

Circular No. 102  
DEPARTMENT OF THE INTERIOR  
GENERAL LAND OFFICE

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LAWS AND REGULATIONS

RELATING TO

THE RECLAMATION OF ARID LANDS  
BY THE UNITED STATES

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APPROVED APRIL 29, 1912



WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1912

# LAWS AND REGULATIONS

## RELATING TO THE RECLAMATION OF ARID LANDS BY THE UNITED STATES.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
Washington, D. C., April 29, 1912.

### STATUTES.

#### GENERAL ACTS.

An Act Appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all moneys received from the sale and disposal of public lands in Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming, beginning with the fiscal year ending June thirtieth, nineteen hundred and one, including the surplus of fees and commissions in excess of allowances to registers and receivers, and excepting the five per centum of the proceeds of the sales of public lands in the above States set aside by law for educational and other purposes, shall be, and the same are hereby, reserved, set aside, and appropriated as a special fund in the Treasury to be known as the "reclamation fund," to be used in the examination and survey for and the construction and maintenance of irrigation works for the storage, diversion, and development of waters for the reclamation of arid and semiarid lands in the said States and Territories, and for the payment of all other expenditures provided for in this act: *Provided,* That in case the receipts from the sale and disposal of public lands other than those realized from the sale and disposal of lands referred to in this section are insufficient to meet the requirements for the support of agricultural colleges in the several States and Territories, under the act of August thirtieth, eighteen hundred and ninety, entitled "An act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an act of Congress approved July second, eighteen hundred and sixty-two," the deficiency, if any, in the sum necessary for the support of the said colleges shall be provided for from any moneys in the Treasury not otherwise appropriated.

SEC. 2. That the Secretary of the Interior is hereby authorized and directed to make examinations and surveys for, and to locate and construct, as herein provided, irrigation works for the storage, diversion, and development of waters, including artesian wells, and to report to Congress at the beginning of each regular session as to the results of such examinations and surveys, giving estimates of cost of all contemplated works, the quantity and location of the lands which can be irrigated therefrom, and all facts relative to the practicability of each irrigation project; also the cost of works in process of construction as well as of those which have been completed.

SEC. 3. That the Secretary of the Interior shall, before giving the public notice provided for in section four of this act, withdraw from public entry the lands required for any irrigation works contemplated under the provisions of this act, and shall restore to public entry any of the lands so withdrawn when, in his judgment, such lands are not required for the purposes of this act; and the Secretary of the Interior is hereby authorized, at or immediately prior to the time of beginning the surveys for any contemplated irrigation works, to withdraw from entry, except under the homestead laws, any public lands believed to be susceptible of irrigation from said works: *Provided*, That all lands entered and entries made under the homestead laws within areas so withdrawn during such withdrawal shall be subject to all the provisions, limitations, charges, terms, and conditions of this act; that said surveys shall be prosecuted diligently to completion, and upon the completion thereof, and of the necessary maps, plans, and estimates of cost, the Secretary of the Interior shall determine whether or not said project is practicable and advisable, and if determined to be impracticable or unadvisable he shall thereupon restore said land to entry; that public lands which it is proposed to irrigate by means of any contemplated works shall be subject to entry only under the provisions of the homestead laws in tracts of not less than forty nor more than one hundred and sixty acres, and shall be subject to the limitations, charges, terms, and conditions herein provided: *Provided*, That the commutation provisions of the homestead laws shall not apply to entries made under this act.

SEC. 4. That upon the determination by the Secretary of the Interior that any irrigation project is practicable, he may cause to be let contracts for the construction of the same, in such portions or sections as it may be practicable to construct and complete as parts of the whole project, providing the necessary funds for such portions or sections are available in the reclamation fund, and thereupon he shall give public notice of the lands irrigable under such project, and limit of area per entry, which limit shall represent the acreage which, in the opinion of the Secretary, may be reasonably required for the support of a family upon the lands in question; also of the charges which shall be made per acre upon the said entries, and upon lands in private ownership which may be irrigated by the waters of the said irrigation project, and the number of annual installments, not exceeding ten, in which such charges shall be paid and the time when such payments shall commence. The said charges shall be determined with a view of returning to the reclamation fund the estimated cost of construction of the project, and shall be apportioned equitably: *Provided*, That in all construction work eight hours shall

constitute a day's work, and no Mongolian labor shall be employed thereon.

SEC. 5. That the entryman upon lands to be irrigated by such works shall, in addition to compliance with the homestead laws, reclaim at least one-half of the total irrigable area of his entry for agricultural purposes, and before receiving patent for the lands covered by his entry shall pay to the Government the charges apportioned against such tract, as provided in section four. No right to the use of water for land in private ownership shall be sold for a tract exceeding one hundred and sixty acres to any one landowner, and no such sale shall be made to any landowner unless he be an actual bona fide resident of such land, or occupant thereof residing in the neighborhood of said land, and no such right shall permanently attach until all payments therefor are made. The annual installments shall be paid to the receiver of the local land office of the district in which the land is situated, and a failure to make any two payments when due shall render the entry subject to cancellation, with the forfeiture of all rights under this act, as well as of any moneys already paid thereon. All moneys received from the above sources shall be paid into the reclamation fund. Registers and receivers shall be allowed the usual commissions on all moneys paid for lands entered under this act.

SEC. 6. That the Secretary of the Interior is hereby authorized and directed to use the reclamation fund for the operation and maintenance of all reservoirs and irrigation works constructed under the provisions of this act: *Provided*, That when the payments required by this act are made for the major portions of the lands irrigated from the waters of any of the works herein provided for, then the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby, to be maintained at their expense under such form of organization and under such rules and regulations as may be acceptable to the Secretary of the Interior: *Provided*, That the title to and the management and operation of the reservoirs and the works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress.

SEC. 7. That where in carrying out the provisions of this act it becomes necessary to acquire any rights or property, the Secretary of the Interior is hereby authorized to acquire the same for the United States by purchase or by condemnation under judicial process, and to pay from the reclamation fund the sums which may be needed for that purpose, and it shall be the duty of the Attorney-General of the United States upon every application of the Secretary of the Interior, under this act, to cause proceedings to be commenced for condemnation within thirty days from the receipt of the application at the Department of Justice.

SEC. 8. That nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user

of water in, to, or from any interstate stream or the waters thereof: *Provided*, That the right to the use of water acquired under the provisions of this act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right.

SEC. 9.<sup>1</sup> That it is hereby declared to be the duty of the Secretary of the Interior in carrying out the provisions of this act, so far as the same may be practicable and subject to the existence of feasible irrigation projects, to expend the major portion of the funds arising from the sale of public lands within each State and Territory hereinbefore named for the benefit of arid and semiarid lands within the limits of such State or Territory: *Provided*, That the Secretary may temporarily use such portion of said funds for the benefit of arid or semiarid lands in any particular State or Territory hereinbefore named as he may deem advisable, but when so used the excess shall be restored to the fund as soon as practicable, to the end that ultimately, and in any event, within each ten-year period after the passage of this act, the expenditures for the benefit of the said States and Territories shall be equalized according to the proportions and subject to the conditions as to practicability and feasibility aforesaid.

SEC. 10. That the Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this act into full force and effect.

Approved, June 17, 1902 (32 Stat., 388).

An Act Authorizing the use of earth, stone, and timber on the public lands and forest reserves of the United States in the construction of works under the national irrigation law.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in carrying out the provisions of the national irrigation law, approved June seventeenth, nineteen hundred and two, and in constructing works thereunder, the Secretary of the Interior is hereby authorized to use and to permit the use by those engaged in the construction of works under said law, under rules and regulations to be prescribed by him, such earth, stone, and timber from the public lands of the United States as may be required in the construction of such works, and the Secretary of Agriculture is hereby authorized to permit the use of earth, stone, and timber from the forest reserves of the United States for the same purpose, under rules and regulations to be prescribed by him.

Approved, February 8, 1905 (33 Stat., 706).

An Act To provide for the covering into the reclamation fund certain proceeds of sales of property purchased by the reclamation fund.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there shall be covered into the reclamation fund established under the act of June seventeenth, nineteen hundred and two, known as the reclamation act, the proceeds of the sales of material utilized for temporary work and structures in connection with the operations under the said act, as

<sup>1</sup> Sec. 9 of this act repealed by act of June 25, 1910.

well as of the sales of all other condemned property which had been purchased under the provisions thereof, and also any moneys refunded in connection with the operations under said reclamation act.

Approved, March 3, 1905 (33 Stat., 1032).

An Act Providing for the withdrawal from public entry of lands needed for townsite purposes in connection with irrigation projects under the reclamation act of June seventeenth, nineteen hundred and two, and for other purposes.

*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 withdraw from public entry any lands needed for townsite purposes in connection with irrigation projects under the reclamation act of June seventeenth, nineteen hundred and two, not exceeding one hundred and sixty acres in each case, and survey and subdivide the same into town lots, with appropriate reservations for public purposes.

SEC. 2. That the lots so surveyed shall be appraised under the direction of the Secretary of the Interior and sold under his direction at not less than their appraised value at public auction to the highest bidders, from time to time, for cash, and the lots offered for sale and not disposed of may afterwards be sold at not less than the appraised value under such regulations as the Secretary of the Interior may prescribe. Reclamation funds may be used to defray the necessary expenses of appraisal and sale, and the proceeds of such sales shall be covered into the reclamation fund.

SEC. 3. That the public reservations in such townsites shall be improved and maintained by the town authorities at the expense of the town; and upon the organization thereof as municipal corporations the said reservations shall be conveyed to such corporations by the Secretary of the Interior, subject to the condition that they will be used forever for public purposes.

SEC. 4. That the Secretary of the Interior shall, in accordance with the provisions of the reclamation act, provide for water rights in amount he may deem necessary for the towns established as herein provided, and may enter into contract with the proper authorities of such towns, and other towns or cities on or in the immediate vicinity of irrigation projects, which shall have a water right from the same source as that of said project for the delivery of such water supply to some convenient point, and for the payment into the reclamation fund of charges for the same to be paid by such towns or cities, which charges shall not be less nor upon terms more favorable than those fixed by the Secretary of the Interior for the irrigation project from which the water is taken.

SEC. 5. That whenever a development of power is necessary for the irrigation of lands under any project undertaken under the said reclamation act, or an opportunity is afforded for the development of power under any such project, the Secretary of the Interior is authorized to lease for a period not exceeding ten years, giving preference to municipal purposes, any surplus power or power privilege, and the money derived from such leases shall be covered into the reclamation fund and be placed to the credit of the project from which such power is derived: *Provided*, That no lease shall be made of such surplus power or power privilege as will impair the efficiency of the irrigation project.

Approved, April 16, 1906 (34 Stat., 116).

