

OREGON ADMINISTRATIVE RULES  
CHAPTER 690, DIVISION 40 — WATER RESOURCES DEPARTMENT

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DIVISION 40

ADMINISTRATION OF THE CAREY ACT

**Reclamation of Land's Under Provisions of the Carey Act**  
690-40-000 Rules pertaining to the reclamation of lands accepted by the State of Oregon under the provisions of the Carey Act were promulgated by the State Reclamation Commission, now under the administration of the Water Resources Director, March 8, 1944, and filed with the Secretary of State July 31, 1947, as Administrative Order 2RC 1.

Pursuant to ORS 183.360(3), these rules are not published in the Oregon Administrative Rules Compilation. Copies may be obtained from the Secretary of State as provided by ORS 183.060.

Stat. Auth.: ORS Ch.

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RULES AND REGULATIONS  
of the  
STATE RECLAMATION COMMISSION

Pertaining to the Reclamation of Lands Accepted by the  
State under the Provisions of the Carey Act

In order that those desiring to settle upon and cultivate lands reclaimed under the provisions of the Carey Act, may be advised as to the method of procedure required by the Commission, these rules and regulations have been adopted by the State Reclamation Commission, based upon its interpretation of the Federal and State laws and the rules of the U.S. Department of the Interior.

Section 16, Chapter 226, Laws of Oregon for 1909 provides: "The Board shall provide suitable rules for the filing of applications for constructing irrigation works, prescribing the nature of final surveys and the gathering of engineering data upon which the contract with the State is to be based, the manner in which the plans and specifications shall be submitted, and for the entry of and payment for the land and water rights by settlers and for the settlement or forfeiting of entry by settlers, and such other rules and regulations as are necessary to carry out the provisions of this Act."

In all cases the word Company shall be construed to mean Commission, in connection with the Tumalo Project.

Policy of the Commission

Rule 1. It will be the policy of the Commission to guard equally the interest of the State, of the intending settler, and of the company which has the contract for the construction of the canal system and colonization of the lands thereunder, and in referring to the several parties in these rules, the company that is building the system shall be referred to as the "construction company," the intending settler as "entryman" or "settler," and the State Reclamation Commission, as the "Commission."

Meetings of the Commission

Rule 2. The Commission will hold a regular meeting on each Tuesday; and special meetings will be held at such times as may be found necessary for the property transaction of business. All communications relative to the affairs of the Commission should be addressed to the Secretary of the State Reclamation Commission.

Who May Enter

Rule 3. The right to enter land under the Carey Act does not depend directly upon the general land laws of the United States; no entryman will, therefore, be disqualified for entering land under the provisions of this act by reason of his having previously exhausted his rights under the general land laws of the United States.

## Application

Rule 4. Application to the State for entry of land, and for the purchase of water right and release of lien from the company must be made to the company. This application and contract shall be executed in triplicate and forwarded by the company to the Commission within 30 days after execution, for approval and endorsement by the Commission, and without such endorsement shall be void. The company shall, at the time of transmitting such application and contracts, also transmit to the Commission any payments or deposits required by law, contract, or these rules, and no application shall be approved until such payment or deposit has been received. One copy of each application and contract shall be retained by the Commission and the remaining copies returned to the company who shall deliver one copy to the applicant. No land will be considered entered until the settler's application has been received and approved by the Commission and the entry noted on the records of the Commission at Salem.

## Filing Fee for Proofs on Lands in Segregation Lists 6 and 19

Rule 5. A fee of 50 cents per acre shall be required of all settlers making application for lands embraced in Segregation Lists Nos. 6 and 19, from and after January 1, 1911, said payment of 50 cents per acre to accompany the proof papers of each settler, and no proof shall be acted upon by the Commission until such payment has been received. This payment to be deposited in the reclamation fund provide by law.

## Location

Rule 6. all filings or entries of land shall be made according to legal subdivisions; and the legal subdivisions constituting a filing under a Carey Act project shall be contiguous. But when a tract is isolated and not contiguous to other land open to entry, such isolated tract, together with other land within the segregation in all not to exceed 160 acres, may, with the approval of the company (or district) and the Commission, be filed upon. And an entryman may also file upon land under the provisions of these rules upon two or more Carey Act projects in the State, the total amount so filed not to exceed 160 acres.

