GENERAL LAND OFFICE CIRCULARS, WITH AMENDMENTS AND SUPPLEMENTS CONCERNING

COAL-LAND LAWS AND REGULATIONS THEREUNDER.

Department of the Interior,
General Land Office,
Washington, D. C., April 12, 1907.

The following coal-land laws relating to the public-land States and Territories and to the district of Alaska, together with the rules and regulations as now applicable, are herewith published for the instruction of the local land officers and the information of intending applicants. All rules and regulations heretofore issued under said laws are hereby abrogated. (See Isolated Tracts.)

PART I.

TITLE XXXII, CHAPTER SIX.

MINERAL LANDS AND MINING RESOURCES.

Entry of coal lands, 3 March, 1873, c. 279 s, 1, v. 17, p. 607.

Sec. 2347. Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the Register of the proper land office, have the right to enter, by legal subdivisions, any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the Receiver of not less than ten dollars per acre for such lands where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.

Preemption of coal lands, *Ibid.*, s. 2.

Sec. 2348. Any person or association of persons severally qualified, as above provided, who have opened and improved, or shall hereafter open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference right of entry, under the preceding section, of the mines so opened and improved: Provided, That when any association of not less than four persons, severally qualified as above provided, shall have expended not less than five thousand dollars in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvements.

Sec. 2349. All claims under the preceding section must be presented to the Register of the proper land district within sixty days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor; but when the township plat is not on file at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office; and where the improvements shall have been made prior to the expiration of three months from the third day of March, eighteen hundred and seventy-three, sixty days from the expiration of such three months shall be allowed for the filing of a declaratory statement, and no sale under the provisions of this section shall be allowed until the expiration of six months from the third day of March, eighteen hundred and seventy-three.

Preemption claims of coal land to be presented within 60 days, &c. *Ibid.*, s. c.

Sec. 2350. The three preceding sections shall be held to authorize only one entry by the same person or association of persons; and no association of persons any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such sections shall enter or hold any other lands under their provisions; and all persons claiming under section twenty-three hundred and forty-eight shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice, or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

Only one entry allowed. *Ibid.*, s. 4.

Sec. 2351. In case of conflicting claims upon coal-lands where the improvements shall be commenced, after the third day of March, eighteen hundred and seventy-three, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference-right to purchase. And also where improvements have already been made prior to the third day of March, eighteen hundred and seventy-three, division of the land claimed may be made by legal subdivisions, to include, as near as may be, the valuable improvements of the respective parties. The Commissioner of the General Land Office is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and the four preceding sections.

Conflicting claim. *Ibid.*, s. 5.

Sec. 2352. Nothing in the five preceding sections shall be construed to destroy or impair any rights which may have attached prior to the third day of March, eighteen hundred and seventy-three, or to authorize the sale of lands valuable for mines of gold, silver, or copper.

Rights reserved *Ibid.*, s. 6.

RULES AND REGULATIONS.

1. The sale of coal lands is provided for—

(a) By ordinary cash entry under section 2347;

(b) By cash entry under a preference right to purchase acquired by compliance with the provisions of section 2348.

2. Coal lands may be entered only after survey and by legal

subdivisions. The lands must be vacant and unappropriated and must contain workable deposits of coal and must not be valuable for mines of gold, silver, or copper. Lands containing lignites are included under the term "coal lands."

3. Entry by an individual may be made only by a person above the age of 21 years who is a citizen of the United States or has declared his intention to become such, and shall not embrace more than 160 acres. Entry by an association of persons may embrace 320 acres, but each person composing the association must be qualified as in the case of an individual entryman. A corporation is held to be an association under the provisions of the coal-land law.

4. When an association of not less than four persons, severally qualified as required in the case of an individual entryman, shall have expended not less than $5,000 in working and improving a mine or mines of coal upon the public lands, such association may enter not exceeding 640 acres, including such mining improvements.

5. But one entry of coal lands by any person or association of persons is allowed by the law. No person who, and no association any member of which, either as an individual or as a member of an association, shall have had the benefits of the law may enter or hold any other coal lands thereunder. The right so to enter or hold is exhausted whether an entry embraces in any instance the maximum area allowed by the law or less; also by the acquisition of a preference right of entry unless sufficient cause for the abandonment thereof is shown. Assignment of a preference right of entry under section 2348, Revised Statutes, will not hereafter be recognized.

6. Information will be furnished registers and receivers by the Commissioner of the General Land Office of the price at which all coal lands in their respective districts will be offered. The local land officers will from time to time be furnished with schedules and maps (1) showing lands known to lie without ascertained coal areas and open to entry under the general land laws, according to the character of each particular tract; (2) showing lands known to contain workable deposits of coal, whereon prices will be fixed upon information derived from field examination; and (3) showing lands containing coal of such character as may, from their location at a distance from transportation lines, be sold at the minimum price fixed by the statute as hereinafter stated.

Local land officers will allow coal entries for lands in the first and third classes at the minimum price fixed by the statute, and for those in the second class at the prices stated in the schedules and maps furnished them. Lands listed in classes 2 and 3 are subject to entry under the coal-land laws only, unless shown by the applicant to be of such character as to be subject to entry under some other law. For those lands listed as of the first and third classes (when entered under the coal-land laws) the price is not less than $10 per acre when situated more than 15 miles from a completed railroad and $20 when situated within 15 miles of a completed railroad; and where the lands lie partly without such limit, the higher price must be paid for each smallest legal subdivision the greater part of which lies within 15 miles of such railroad. The term "completed railroad" is construed to mean a railroad actually constructed, equipped, and operating at the date of entry. The distance is to be calculated from the point on such railroad

nearest the lands applied for, and the facts in each case must be shown by the affidavit of the applicant, corroborated by the affidavit of some disinterested credible person having actual knowledge thereof.

7. A preference right of entry accrues only where a person or association of persons, severally qualified, have opened and improved a coal mine or mines upon the public lands and shall be in actual possession thereof and not by the filing of a declaratory statement. A perfunctory compliance with the law in this respect will not suffice, but a mine or mines of coal must be in fact opened and improved on the land claimed.

There is no authority under which a coal mine upon public lands, entry not having been made, may be worked and operated for profit and sale of the coal, or beyond the opening and improving of the mine as a condition precedent to a preference right under section 2348 of the Revised Statutes. To preserve a preference right of entry specified in the statute the person or association of persons having acquired the same must present to the register of the proper land district, within sixty days from the date of actual possession and commencement of improvements upon the land, a declaratory statement therefor in all cases where the township plat has been filed. When the township plat is not on file at the date of such improvement, such declaratory statement must be presented within sixty days from the receipt of such plat at the district land office.

8. After entry has been allowed the local officers have no authority to order a hearing or make further determination with respect to it, except upon instructions from the General Land Office. They will, however, receive all protests against it and promptly forward them, together with a statement of the facts shown by their records, for consideration and action.

9. Prior to entry it is competent for the local officers to order a hearing on sufficient grounds set forth under oath by any protestant.

10. When it is sought to purchase otherwise than in the exercise of a preference right the party will himself make oath to the following application, which must be presented to the register:

I, ——— ———, hereby apply, under the provisions of the Revised Statutes of the United States, relating to the sale of coal lands of the United States, to purchase the —— quarter of section ——, in township —— of range ——, in the district of lands subject to sale at the land office at ———, and containing —— acres; and I solemnly swear that no portion of said tract is in the possession of any other party or parties who has or have commenced improvements thereon for the development of coal; that I am twenty-one years of age; a citizen of the United States (or have declared my intention to become a citizen of the United States), and have never held, except ——— or purchased any lands under said act, either as an individual or as a member of an association; that I make this application in good faith for my own benefit, and not, directly or indirectly, in whole or in part, in behalf of any other person or persons whomsoever; and I do further swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof; that my knowledge of said land is such as to enable me to testify understandingly with regard

thereto; that said land contains workable deposits of coal; that there is not to my knowledge within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable deposit of gold, silver, or copper. So help me God.