## An Act To extend the irrigation act to the State of Texas.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the provisions of the act entitled "An act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," approved June seventeenth, nineteen hundred and two, be, and the same are hereby, extended so as to include and apply to the State of Texas.

Approved, June 12, 1906 (34 Stat., 259).

## An Act Providing for the subdivision of lands under the reclamation act, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever, in the opinion of the Secretary of the Interior, by reason of market conditions and the special fitness of the soil and climate for the growth of fruit and garden produce, a lesser area than forty acres may be sufficient for the support of a family on lands to be irrigated under the provisions of the act of June seventeenth, nineteen hundred and two, known as the reclamation act, he may fix a lesser area than forty acres as the minimum entry and may establish farm units of not less than ten nor more than one hundred and sixty acres. That whenever it may be necessary, for the purpose of accurate description, to further subdivide lands to be irrigated under the provisions of said reclamation act, the Secretary of the Interior may cause subdivision surveys to be made by the officers of the Reclamation Service, which subdivisions shall be rectangular in form, except in cases where irregular subdivisions may be necessary in order to provide for practicable and economical irrigation. Such subdivisions surveys shall be noted upon the tract books in the General Land Office, and they shall be paid for from the reclamation fund: *Provided,* That an entryman may elect to enter under said reclamation act a lesser area than the minimum limit in any State or Territory.

SEC. 2. That wherever the Secretary of the Interior, in carrying out the provisions of the reclamation act, shall acquire by relinquishment lands covered by a bona fide unperfected entry under the land laws of the United States, the entryman upon such tract may make another and additional entry, as though the entry thus relinquished had not been made.

SEC. 3. That any townsite heretofore set apart or established by proclamation of the President, under the provisions of sections twenty-three hundred and eighty and twenty-three hundred and eighty-one of the Revised Statutes of the United States, within or in the vicinity of any reclamation project, may be appraised and disposed of in accordance with the provisions of the act of Congress approved April sixteenth, nineteen hundred and six, entitled "An act providing for the withdrawal from public entry of lands needed for townsite purposes in connection with irrigation projects under the reclamation act of June seventeenth, nineteen hundred and two, and for other purposes;" and all necessary expenses incurred in the appraisal and sale of lands embraced within any such townsite shall be

paid from the reclamation fund, and the proceeds of the sales of such lands shall be covered into the reclamation fund.

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SEC. 5. That where any bona fide desert-land entry has been or may be embraced within the exterior limits of any land withdrawal or irrigation project under the act entitled "An act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," approved June seventeenth, nineteen hundred and two, and the desert-land entryman has been or may be directly or indirectly hindered, delayed, or prevented from making improvements or from reclaiming the land embraced in any such entry by reason of such land withdrawal or irrigation project, the time during which the desert-land entryman has been or may be so hindered, delayed, or prevented from complying with the desert-land law shall not be computed in determining the time within which such entryman has been or may be required to make improvements or reclaim the land embraced within any such desert-land entry: *Provided,* That if after investigation the irrigation project has been or may be abandoned by the Government, time for compliance with the desert-land law by any such entryman shall begin to run from the date of notice of such abandonment of the project and the restoration to the public domain of the lands withdrawn in connection therewith, and credit shall be allowed for all expenditures and improvements heretofore made on any such desert-land entry of which proof has been filed; but if the reclamation project is carried to completion so as to make available a water supply for the land embraced in any such desert-land entry, the entryman shall thereupon comply with all the provisions of the aforesaid act of June seventeenth, nineteen hundred and two, and shall relinquish all land embraced within his desert-land entry in excess of one hundred and sixty acres, and as to such one hundred and sixty acres retained, he shall be entitled to make final proof and obtain patent upon compliance with the terms of payment prescribed in said act of June seventeenth, nineteen hundred and two, and not otherwise. But nothing herein contained shall be held to require a desert-land entryman who owns a water right and reclaims the land embraced in his entry to accept the conditions of said reclamation act.

Approved, June 27, 1906 (34 Stat., 519).

## An Act Providing for the reappraisal of unsold lots in the town sites on reclamation projects, and for other purposes.

*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 is hereby authorized, whenever he may deem it necessary, to reappraise all unsold lots within town sites on projects under the reclamation act heretofore or hereafter appraised under the provisions of the act approved April sixteenth, nineteen hundred and six, entitled "An act providing for the withdrawal from public entry of lands needed for town site purposes in connection with irrigation projects under the reclamation act of June seventeenth, nineteen hundred and two, and for other purposes," and the act approved June twenty-seventh, nineteen hundred and six, entitled "An act providing

for the subdivision of lands entered under the reclamation act, and for other purposes;” and thereafter to proceed with the sale of such town lots in accordance with such acts.

SEC. 2. That in the sale of town lots under the provisions of the said acts of April sixteenth and June twenty-seventh, nineteen hundred and six, the Secretary of the Interior may, in his discretion, require payment for such town lots in full at time of sale or in annual installments, not exceeding five, with interest at the rate of six per centum per annum on deferred payments.

Approved, June 11, 1910 (36 Stat., 465).

An Act Providing that entrymen for homesteads within reclamation projects may assign their entries upon satisfactory proof of residence, improvement, and cultivation for five years, the same as though said entry had been made under the original homestead act.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after the filing with the Commissioner of the General Land Office of satisfactory proof of residence, improvement, and cultivation for the five years required by law, persons who have, or shall make, homestead entries within reclamation projects under the provisions of the act of June seventeenth, nineteen hundred and two, may assign such entries, or any part thereof, to other persons, and such assignees, upon submitting proof of the reclamation of the lands and upon payment of the charges apportioned against the same as provided in the said act of June seventeenth, nineteen hundred and two, may receive from the United States a patent for the lands: *Provided*, That all assignments made under the provisions of this act shall be subject to the limitations, charges, terms, and conditions of the reclamation act.

Approved, June 23, 1910 (36 Stat., 592).

An Act To authorize advances to the "reclamation fund," and for the issue and disposal of certificates of indebtedness in reimbursement therefor, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That to enable the Secretary of the Interior to complete Government reclamation projects heretofore begun, the Secretary of the Treasury is authorized, upon request of the Secretary of the Interior, to transfer from time to time to the credit of the reclamation fund created by the act entitled "An act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," approved June seventeenth, nineteen hundred and two, such sum or sums, not exceeding in the aggregate twenty million dollars, as the Secretary of the Interior may deem necessary to complete the said reclamation projects, and such extensions thereof as he may deem proper and necessary to the successful and profitable operation and maintenance thereof or to protect water rights pertaining thereto claimed by the United States, provided the same shall be approved by the President of the United States; and such sum or sums as may be required to comply with the foregoing authority are hereby appropriated out of any money in the Treasury not otherwise appropriated: *Provided*, That the sums hereby authorized to be transferred to the reclamation fund shall be so transferred only as such sums shall be actually

needed to meet payments for work performed under existing law: *And provided further*, That all sums so transferred shall be reimbursed to the Treasury from the reclamation fund, as hereinafter provided: *And provided further*, That no part of this appropriation shall be expended upon any existing project until it shall have been examined and reported upon by a board of engineer officers of the Army, designated by the President of the United States, and until it shall be approved by the President as feasible and practicable and worthy of such expenditure; nor shall any portion of this appropriation be expended upon any new project.

SEC. 2. That for the purpose of providing the Treasury with funds for such advances to the reclamation fund, the Secretary of the Treasury is authorized to issue certificates of indebtedness of the United States in such form as he may prescribe and in denominations of fifty dollars, or multiples of that sum; said certificates to be redeemable at the option of the United States at any time after three years from the date of their issue and to be payable five years after such date, and to bear interest, payable semiannually, at not exceeding three per centum per annum; that principal and interest to be payable in gold coin of the United States. The certificates of indebtedness herein authorized may be disposed of by the Secretary of the Treasury at not less than par, under such rules and regulations as he may prescribe, giving all citizens of the United States an equal opportunity to subscribe therefor, but no commission shall be allowed and the aggregate issue of such certificates shall not exceed the amount of all advances made to said reclamation fund, and in no event shall the same exceed the sum of twenty million dollars. The certificates of indebtedness herein authorized shall be exempt from taxes or duties of the United States as well as from taxation in any form by or under State, municipal, or local authority; and a sum not exceeding one-tenth of one per centum of the amount of the certificates of indebtedness issued under this act is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay the expenses of preparing, advertising, and issuing the same.

SEC. 3. That beginning five years after the date of the first advance to the reclamation fund under this act, fifty per centum of the annual receipts of the reclamation fund shall be paid into the general fund of the Treasury of the United States until payment so made shall equal the aggregate amount of advances made by the Treasury to said reclamation fund, together with interest paid on the certificates of indebtedness issued under this act and any expense incident to preparing, advertising, and issuing the same.

SEC. 4. That all money placed to the credit of the reclamation fund in pursuance of this act shall be devoted exclusively to the completion of work on reclamation projects heretofore begun as hereinbefore provided, and the same shall be included with all other expenses in future estimates of construction, operation, or maintenance, and hereafter no irrigation project contemplated by said act of June seventeenth, nineteen hundred and two, shall be begun unless and until the same shall have been recommended by the Secretary of the Interior and approved by the direct order of the President of the United States.

SEC. 5. That no entry shall be hereafter made and no entryman shall be permitted to go upon lands reserved for irrigation purposes

until the Secretary of the Interior shall have established the unit of acreage and fixed the water charges and the date when the water can be applied and made public announcement of the same.

SEC. 6. That section nine of said act of Congress, approved June seventeenth, nineteen hundred and two, entitled "An act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," is hereby repealed.

Approved, June 25, 1910 (36 Stat., 835).

An Act Granting leaves of absence to homesteaders on lands to be irrigated under the provisions of the act of June seventeenth, nineteen hundred and two.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all qualified entrymen who have heretofore made bona fide entry upon lands proposed to be irrigated under the provisions of the act of June seventeenth, nineteen hundred and two, known as the national irrigation act, may, upon application and a showing that they have made substantial improvements, and that water is not available for the irrigation of their said lands, within the discretion of the Secretary of the Interior, obtain leave of absence from their entries until water for irrigation is turned into the main irrigation canals from which the land is to be irrigated: *Provided,* That the period of actual absence under this act shall not be deducted from the full time of residence required by law.

Approved, June 25, 1910 (36 Stat., 864).

An Act To provide for the sale of lands acquired under the provisions of the reclamation act and which are not needed for the purposes of that act.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever in the opinion of the Secretary of the Interior any lands which have been acquired under the provisions of the act of June seventeenth, nineteen hundred and two (Thirty-second Statutes, page three hundred and eighty-eight), commonly called the "reclamation act," or under the provisions of any act amendatory thereof or supplementary thereto, for any irrigation works contemplated by said reclamation act are not needed for the purposes for which they were acquired, said Secretary of the Interior may cause said lands, together with the improvements thereon, to be appraised by three disinterested persons, to be appointed by him, and thereafter to sell the same for not less than the appraised value at public auction to the highest bidder, after giving public notice of the time and place of sale by posting upon the land and by publication for not less than thirty days in a newspaper of general circulation in the vicinity of the land.

