

It is believed that our present fee patent forms can be utilized in such cases by inserting a lien worded as shown on the accompanying form, 4-1060. Should you find this suitable please indicate your approval.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved, January 26, 1917:

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said claimant and to the heirs of the said claimant the Land above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant, and to the heirs and assigns of the said claimant forever; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States. The lands hereby conveyed are subject to a lien, prior and superior to all other liens, for the amount of costs and charges due to the United States for and on account of construction of the irrigation system or acquisition of water rights by which said lands have been or are to be reclaimed, as provided and prescribed by the act of Congress of May 18, 1916 (39 Stat., 123) and the lien so created is hereby expressly reserved.

**REGULATIONS GOVERNING APPLICATIONS FOR RESURVEYS
UNDER THE ACT OF MARCH 3, 1909.**

CIRCULAR.
[No. 520.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 13, 1917.

The following regulations are issued to govern applications for resurveys under the act of March 3, 1909 (35 Stat., 845), as amended by the joint resolution of June 25, 1910 (36 Stat., 884), authorizing the Secretary of the Interior to cause to be made such resurveys of the public lands as after full investigation he may deem essential to properly mark the boundaries of the public lands remaining undisposed of. They are prompted by a desire to conserve the funds now available for the execution of resurveys and to insure their expenditure in the manner most advantageous to the general public interest,

and further to eliminate petitions which possess no intrinsic merit, without prejudice to the legitimate demands for resurveys contemplated by the said act.

The application when perfected under the following requirements should be submitted to the United States surveyor general of the district in which the lands are situated, or in case the United States surveyor general's office for that district has been abolished the petition may be transmitted to the Commissioner of the General Land Office at Washington, D. C.

The regulations are as follows:

1. As a general rule, and in the absence of any particular governmental purpose to be subserved, no township is eligible for resurvey unless title to at least 50 per centum of the area of the lands embraced therein, remains in the United States. For the purpose of determining the eligibility of a township under this rule, lands covered by approved selections, school sections, and entries upon which final certificates or patents have been issued are to be considered as alienated lands. Townships within the primary limits of railroad land grants are generally ineligible.

2. The applicants for the resurvey of any township are required to present satisfactory prima facie evidence of the necessity for such action, based either upon general obliteration of evidences of the original survey or upon conditions so grossly defective as to preclude the possibility of a reasonably certain identification of the subdivisions of the subsisting survey or a satisfactory local restoration thereof.

3. A majority of the settlers in each township are required to join in the application and in addition there must appear the indorsements of the entrymen and owners, including the State, whose holdings represent the major part of the area entered or patented, with a description opposite each name of the lands actually occupied, entered, or owned, and a statement as to whether the applicant is a settler, entryman, or owner thereof. Where an entryman or owner, including the State, has failed for any reason whatsoever to join in the application, evidence of service of notice upon him for at least 30 days in advance of the filing of the application is required in order that he may be afforded ample opportunity to make timely protest against the granting of such resurvey if in his opinion such action is undesirable.

4. Applications for the resurvey of each township must be supported by evidence in the form of an affidavit, preferably from the county or other competent surveyor, showing in detail that the evidences of the original survey have been obliterated to such an extent as to make it impracticable to apply the suggestions of the circular issued by this office for the necessary restoration of the lines and

corners in the proper identification of the legal subdivisions occupied by the present or prospective entrymen or that the original survey is so grossly defective as to preclude the possibility of identifying or restoring the boundaries of the sections.

5. In general, no resurvey will be undertaken unless the preliminary examination of the township develops evidence of existing settlement and agricultural possibilities sufficient to support the presumption that the unappropriated lands therein are such as to attract bona fide entrymen, thus eliminating townships which, although theoretically eligible, are of such a physical character that the resurvey thereof would serve no useful purpose.

If upon receipt of the application the necessity for the resurvey is made apparent and the township is shown to be eligible therefor, a United States surveyor will be assigned under appropriate instructions to make an actual field examination to verify the correctness of the applicants' allegations upon which the resurvey petition rests, and if the report of his investigation establishes the necessity for an official resurvey the matter will then be laid before the Secretary of the Interior with a request for authority to proceed with the actual field work.

GENERAL.