11. Where a preference right of entry is sought to be preserved the required declaratory statement must be substantially as follows:

I, ——— ———, do hereby declare my intention to purchase, in the exercise of a preference right, under the provisions of the Revised Statutes of the United States relating to the sale of the coal lands of the United States, the —— quarter of section —— of township —— of range ——, in the district of the lands subject to sale at the district land office at ———; and I do solemnly swear that I am —— years of age and a citizen of the United States (or have declared my intention to become a citizen of the United States); that I have never, either as an individual or as a member of an association, held, except ——— or purchased any coal lands under the aforesaid provisions of the Revised Statutes; that I was in possession of, and commenced improvements on, said tract on the —— day of ———, A. D. 19—, and have ever since remained in actual possession continuously; that I have opened and improved a valuable mine of coal thereon, and have expended in labor and improvements on said mine the sum of ——— dollars, the labor and improvements being as follows: (Here describe the nature and character of the improvements); and I do furthermore solemnly swear that I am well acquainted with the character of said described land and with each and every legal subdivision thereof; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that there is not, to my knowledge, within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable deposit of gold, silver, or copper. So help me God.

12. One year from and after the expiration of the period allowed for filing the declaratory statement is given within which to make proof and payment; but the local officers will allow no party to make final proof and payment except on special written notice to all others who appear on their records as claimants to the same tract. No notice will be given to parties whose declaratory statements have expired by limitation under the law.

13. A declarant will not be permitted to file after the expiration of the sixty days allowed nor to exercise a preference right of purpose after the expiration of the year.

14. When it is sought to purchase, in the exercise of a preference right, the applicant must himself make the following affidavit, which must be presented to the register:

I, ——— ———, claiming, under the provisions of the revised Statutes of the United States relating to the sale of coal lands of the United States, the preference right to purchase the ——— quarter of section ——, in township —— of range ——, subject to sale at the district land office at ———, hereby apply to purchase and enter the same; and I do solemnly swear that I have not hitherto held, except ——— or purchased, either as an individual or as a

member of an association, any coal lands under the aforesaid provisions of the law; that I have expended in developing coal mines on said tract, in labor and improvements, the sum of ——— dollars, the nature of such improvements being as follows: ——— ———; that I am now in the actual possession of said mines, and make the entry in good faith for my own benefit, and not, directly or indirectly, in whole or in part, in behalf of any person or persons whomsoever; and I do furthermore swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that said land contains workable deposits of coal; that there is not, to my knowledge, within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable deposits of gold, silver, or copper. So help me God.

15. Where purchase and entry, whether in the exercise of a preference right or otherwise, is made by an association, each member thereof must subscribe and swear to the application or affidavit, the necessary changes being made to cover the joint possession and expenditure and the purchase and entry in their joint interests.

16. Each application, declaratory statement, and affidavit, forms whereof are given above, must be verified before the register or receiver or some officer authorized by law to administer oaths in the land district wherein the lands involved are situate. (Amendment of Apr. 29, 1908.)

17. Upon the filing of an application to purchase coal lands under the provisions of paragraphs 10 or 14 the applicant will be required, at his own expense, to publish a notice of said application in a newspaper nearest the lands, to be designated by the register, for a period of thirty days, during which time a similar notice must be posted in the local land office and in a conspicuous place on the land. The notice should describe the land applied for and state that the purpose thereof is to allow all persons claiming the land applied for, or desiring to show that the applicant's coal entry should not be allowed for any reason, an opportunity to file objections with the local land officers.

Publication must be made sufficiently in advance to permit entry within the year specified by the statute.

18. After the thirty day period of newspaper publication has expired, the claimant will furnish from the office of publication a sworn statement (including an attached copy of the published notice) that the notice was published for the required period, giving the first and last date of such publication, and his own affidavit, or that of some credible person having personal knowledge of the fact, showing that the notice aforesaid remained conspicuously posted upon the land sought to be patented during said thirty days publication, giving the dates. The register shall certify to the fact that the notice was posted in his office for the full period of thirty days, the certificate to state distinctly when such posting was done and how long continued, giving the dates. In no case shall entry be allowed until the proofs specified have been filed.

The claimant will be required within thirty days after the

expiration of the period of newspaper publication to furnish the proofs specified in said paragraph and tender the purchase price of the land. Should the specified proofs and purchase price be not furnished and tendered within this time, the local land officers will thereupon reject the application, subject to appeal. Furthermore, in the exercise of a preference right to purchase, no part of the thirty-day period specified herein may extend beyond the year fixed by the statute. (Amendment of Nov. 30, 1907.)

19. Of the following forms, the one appropriate to the sections of the Revised Statutes under which application is made should be used for publication of all notices of application to enter coal lands:

4-365.

Notice for Publication. Coal Entry. (Section 2347, R. S.)

.....Land Office.

....., 19....

Notice is hereby given that ....., of ....., County of ....., State of ....., has this day filed in this office his application to purchase, under the provisions of Section 2347, U. S. Revised Statutes, the ..... of Section No. .., Township No. .., Range No. .....

Any and all persons claiming adversely the lands described, or desiring to object for any reason to the entry thereof by the applicant, should file their affidavits of protest in this office during the thirty-day period of publication immediately following the first printed issue of this notice, otherwise the application may be allowed.

....., Register.

4-366.

Notice for Publication. Coal Entry. (Secs. 2348-52, R. S.)

.....Land Office.

....., 19....

Notice is hereby given that ....., of ....., County of ....., State of ....., who, on the ..... day of ....., 19.., filed in this office his coal declaratory statement for the ..... of Section No. .., Township No. .., Range No. .., has this day filed in this office his application to purchase said land under the provisions of Sections 2348 to 2352, U. S. Revised Statutes.

Any and all persons claiming adversely the lands described, or desiring to object for any reason to the entry thereof by the applicant, should file their affidavits of protest in this office during the thirty-day period of publication immediately following the first printed issue of this notice.

....., Register.

20. When it is sought to purchase, either by ordinary cash entry or in the exercise of a preference right, the register, if he finds the tract applied for is vacant, surveyed, and unappropriated, and that the claimant has complied with all the laws and regulations relating to the acquisition of coal lands, will so certify to the receiver, stating the prescribed purchase price, and the applicant must then pay the same.

21. The receiver will then issue to the purchaser a duplicate receipt, and at the close of the month the register and receiver will make returns of the sale to the General Land Office, whence, if the proceedings are found to be regular, a patent will be issued; and on surrender of the duplicate receipt such patent will be delivered, at the option of the patentee, either by the Commissioner at Washington or by the register at the district land office.

22. An application for cash entry will be subject to any valid adverse right which may have attached to the same land pursuant to section 2348, Revised Statutes.

23. Qualified persons or associations who are lawfully in pos-

session of tracts of coal lands which are still unsurveyed may, under sections 2401, 2402, and 2403, Revised Statutes, as amended by the Act of August 20, 1894, apply to the Surveyor-General for the survey of the township or townships, or portions thereof, embracing the lands claimed, to be specified as nearly as practicable. Each such application must be accompanied by the affidavit of the applicant or applicants, duly corroborated by at least two competent persons, setting forth the qualifications of the former as claimant or claimants of the land, the facts constituting their possession, the character of the land, and such other facts in the case as are essential in that connection. If the Surveyor-General approves the application he will thereupon transmit it to the General Land Office with the affidavits and his report.