SEC. 2. That upon payment of the purchase price, the Secretary of the Interior is authorized by appropriate deed to convey all the right, title, and interest of the United States of, in, and to said lands to the purchaser at said sale, subject, however, to such reservations, limitations, or conditions as said Secretary may deem proper: *Provided,* That not over one hundred and sixty acres shall be sold to any one person.

SEC. 3. That the moneys derived from the sale of such lands shall be covered into the reclamation fund and be placed to the credit of the project for which such lands had been acquired.

Approved, February 2, 1911 (36 Stat., 895).

An Act To authorize the Secretary of the Interior to withdraw public notices issued under section four of the reclamation act, and for other purposes.

*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, withdraw any public notice heretofore issued under section four of the reclamation act of June seventeenth, nineteen hundred and two, and he may agree to such modification of water-right applications heretofore duly filed or contracts with water users' associations and others, entered into prior to the passage of this act, as he may deem advisable, or he may consent to the abrogation of such water-right applications and contracts, and proceed in all respects as if no such notice had been given.

Approved, February 13, 1911 (36 Stat., 902).

An Act To amend section five of the act of Congress of June twenty-fifth, nineteen hundred and ten, entitled "An act to authorize advances to the 'reclamation fund,' and for the issue and disposal of certificates of indebtedness in reimbursement therefor, and for other purposes."

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section five of an act entitled "An act to authorize advances to the 'reclamation fund,' and for the issue and disposal of certificates of indebtedness in reimbursement therefor, and for other purposes," approved June twenty-fifth, nineteen hundred and ten (Thirty-sixth Statutes at Large, page eight hundred and thirty-five), be, and the same hereby is, amended as follows:

"SEC. 5. That no entry shall be hereafter made and no entryman shall be permitted to go upon lands reserved for irrigation purposes until the Secretary of the Interior shall have established the unit of acreage and fixed the water charges and the date when the water can be applied and make public announcement of the same: *Provided,* That where entries made prior to June twenty-fifth, nineteen hundred and ten, have been or may be relinquished in whole or in part, the lands so relinquished shall be subject to settlement and entry under the homestead law as amended by an act entitled 'An act appropriating the receipts from the sale and disposal of the public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands,' approved June seventeenth, nineteen hundred and two (Thirty-second Statutes at Large, page three hundred and eighty-eight)."

Approved, February 18, 1911 (36 Stat., 917).

An Act To authorize the Government to contract for impounding, storing, and carriage of water, and to cooperate in the construction and use of reservoirs and canals under reclamation projects, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever in carrying out the provisions of the reclamation law, storage or carrying capacity has been or may be provided in excess of the requirements of the lands to be irrigated under any project, the Secretary of the Interior, preserving a first right to lands and entrymen under the

project, is hereby authorized, upon such terms as he may determine to be just and equitable, to contract for the impounding, storage, and carriage of water to an extent not exceeding such excess capacity with irrigation systems operating under the act of August eighteenth, eighteen hundred and ninety-four, known as the Carey Act, and individuals, corporations, associations, and irrigation districts organized for or engaged in furnishing or in distributing water for irrigation. Water so impounded, stored, or carried under any such contract shall be for the purpose of distribution to individual water users by the party with whom the contract is made: *Provided, however,* That water so impounded, stored, or carried shall not be used otherwise than as prescribed by law as to lands held in private ownership within Government reclamation projects. In fixing the charges under any such contract for impounding, storing, or carrying water for any irrigation system, corporation, association, district, or individual, as herein provided, the Secretary shall take into consideration the cost of construction and maintenance of the reservoir by which such water is to be impounded or stored and the canal by which it is to be carried, and such charges shall be just and equitable as to water users under the Government project. No irrigation system, district, association, corporation, or individual so contracting shall make any charge for the storage, carriage, or delivery of such water in excess of the charge paid to the United States except to such extent as may be reasonably necessary to cover cost of carriage and delivery of such water through their works.

Sec. 2. That in carrying out the provisions of said reclamation act and acts amendatory thereof or supplementary thereto, the Secretary of the Interior is authorized, upon such terms as may be agreed upon, to cooperate with irrigation districts, water users associations, corporations, entrymen or water users for the construction or use of such reservoirs, canals, or ditches as may be advantageously used by the Government and irrigation districts, water users associations, corporations, entrymen or water users for impounding, delivering and carrying water for irrigation purposes: *Provided,* That the title to and management of the works so constructed shall be subject to the provisions of section six of said act: *Provided further,* That water shall not be furnished from any such reservoir or delivered through any such canal or ditch to any one landowner in excess of an amount sufficient to irrigate one hundred and sixty acres: *Provided,* That nothing contained in this act shall be held or construed as enlarging or attempting to enlarge the right of the United States, under existing law, to control the waters of any stream in any State.

Sec. 3. That the moneys received in pursuance of such contracts shall be covered into the reclamation fund and be available for use under the terms of the reclamation act and the acts amendatory thereof or supplementary thereto.

Approved, February 21, 1911 (36 Stat., 925).

An Act To amend an act entitled "An act providing for the withdrawal from public entry of lands needed for town-site purposes in connection with irrigation projects under the reclamation act of June seventeenth, nineteen hundred and two, and for other purposes," approved April sixteenth, nineteen hundred and six.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section five of an act entitled "An act providing for the withdrawal from public

entry of lands needed for town-site purposes in connection with irrigation projects under the reclamation act of June seventeenth, nineteen hundred and two, and for other purposes," approved April sixteenth, nineteen hundred and six, be amended so as to read as follows:

"Sec. 5. That whenever a development of power is necessary for the irrigation of lands, under any project undertaken under the said reclamation act, or an opportunity is afforded for the development of power under any such project, the Secretary of the Interior is authorized to lease for a period not exceeding ten years, giving preference to municipal purposes, any surplus power or power privilege, and the money derived from such leases shall be covered into the reclamation fund and be placed to the credit of the project from which such power is derived: *Provided,* That no lease shall be made of such surplus power or power privileges as will impair the efficiency of the irrigation project: *Provided further,* That the Secretary of the Interior is authorized, in his discretion, to make such a lease in connection with Rio Grande project in Texas and New Mexico for a longer period not exceeding fifty years, with the approval of the water users' association or associations under any such project, organized in conformity with the rules and regulations prescribed by the Secretary of the Interior in pursuance of section six of the reclamation act approved June seventeenth, nineteen hundred and two."

Approved, February 24, 1911 (36 Stat., 931).

#### SPECIAL ACTS.

The act of April 23, 1904 (33 Stat., 302), as amended by section 15 of the act of May 29, 1908 (35 Stat., 448), provides for the disposition and irrigation of lands within the limits of the Flathead Indian Reservation, Mont.

Section 25 of the act approved April 21, 1904 (33 Stat., 224), provides for the reclamation, allotment, and disposal of surplus irrigable lands in the Yuma and Colorado River Indian Reservations in California and Arizona.

Section 26 of the act of April 21, 1904, *supra*, provides for the reclamation, allotment, and disposal of surplus irrigable lands in the Pyramid Lake Indian Reservation, Nev.

The act of March 27, 1904 (33 Stat., 357), authorizes the reclamation and disposition of irrigable lands in the ceded Crow Indian Reservation, in Montana.

Section 12 of the act of March 22, 1906 (34 Stat., 80), provides for the disposition, under the reclamation act, of lands in the diminished Colville Indian Reservation, Wash.

The act of June 9, 1906 (34 Stat., 228), authorizes the disposition of lands in the abandoned Fort Shaw Military Reservation, Mont., under the reclamation act.

The act of March 6, 1906 (34 Stat., 53), authorizes the reclamation and disposal of surplus irrigable lands in the Yakima Indian Reservation, Wash.

The act of June 21, 1906 (34 Stat., 327), authorizes the sale of allotted Indian lands on reclamation projects, and the act of March 3, 1909 (35 Stat., 782), authorizes the Secretary of the Interior to make allotments of such lands in such areas as he may deem proper, not exceeding the amount therein named.



The act of March 1, 1907 (34 Stat., 1037), provides for the disposition of irrigable lands in the Blackfeet Indian Reservation, Mont.

The act of April 30, 1908 (35 Stat., 85), provides for the irrigation of Indian lands.

Sections 1 and 10 of the act of Congress approved May 30, 1908, provide for the reclamation of lands on the Fort Peck Indian Reservation, Mont.

Section 1 of the act of June 22, 1910 (36 Stat., 583), authorizes the withdrawal and reclamation of classified coal land, patents for such lands to reserve to the United States the coal deposits therein.

## REGULATIONS.

### GENERAL INFORMATION.

1. Section 3 of the act of June 17, 1902 (32 Stat., 388), provides for the withdrawal of lands from all disposition other than that provided for by said act. Lands withdrawn as susceptible of irrigation (usually referred to as withdrawn under the second form) are subject to entry under the provisions of the homestead law only, and since the passage of the act of June 25, 1910 (36 Stat., 835), are open to settlement or entry only when approved farm unit plats have been filed and public notice has been issued in connection therewith, fixing the water charges and the date when water can be applied, except as provided by the act of February 18, 1911 (36 Stat., 917). Where settlements had been effected in good faith prior to June 25, 1910, on lands embraced within second form withdrawals, persons showing such settlement are entitled to complete entry in the manner and within the time provided by law.

2. Under the provisions of the act of February 18, 1911 (36 Stat., 917), the prohibition contained in section 5 of the act of Congress approved June 25, 1910, forbidding settlement on or entry of lands reserved for irrigation purposes prior to the approval of farm unit plats and the issuance of public notice fixing the water charges and the date when water can be applied, is withdrawn and set aside as to lands included in entries made prior to June 25, 1910, where such entries have been or may be relinquished in whole or in part.

3. Settlement and entry on such lands will be allowed subject to the provisions of the homestead law and the reclamation act of June 17, 1902, supra, in the same manner as for other lands subject to entry within reclamation projects. The lands must have been covered by a valid entry prior to June 25, 1910, and shall only be subject to entry under the provisions of the present act in cases where a relinquishment of the former entry has been or shall be filed. Registers and receivers in their action on applications to make homestead entry under the provisions of this act will be governed by the records of their office, and will note on all entries allowed hereunder the homestead number and date of the relinquished entry, and the fact that the new entry is allowed subject to the provisions of the act of February 18, 1911.