In the application of the terms of this act it is not intended that there shall be undertaken any work involving the mere reestablishment of lost or obliterated or misplaced corners in a limited area of a township, such work being within the province of the local surveyors, and the authority of the surveyor general's office will be limited to the giving of advice in accordance with the circular for the restoration of lost or obliterated corners. Employees of the Government are prohibited from participating in the resurvey of a township, the reestablishment of lost corners, or in the subdivision of sections for private parties, even if the expense is borne by the county or municipal authorities or by individuals. To permit any such procedure would bring the Government into controversy with parties who feel aggrieved at the conclusions reached and would make the Government a party to various suits involving lands in private ownership in which it was not a real party in interest by virtue of ownership in the lands affected, and would ultimately extend to such calls for assistance from owners of private lands in settling their disputes as could not be met without detriment to the purpose for which the appropriations under the control of this office are made.

The Government's real interest in the resurvey of the public lands is well stated in the said act of March 3, 1909, "to properly mark the boundaries of the public lands remaining undisposed of." Its

duty being thus defined, this office has consistently refrained from attempting to do more in the location of corners of privately owned lands in townships being resurveyed than to place such corners where the surrounding evidences of survey unquestionably point to one conclusion as to the proper place for the reestablishment of a lost corner and, if conflicts arise out of the undisputed location of such corners, to survey out the claims by metes and bounds, showing the resulting conflicts and leaving the adjudication of the question to the local courts having jurisdiction over the lands involved.

The duty of this office in making resurveys may therefore again be stated to be the proper marking of the boundaries of the public lands remaining undisposed of, and this only after full investigation as to the necessity therefor.

CLAY TALLMAN, *Commissioner.*

Approved:

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

[35 Stat., 845, chap. 271.]

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 may in his discretion cause to be made, as he may deem wise under the rectangular system now provided by law, such resurveys or retracements of the surveys of public lands as, after full investigation, he may deem essential to properly mark the boundaries of the public lands remaining undisposed of: *Provided,* That no such resurvey or retracement shall be so executed as to impair the bona fide rights or claims of any claimant, entryman, or owner of lands affected by such resurvey or retracement: *Provided further,* That not to exceed five per cent of the total annual appropriation for surveys and resurveys of the public lands shall be used for the resurveys and retracements authorized hereby. Approved March 3, 1909.

[36 Stat., 884—Joint resolution No. 40.]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the words "five per centum" in the last proviso of chapter two hundred and seventy-one of volume thirty-five of the United States Statutes at Large be changed to read "twenty per centum," so that the said chapter when so changed shall read as follows:

"That the Secretary of the Interior may, in his discretion, cause to be made, as he may deem wise under the rectangular system now provided by law, such resurveys or retracements of the surveys of public lands as, after full investigation, he may deem essential to properly

mark the boundaries of the public lands remaining undisposed of: *Provided*, That no such resurvey or retracement shall be so executed as to impair the bona fide rights or claims of any claimant, entryman, or owner of lands affected by such resurvey or retracement: *Provided further*, That not to exceed twenty per centum of the total annual appropriation for surveys and resurveys of the public lands shall be used for the resurveys and retracements authorized hereby." Approved June 25, 1910.

ALLEGED UNLAWFUL INCLOSURE OF PUBLIC LANDS IN NEW MEXICO.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 23, 1917.

CHIEF OF FIELD DIVISION,
Santa Fe, New Mexico.

SIR: From time to time during the past two years numerous complaints have been received by this office relative to the maintenance of drift fences and alleged unlawful inclosures of public lands in southeastern New Mexico. Extensive investigations have been made by special agents under your supervision, and reports have been submitted thereupon. The reports have gone into the situation extensively and comprehensively, and deal not only with the alleged unlawful inclosure situation, but also contain information relative to the method employed on behalf of the State of New Mexico in making the selection of public lands, showing how in certain instances large areas of government lands are incidentally controlled by those in possession of the selected lands; the disposition by the State of lands thus selected; the control of pasturage by the control of water; the conflicts among the cattle men and sheep growers and settlers; and the extent of the exercise of the police power of the State which, it is alleged, has been resorted to in such a manner as to maintain fences upon and control of pasturage on the public domain in certain cases.

This office is also in receipt of a report in which it was alleged that the following statement was made by the grand jury during the April, 1916, term of the U. S. District Court:

It has been brought to the attention of the Grand Jury that there has been considerable fencing of public lands throughout the State by private parties. This fencing is illegal, and done to the detriment of other parties, who are deprived of the use of these lands. We, the Grand Jury, recommend that this matter be investigated by the United States officials.