24. The "Rules of practice in cases before the United States district land offices, the General Land Office, and the Department of the Interior" will, as far as applicable, govern all cases and proceedings arising under the statutes providing for the sale of coal lands.

25. Local officers will report at the close of each month as "sales of coal lands" all filings and entries in separate abstracts, commencing with No. 1 and thereafter proceeding consecutively in the order of their reception. Where a series of numbers has already been commenced by sale of coal lands they will continue the same without change.

PART II.

COAL LANDS IN ALASKA.

[Act June 6, 1900 (31 Stat., 658.)]

An Act to Extend the Coal-land Laws to the District of Alaska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the public-land laws of the United States are hereby extended to the district of Alaska as relate to coal lands, namely, sections twenty-three hundred and forty-seven to twenty-three hundred and fifty-two, inclusive, of the Revised Statutes.

[Act April 28, 1904 (33 Stat., 525.)]

An Act to Amend an Act Entitled "An Act to Extend the Coal-land-laws to the District of Alaska," Approved June Sixth, Nineteen Hundred.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person or association of persons qualified to make an entry under the coal-land laws of the United States, who shall have opened or improved a coal mine or coal mines on any of the unsurveyed public lands of the United States in the district of Alaska, may locate the lands upon which such mine or mines are situated, in rectangular tracts containing forty, eighty, or one hundred and sixty acres, with north and south boundary lines run according to the true meridian, by marking the four corners thereof with permanent monuments, so that the boundaries thereof may be readily and easily traced. And all such locators shall, within one year from the passage of this Act, or within one year from making such location, file for record in the recording district, and with the register and receiver of the land district in which the lands are located or situated, a notice containing the name or names of the locator or locators, the date of the location, the description of the lands located, and a refer-

ence to such natural objects or permanent monuments as will readily identify the same.

Sec. 2. That such locator or locators, or their assigns, who are citizens of the United States, shall receive a patent to the lands located by presenting, at any time within three years from the date of such notice, to the register and receiver of the land district in which the lands so located are situated an application therefor, accompanied by a certified copy of a plat of survey and field notes thereof, made by a United States deputy surveyor or a United States mineral surveyor duly approved by the Surveyor-General for the district of Alaska, and a payment of the sum of ten dollars per acre for the lands applied for; but no such application shall be allowed until after the applicant has caused a notice of the presentation thereof, embracing a description of the lands, to have been published in a newspaper in the district of Alaska published nearest the location of the premises for a period of sixty days, and shall have caused copies of such notice, together with a certified copy of the official plat of survey, to have been kept posted in a conspicuous place upon the land applied for and in the land office for the district in which the lands are located for a like period, and until after he shall have furnished proof of such publication and posting, and such other proof as is required by the coal-land laws: Provided, That nothing herein contained shall be so construed as to authorize entries to be made or title to be acquired to the shore of any navigable waters within said district.

Sec. 3. That during such period of posting and publication, or within six months thereafter, any person or association of persons having or asserting any adverse interest or claim to the tract of land or any part thereof sought to be purchased shall file in the land office where such application is pending, under oath, an adverse claim, setting forth the nature and extent thereof, and such adverse claimant shall, within sixty days after the filing of such adverse claim, begin an action to quiet title in a court of competent jurisdiction within the district of Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of such court therein.

Sec. 4. That all the provisions of the coal-land laws of the United States not in conflict with the provisions of this Act shall continue and be in full force in the district of Alaska.

RULES AND REGULATIONS.

1. Persons or associations of persons locating or entering coal lands in the district of Alaska under the provisions of the Act of April 28, 1904 (33 Stat. L., 525), amendatory of the Act of June 6, 1900 (31 Stat. L., 330), are required to possess the qualifications of persons or associations making entry under the general coal-land laws of the United States, and are subject to the same limitations.

2. The lands must be vacant and unappropriated, and must contain deposits of coal, and must not be valuable for mines of gold, silver, or copper. Lands containing lignites are included under the term "coal lands."

3. Entry by an individual may be made only by a person above the age of 21 years, who is a citizen of the United States, and shall

not embrace more than 160 acres. Entry by an association of persons may embrace 320 acres, but each person composing the association must be qualified as in the case of an individual entryman. A corporation is held to be an association under the provisions of the coal-land law.

4. When an association of not less than four persons, severally qualified as required in the case of an individual entryman, shall have expended not less than $5,000 in working and improving a mine or mines of coal upon the public lands, such association may enter not exceeding 640 acres, including such mining improvements.

5. But one entry of coal lands by any person or association of persons is allowed by the law. No person who, and no association any member of which, either as an individual or as a member of an association, shall have had the benefits of the law may enter or hold other coal lands thereunder. The right so to enter or hold is exhausted, whether an entry embraces in any instances the maximum area allowed by the law or less.

6. There is no authority under which a coal mine upon public lands, entry not having been made, may be worked and operated for profit and sale of the coal, or beyond the opening and improving of the mine as a condition precedent to the right to apply for patent.

7. The requirement of the statute with respect to the form of the tract sought to be entered is construed to mean that the boundary lines of each entry must be run in cardinal directions, i. e., due north and south and east and west lines, by reference to a true meridian (not magnetic), with the exception of meander lines on meanderable streams and navigable waters forming a part of the boundary lines of a location. Those meander lines which form part of the boundary of a claim will be run according to the directions in the Manual of Surveying Instructions, but other boundary lines will be run in true east and west and north and south directions, thus forming rectangles, except at intersections with meandered lines.

8. The permanent monuments to be placed at each of the four corners of the tract located may consist of—

First. A stone at least 24 inches long, set 12 inches in the ground, with a conical mound of stone 1½ feet high, 2 feet base, alongside.

Second. A post at least 3 feet long by 4 inches square, set 18 inches in the ground, and surrounded by a substantial mound of stone or earth.

Third. A rock in place; and, whenever possible, the identity of all corners should be perpetuated by taking courses and distances to bearing trees, rocks, or other objects, permanent objects being selected for bearings whenever possible.

9. It is further provided by the first section of the act that within one year from the date of the passage of the act or within one year from making the location there shall be filed for record in the recording district and with the register and receiver of the land district in which the land is situated a notice containing the name or names of the locator or locators, the date of the location, the description of the lands located, and a reference to such natural objects or permanent monuments as will readily identify the same. In other words, the notice should contain a complete description in

every particular of the claim as it is marked and monumented upon the ground.

10. By the second section of the act the locator or his assigns is allowed three years from the date of filing the notice prescribed in the first section of the act within which to file an application with the local land officers for a patent for the land claimed. It will thus be seen that persons or associations of persons claiming coal lands in that district at the date of the passage of the act have four years from location or from the date of the act within which to present their applications for patent.

11. Persons or associations of persons who fail to record their notices within the time prescribed by the first section of the act, or fail to file application for patent in the time prescribed by the second section, forfeit their rights to the particular tract located.

12. With the application for patent the claimant must file a certified copy of the plat of survey and field notes thereof made by a United States deputy surveyor or a United States mineral surveyor, duly approved by the Surveyor-General of the district of Alaska. Under this clause of the act it will be allowable for the claimant, at his own expense, to procure the making of a survey by one of the officials mentioned without first making application to the Surveyor-General, but the survey when made is to be submitted to and approved by the Surveyor-General and by him numbered serially.

13. The survey must be made in strict conformity with or be embraced within the lines of the location as appears from the record thereof with the recorder in the recording district, and must be made in according with the regulations relative to lode and placer mining claims so far as they are applicable.