4. Entry under this act is permitted only after relinquishment of an entry made prior to June 25, 1910, and therefore the relinquishment of an entry made under this act, even though it covers lands which were the subject of another entry made prior to June 25, 1910,

would not permit a third entry to be made. Lands entered under this act will be held subject to the prohibition contained in section 5 of the act of June 25, 1910, upon the relinquishment of an entry made under the act of February 18, 1911.

5. Homestead entries of lands shown on the farm unit plats are made in practically the same manner as the usual homestead entry, but they are subject to all the provisions, limitations, charges, terms, and conditions of the reclamation act.

6. Registers and receivers will indorse across the face of each homestead application, when allowed under the reclamation act, the following: "This entry allowed subject to the provisions of the act of June 17, 1902 (32 Stat., 388);" and will advise each entryman of the provisions of the act by furnishing him with a copy of this circular.

7. These entries are not subject to the commutation provisions of the homestead law, and on the determination by the Secretary of the Interior that the proposed irrigation project is practicable, the entries hitherto made and not conforming to an established farm unit may be reduced in area to the limit representing the acreage which, in the opinion of the Secretary, may be reasonably required for the support of a family upon the lands in question, and the lands within a project are platted to farm units representing such areas. The farm units may be as small as 10 acres where the lands are suitable for fruit raising, etc., but on most projects, so far, they have been fixed at from 40 to 80 acres each. These areas are announced on farm unit plats, and public notice stating the amount of the charges and other details concerning payment, is issued by the Secretary of the Interior, shortly before the Government is ready to furnish water. Until this public notice is issued it will be impossible in most respects to give definite information as to any particular tract or as to the details intended to be covered by such notice; but registers and receivers will, upon inquiry, give all general information relative to the public lands included in reclamation projects, and will keep the engineers of the Reclamation Service fully informed, by correspondence, as to conditions affecting the same.

### WITHDRAWALS AND RESTORATIONS.

8. The withdrawal of these lands at first is principally for the purpose of making surveys and irrigation investigations in order to determine the feasibility of the plans of irrigation and reclamation proposed. Only a portion of the lands will be irrigated even if the project is feasible, but it will be impossible to decide in advance of careful examination what lands may be watered, if any, and the mere fact that surveys are in progress is no indication whatever that the works will be built. It can not be determined how much water there may be available, or what lands can be covered, or whether the cost will be too great to justify the undertaking until the surveys and the irrigation investigations have been completed.

9. There are two classes of withdrawals authorized by the act: One commonly known as "Withdrawals under the first form," which embraces lands that may possibly be needed in the construction and maintenance of irrigation works, and the other commonly known as "Withdrawals under the second form," which embraces lands not supposed to be needed in the actual construction and main-

tenance of irrigation works, but which may possibly be irrigated from such works.

10. After lands have been withdrawn under the first form they can not be entered, selected, or located in any manner so long as they remain so withdrawn, and all applications for such entries, selections, or locations should be rejected and denied, regardless of whether they were presented before or after the date of such withdrawal. (See John J. Maney, 35 L. D., 250.)

11. Lands withdrawn under the second form and subject to entry can be entered only under the homestead laws and subject to the provisions, limitations, charges, terms, and conditions of the reclamation act, and all applications to make selections, locations, or entries of any other kind on such lands should be rejected, regardless of whether they are presented before or after the lands are withdrawn, except that where settlement rights were acquired prior to the withdrawal and have been diligently prosecuted and the homestead law fully complied with, the settler will be entitled to make and complete his entry as if it had been made before the withdrawal. (See Wm. Boyle, 38 L. D., 603.)

12. Withdrawals made under either of these forms do not defeat or adversely affect any valid entry, location, or selection which segregated and withheld the lands embraced therein from other forms of appropriation at the date of such withdrawal; and all entries, selections, or locations of that character should be permitted to proceed to patent or certification upon due proof of compliance with the law in the same manner and to the same extent to which they would have proceeded had such withdrawal not been made, except as to lands needed for construction purposes. All lands, however, taken up under any of the land laws of the United States subsequent to October 2, 1888, are subject to right of way for ditches or canals constructed by authority of the United States (act of August 30, 1890, 26 Stat., 391; circular approved by Department July 25, 1903). All entries made upon the lands referred to are subject to the following proviso of the act cited:

<sup>c</sup> That in all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this act west of the one hundredth meridian it shall be expressed that there is reserved from lands in said patent described a right of way thereon for ditches or canals constructed by the authority of the United States.

13. Should a homestead entry embrace land that is needed in whole or in part for purposes contemplated by said proviso the land would be taken for such purpose, and the entryman would have no claim against the United States for the same.

14. All withdrawals become effective on the date upon which they are ordered by the Secretary of the Interior, and all orders for restorations on the date they are received in the local land office unless otherwise specified in the order. (George B. Pratt et al., 38 L. D., 146.)

15. Upon the cancellation of a homestead entry covering lands embraced within a withdrawal under the reclamation act such withdrawal becomes effective as to such lands without further order. (See Cornelius J. MacNamara, 33 L. D., 520.)

16. Where the Secretary of the Interior by the approval of farm-unit plats has determined, or may determine, that the lands desig-

nated thereon are irrigable, the filing of such plats in the General Land Office and in the local land offices is to be regarded as equivalent to an order withdrawing such lands under the second form, and as an order changing to the second form any withdrawals of the first form then effective as to any such tracts. This applies to all areas shown on the farm-unit plats as subject to entry under the provisions of the reclamation act or as subject to the filing of water-right applications. Upon receipt of such plats appropriate notations of the change of form of withdrawal are to be made in accordance therewith upon the records of the General Land Office and of the local land offices.

17. In the event any lands embraced in any entry on which final proof has not been offered, or in any unapproved or uncertified selection, are needed in the construction and maintenance of any irrigation works (other than for right of way for ditches or canals reserved under act of Aug. 30, 1890) under the reclamation act, the Government may cancel such entry or selection and appropriate the lands embraced therein to such use, after paying the value of the improvements thereon and the enhanced value of such lands caused by such improvements.

18. Uncompleted claims to lands withdrawn under the provisions of the reclamation act and determined to be needed for construction of irrigation works in connection with a project that has been found practicable should not be allowed to be perfected, but should remain in the same status as existed at the time the determination was made, and the rights of the claimants adjusted upon the basis of that status. (Opinion of Asst. Atty. General, 34 L. D., 421.)

19. Where the owners of the improvements mentioned in paragraph 17 shall fail to agree with the representative of the Government as to the amount to be paid therefor, the same shall be acquired by condemnation proceedings under judicial process, as provided by section 7 of the reclamation act.

20. Inasmuch as every entry within the limits of a withdrawal under the reclamation act is subject to conformation to an established farm unit, improvements placed upon the different subdivisions by the entryman prior to such conformation are at his risk. (Jerome M. Higman, 37 L. D., 718.) They should be confined to one legal subdivision until the entry is conformed. In readjusting such an entry the Secretary is not required to confine the farm unit to the limits of the entry, but may combine any legal subdivision thereof with a contiguous tract lying outside of the entry so as to equalize in value the several farm units. (Idem.) The act of June 27, 1906, supra, authorizes the Secretary of the Interior to fix a lesser area than 40 acres as a farm unit when, "by reason of market conditions and special fitness of the soil and climate for the growth of fruit and garden produce, a lesser area than forty acres may be sufficient for the support of a family" or when necessary "in order to provide for practical and economical irrigation."

#### ADDITIONAL ENTRIES.

21. A person who has entered a farm unit within a project can not make an additional homestead entry. One who has made homestead entry for less than 160 acres outside of a reclamation project is disqualified from making an additional entry of a farm unit within a

reclamation project, which farm unit is the equivalent of a homestead entry of 160 acres of land outside of the reclamation project.

22. Where, however, the first or original homestead entry was made subject to the restrictions and conditions of the reclamation act, any entry additional thereto would be likewise subject to the same restrictions and conditions, and in such cases additional entries may be allowed within reclamation projects under acts authorizing additional entries, except where farm units have been established, prior to the filing of the applications. Both entries so allowed are subject to the same adjustment to one farm unit as if the entire tract had been included in the first entry. (Henry W. Williamson, 38 L. D., 233.)

#### CONTESTS.

23. No private contest will be allowed against any entry embracing land included within the area of any first form withdrawal or land reserved for irrigation purposes, commonly known as land under the second form of withdrawal, until the Secretary of the Interior shall have established the unit of acreage and fixed the water charges, and the date when the water can be applied and made public announcement of the same. In cases where contest has been allowed as to entries on second form lands, the act of Congress approved June 25, 1910 (36 Stats. 835), precludes entry by successful contestants until the lands are restored to the public domain or platted to farm units and covered by public notice under section 4 of the reclamation act. In all cases where a contest has been allowed prior to the withdrawal of the lands, or in the case of entries on second form lands, prior to the approval of the act of June 25, 1910, the withdrawal attaches to the lands involved immediately on cancellation of the entry and no rights can be obtained by the contestant in the event that the entry is canceled under the contest proceedings prior to the vacation of the order of withdrawal and opening of the lands to entry. In all cases where a preference right has been gained by virtue of a successful contest, terminated before the withdrawal of the land or the passage of the said act, the successful contestant may exercise his right and make entry at any time within thirty days from notice that the lands involved have been restored to the public domain or covered by public notice and made subject to entry, but, in the latter event, his entry must be made subject to the limitations, charges, and conditions imposed by the reclamation act.

24. Any entry of land embraced within the area of a second form withdrawal may be contested after farm units have been established covering such entry and public notice has issued in connection with the same, fixing the water charges and the date when water can be applied, and if at the date of entry by the successful contestant the lands have not been released from the withdrawal under the provisions of the reclamation act, his entry will be subject to the limitations, charges, and conditions imposed by that act.

#### LEAVE OF ABSENCE.

25. When homestead entrymen within irrigation projects file in the local land office applications for leave of absence under the provisions of the act of June 25, 1910, the register and receiver will make proper notation of the same on their records and, at once, by special

letter, forward the application, together with their recommendation thereon, to the General Land Office for action.

26. These applications for leave of absence should be in the form of an affidavit, duly corroborated by two witnesses, contain a specific description of the land, show the good faith of the applicant, and set forth in detail the character, the extent, and the approximate value of the improvements placed on the lands, which must be such as to satisfy the requirement of the law that the entryman has made substantial improvements, and the applicant must show, as a matter of fact, that water is not available for the irrigation thereof.

27. When sufficient showing is made in cases coming within the provisions of the law, leave of absence will be granted until such time as water for irrigation is turned into the main irrigation canals from which the land is to be irrigated or, in the event that the project is abandoned by the Government, until the date of notice of such abandonment and the restoration to the public domain of the lands embraced in the entry.