## Entries in List No. 11

Rule 7. When the lands within the Deschutes Land Company's Segregation shall have been opened to entry or sale, they may be entered in noncontiguous tracts without reference to the distance between said tract, or one entryman may make several entries for said lands not to exceed a total area of 160 acres; provided that residence, cultivation and settlement for the entire area entered may be performed on any one or more of the said tracts.

## State Law on Qualifications of Entryman; Payment

Rule 8. Section 13, Chapter 226, Laws of Oregon for 1909, reads as follows: "Any citizen of the United States, or any person having declared his intention to become such, over the age of 21 years, may make application, under oath, to the Board upon forms prescribed by it to enter any of the lands reclaimed under the provisions of this act, in an amount not to exceed 160 acres for any one person. Each application shall be accompanied by the contract, made and entered into by the applicant with the person, association or corporation which has undertaken the reclamation of the tract in question, which contract shall show that the applicant has made proper arrangement for the purchase of the necessary water rights, and the release of the construction lien. Each application to the Board, shall in addition be accompanied by a payment of not less than one dollar (\$1.00) per acre for each acre included in the application which payment shall be made by the contractor out of the first payment by the applicant, and shall be deposited by the Board with the State Treasurer, who shall credit the same to the 'reclamation fund' herein created. If the application is not approved, the one dollar payment shall be returned to the contractor."

## Settlement

Rule 9. The Carey Act grants certain lands to the State upon condition that the State shall cause such lands "to be irrigated, reclaimed, occupied, and not less than 20 acres of each 160-acre tract, cultivated by actual settlers, \* \* \* as thoroughly as is required of citizens who may enter under said desert land law." The contract between the State and United States provides that the "State shall not lease any of said lands or use or dispose of the same in any way whatever, except to secure their reclamation, cultivation and settlement."

## Residence

Rule 10. Actual settler is defined to mean a person in the actual occupancy of the lands, with his family, if married, with the intention of making the same his residence and using the land as his home.

## Settlement, Cultivation--Proof

Rule 11. Within three years from the date of the settler's application for entry of land, he shall become an actual resident upon the land applied for, with his family, if married, and maintain such residence in accordance with the rules of the State Reclamation Commission until he has made proof of reclamation, cultivation and settlement. In making proof, under this rule, actual residence for at least three consecutive months prior to and including date of proof will be required.

Within three years from the date of the settler's application, at least one-eighth of the irrigable land applied for shall be actually cultivated and irrigated.

Within three years from the date of the settler's application, he shall appear before any officer in the State authorized to administer oaths, and make proof of reclamation, cultivation and settlement, upon forms approved by the Commission, supported by affidavits of two credible witnesses, and shall file such proof with the Secretary of State Reclamation Commission at Salem, Oregon. Such proof may be made at any time after the required residence and cultivation and prior to the expiration of the three-year period, provided the settler is actually residing upon the land at the time of making proof.

#### Alternative Rule for Settlement, Cultivation and Proof

Rule 12. Provided that in lieu of the above requirement as to settlement and cultivation, any settler may make proof of reclamation, cultivation and settlement on lands embraced in his application within three years from the date of such application upon submitting proof, on forms approved by the Commission, that the land has been enclosed with a substantial fence, and not less than one-fourth of the irrigable land embraced in the application, nor less than one-eighth of the total area of the land applied for has been actually cultivated by clearing, plowing and planting to crops, and irrigated in a substantial, workmanlike manner to raise ordinary agricultural crops; that a substantial house, fit for human habitation, having a total floor space of not less than 200 square feet has been built thereon; and that the settler, with his family, if married, has resided upon the land embraced in his application for a period of one week immediately prior to and including date of proof; and the settler shall appear before any officer of the State authorized to administer oaths, and make proof of reclamation, cultivation and settlement upon forms approved by the Commission, supported by affidavit of two credible witnesses and file the same with the Secretary of the State Reclamation Commission at Salem, Oregon, on or before the expiration of such three-year period. Such proof may be made at any time after the required residence and cultivation, and prior to the expiration of the three-year period, provided the settler is actually residing upon his land at the time of making proof.