14. Upon the presentation of an application for patent, if no reason appears for rejecting it, it will be received by the register and receiver and the claimant required to publish a notice thereof for the period of sixty days in a newspaper in the district of Alaska published nearest the location of the particular lands, and to cause a copy thereof, together with a certified copy of the official plat of survey, to be posted and remain posted throughout the period of publication in a conspicuous place upon the land applied for, and the register will post a copy of such notice and official plat in his office for the same period. When the notice is published in a weekly newspaper nine consecutive insertions are necessary; when in a daily newspaper, the notice must appear in each issue for sixty-one consecutive issues. In both cases the first day of issue must be excluded in estimating the period of sixty days.

15. The notice so published must embrace all the data given in the notice posted upon the claim and in the local land office. In addition to such data, the published notice must further indicate the locus of the claim by giving the connecting line, as shown by the field notes and plat, between a corner of the claim and a United States mineral monument or a corner of the public survey, if there is one, and fix the boundaries of the claim by courses and distances.

The publication in the newspaper and the posting upon the land and in the local land office must cover the same period of time.

16. Upon the expiration of the sixty-day period prescribed the

claimant may file in the local land office a sworn statement from the office of publication, to which shall be attached a copy of the notice published, to the effect that the notice was published for the statutory period, giving the first and last day of such publication, and his own affidavit showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during the sixty-day period of publication, giving the dates. The register will also file with the record a certificate showing that the notice and plat were posted in his office for the full period of sixty days, such certificate to state distinctly when such posting was done and how long continued.

Not earlier than six months after the expiration of the period of publication, if no objections are interposed or adverse claim filed, entry may be allowed upon payment of the price per acre specified by the act, which is $10 per acre in all cases.

17. The proviso to the second section of the act is as follows:

That nothing herein contained shall be so construed as to authorize entries to be made or title to be acquired to the shore of any navigable waters within said district.

The term "shore" is defined to mean the land lying between high and low water marks of any navigable waters within said district.

18. Section 3 provides for the assertion by any person or association of persons of an adverse claim, and requires that such adverse claim shall be filed during the period of posting and publication or within six months thereafter; that it shall be under oath, and set forth the nature and extent thereof.

19. An adverse claim may be verified by the oath of the adverse claimant or by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated, and when verified by such agent or attorney in fact he must distinctly swear that he is such agent or attorney in fact and accompany his affidavit by proof thereof. The adverse claimant should set forth fully the nature and extent of the interference or conflict by filing with his adverse claim a plat showing his entire claim and its situation or position with relation to the one against which he claims; whether he claims as a purchaser for valuable consideration or as a locator; if the former, a certified copy of the original location, the original conveyance or duly certified copy thereof, or an abstract of title from the office of the proper recorder should be furnished, or, if the transaction was a merely verbal one, he will narrate the circumstances attending the purchase, the date thereof, and amount paid, which facts will be supported by the affidavits of one or more witnesses, if any were present at the time; and if he claims as locator, he must file a duly certified copy of the location notice from the office of the proper recorder and his affidavit of continued ownership.

20. Upon the filing of such adverse claim within the sixty days period of posting and publication, or within six months thereafter, the party who files the adverse claim shall, under the act, within sixty days after the filing of such adverse claim, begin an action to quiet title in a court of competent jurisdiction within the district of Alaska.

21. All papers filed should have indorsed upon them the precise date of filing; and upon the filing of an adverse claim within the time prescribed by the statute all proceedings on the application for patent will be suspended, with the exception of the completion of the publication and posting of notice and plat and filing the necessary proof thereof, until final adjudication of the rights of the parties. In cases of final judgment rendered the party entitled under the decree must, before he is allowed to make entry, file a certified copy thereof.

22. Where such suit has been dismissed a certificate of the clerk of the court to that effect or a certified copy of the order of dismissal will be sufficient. Where no suit has been commenced against the application for patent within the statutory period, a certificate to that effect by the clerk of the Territorial court having jurisdiction will be required.

23. In connection with the foregoing, it is to be borne in mind that by section 4 of the act it is declared:

That all the provisions of the coal-land laws of the United States not in conflict with the provisions of this Act shall continue and be in full force in the district of Alaska.

24. An assignment to a qualified person of a preference right of entry under the Act of April 28, 1904, will be recognized when properly executed. Proof and payment by the assignee must be made, however, in the same manner and within the same time as though there had been no assignment.

25. The following forms for notice of location and application for patent should be used:

NOTICE OF LOCATION.

I, ——— ———, of ———, having on the —— day of ———, 19—, opened and improved a coal mine on the following-described tract (here describe the lands by metes and bounds in rectangular form with north and south boundary lines run according to the true meridian, and a reference to such natural or permanent objects as will readily identify the same), do hereby locate the same as provided by the Alaska coal-land Act of April 28, 1904 (33 Stats., 525); and I do solemnly swear that I am a citizen of the United States (or have declared my intention to become a citizen of the United States); that I am over the age of 21 years; that I have never either as an individual or as a member of an association held, except ———, or purchased any coal lands of the United States; that I have remained in actual possession of said land continuously since the —— day of ——, 19—; that I have expended in labor and improvements on said mine the sum of ——— dollars, the labor and improvement being as follows (here describe the nature and character of such improvements); and I do furthermore solemnly swear that I am well acquainted with the character of said described lands and with each and every portion thereof; that my knowledge of said lands is such as to enable me to testify understandingly with regard thereto; that there is not, to my knowledge, within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, copper, or other valuable minerals, and that there is not within the limits of said land, to my knowledge, any valuable

deposits of gold, silver, or copper or other minerals. So help me God.

——— ———.

Dated ——, 19—.
(Jurat.)

APPLICATION FOR PATENT.

I, ——— ———, claiming under the provisions of the Act of April 28, 1904 (33 Stats., 525), amendatory of the Act of June 6, 1900 (31 Stats., 658), extending the coal-land laws to the district of Alaska, do hereby apply to purchase the land described in the accompanying field notes and plat and subject to sale at the district land office at ———, Alaska; and do solemnly swear that my title to said tract is as follows: ——————— as will more fully appear by the certified copy of location notice and abstract of title filed herewith; that I am above the age of 21 years, and a citizen of the United States; that I have not hitherto held, except ———, or purchased, either as an individual or as a member of an association, any coal lands under the provisions of the coal-land laws; that I have expended in developing coal mines on said tract, in labor and improvements, the sum of ——— dollars, the nature of said improvements being as follows: ———————; that I am now in the actual possession of said mines and make the entry in good faith for my own benefit, and not, directly or indirectly, in whole or in part, in behalf of any person or persons whomsoever; and I do furthermore swear that I am well acquainted with the character of said described land, and with each and every portion thereof; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that said land contains deposits of coal; that there is not, to my knowledge, within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, copper, or other valuable minerals, and that there is not within the limits of said land, to my knowledge, any valuable deposits of gold, silver, copper, or other minerals. So help me God.

——— ———.

(Jurat.)

26. The notice of location and the application for patent, the forms of which are given above, may be sworn to by the claimant before any officer authorized by law to administer oaths, but the authority of said officer must be properly shown.

27. Any party duly qualified under the law, after swearing to his notice of location or application for patent, may, by a sufficient power of attorney duly executed under the laws of the State or Territory in which such party may be then residing, empower an agent to file with the register of the proper land office the notice of location or application for patent, and also authorize him to make payment for and entry of the lands in the name of such qualified party; and when such power of attorney shall have been filed in the local land office such agent may act thereunder as indicated, but no person will be permitted to act as such agent for more than four applicants.

28. Where a claimant shows by affidavit that he is not personally acquainted with the character of the land, any qualified person may make the required affidavit as to its character; but whether

this affidavit is made by the claimant or by another it must be corroborated by the affidavits of two disinterested and credible witnesses having personal knowledge of the facts.

