

## MEMORANDUM

**TO:** Water Resources Commission

**FROM:** Bruce Moyer, Administrator

**SUBJECT:** Agenda Item D, October 11, 2002  
Water Resources Commission Meeting

### **Information Report on the Department's Plan to Initiate Rulemaking on OAR Chapter 690, Division 40 (Administration of the Carey Act)**

#### **I. Issue Statement**

This report briefs the Commission on the Department's intent to conduct rulemaking on OAR Chapter 690, Division 40, regarding state administration of reclamation under the Carey Act and the Tumalo Project.

The purpose of the Carey Act in Oregon has been completed and fulfilled. The state administrative rules implementing the Carey Act, which were originally adopted prior to 1909 and last revised in 1947, need to be reconsidered and revised to reflect current conditions insofar as the purpose, objectives, and rationale for the Carey Act in Oregon. *This is an informational report only; no Commission action is required.*

#### **II. Background/Discussion**

Under the Carey Act of 1894, the federal government entered into contracts with state governments for the irrigation and reclamation of desert lands. In 1901, Oregon officially accepted the conditions of the Act. The 1901 state Carey Act program and implementing statutes were repealed in their entirety with the 1909 enactment of a revised state Carey Act program, now codified at ORS 555.010 to 555.190. These statutes have changed little since their enactment.

Under the Carey Act, the federal government granted certain desert lands to Oregon. Under the Oregon statute, the state was authorized to contract for construction of irrigation projects to reclaim those desert lands granted by the federal government, and to attach a lien to lands benefited by the reclamation projects. Once an irrigation project could ensure a reliable water supply, the law allowed entry by settlers on the reclaimed lands and conveyance of title to the settlers following settlement and cultivation, and upon payment of the reclamation lien. Originally, applications for entry onto the lands

within the project boundary were to be submitted to the irrigation project construction companies. Responsibility for processing applications was later transferred to the irrigation district successor of the construction company.

Under the Act, a qualified applicant can apply for entry and use of not more than 160 acres of reclaimed land. Before lands may be deemed open for entry, the construction company or district must determine that a water right is appurtenant to the land, or it must agree to contract for the sale of water adequate for the cultivation of the total irrigable acreage. Final approval of entry and acquisition currently rests with the Water Resources Commission. Commission approval must be based on a finding that the proposed entry and acquisition is in the best interests of the state, the irrigation district, and the public. In considering the interests of the state and the irrigation district, the Commission must find that a water right has been or will be obtained from the district for the lands to be entered.

Prior to 1920, the state petitioned the federal government for land totaling approximately 862,000 acres for 39 proposed projects. Ultimately, only five projects were completed with patents received and deeds issued. Lands actually reclaimed under the Act include approximately: 49,500 acres in Central Oregon Irrigation District; 7,000 acres in Tumalo Irrigation District; 3,700 acres in Jordan Valley Irrigation District; 1,280 acres in Deschutes Reclamation Irrigation District; and 240 acres in Brownell.

Through previous actions, prior state Carey Act administrators have determined that the purpose, objectives and rationale for the Carey Act in Oregon have been completed and fulfilled. In its prior deliberations, the Water Resources Commission has come to similar conclusions. Further, the Department has determined that all lands under patent to the state were either under contract for water or reconveyed to the federal government and that all water available under the projects had been fully appropriated. The Department intends to amend the rules under OAR Chapter 690, Division 40, to reflect the current status of the Carey Act in Oregon.

### **III. Recommendation**

No action is required; this is an informational report only.

**Attachment:**

OAR Chapter 690, Division 40, Administration of the Carey

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