28. Attention is directed to the provision that "the period of actual absence shall not be deducted from the full time of residence required by law." The effect of the granting of leave of absence under this act is to protect the entry from contest for abandonment and, by the necessary implication of the act, the period of seven years within which the entryman is required to submit final five year proof will be extended and the entry will not be subject to cancellation for failure to submit proof until seven years from the date of entry, exclusive of the period for which leave of absence may be granted.

#### ASSIGNMENTS.

29. Under the provisions of the act of June 23, 1910 (36 Stat., 592) persons who have made or may make homestead entries subject to the reclamation act may assign their entries in their entirety at any time after filing in this office satisfactory proof of residence, improvements, and cultivation for the five years required by the ordinary provisions of the homestead law. The act also provides for the assignment of homestead entries in part, but such assignments, if made prior to the establishment of farm units, must be made in strict accordance with the legal subdivisions of the public survey, and if made after such units are established must conform thereto, except as hereinafter provided.

30. In cases where the entry involves two or more farm units, the entryman may file an election as to which farm unit he will retain, and he may assign and transfer to a qualified assignee any farm unit or farm units entirely embraced within the original entry. He may also assign parts of farm units included in his entry, provided the assignee has an entry covering or obtains an assignment of the remainder of such unit. If an election by the entryman to conform to a farm unit be filed and no assignment made of the remainder of the entry, the entry will be conformed to the farm unit selected for retention and canceled as to the remainder.

31. Where it is desired to assign a part of an established farm unit, an application for the amendment and subdivision of such unit should be filed with the project engineer, and the assignment, with accompanying affidavit and supplemental water right application, should be filed in the local land office.

32. If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit, or the division of the irrigable area, a deposit equal to the estimated cost of such survey must be made with the special fiscal agent, Reclamation Service, on the project by or on behalf of the parties concerned. Any excess over the actual cost will be returned to the depositor or depositors after completion of the survey and they will also be required to make good any deficiency in their deposit.

33. When the plats describing the amended farm units are approved by the engineer in charge of the project he will forward a copy of the amended plat to the local land office where the same will be treated as an official amendment of the farm unit plat, which will thereafter be formally approved in the usual manner by authority of the Secretary.

34. No assignment of any portion of any farm unit will be accepted by the Commissioner of the General Land Office or recognized as modifying any approved water right application or releasing any part of the farm unit as originally established from any portion of the charges announced against it until after the filing in the local land office of evidence of the qualifications of the assignee, and a proper water right application with payment of all amounts due upon the land included in the assignment.

35. Assignments under this act must be made expressly subject to the limitations, charges, terms, and conditions of the reclamation act, and, inasmuch as that act limits the right of entry to one farm unit, the assignee must present a showing in the form of an affidavit duly corroborated, that he has not acquired title to and is not claiming any other farm unit or entry under the reclamation act, and has no other existing water right applications covering an area of land which added to that taken by assignment will exceed one hundred and sixty acres, or the maximum limit of area fixed by the Secretary.

36. Assignments made and filed in accordance with these regulations must be noted on the local office record and at once forwarded to the General Land Office for immediate consideration, and, if approved, the assignees in each case will be required to make payment of the water right charges and submit proof of reclamation as would the original entryman, and, after proof of full compliance with the law, may receive a patent for the land.

#### MORTGAGES.

37. Mortgages of lands embraced in homestead entries within reclamation projects may file in the local land office for the district within which the land is located a notice of such mortgage, and shall become entitled to receive and be given the same notice of any contest or other proceedings thereafter had affecting the land as is required to be given the entryman in connection with such proceeding. Every such notice of a mortgage received must be forthwith noted upon the records of the local land office and be promptly reported to the General Land Office, where like notation will be made. Relinquishment of a homestead entry within a reclamation project upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted, unless the mortgagee joins therein, nor will an assignment of such an entry or part thereof

under the act of June 23, 1910 (36 Stat., 592), be recognized or permitted unless the assignment specifically refers to such mortgage and is made and accepted subject thereto.

#### CANCELLATION.

38. All persons holding land under homestead entries made under the reclamation act must, in addition to paying the water right charges, reclaim at least one-half of the total irrigable area of their entries as finally adjusted for agricultural purposes, and reside upon, cultivate, and improve the lands embraced in their entries for not less than the period required by the homestead laws. Any failure to make any two payments when due or to reclaim the lands as above indicated, or any failure to comply with the requirements of the homestead laws and the reclamation act as to residence, cultivation, and improvement, will render their entries subject to cancellation and the money already paid by them subject to forfeiture, whether they have filed water right application or not.

#### WIDOWS AND HEIRS OF ENTRYMEN.

39. The widows or heirs of persons who make entries under the reclamation act will not be required both to reside upon and cultivate the lands covered by the entry of the person from whom they inherit, but they must reclaim at least one-half of the total irrigable area of the entry for agricultural purposes as required by the reclamation act and make payment of all unpaid charges when due and before either final certificate or patent can be issued.

40. Upon the death of a homesteader having an entry within an irrigation project, leaving no widow and only minor heirs, his right may, under section 2292, Revised Statutes, be sold for the benefit of such heirs. (See heirs of Frederick C. De Long, 36 L. D., 332.) If in such case the land has been divided into farm units the purchaser takes title to the particular unit to which the entry has been limited, but if subdivision has not been made he will acquire an interest only in the land which would have been allotted to the entryman as his farm unit, in either case taking subject to the payment of the charges authorized by the reclamation act and regulations thereunder and free from all requirements as to residence and cultivation (*idem*).

#### FINAL PROOF.

#### GENERAL INFORMATION.

41. All persons who apply to make entry of lands within the irrigable area of any project commenced or contemplated under the reclamation act will be required to comply fully with the homestead law as to residence, cultivation, and improvement of the land, and the failure to supply water from such works in time for use upon the land entered will not justify a failure to comply with the law and to make proof thereof within the time required by the statutes, except in cases where leave of absence is granted under the act of June 25, 1910 (*supra*).

42. Persons who have resided upon, cultivated and improved their lands for the length of time prescribed by the homestead laws will not

thereafter be required to continue such residence and cultivation, and they may make final proof of reclamation at any time when they can also make proof of the necessary residence, cultivation, and improvement for five years, but no final certificate or patent will issue until all fees, commissions, and construction charges, including operation and maintenance charges due at the time of payment, have been paid in full. The entire building charge and such installments of the operation and maintenance charges as are then due may be paid at any time after the entry has been conformed to a farm unit, and prior to the time on which they otherwise fall due under the terms of the public notice.

43. Soldiers and sailors of the war of the rebellion, the Spanish-American War, or the Philippine insurrection, and their widows and minor orphan children who are entitled to claim credit for the period of the soldier's service under the homestead laws, will be allowed to claim credit in connection with entries made under the reclamation act, but will not be entitled to receive final certificate or patent until all the water-right charges have been paid in full and the requirements as to reclamation have been met.

44. Upon the tendering to registers and receivers of homestead proofs in entries subject to the reclamation act, they will accept only the testimony fees for "reducing testimony to writing and examining and approving testimony," and will not accept final commissions payable under such entries until proof is submitted showing full compliance with all requirements of the act of June 17, 1902, including the payment of all reclamation charges.

45. On September 9, 1910, the Acting Secretary of the Interior approved a form of water-right certificate to be signed by the Commissioner of the General Land Office and given to water-right applicants upon submission of satisfactory proof of full compliance with the requirements of the reclamation act, and two forms of final affidavit, corroborated, to be submitted, the first by the owner of private land reclaimed under the act of June 17, 1902 (32 Stat., 388), and the second by the homestead entrymen under the provisions of said act (38 L. D., 197). These forms have been printed as forms 4-193, 4-068, and 4-073, respectively, and a supply of the last two forms has been furnished registers and receivers, who will require all water users desiring to make final proof of compliance with the requirements of the reclamation act as to reclamation of one-half of the irrigable lands in their entries or water rights and the payment of the estimated building charges and assessed operation and maintenance charges, to submit affidavit, duly corroborated by two witnesses, on the appropriate form.

46. To establish compliance with the clause of the reclamation act that requires reclamation of at least one-half of the irrigable area of an entry made subject to the provisions of the act, entrymen will be required to make proof showing that the land has been cleared of sagebrush or other incumbrance and leveled, that sufficient laterals have been constructed to provide for the irrigation of the required area, that the land has been put in proper condition and has been watered and cultivated, and that the growth of at least one satisfactory crop has been secured thereon, but the securing of an actual and satisfactory growth of orchard trees shall likewise be regarded as satisfactory reclamation. When proof of reclamation of one-half the irrigable

area is made in advance of full payment of the charges, evidence of satisfactory proof thereof will be issued by the General Land Office.

47. Upon the filing of affidavit on form 4-068 or 4-073 as proof of compliance with the requirements of the reclamation act the register and receiver will forward copy thereof to the engineer in charge of the project who will make prompt report thereon. Upon receipt of such report in case of homestead entries upon which final proof has been accepted by this office, the register and receiver will issue final certificate of compliance with the homestead laws and forward the same with the affidavit and engineer's report to this office with such recommendation as they deem proper. When such affidavit appears sufficient, and the case is otherwise regular, final water-right certificate (Form 4-193) will issue and the case will be approved for patent. In the case of water-right contracts for lands in private ownership, final water-right certificate will be issued by this office where the final affidavit is found to be sufficient, and the certificate so issued will constitute full evidence of the water user's right to the use of water appurtenant to the lands covered by his contract.

#### REPORTS ON FINAL PROOF NOTICES.

48. Registers and receivers are directed to furnish chiefs of field divisions with copies of notices of application to make proof, noting on each application the particular project wherein the land lies. When the notice involves any lands withdrawn under the first form withdrawal authorized by the reclamation act, they will indorse on the back of the notice mailed to the chief of field division: "For report by indorsement hereon as to whether the described lands, or any of them, are needed for construction purposes." In all cases as soon as such notice is received by the chief of field division, he will refer the same to the project engineer, who will make report by indorsement on the notice as to whether the lands are needed for construction purposes and as to any other matters as he may be instructed to report on by special instructions. This notice should be returned by the engineer to the chief of field division in sufficient time to enable that officer to return the same to the local land officers prior to the date fixed for proof.

49. If the lands covered by the final proof notice were entered prior to withdrawal for reclamation purposes, and the project engineer reports that they are not needed for construction purposes, final certificate will be issued upon submission of final proof as on entries not subject to the reclamation act. In all cases where the lands are entered prior to reclamation withdrawal and the project engineer reports that they are needed for construction purposes, and in all cases where the entry was made after withdrawal of the lands for reclamation purposes, whether or not they are needed for construction purposes, the register and receiver will forward the proof, if found to be regular, to the General Land Office without issuance of final certificate.