29. The "Rules of practice in cases before the United States district land offices, the General Land Office, and the Department of the Interior," will, as far as applicable, govern all cases and proceedings arising under the statutes providing for the sale of coal lands.

30. Local officers will report at the close of each month as "sales of coal lands" all filings and entries in separate abstracts, commencing with number one and thereafter proceeding consecutively in the order of their reception.

Where a series of numbers has already been commenced by sale of coal lands, they will continue the same without change.

R. A. Ballinger,
Commissioner.

Department of the Interior, April 12, 1907.

Approved.

James Rudolph Garfield,
Secretary.

Department of the Interior,
General Land Office,
Washington, D. C., June 27, 1908.

Registers and Receivers, United States Land Offices, Alaska.

Sirs: The instructions of the General Land Office, dated March 3, 1908, relative to the time within which applications to purchase coal lands in Alaska under the Act of April 28, 1904 (33 Stat., 525), must be perfected is amended to read as follows:

Your attention is called to the fact that the coal-land law of April 28, 1904 (33 Stat., 525), provides that locators or their assigns may, at any time within three years after filing the notice prescribed by the first section of the Act, make application for patent for the land claimed.

This does not mean that if the application is filed at an earlier time than that allowed, the claimant may defer payment for his claim and making entry for a period of time which added to the time between filing the location notice and submitting the application for patent, will equal three years.

When the claimant files his application for patent he waives the unexpired portion of the three years fixed by the statute and must, thereafter, diligently proceed to make publication and submit the proofs prescribed by the statute and the regulations.

Paragraph 16 of the regulations of April 12, 1907 (35 L. D., 673), provides that payment and entry may be made not earlier than six months after the expiration of the period of publication. The law does not contemplate that this time be extended an unreasonable period at the option of the claimant, but that after the filing of the application, the case proceed regularly to entry. Accordingly, should the specified proofs and purchase price be not furnished and tendered within six months from the expiration of the six months within which adverse claims may be filed, or within six months after the final termination of adverse proceedings instituted under Section 3 of the Act, you will reject the application subject to appeal: Provided, That the period of six months herein fixed within which to perfect entry shall be allowed in case of pending applications which have not been perfected within the ninety days specified by the instructions of March 3, 1908, the time to run from date hereof.

This is not intended in any way to modify the circular instructions of May 16, 1907, copy inclosed herewith.

Very respectfully,

S. V. Proudfit,
Acting Commissioner.

Approved, June 27, 1908.
Frank Pierce,
Acting Secretary.

Department of the Interior,
General Land Office,
Washington, D. C., July 11, 1908.

Registers and Receivers, United States Land Offices,
and United States Surveyor-General, District of Alaska.

Gentlemen: Herewith is copy of Act of Congress approved May 28, 1908, Public No. 151, relating to existing unpatented coal claims in the district of Alaska.

CONSOLIDATION OF CLAIMS, MAXIMUM AREA.

The said Act provides a method whereby qualified persons, their heirs or assigns, who initiated coal claims in Alaska prior to November 12, 1906, may consolidate their claims through the means of associations or corporations which may perfect entry and acquire title to contiguous locations, such consolidated claims not to exceed 2,560 acres of contiguous lands nor to exceed in length twice the width of the tract thus consolidated and applied for.

QUALIFICATIONS OF APPLICANTS FOR CONSOLIDATED CLAIM.

When application is made by an association of persons, each member thereof must be shown to be qualified to make entry under the coal-land laws applicable to Alaska, and to be the owner, by location, inheritance, or purchase, of an undivided interest in the consolidated claim. Proof of the qualifications of the applicants may consist of their own affidavits. The application for patent may be executed and filed by the duly authorized agent of the members of the association.

A corporation applying to consolidate its claims must show at date of application that not less than 75 per cent of its stock is held by persons qualified to enter coal lands in Alaska, and to this end each such application must be accompanied by a list of the stockholders, showing their respective holdings of stock in the corporation, and the personal affidavits of those holding such 75 per cent of the capital stock, showing their qualifications under the law. Applications by corporations must be signed by the president and secretary and attested by the corporate seal. All applications may be upon Form 4-367, modified to suit conditions.

PENDING ENTRIES.

Claims embraced in unpatented entries, if the entryman shall so elect, may be consolidated into a single entry under this act, upon presentation of a proper application therefor, within twelve months from date hereof. In the event of such consolidation, no further payment, publication of notice, nor any new or additional survey of the claims embraced in the consolidated entry will be required; but the application must be accompanied by a plat of the claims as consolidated, by proof of the qualifications of the applicants, and by evidence of the assignment of the claims to the applicants.

ASSIGNMENTS.

Assignments to individuals or corporations under the provisions of the Act of May 28, 1908, must be executed in accordance with local requirements, and all applications be accompanied by abstracts of title properly certified.

SURVEYS.

Where locations already surveyed are sought to be consolidated,

the application must be accompanied by a plat showing the separate locations included in the consolidation and their relation to each other. One entry may then be made for the consolidated claim. Where unsurveyed claims are consolidated, the survey may describe the exterior limits of the consolidated claim, as in the case of the survey of one location, but the field notes of survey must be accompanied by duly certified copies of the location notices of the included claims, and must show that the survey is made substantially in accordance with the aggregate locations. Consolidated claims need not be surveyed in perfect squares or parallelograms, but the length of the consolidated claim must not exceed twice the width, length and width to be measured in straight lines.

TIME WITHIN WHICH APPLICATION TO ENTER MUST BE MADE.

Application for patent for consolidated claims may be accepted if filed within three years from date of the latest recorded notice of location of the included claims, exclusive of the period of suspension between November 12, 1906, and August 1, 1907 (Circular, May 16, 1907, 35 L. D., 572). In case of consolidation of claims, including both claims for which no application for patent has been filed and claims for which applications have been made, the application under the provision of this Act must be filed within three years from date of the latest recorded notice of location of the included claims, exclusive of the period of suspension hereinbefore mentioned. In case of consolidation of claims for all of which applications for patent have already been filed, final proof, payment, and entry must be made within six months after the expiration of the period of six months prescribed by section 3 of the Act of April 28, 1904, for the filing of adverse claims has elapsed in case of all the included applications or within six months after the final adjudication of the rights of the parties in adverse suits instituted with respect to any or all of such included applications: Provided that in those cases wherein the time here specified has expired applications to consolidate must be filed within six months from date hereof.

SECTION 3 OF ACT.

Inasmuch as section 3 deals exclusively with such coal lands or deposits as shall have been purchased under this Act, its interpretation seems more properly to fall within the province of the Department of Justice, and it is deemed inadvisable for this Department to attempt at this time to define its provisions.

ACT APRIL 28, 1904, 33 STATS., 525.

So far as not in conflict with or superseded by the Act of May 28, 1908, the Act of April 28, 1904, will govern the survey, application, and entry of the coal claims described in these instructions.

PATENTS.

Patents issued under the provisions of the Act of May 28, 1908, will contain recitals of the terms and conditions imposed by sections 2 and 3 of the Act.

Very respectfully,

S. V. Proudfit,
Acting Commissioner.

Approved:
Frank Pierce,
First Assistant Secretary.

[Public—No. 151.]
(S. 6805.)

