Secretary.

President of the _____ Company.

FORM 7.

[Under act February 15, 1901.]

STATE OF _____,
 County of _____, ss:

_____, being duly sworn, says he is the chief engineer of (or the person employed by) the _____ company, under whose supervision the survey was made of the grounds selected by the company for structures for electrical purposes under the act of Congress approved February 15, 1901, said grounds (here describe as required by sections 41 and 50); that the accompanying drawing correctly represents the locations of the said structures; and that in his belief the structures represented are actually and to their entire extent required for the necessary uses contemplated by the said act of February 15, 1901 (31 Stat., 790).

Subscribed and sworn to before me this _____ day of _____, 19____.
 [SEAL.] _____

Chief Engineer.

Notary Public.

FORM 8.

[Under act of February 15, 1901.]

I, _____, do hereby certify that I am the president of the _____ company; that the survey of the structures represented on the accompanying drawing was made under authority and by direction of the company, and under the supervision of _____, its chief engineer (or the person employed in the premises), whose affidavit precedes this certificate; that the survey as represented on the accompanying drawing actually represents the structures required (here describe as required by sections 41 and 50) for electrical purposes, under the act of Congress approved February 15, 1901; and that the company, by resolution of its board of directors, passed on the _____ day of _____, 19____, directed the proper officers to present the said drawing for the approval of the Secretary of the Interior in order that the company may obtain the use of the grounds required for said structures, under the provisions of said act approved February 15, 1901 (31 Stat., 790).

[Seal of the company.]
 Attest:

Secretary.

President of the _____ Company.

FORM 9.

Reservoir declaratory statement.

[Under act of Jan. 13, 1897 (29 Stat., 484).]

RES. D. S. }
 No. _____ }

LAND OFFICE AT _____,
 _____, 19____.

I, _____, of _____, do hereby certify that I am president of the _____ company, and on behalf of said company, and under its authority, do hereby apply for the reservation of land in _____ County, State of _____, for the construction and use of a reservoir for furnishing water for live stock under the provisions of the act of January 13, 1897 (29 Stat., 484). The location of said reservoir and of the land necessary for its use, is as follows: _____ of section _____ in township _____, of range _____ M., containing _____ acres.

I hereby certify that to the best of my knowledge and belief the said land is not occupied or otherwise claimed, is not mineral or otherwise reserved, and that the said reservoir is to be used in connection with the business of the applicant of

The land owned or claimed by the applicant within the vicinity of the said reservoir (within three miles) is as follows: _____

I further certify that no part of the land to be reserved under this application is or will be fenced; that the same shall be kept open to the free use of any person desiring to water animals of any kind; that the land will not be used for any purpose except the watering of stock, and that the land is not, by reason of its proximity to other lands reserved for reservoirs, excluded from reservation by the regulations and rulings of the Land Department.

The water of said reservoir will cover an area of _____ acres, in _____ of section _____ in township _____, of range _____ of said lands; the capacity of the reservoir will be _____ gallons, and the dam will be _____ feet high. The source of the water for said reservoir is _____

and there are no streams or springs within two miles of the land to be reserved except as follows: _____

The applicant has filed no other declaratory statements under this act except as follows:

- No. _____, _____ land office, area to be reserved _____ acres.
- No. _____, _____ land office, area to be reserved _____ acres.
- No. _____, _____ land office, area to be reserved _____ acres.
- No. _____, _____ land office, area to be reserved _____ acres.
- No. _____, _____ land office, area to be reserved _____ acres.
- No. _____, _____ land office, area to be reserved _____ acres.
- No. _____, _____ land office, area to be reserved _____ acres.
- No. _____, _____ land office, area to be reserved _____ acres.
- No. _____, _____ land office, area to be reserved _____ acres.
- No. _____, _____ land office, area to be reserved _____ acres.

Total, _____ acres, of which Nos. _____ are located in said county.

And I further certify that it is the bona fide purpose and intention of this applicant to construct and complete said reservoir and maintain the same in accordance with the provisions of said act of Congress and such regulations as are or may be prescribed thereunder.

[Seal of company.] _____
Attest: _____
Secretary.

STATE OF _____,
County of _____, ss:

_____ being duly sworn, deposes and says that the statements herein made are true to the best of his knowledge and belief.

Sworn to and subscribed before me this _____ day of _____, in the year 19____.
[SEAL.] _____
Notary Public.

NOTE.—When the applicant is a corporation the form should be executed by its president, under its seal, and attested by its secretary. When the applicant is not a corporation or an association of individuals, strike out the words in italics.

LAND OFFICE AT _____,
_____, 19____.

I, _____, register of the land office, do hereby certify that the foregoing application is for the reservation of lands subject thereto under the provisions of the act of January 13, 1897; that there is no prior valid adverse right to the same; and that the land is not, by reason of its proximity to other lands reserved for reservoirs, excluded from reservation by the regulations and rulings of the Land Department.

Fees, \$ _____ paid.

Register.

The description of the business of the applicant should include "a full and minute statement of the extent to which he is engaged in breeding, grazing, driving, or transporting live stock, giving the number and kinds of such stock, the place where they are being bred or grazed, and whether within an inclosure or upon uninclosed lands, and also from where and to where they are being driven or transported." Circular June 23, 1899.

FORM 10.

STATE OF _____,
County of _____, ss:

_____ being duly sworn, says that he is the person who was employed to make the survey of a reservoir covering an area of _____ acres, the initial point of the survey being _____ (here describe as required by section 21); said reservoir having been constructed upon the _____ quarter of the _____ quarter of section _____, township _____, range _____, _____ principal meridian, as proposed by reservoir declaratory statement No. _____, which was filed in the local land office at _____, under the provisions of the act of January 13, 1897 (29 Stat., 484); that the said survey was made on the _____ day of _____, 19____; that the dam and all necessary works have been constructed in a substantial manner; that the reservoir has a capacity of _____ gallons, and at the time of said survey contained _____ gallons of water.

Sworn and subscribed to before me this _____ day of _____, 19____.
[SEAL.] _____
Notary Public.

FORM 11.

I, _____, do certify that I am the president of the _____ company which filed (or that I am the person who filed) reservoir declaratory statement No. _____, in the local land office at _____; that the reservoir proposed has been constructed upon the _____ quarter of the _____ quarter of section _____, township _____, range _____, _____ principal meridian, covering an area of _____ acres, the initial point of the survey being _____ (describe as in Form 10); that the dam and all necessary works have been constructed in a substantial manner in good faith in order that the reservoir may be used and maintained for the purposes, and in the manner prescribed by the said act of January 13, 1897 (29 Stat., 484), the provisions of which have been and will be complied with in all respects.

[Seal of company.] _____
Attest: _____
Secretary.

President of the Company.

FORM 12.

STATE OF _____,
County of _____, ss:

_____ being duly sworn, deposes and says that he is the president of the _____ company which filed (or that he is the person who filed) reservoir declaratory statement No. _____, in the local land office at _____; that the reservoir constructed in pursuance thereof, as heretofore certified, has been kept in repair; that water has been kept therein to the extent of not less than _____ gallons during the entire calendar year of 19____; that neither the reservoir nor any part of the land reserved for use in connection therewith is or has been fenced during said years, and that the said company has in all things complied with the provisions of the act of January 13, 1897 (29 Stat., 484).

Sworn and subscribed to before me this _____ day of _____, 19____.
[SEAL.] _____
Notary Public.

President of _____ Company.