50. If any final proof offered under this act be irregular or insufficient, the register and receiver will reject it and allow the entryman the usual right of appeal; and if the General Land Office finds any proof forwarded to be insufficient or defective in any respect, it may

be rejected and the entryman will be notified of that fact, or he may be given an opportunity to cure the defect or to present acceptable proof.

#### NOTICE TO CONFORM.

51. The registers and receivers are directed to notify, in writing, every person who makes final proof on a homestead entry which is subject to the limitations and conditions of the act of June 17, 1902, embracing land included in an approved farm-unit plat, where the entry does not conform to an established farm unit, and conformation notice has not already been issued, that thirty days from notice is allowed such entryman to elect the farm unit he desires to retain, in default of which the entry will be conformed by the General Land Office.

#### ACTION ON PROOFS.

52. Homesteaders who have resided on, cultivated, and improved their lands for the time required by the homestead laws, and have submitted proof which has been found satisfactory thereunder by the General Land Office, but who are unable to furnish proof of reclamation because water has not been furnished to the lands or farm units not established, will be excused from further residence on their lands and will be given a notice reciting that further residence is not required, but that final certificate and patent will not issue until proof of reclamation of one-half of the irrigable area of the entry as finally adjusted and payment of all charges imposed by the public notice issued in pursuance of section 4 of the reclamation act.

#### CONTROL OF SUBLATERALS.

53. The control of operation of all sublaterals constructed or acquired in connection with projects under the reclamation act is retained by the Secretary of the Interior to such extent as may be necessary or reasonable to assure to the water users served therefrom the full use of the water to which they are entitled. (See 37 L. D., 468.)

#### WATER RIGHTS.

##### WATER RIGHTS FOR LANDS IN PRIVATE OWNERSHIP.

54. Lands which have been patented or which were entered before the reclamation withdrawal may obtain the benefit of the reclamation act, but water-right contracts may not be held for more than 160 acres by any one landowner, and such landowner must be an actual bona fide resident on such land or occupant thereof residing in the neighborhood. The Secretary of the Interior has fixed the limit of residence in the neighborhood at a maximum of 50 miles. This limit of distance may be varied, depending on local conditions. A landowner may, however, be the purchaser of the use of water for more than one tract in the prescribed neighborhood at one time, provided that the aggregate area of all the tracts involved does not exceed the maximum limit established by the Secretary of the Interior nor the limit of 160 acres fixed by the reclamation act; and a landowner who has made contract for the use of water in connection with 160 acres of irrigable land and sold the same together with the water right, can make other and successive contracts for other irrigable lands owned

or acquired by him. Holders of more than 160 acres of irrigable land within a reclamation project must sell or dispose of all in excess of that area before they can receive water. If the holder of a greater area desires, he can subscribe for stock in the local water users' association (if there be one) for his entire holding, executing a trust deed, giving the association power to ultimately sell the excess area to actual settlers who are qualified to comply with the reclamation act, unless the land has been sold by the owner when the Government is ready to furnish water thereon.

55. The purpose of the reclamation act is to secure the reclamation of arid or semiarid lands and to render them productive, and section 8 declares that the right to the use of water acquired under this act shall be appurtenant to the land irrigated and that "beneficial use shall be the basis, the measure, and the limit of the right." There can be no beneficial use of water for irrigation until it is actually applied to reclamation of the land. The final and only conclusive test of reclamation is production. This does not necessarily mean the maturing of a crop, but does mean the securing of actual growth of a crop. The requirement as to reclamation imposed upon lands under homestead entries shall therefore be imposed likewise upon lands in private ownership and land entered prior to the withdrawal—namely, that the landowner shall reclaim at least one-half of the total irrigable area of his land for agricultural purposes, and no right to the use of water will permanently attach until such reclamation has been shown. (See 37 L. D., 468.)

56. The provisions of section 5 of the reclamation act relative to cancellation of entries with forfeiture of rights for failure to make any two payments when due evidently states the rule to govern all who receive water under any project, and accordingly a failure on the part of any water-right applicant to make any two payments when due shall render his water-right application subject to cancellation with the forfeiture of all rights under the reclamation act as well as of any moneys already paid to or for the use of the United States upon any water right sought to be acquired under said act (37 L. D., 468.)

#### VESTED WATER RIGHTS.

57. The provision of section 5 of the reclamation act limiting the area for which the use of water may be sold does not prevent the recognition of a vested right for a larger area and protection of the same by allowing the continued flowing of the water covered by the right through the works constructed by the Government under appropriate regulations and charges.

#### CORPORATION LANDS.

58. Under dates of February 2, 1909 (37 L. D., 428) and March 3, 1909, the department held that under section 5, act of June 17, 1902, a corporation, otherwise competent, is entitled to take water under the statute, provided its home office is on or in the neighborhood of the land for which it seeks water service.

59. Further, that the corporation must show its stockholders, and that as individuals they have not in the aggregate taken water rights that, with that claimed by the corporation, will amount to more

than 160 acres or the maximum limit of area established by the Secretary of the Interior. Registers and receivers are accordingly instructed to be guided by the rulings of the department, as set forth above, in their action on water-right applications by corporations when presented.

#### TOWNSITE SUBDIVISIONS.

60. Where water-right application has been made and accepted for land in private ownership, no new water-right application by any purchaser of part of the irrigable area of such private land will be accepted for land so purchased, if the same is subdivided into lots of such form and area as to indicate a use thereof for townsite rather than for agricultural or horticultural purposes. In such case, no notation shall be made of such transfer on the original water-right application, but water will be furnished such land on the original application, and the water-right charges collected thereunder, as if no such sale or sales had been made.

61. Water for land subdivided into such form and areas as to indicate a use thereof for townsite rather than for agricultural or horticultural purposes may be procured for the entire areas so subdivided, by contract with the Reclamation Service through the proper representatives of the landowners, as authorized by the Secretary of the Interior under the acts of April 16 and June 27, 1906 (34 Stat., 116 and 519).

62. Where separate water-right applications, otherwise valid, have been accepted for lands subdivided into such form and areas as indicate a use thereof for townsite rather than for agricultural and horticultural purposes, such water-right applications and the corresponding subscriptions to the stock of the water users' association may be surrendered and canceled, and water supplied to such lands under the provisions of the said acts of April 16 and June 27, 1906, upon such terms and conditions as will return to the Reclamation Service an amount not less than the charges due under such water-right applications. Similar adjustment by cancellation and new contract may be made where water-right application has been accepted and the land has been subsequently subdivided into tracts of form and area as above.

#### WATER-RIGHT APPLICATION.

63. The department has adopted three forms of applications for water rights, viz, Form A (4-021) for homesteaders who have made entries of lands withdrawn under the second form of withdrawal; Form B (4-020) for private owners of lands embraced within said project; and Form C (4-019) for Indian allottees. Copies of these forms have been furnished registers and receivers, and they will be used in all applications for water rights in any of the reclamation projects.

64. Upon notice issued by the Secretary of the Interior that the Government is ready to receive applications for water right for described lands under a particular project, all persons who have made entries of lands under the provisions of the act of June 17, 1902 (32 Stat., 388), will be required to file application for water rights on Form A for the number of acres of irrigable land in the farm unit

entered, as shown by the plats of farm units approved by the Secretary of the Interior.

65. Upon the issuance of such notice private landowners and entrymen whose entries were made prior to withdrawal may, in like manner, apply on forms B or C for water rights for tracts not containing more than 160 acres of irrigable land, according to the approved plats, unless a smaller limit has been fixed as to lands in private ownership by the Secretary of the Interior.

66. Each application on Form B or Form C must contain a statement as to the distance of the applicant's residence from the land for which a water right is desired.

67. If a greater distance than that fixed for the project is shown in any application, the case should be reported to the Commissioner of the General Land Office for special consideration upon the facts shown. If the applicant is an actual bona fide resident on the land for which water-right application is made, the clause in parentheses of Form B or Form C, regarding residence elsewhere, must be stricken out.

68. The applicant on Form B or Form C must state accurately the nature of his interest in the land. If this interest is such that it can not ripen into a fee-simple title at or before the time when the last annual installment for water right is due, the register and receiver must reject the application.

69. Form B (4-020) is intended for use by owners of private land and entrymen whose entries were made prior to the withdrawal of the land within reclamation projects in entering into contracts with the United States for the purchase of a water right, and must be signed and sealed in duplicate and acknowledged before a duly authorized officer in the manner provided by local law. A space is provided on the blank for evidence of the acknowledgment, which should be in exact conformity to that required by the statutes of the State in which the lands covered by the contract lie for the execution of mortgages or deeds of trust. When so executed both originals must be filed in the local land office together with three complete copies, either in person or by mail. If the application is regular and sufficient in all respects, duly approved by the project engineer, and bears the certificate of the secretary of the local water users' association, if there be one, and is accompanied by the proper payments required by the provisions of the public notices issued in connection with the local reclamation project, the register will accept the same by filling out the blank provided at the bottom of the third page and attach his signature and seal by placing a scroll around the word "Seal."

70. Attention is especially called to sections 3743 to 3747, inclusive, of the Revised Statutes, relative to the deposit and execution of public contracts. The register will immediately after execution of the contract, execute the oath of disinterestedness required by section 3745, Revised Statutes, before a duly authorized officer on the blank form provided on the last page of the water-right contract.

No funds are available for the payment by the Government of any fees in connection with this oath, and the register should therefore take such oath before the receiver of public moneys, who is precluded by section 2246, Revised Statutes, from charging or receiving directly or indirectly any compensation for the administering of such oath. In the event that it becomes necessary to take this oath before any

other authorized officer, the fee due such officer must be paid to him by the water-right applicant, and registers are authorized to refuse to accept the water-right application on failure of the applicant to make such payment.

71. Section 3744, Revised Statutes, makes it the duty of a public officer executing a contract on behalf of the United States to file a copy of the same in the returns office of this department as soon as possible and within thirty days after the making of the contract, and registers will therefore forward to that office one of the original copies of each contract as soon as possible after the execution of the same. The provision of said section requiring that all papers in relation to each contract shall be attached together by a ribbon and seal, and marked by numbers in regular order, according to the number of papers composing the whole return, does not apply to the contracts for the purchase of water rights, because of the fact that only one paper is used.

72. As stated in the instructions for the execution of the blank upon the third page thereof, the contract must be duly recorded in the records of the county in which the lands are situated, and therefore immediately upon execution of the contract the second original copy will be returned to the applicant, and he will be required to have the contract duly recorded by the proper recording officer, at his own expense, and return the contract to the local land office within thirty days, in default of which the register and receiver will make report to the General Land Office and the contract will be canceled without further notice for failure to comply with the regulations.