An Act to Encourage the Development of Coal Deposits in the Territory of Alaska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons, their heirs or assigns, who have in good faith personally or by an attorney in fact made locations of coal land in the Territory of Alaska in their own interest, prior to November twelfth, nineteen hundred and six, or in accordance with circular of instructions issued by the Secretary of the Interior May sixteenth, nineteen hundred and seven, may consolidate their said claims or locations by including in a single claim, location, or purchase not to exceed two thousand five hundred and sixty acres of contiguous lands, not exceeding in length twice the width of the tract thus consolidated, and for this purpose such persons, their heirs, or assigns, may form associations or corporations who may perfect entry of and acquire title to such lands in accordance with the other provisions of law under which said locations were originally made: Provided, That no corporation shall be permitted to consolidate its claims under this Act unless seventy-five per centum of its stock shall be held by persons qualified to enter coal lands in Alaska.

Sec. 2. That the United States shall, at all times, have the preference right to purchase so much of the product of any mine or mines opened upon the lands sold under the provisions of this Act as may be necessary for the use of the Army and Navy, and at such reasonable and remunerative price as may be fixed by the President; but the producers of any coal so purchased who may be dissatisfied with the price thus fixed shall have the right to prosecute suits against the United States in the Court of Claims for the recovery of any additional sum or sums they may claim as justly due upon such purchase.

Sec. 3. That if any of the lands or deposits purchased under the provisions of this Act shall be owned, leased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever so that they form part of, or in any way effect any combination, or are in anywise controlled by any combination in the form of an unlawful trust, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, or of any holding of such lands by any individual, partnership, association, corporation, mortgage, stock ownership, or control, in excess of two thousand five hundred and sixty acres in the district of Alaska, the title thereto shall be forfeited to the United States by proceedings instituted by the Attorney-General of the United States in the Courts for that purpose.

Sec. 4. That every patent issued under this Act shall expressly recite the terms and conditions prescribed in sections two and three hereof.

Approved, May 28, 1908.

INSTRUCTIONS RELATING TO COAL LANDS, ETC.

Department of the Interior,
General Land Office,
Washington, D. C., April 24, 1907.

Registers and Receivers,
United States Land Offices.

Sirs: The following instructions are issued for your guidance:

COAL LANDS.

1. Lands heretofore withdrawn from coal entry and not released from such withdrawals shall be entered on the tract books as "coal lands."

2. No entries of lands so noted shall be permitted under the coal-land laws until the maps and lists, as hereinafter mentioned, are filed in the local land office. Provided, however, such lands are now open for location and entry under the general mining laws for valuable deposits of gold, silver, or copper, notwithstanding the fact

that they may also contain workable deposits of coal. Lands noted on the tract books as coal lands may, if nonmineral in character, be entered under the appropriate land laws, but no final proof or entry will be allowed until receipt of a report from a field officer, in accordance with instructions from the Commissioner of the General Land Office, unless said lands have been restored to entry as hereinafter provided.

3. You will be furnished, from time to time, township maps showing the coal lands in the respective townships, containing thereon the price at which such coal lands will be sold. Lands not enumerated and priced as "coal lands" in any such township map shall be treated as restored to entry under the general land laws, and you will so note on your tract books. Upon the filing of such maps, coal claims may be received, as provided by the regulations of April 12, 1907, within the townships covered thereby.

All coal filings made within sixty days prior to withdrawals from coal entry may be completed within the time prescribed by the statutes, less the time from date of such withdrawals to date of special written notice of filing of the maps and lists in the local office, as herein provided, such notice to be given by you to all persons entitled thereto. Also persons who had, within sixty days prior to such withdrawal, opened and improved a coal mine upon public surveyed lands may file within the statutory period allowed, less that covered by the withdrawal. Claims upon unsurveyed lands classed as coal lands must be presented for filing within sixty days after the filing of the plat of survey, if the maps and plats are filed before the survey, or, after the lands have been surveyed, within sixty days after the filing of the maps and lists herein required in the local office, if the maps and lists are filed after the survey. However, in cases of valid and existent rights, the price per acre to be paid will be the minimum price fixed by statute.

LANDS NOT "COAL LANDS."

4. Lands not listed as "coal lands," as hereinbefore mentioned, may be entered under any of the public land laws applicable to the particular tract. If any of these lands are found to contain workable deposits of coal they may be entered under the provisions of the coal land circular of April 12, 1907, at the minimum price fixed by the statute.

ACTION REQUIRED BY SPECIAL AGENTS.

5. In all cases of application to make final proof, final entry, or to purchase public lands under any public land law, the Register and Receiver will at once forward a copy thereof to the Chief of Field Division of Special Agents. Such copy will be indorsed "coal lands" or "not coal lands," as the case may be. Where the land is in a National Forest or other reservation, a second copy will be forwarded to the officer in charge thereof.

6. Registers and Receivers will not issue final certificate or its equivalent in any case until the copy of notice mentioned in paragraph 5 is returned with the Chief of Field Division's indorsement thereon. The Chief of Field Division will in every case return the copy of notice prior to date for final proof or purchase.

7. When the copy of notice is returned with an indorsement not protesting the validity of the entry, the Register and Receiver will

act upon the merits of the proof as submitted. Where the returned indorsement of Chief of Field Division or other officer protests the validity of the entry, the Register and Receiver will forward all papers to this office without action.

8. The Chief of Field Division, on receipt of such copy of notice, will make a case thereof on his docket, and also make a field examination in the following cases:

(a) Cases wherein he has reason to believe a particular entry is fraudulent.

(b) Cases wherein the Register and Receiver have reason to believe a particular entry is fraudulent and have indorsed that fact upon the copy of notice.

(c) Cases other than coal entries in lands classed as coal lands.

Chiefs of Field Division will exert every effort to make the field examination prior to date for final proof.

9. In cases not within paragraph 8 the Chief of Field Division will return such copy of notice indorsed over his signature "no protest against validity of this entry." In cases under paragraph 8 he will return to the Register and Receiver the copy of notice indorsed "protest against the validity of this entry is filed in this office." If investigation is completed before date for final proof, he will so notify the Register and Receiver, by letter; and if investigation is unfavorable to entry, he will submit his report to this office.

The circulars of January 21, 1907, March 15, 1907, and all parts of the circular of December 7, 1905, in conflict herewith, and all other regulations and circulars in conflict herewith, are hereby revoked.

Very respectfully,

R. A. Ballinger,
Commissioner.

Approved April 24, 1907.
James Rudolph Garfield,
Secretary.

Department of the Interior,
General Land Office,
Washington, D. C., May 16, 1907.

Register and Receiver, Juneau, Alaska.

Gentlemen: The following instructions are issued for your guidance:

1. Under the order of November 12, 1906, withdrawing lands in Alaska from entry, location, or filing under the coal-land laws, and subsequent modifications of said order, no lands in Alaska known to contain workable deposits of coal can be entered, located, or filed upon while such orders remain in force, except as hereinafter provided.

2. All qualified persons or associations of qualified persons who had within one year prior to November 12, 1906, in good faith made legal and valid locations under the Act of April 28, 1904, may file notices of such locations in the manner and within the time prescribed by said Act, if such notices have not already been filed and such locations have not been abandoned or forfeited; and they or any other person or persons to whom they may lawfully assign their rights after such notices have been filed may thereafter proceed to make entry and obtain patent within the time and in the manner prescribed by law.

3. In computing the time within which notices of location may be filed under the preceding paragraph, the time intervening between November 12, 1906, and August 1, 1907, will not be taken into consideration or counted, but such notices may be filed within one year from the date of location, exclusive of such time.

4. All qualified persons or associations of qualified persons who may have in good faith legally filed valid notices of location under the Act of April 28, 1904, prior to November 12, 1906, and the bona fide qualified assignees of such

persons, may make entry and obtain patent under such notices within the time and in the manner prescribed by statute if they have not abandoned their right to do so.

5. In computing the time within which persons or associations of persons mentioned in the preceding paragraph may apply for patent, the time intervening between November 12, 1906, and the day on which they receive the written notices given by you as hereinafter required will not be considered or counted, and such applications may be made at any time within three years from the date on which such notices of location were filed, exclusive of such time.