#### Applying to Carey Act Projects under the Jurisdiction of Irrigation Districts

Rule 12a. Residence must be established within a period of six months from the date of entry, and that final proof shall be made within a period of one year from the date of entry, unless the Commission upon application shall deem it advisable to extend the time therefor. (Vol. 3, P. 350, Desert Land Board)

#### Extension of Time to Make Proof

Rule 13. The Commission may, for good cause shown, extend the time to make proof. Requests for such extension should be in writing, accompanied by affidavit setting forth facts upon which the request for extension of time

is based. It will be the policy of the Commission to reject applications under this rule, except in cases of special merit.

#### Assignments

Rule 14. Assignment of the application and contract may be made but the assignee shall possess all qualifications of an original entryman. Such assignment should be executed in triplicate and should be a complete and proper assignment of all the applicant's right, title and interest in and to the application, contract and release of lien, if issued, and to the land. One copy should be filed with the company and one copy with the Commission, accompanied by the assignee's affidavit Form D, and the written consent of the company to the assignment. The assignee shall make and complete all proofs required by these rules.

#### Certificate of Proof

Rule 15. Upon receipt and approval by the Commission of satisfactory proof of reclamation, cultivation and settlement, the Commission shall direct the Secretary to issue a certificate (Form C) showing that satisfactory proof has been received and approved, and such certificate shall be forwarded to the settler, except that when deed is issued at the same time as the certificate, the certificate shall be filed in the Commission's records and the deed forwarded to the settler.

#### Lien for Reclamation -- Release of Lien

Rule 16. As the object in withdrawing the land from the operation of the United States General Land Laws is primarily for the purpose of affording proper security for the capital invested in the construction of the works for reclaiming the same from its desert condition, no one shall enter any of such land until he has first entered into a contract with the construction company (or district) for the purchase of the necessary water rights. The law provides that the water rights purchased by the entryman shall, as soon as title passes from the United States to the State, become appurtenant to the land, and that the person, association or company furnishing water for the same shall have a prior lien on said water right and land upon which said water is used, for all deferred payments for said water rights. As soon as the settler has completed the payment to the company of the amount of lien, the company shall execute and deliver to the settler, a full release of their lien and within 30 days from the execution of such release shall file a duplicate of such release with the Commission.

#### Deeds

Rule 17. After the issuance of Certificate of Proof, as provided in Rule 15, and the filing of duplicate Release of Lien, as provided in Rule 16, the Commission will issue a deed, conforming to the State law as cited in Rule

8, to the person named in the certificate, or his heirs, or his assignees; provided, however, that no deed will be issued until after the lands described in the certificate have been patented to the State by the United States; and provided further, that in case certificate has been issued prior to March 8, 1944 and forwarded to the settler, such certificate shall be returned and filed with the Commission, or satisfactory evidence submitted that it is lost or destroyed, prior to the issuance of deed.

Rule 17a. Any contract holder on the Tumalo Project who has paid not less than one-third the full purchase price specified in his contract and has received proper certificate of proof of reclamation, cultivation and settlement for the lands held under said contract, may, at his option, request the Commission to issue deed for said lands, and, if patent of lands has been issued to the State, the Commission may, at its discretion, issue quit claim deed for such lands, receiving back a first mortgage for the full amount of the lien price then remaining unpaid.

#### Forfeiture of Rights of Entrymen

Rule 18. The rights of entryman before the Commission shall be subject to forfeiture to the State for the following causes: (1) Failure to reside upon, cultivate and improve the land embraced within said entry as provided by law and these rules; (2) failure to submit satisfactory proof of reclamation, cultivation and settlement within the time specified in these rules; (3) failure to purchase the necessary water right or release of lien from the construction company.

#### Forms Approved

Rule 19. The following forms for proof of reclamation, cultivation and settlement; certificate of proof; deed, and affidavit of assignee are the forms approved by the Commission for their respective purposes, as follows:

- A - New proof form
- C - Certificate of Proof  
Deed
- D - Affidavit of Assignee

Blank copies of such approved forms can be obtained without charge by writing the Secretary, State Reclamation Commission, Salem, Oregon.

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