73. Upon return of the original copy of the contract to the local land office bearing certificate at the bottom of the last page, executed by the recording officer showing the recordation of the instrument, the register will fill out the same blank on the three copies held in his office, signing the name of the recording officer with the word "signed" in parentheses, preceding such name. The second original copy, when thus completed, is to be forwarded to the Auditor of the Treasury Department for the Interior Department, and one of the other copies will be forwarded to the applicant, one to the project engineer and the last copy must be forwarded to this office with the regular monthly returns.

74. No new forms of water-right application carrying assignments of credit (4-020a and 4-021a) have been prepared, and the use of the old forms bearing these numbers has been abandoned, and where application is filed by an assignee either of an entryman under the reclamation act or a private landowner, the new forms 4-020 or 4-021 should be used, and at the bottom of the last page, without the use of any additional papers, the prior applicant should execute the following form, either written in ink or typewritten:

I, \_\_\_\_\_, for value received, hereby sell and assign to \_\_\_\_\_ all my right, title and interest in and to any credits heretofore paid on water-right application No. \_\_\_\_\_ for the above-described land, together with all interests possessed by me under said application.

\_\_\_\_\_  
Assignor.

\_\_\_\_\_  
Witness.

75. Action on cases bearing such assignment will be the same as on other cases, except that the assignment must be permissible under the provisions of existing public notices and departmental regulations.

76. In order to avoid discrepancies in areas and resulting payments and the acceptance of applications for tracts not designated as lands for which water can be furnished, the following instructions are issued:

I. When practicable, all applications for water rights, both by homesteaders who have made entries of lands withdrawn and by private owners of lands embraced within a reclamation project, should be submitted by the applicants to the project engineer, United States Reclamation Service, for his examination and approval, before the applications are filed in the local land offices. In such cases the project engineers will indorse their approval upon the application forms if found correct, or point out defects and suggest corrections if any are required.

II. Where, because of lack of time, distance, or necessity of submitting the water-right applications with applications to make original homestead entries, etc., it is not practicable to have the water-right applications examined and approved by the project engineer prior to the filing in the local land office, the water-right applications must be filled out and filed in the local land office accompanied by an extra copy. Registers and receivers will suspend action in such cases and daily forward to the proper project engineer one copy of each of such water-right applications for examination and return by the engineer within fifteen days, approved by him, or with defects indicated and corrections suggested if not in form for approval. In the latter case the applicant should be promptly advised and allowed thirty days to make the necessary amendments, in default of which the application will be rejected.

III. The Reclamation Service will advise its project engineers that their approval will be regarded as certifying to the correctness of the following matters: (a) That the land described is subject to water-right application under the project; (b) that the irrigable acreage shown is correct in accordance with the public notices, the official plats, and instructions approved by the Secretary of the Interior; (c) that the number of acre-feet per annum to be furnished is correctly stated; (d) that the amount of the building charge is correctly stated; (e) that the number of annual installments is correctly stated. Before certifying any water-right application for private lands the local engineer of the Reclamation Service shall see that it includes all the land owned by the applicant within the subdivision in addition to the other irrigable lands owned by him on the project and open to application for a water right, not exceeding the limit of area fixed by the reclamation act and the public notice in pursuance of which the application is presented.

IV. These regulations are designed to aid the applicants in presenting water-right applications which will be correct in form, and which contain matters essential to the approval of their applications; also, to aid the registers and receivers of local land offices in the consideration of such application; and registers and receivers are, therefore, enjoined to use both care and diligence in enforcing the above requirements.



V. If the Secretary of the Interior has made a contract with a water users' association organized under the project, due notice thereof will be given to the registers and receivers, and applications for water rights should not be accepted in such cases unless the certificate at the end thereof has been duly executed by the said association.

77. The following rules are laid down with reference to water-right applications for land in private ownership, including entries not subject to the reclamation act:

I. Where water-right application is presented covering only part of the irrigable area of a subdivision in private ownership, not subdivided into lots and blocks for townsite purposes, the register and receiver will accept it, provided it bears the usual certificates of the project engineer and the local water users' association (where such association has been formed and contract entered into with the Secretary of the Interior).

II. In case of sale by a private owner of part of the irrigable land covered by a subsisting water-right application, the vendor, in order to have his water-right charges adjusted to the reduced acreage retained by him, will be required to present the following evidence:

(a) Certificate of the proper officer having charge of the county records, showing record of a subscription for stock in the local water users' association covering the land in question and that the land has been duly conveyed by the subscriber at a time subsequent to the recording of the stock subscription.

(b) The certificate of the local water users' association, if one has been organized on the project, under corporate seal, to the effect that proof has been presented to the association of the transfer of the land to the person named and that appropriate transfer has been made on its books of the shares of stock appurtenant to said land.

(c) The vendor should also so arrange that his vendee shall promptly make a water-right application for the irrigable land within the tract conveyed to him, and upon presentation and acceptance of such application appropriate notation of such transfer, with a reference to the new water-right application, will be made on the original or prior water-right application.

III. In case of relinquishment by an entryman, whose entry is not subject to the reclamation act, of a part of the land included in his entry, appropriate notation will be made on his water-right application, showing such relinquishment, and his charges will be reduced accordingly.

IV. Where an entryman relinquishes a part of his entry under conditions described in Rule III hereof, and the next person who enters the land so relinquished claims credit for installments paid by the first entryman, he must at the time of such entry file with his application to enter an assignment in writing of the water-right credits of the prior entryman; also a water-right application covering the land entered.

78. In order that there may be no unnecessary delay in the obtaining of water by entrymen and landowners in reclamation projects, after they have filed water-right applications and made the required preliminary payment, the register and receiver are directed to issue in triplicate certificates of water-right applications accepted in connection with homestead entries made subject to the reclamation act. Certificate of filing water-right application will not be issued here-

after in connection with the new Form B (4-020), inasmuch as the acceptance of the contract is equivalent to such certificate. One copy of each certificate of filing water-right application issued and of each water-right contract for lands in private ownership executed will be forwarded to the applicant and one copy to the engineer in charge of the project. At the end of each month the register and receiver are to prepare a schedule, Form 4-115b, of certificates issued upon water-right applications accepted during the month, showing also contracts executed, and an abstract, Form 4-105b, of collections of charges made during the month, forwarding the original in triplicate to this office and furnishing the Director of the Reclamation Service and the project engineer with copies of each monthly schedule of certificates and abstract of collections made. Receipts made from the sale of townsite lots should be reported separately on Form 4-105 for payment into the reclamation fund as original receipts on account thereof.

79. The copies of certificates of water-right applications and contracts must be forwarded, on the day issued, to the engineer in charge of the reclamation project wherein the lands are situated, and the monthly abstract of collections must be prepared and copy forwarded to him immediately after the close of the month during which the collections were made.

80. As above indicated, prompt action is essential in these matters in order that the applicants who are entitled to water may receive same at the earliest possible moment; and any dereliction in furnishing the copies of certificates and abstracts above indicated will be considered a failure of satisfactory performance of duty.

#### WATER-RIGHT CHARGES.

81. The Secretary of the Interior will at the proper time, as provided in section 4 of the reclamation act, fix and announce the area of lands which may be embraced in any entry thereafter made or which may be retained in any entry theretofore made under the reclamation act; the amount of water to be furnished per annum per acre of irrigable land and the charges which shall be made per acre for the irrigable lands embraced in such entries and lands in private ownership, for the estimated cost of building the works and for operation and maintenance, and prescribe the number and amount and the dates of payment of the annual installments thereof.

82. Under the act of February 13, 1911 (36 Stats., 902) the Secretary is authorized in his discretion to withdraw any public notice issued prior to the passage of the act.

83. If any entry subject to the reclamation act of June 17, 1902 (32 Stat., 388) is canceled or relinquished, the payment for water-right charges already made and not assigned in writing to a prospective or succeeding entryman under the provisions of paragraph 85 hereof are forfeited. All water-right charges which remain unpaid are canceled by the relinquishment or cancellation of the entry, except as provided by the specific provisions of public notices applicable to particular projects.

84. Any person who thereafter enters the same land must, in the absence of an assignment in writing or public notice to the contrary, pay the water-right charges as if the land had never been previously

entered. No credit will be allowed in such cases for the payment made by the prior entryman, and the new entryman must pay at the time of filing his homestead application and water-right application, such charges for building and operation and maintenance as are required by the public notice in force at the time on the particular project.

85. A person who has entered lands under the reclamation act, and against whose entry there is no pending charge of noncompliance with the law or regulations, or whose entry is not subject to cancellation under this act, may relinquish his entry to the United States and assign to a prospective or succeeding entryman any credit he may have for payments already made under this act on account of said entry, and the party taking such assignment may, upon making proper entry of the land and proving the good faith of the prior entryman to the satisfaction of the Commissioner of the General Land Office, receive full credit for all payments thus assigned to him, but must otherwise comply in every respect with the homestead law and the reclamation act.

86. The transfer of lands in private ownership covered by water right contract before cancellation of the contract carries with it the burden of water-right charges and credit for the payments made by the prior owner. (See Dept. decision Mar. 20, 1911, in case of Fleming McLean and Thomas Dolf, 39 L. D., 580.)

87. All charges due for operation and maintenance of the irrigation system for all the irrigable land included in any water-right application must be paid on or before April 1 of each year, except where a different date is specified in the orders relating to the particular project, and in default of such payment no water will be furnished for the irrigation of such lands.

REGULATIONS AS TO THE COLLECTION OF RECLAMATION WATER-RIGHT CHARGES BY RECEIVERS OF PUBLIC MONEYS.

88. In accordance with the provisions of section 5 of the reclamation act, all payments of the annual installments of reclamation water-right charges, including the portions for building charges and operation and maintenance charges on reclamation water-right applications, shall be made to the receivers of public moneys of the respective local land districts, but, for the convenience of the water-right applicants, the charges provided may be tendered to and received by the designated special fiscal agents for the several irrigation projects for transmission by them to the proper receivers of public moneys. The acceptance of these water-right charges by the fiscal agents of the Reclamation Service can not be held to be a payment to the United States in accordance with the requirements of section 5 of the reclamation act until the moneys are actually in the hands of the proper receivers of public moneys. The permission granted above is only for the convenience of water-right applicants, but care will be taken to properly safeguard the handling of such funds until their receipt by the respective receivers of public moneys. Notice of overdue water-right charges will be sent to water users by the registers and receivers whenever directed by the General Land Office and a press copy of every such notice must be sent to the project engineer in charge of the project on the same day without waiting for the end of the month.

89. Where payment is tendered for a part only of either an annual installment of water-right building charges or an annual operation and maintenance charge, receivers may hereafter accept the same if the insufficient tender is, in the opinion of the receiver, caused by misunderstanding as to the amount due and approximates the same.