6. You are directed to at once notify all persons or associations of persons who have filed notices of location in your office, including those who have pending applications for patent, and all persons or associations of persons holding as assignees under such locations who have notified you of such assignments, of their right to proceed in the manner herein prescribed and authorized, and to furnish them with a copy of these instructions. These notices must be served either personally or by registered mail, and you should carefully preserve with the record in each case the registry return receipt or other evidence of such notice.

7. In all cases where you publish notice of applications for entry or patent under the coal-land laws, or under any other law, you will at once mail a copy of said notice to a special agent assigned to duty in Alaska. Should said agent thereafter file in your office a protest against the validity of the location or claim embraced in any such application you will defer action upon such application until said protest is withdrawn or appropriate action is taken thereon.

Very respectfully,

R. A. Ballinger,
Commissioner.

Approved, May 16, 1907.
James Rudolph Garfield,
Secretary.

INSTRUCTIONS.

Department of the Interior,
General Land Office,
Washington, D. C., May 20, 1907.

Registers and Receivers, United States Land Office.

Sirs: The following instructions are issued for your further guidance in cases arising under the coal-land laws:

1. As soon as the maps showing the character of any part of any township or townships within your respective districts have been furnished you as prescribed in the coal-land regulations, approved April 12, 1907, you will at once post in your office a list of such townships, and furnish a copy of such list to the newspapers in your district for publication as a matter of news, but without cost to the Government for such publication.

2. You are also directed to mail a copy of these instructions and a copy of the instructions of April 24, 1907, to all persons or associations of persons shown by your records to have or claim any interest in any land covered by any pending application to purchase under the coal-land laws or embraced in any valid unexpired coal declaratory statement.

3. All qualified persons or associations of qualified persons who legally and in good faith went into possession of and improved coal mines within less than sixty days preceding the date when the lands upon which such mines are situated were withdrawn from coal entry, and who have not filed declaratory statements, may at once, or within the time prescribed by statute, namely, within sixty days after the date of actual possession, and the commencement of improvements on the land, not counting the time intervening between date of withdrawal and July 1, 1907, file such declaratory statements and proceed to obtain patent in the manner, at the minimum price, and within the time fixed by law, regardless of the fact that the maps required by the coal-land regulations of April 12, 1907, may not have been filed in your office, and regardless of the fact that a higher price may have been fixed for such lands under said regulations.

4. All qualified persons or associations of qualified persons who in good faith filed legal declaratory statements in your office prior to the date on which the lands covered thereby were withdrawn from coal entry, and all qualified

persons legally holding as assignees under any such declaratory statement by assignment made prior to April 12, 1907, may proceed to obtain title in the manner, at the minimum price, and within the time fixed by the statute, namely, fourteen months after the date of actual possession and the commencement of improvements on the land, not counting the period intervening between date of withdrawal and the mailing of copies of regulations as prescribed by paragraph 2 hereof, regardless of the fact that the maps required by the coal-land regulations of April 12, 1907, may not have been filed in your office at the date upon which application to purchase is presented, and regardless of the fact that a higher price may have been fixed for the lands claimed under said regulations.

All parts of regulations in conflict herewith are hereby revoked.

Very respectfully,

R. A. Ballinger,
Commissioner.

COAL LANDS—SURFACE RIGHTS OF ENTRYMEN—ACT OF MARCH 3, 1909.

[Circular.]

Department of the Interior,
General Land Office,
Washington, D. C., September 7, 1909.

Registers and Receivers, United States Land Offices.

Gentlemen: The circular approved March 25, 1909 (37 L. D., 528), of instructions, under the act of Congress of March 3, 1909 (35 Stat., 844), for the protection of surface rights of entrymen, is amended to read as follows:

The Purpose of the Act.

1. The main purpose of the act is to protect persons who, in good faith, have located, selected, or entered, under nonmineral laws, public lands which are, after such location, selection, or entry, classified, claimed or reported as being valuable for coal by providing a means whereby such persons may, at their election, retain the lands located, selected, or entered, subject to the right of the Government to the coal therein. It applies alike to locations, selections, and entries made prior to its passage and those made subsequently thereto.

The act also provides for the disposal, under the existing coal-land laws, of the coal contained in such lands.

Election.

2. All persons who, in good faith, locate, select, or enter, under the nonmineral laws, lands which are, subsequently to the date of such location, selection, or entry, classified, claimed or reported as being valuable for coal, may elect, upon making satisfactory proof of compliance with the laws under which they claim, to receive patents upon their location, selection, or entry, as the case may be, such patents to contain a reservation to the United States of all coal in the lands and the right of the United States, or anyone authorized by it, to prospect for, mine, and remove the coal in accordance with the conditions and limitations imposed by the Act; or may decline to elect to receive patent with such reservation, in which event proceedings shall be had as hereinafter indicated.

Lands Classified, Claimed, or Reported as Coal Lands.

3. Upon receipt of these instructions, Registers and Receivers will promptly advise, by registered mail, each nonmineral claimant to land, which, subsequent to location, selection, or entry, has been classified, claimed, or reported as being valuable for coal, that at the time of applying for notice of intention to submit final proof that he must, in writing, state whether he elects to receive a patent containing the reservation prescribed by the Act.

In the event of election to receive such patent, no further inquiry will be necessary respecting the coal character of the land.

In the event the claimant declines to elect to receive such patent, evidence will be received at the time of making final proof for the purpose of determining whether the lands are chiefly valuable for coal; and the entryman, locator, or selector will be entitled to a patent without reservation unless at the time of hearing on final proof it shall be shown that the land is chiefly valuable for coal.

The claimant may, after determination at final proof that the lands

are chiefly valuable for coal, elect to receive patent with the statutory reservation, provided, of course, proof of compliance with the law in other respects is satisfactory.

Notice to Chief of Field Division.

4. Where the nonmineral claimant indicates his intention to contest the alleged coal character of the land involved, the chief of the appropriate field division must be advised sufficiently to enable him to be prepared to represent the Government at the time such final proof is made.

Action of the Register and Receiver.

5. In every case where there is controversy as to the coal character of the land, and evidence is offered thereon, the Register and Receiver will forward the testimony and other papers to the Commissioner of the General Land Office, with appropriate recommendation, notice of which should be given the claimant.

Where Final Proof Has Already Been Submitted.

6. Where satisfactory final proof has heretofore been made for lands entered under the nonmineral laws, the claimant will be entitled to a patent without reservation, except in those cases where the Government is in possession of sufficient evidence to justify the belief that the land is, and was before making final proof, known to be chiefly valuable for coal, in which case hearing will be ordered. If, at said hearing, it is proven that the land is chiefly valuable for coal, and that the claimant knew that fact at the time of making final proof, the entry shall be canceled, unless the claimant shall prove that he was at the time of the initiation of his claim in good faith endeavoring to secure the land under the nonmineral laws, and not because of its coal character, in which event he shall be permitted to elect to receive patent with the reservations prescribed in the statute. If it is not shown that the land is chiefly valuable for coal, the claimant shall be entitled to patent without reservation.

Disposal of the Coal Deposits.

7. Where election to accept patent with the prescribed reservation has been made by the nonmineral claimant, coal deposits in the land may be prospected for, mined, and removed under the existing coal-land laws, provided the person desiring to do so first procures the consent of the surface owner, or furnishes such security for payment of all damages to such owner caused thereby as may be determined by a court of competent jurisdiction. But no coal declaratory statement or application to purchase under sections 2347-2352 of the Revised Statutes, and the regulations of this Office, will be received until the nonmineral claimant, upon the making of satisfactory proof, has elected to take a patent containing the prescribed reservation, and not then unless such coal declaratory statement or application to purchase is accompanied by the consent of the surface owner, or evidence showing that security has been given as prescribed by the act.