90. In all cases of insufficient payment accepted in accordance with the provisions of the foregoing paragraph, receipts must issue for the amount paid and the money be deposited to the credit of the "Reclamation Fund," and the water user shall be immediately notified by registered letter that the payment is insufficient and allowed a period of thirty days to make payment of the balance due to complete the charge on which a part payment has been made. If the balance is paid within this period additional receipt must issue therefor, but if not paid within the thirty days, report shall be made to the Commissioner of the General Land Office.

91. In all other cases where insufficient tenders are made receivers will issue receipts therefor and return the money by their official check, with notice to the water user as to the reason for its return and properly report the transaction in their accounts.

92. When full payment is tendered direct to the receiver of public moneys, and upon examination is found to be correct, the receiver will issue the usual receipt, and send a press copy to the project engineer on the day issued.

93. Where payment is tendered through special fiscal agents of the Reclamation Service, and, upon examination, the amounts so transmitted by the special fiscal agent are found to be correct, the receiver will then issue the usual receipt and transmit the same to the water-right applicant at his record post-office address. The receiver will receipt to such special fiscal agent upon one copy (and retain the other copy) of the "Abstract of receipts of reclamation water-right charges (R. S., Form 7-406)" received from the special fiscal agent at the end of each month. See section 8 of instructions of May 27, 1908, to special fiscal agents, by the United States Reclamation Service.

94. Attention is invited to paragraph 4 of "Circular of instructions to special fiscal agents by the United States Reclamation Service," dated May 27, 1908, and in accordance therewith receivers of public moneys will require payment direct to themselves in all matters involving tenders for fees on homestead entries; tenders for first installments on water-right applications, including both the portion for building and the portion for operation, and maintenance charges where the public notices require the first installment to be paid at the time of filing homestead entries, and tenders upon water-right applications where a notice of contest against the entry upon which the water-right application rests, has been reported by the register of the land office. In all such cases payments must be made direct to the receiver of public moneys.

95. All moneys collected in connection with water-right applications, both those received direct from water-right applicants and through special fiscal agents, must be deposited in receivers' designated depositories to the credit of the Treasurer of the United States "on account of reclamation fund, water-right charges."

## DESERT-LAND ENTRIES WITHIN A RECLAMATION PROJECT.

96. By section 5 of the act of June 27, 1906 (34 Stat., 519), it is provided that any desert-land entryman who has been or may be directly or indirectly hindered or prevented from making improvements on or from reclaiming the lands embraced in his entry, by reason of the fact that such lands have been embraced within the exterior limits of any withdrawal under the reclamation act of June 17, 1902, will be excused during the continuance of such hindrance from complying with the provisions of the desert-land laws.

97. This act applies only to persons who have been, directly or indirectly, delayed or prevented, by the creation of any reclamation project or by any withdrawal of public lands under the reclamation act, from improving or reclaiming the lands covered by their entries.

98. No entryman will be excused under this act from a compliance with all of the requirements of the desert-land law until he has filed in the local land office for the district in which his lands are situated an affidavit showing in detail all of the facts upon which he claims the right to be excused. This affidavit must show when the hindrance began, the nature, character, and extent of the same, and it must be corroborated by two disinterested persons, who can testify from their own personal knowledge.

99. The register and receiver will at once forward the application to the engineer in charge of the reclamation project under which the lands involved are located and request a report and recommendation thereon. Upon the receipt of this report the register and receiver will forward it, together with the applicant's affidavit and their recommendation, to the General Land Office, where it will receive appropriate consideration and be allowed or denied, as the circumstances may justify.

100. Inasmuch as entrymen are allowed one year after entry in which to submit the first annual proof of expenditures for the purpose of improving and reclaiming the land entered by them, the privileges of this act are not necessary in connection with annual proofs until the expiration of the years in which such proofs are due. Therefore, if at the time that annual proof is due it can not be made, on account of hindrance or delay occasioned by a withdrawal of the land for the purpose indicated in the act, the applicant will file his affidavit explaining the delay. As a rule, however, annual proofs may be made, notwithstanding the withdrawal of the land, because expenditures for various kinds of improvements are allowed as satisfactory annual proofs. Therefore an extension of time for making annual proof will not be granted unless it is made clearly to appear that the entryman has been delayed or prevented by the withdrawal from making the required improvements; and, unless he has been so hindered or prevented from making the required improvements, no application for extension of time for making final proof will be granted until after all the yearly proofs have been made.

101. An entryman will not need to invoke the privileges of this act in connection with final proof until such final proof is due, and if at that time he is unable to make the final proof of reclamation and cultivation, as required by law, and such inability is due, directly or indirectly, to the withdrawal of the land on account of a reclamation

project, the affidavit explaining the hindrance and delay should be filed in order that the entryman may be excused for such failure.

102. When the time for submitting final proof has arrived, and the entryman is unable, by reason of the withdrawal of the land, to make such proof, upon proper showing, as indicated herein, he will be excused, and the time during which it is shown that he has been hindered or delayed on account of the withdrawal of the land will not be computed in determining the time within which final proof must be made.

103. If after investigation the irrigation project has been or may be abandoned by the Government, the time for compliance with the law by the entryman will begin to run from the date of notice of such abandonment of the project and of the restoration to the public domain of the lands which had been withdrawn in connection with the project. If, however, the reclamation project is carried to completion by the Government and a water supply has been made available for the land embraced in such desert-land entry, the entryman must comply with all the provisions of the act of June 17, 1902, and must relinquish all the land embraced in his entry in excess of 160 acres; and upon making final proof and complying with the terms of payment prescribed in said act of June 17, 1902, he shall be entitled to patent. The area of the entry in excess of 160 acres must be relinquished to the United States and entrymen will not be permitted to assign such excess. See departmental decision of January 20, 1912 (40 L. D., 386).

104. Special attention is called to the fact that nothing contained in the act of June 27, 1906, shall be construed to mean that a desert-land entryman who owns a water right and reclaims the land embraced in his entry must accept the conditions of the reclamation act of June 17, 1902, but he may proceed independently of the Government's plan of irrigation and acquire title to the land embraced in his desert-land entry by means of his own system of irrigation.

105. Desert-land entrymen within exterior boundaries of a reclamation project who expect to secure water from the Government must relinquish to the Government all of the lands embraced in their entries in excess of 160 acres whenever they are required to do so through the local land office, and must reclaim one-half of the irrigable area covered by their water right in the same manner as private owners of land irrigated under a reclamation project.

## TOWNSITES IN RECLAMATION PROJECTS.

106. *Withdrawal, survey, appraisal, and sale.*—Townsites in connection with irrigation projects may be withdrawn and reserved by the Secretary of the Interior under the acts approved April 16 and June 27, 1906 (34 Stat., 116 (secs. 1, 2, and 3), and 519, (sec. 4)), respectively, and thereafter will be surveyed into town lots with appropriate reservations for public purposes, and will be appraised and sold from time to time in accordance with special regulations provided under section 2381, United States Revised Statutes, governing reclamation townsites.

107. *Survey and appraisal.*—Townsites under any law directing their disposition under section 2381, will be surveyed, when ordered by the department, under the supervision of this office, into urban, or

urban and suburban, lots and blocks, and thereafter the lots and blocks will be appraised by such disinterested person or persons as may be appointed by the Secretary of the Interior. Each appraiser must take his oath of office and transmit the same to this office before proceeding with his work. This office must be notified by wire of the time when such appraiser or appraisers enter on duty. They will examine each lot to be appraised and determine the fair and just cash value thereof. Improvements on such lots, if any, must not be considered in fixing such value. Lots or blocks reserved for public purposes will not be appraised.

108. *The schedule of appraisement* must be prepared in duplicate on forms furnished by this office, and the certificates at the end thereof must be signed by each appraiser, and on being so completed they must be immediately transmitted to this office, and when approved by the Secretary of the Interior one copy will be sent to the local officers.

109. *Notices of sale* will be published for thirty days (unless a shorter time be fixed in a special case) by advertisement in such newspapers as the department may select and by posting a copy of the notice in a conspicuous place in the register's office.

110. *How sold.*—Beginning on the day fixed in the notice and continuing thereafter from day to day (Sundays and legal holidays excepted) as long as may be necessary, each appraised lot will be offered for sale at public outcry to the highest bidder for cash, at not less than its appraised value.

111. *Qualifications and restrictions.*—No restriction is made as to the number of lots one person may purchase. Bids and payments may be made through agents, but not by mail or at any time or place other than that fixed in the notice of sale.

112. *Combinations in restraint of the sale are forbidden* by section 2373 of the Revised Statutes of the United States, which reads as follows:

Every person who, before or at the time of the public sale of any of the lands of the United States, bargains, contracts, or agrees, or attempts to bargain, contract, or agree with any other person, that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof, or who by intimidation, combination, or unfair management, hinders or prevents, or attempts to hinder or prevent any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

113. *Suspension or postponement* of the sale may be made for the time being, to a further day, or indefinitely, in case of any combination which effectually suppresses competition or prevents the sale of any lot at its reasonable value, or in case of any disturbance which interrupts the orderly progress of the sale.

114. *Payments and forfeitures.*—If any bidder to whom a lot has been awarded fails to make the required payment therefor to the receiver, before the close of the office on the day the bid was accepted, the right thereafter to make such payment will be deemed forfeited, and the lot will be again offered for sale on the following day, or if the sale has been closed, then such lot will be considered as offered and unsold, and all bids thereafter by the defaulting bidder may, in the discretion of the local officers, be rejected.

115. *Lots offered and unsold.*—Each lot offered and remaining unsold at the close of the sale will thereafter be and remain subject to private sale and entry, for cash, at the appraised value of such lot.

116. *Certificates.*—All lots purchased at the same time, in the same manner, in the same townsite, and by the same person should be included in one certificate, in order to prevent unnecessary multiplicity of patents. Lots sold at private sale should be accompanied by an application therefor, signed by the applicant. Certificates will be issued upon payment of the purchase price, as in other cases.

117. In all cases where the Secretary of the Interior shall direct the reappraisal of unsold lots under the first section of the act of June 11, 1910 (36 Stats., 465) the reappraisal will be conducted under the regulations provided for under the original appraisement of lots in townsites created under the laws in said act mentioned. The lots to be reappraised will not, from the date of the order therefor, be subject to disposal until offered at public sale at the reappraised value, which offering will be conducted under the regulations providing for the public sale of lots in such townsites. The lots so offered at public sale will then become subject to private sale at the reappraised price.

118. Whenever the Secretary of the Interior, in the exercise of the discretion conferred upon him by section 2 of said act, shall order the payment of the purchase price of lots, sold in townsites created under the laws in said act mentioned, to be made in annual installments, the same will be done under such regulations as may be issued in each particular instance. Transfers of lots will not be recognized, but entries and patents must be issued in the name of original purchasers.

FRED DENNETT,  
Commissioner.

Approved, April 29, 1912.

SAMUEL ADAMS,  
First Assistant Secretary of the Interior.