Appeals shall be allowed in all proceedings brought hereunder as in other cases.

Certificates and Patents.

8. Coal declaratory statements, certificates, and patents issued under the provisions of this act will describe the land by legal subdivisions as under the general coal-land laws, and payment will be made at the price fixed for the whole area, but appropriate conditions and limitations will be incorporated in the patent fully defining the interests and rights of the respective parties. To his end you will note on each coal receipt and certificate issued by you, in pursuance thereof, the words "Patent will contain conditions and limitations of the Act of March 3, 1909 (35 Stat., 844)."

Very Respectfully,

S. V. Prouty, Acting Commissioner.

Approved: R. A. Ballinger, Secretary.

[Form Approved by the First Assistant Secretary, September 20, 1909, Department of the Interior.]

4-357.

Notice of Right of Election in Cases Where Final Proof Has Not Been Submitted.

(Act March 3, 1909.)

U. S. Land Office, ——, —— No.——
——— ——— ——— ———, 19——.

Sir: Your attention is directed to the provisions of the Act of March 3, 1909, printed on the back hereof, and you are hereby notified that subsequently to your —— —— (insert kind of entry, location, or selection) No. ——, made ———, 19——, for —— ——, section ——, township ——, range ——, —— meridian, said tract was classified, claimed, or reported as being valuable for coal; also that at the time of applying for notice to submit final proof you must state in writing whether you elect to receive a patent which shall contain a reservation to the United States of all coal in said land, the right of the United States, or any person or persons authorized by it, to prospect for, mine, and remove coal from the same, in accordance with the conditions and limitations imposed by said Act. Should you elect to receive such patent, no further inquiry will be made respecting the coal character of the land, and patent will issue, with the statutory reservation, provided satisfactory proof of your good faith and of compliance on your part with provisions of the law under which your claim be submitted. In the event you decline to elect to receive such patent, evidence will be received at the time of making final proof with a view to determining whether the land is chiefly valuable for coal, and, the proof being in other respects regular and satisfactory, you will be entitled to receive patent without reservation unless at the time of the hearing on final proof it shall be shown that the land is chiefly valuable for coal.

Respectfully,

.....Register.

.....Receiver.

Election to Receive Patent Upon Nonmineral Claim Exclusive of Any Deposits of Coal in the Land.

State of ....., County of ....., ss:

I, ..., of town of ....., County of ....., State of ....., who on ....., 19.., made location, selection or entry No. .., for the ...., Section .., Township .., Range .., ...Meridian, being duly sworn, do hereby elect, upon submission of satisfactory proof of compliance with law under which my claim was initiated, to receive patent for the lands, which patent shall reserve to the United States all of the coal in said lands, with the right of the United States, or any person authorized by it, to prospect for mine, and remove the coal from same in accordance with the conditions and limitations of the Act of March 3, 1909 (35 Stat., 844).

In accordance with above election, I hereby authorize the proper officer or officers of the United States, upon submission of satisfactory final proof upon my location, selection, or entry, to issue final certificate or other paper as basis for patent, containing the reservation of the coal hereintofore described, and to issue patent in accordance therewith.

....

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by ....); and that said affidavit was duly sub-
(Give full name and post-office address)
scribed and sworn to before me at my office in ...., this ..... day of ....., 19..

....
(Official designation of office)

Note 1.—This affidavit of election may be executed before any officer authorized to administer oaths and possessed of a seal.

Note 2.—The attention of parties in interest is directed to the provisions of the Act of March 3, 1909, copy of which is printed below.

(For Act approved March 3, 1909, 35 Stat., 844, see page 444.)

EXTENSION OF TIME.

An Act of January 28, 1910, extending time in which to establish residence. Session Laws 1909-1910.

An Act extending the time for certain homesteaders to establish residence upon their lands. North Dakota, South Dakota, Idaho, Minnesota, Montana, Nebraska, Colorado and Wyoming, and the Territory of New Mexico.

Approved, January 28, 1910.

Sixty-first Congress, 1909-1910. Page. 189.

An Act extending the time in which to file adverse claims and institute adverse suits against mineral entries in the district of Alaska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the district of Alaska adverse claims authorized and provided for in sections twenty-three hundred and twenty-five and twenty-three hundred and twenty-six, United States Revised Statutes, may be filed at any time during the sixty days period of publication, or within eight months thereafter, and the adverse suits authorized and provided for in section twenty-three hundred and twenty-six, United States Revised Statutes, may be instituted at any time within sixty days after the filing of said claims in the local land office.

Approved, June 7, 1910. Public No. 198.

An Act for the relief of homestead settlers under the Acts of February twentieth, nineteen hundred and four; June fifth and twenty-eighth, nineteen hundred and six; March second, nineteen hundred and seven; and May twenty-eighth, nineteen hundred and eight.

Approved, March 26, 1910.

Homestead. Second Session of Sixty-first Congress, 1909-1910. Page 265.

INSTRUCTIONS UNDER ENLARGED HOMESTEAD ACT OF FEBRUARY 19, 1909.

Department of the Interior,
General Land Office,
Washington, D. C., December 14, 1909.

The Registers and Receivers, United States Land Offices, Colorado, Montana, Nevada, Oregon, Utah, Washington, Wyoming, Arizona, and New Mexico.

Gentlemen: The following instructions are issued for your guidance in the administration of the Act of Congress, approved February 19, 1909, "to provide for an enlarged homestead" (35 Stat., 639), copy of which may be found at the end of these instructions:

Homestead Entries for 320 Acres—Kind of Land Subject to Such Entry.

1. The first section of the Act provides for the making of homestead entry for an area of 320 acres, or less, of nonmineral, nontimbered, nonirrigable public land in the States of Colorado, Montana, Nevada, Oregon, Utah, Washington, Wyoming, and in the Territories of Arizona and New Mexico.

The term "nonirrigable land," as used in this Act, is construed to mean land which, as a rule, lacks sufficient rainfall to produce agricultural crops without the necessity of resorting to unusual methods of cultivation, such as the system commonly known as "dry farming," and for which there is no known source of water supply from which such land may be successfully irrigated at a reasonable cost.

Therefore, lands containing merchantable timber, mineral lands, and lands within a reclamation project, or lands which may be irrigated at a reasonable cost from any known source of water supply, may not be entered under this Act. Minor portions of a legal subdivision susceptible of irrigation from natural sources, as, for instance, a spring, will not exclude such subdivision from entry under this Act, provided, however, that no one entry shall embrace in the aggregate more than 40 acres of such irrigable lands.

Designation or Classification of Lands—Applications to Enter.

2. From time to time lists designating the lands which are sub-

ject to entry under this Act will be sent you, and immediately upon receipt of such lists you will note upon the tract books opposite the tracts so designated, "Designated, Act February 19, 1909." Until such lists have been received in your office, no applications to enter should be received and no entries allowed under this Act, but after the receipt of such lists it will be competent for you to dispose of applications for lands embraced therein under the provisions of this act, in like manner as other applications for public lands, without first submitting them to the General Land Office for consideration.

The fact that lands have been designated as subject to entry is not conclusive as to the character of such lands. Each entryman must furnish the affidavit required by section 2 of the Act, and should it afterwards develop that the land is not of the character contemplated by the above Act, the entry must be canceled or the area reduced, as the circumstances may warrant.

Compactness—Fees.

3. Lands entered under this Act must be in a reasonably compact form, and in no event exceed 1½ miles in length.

The Act provides that the fees shall be the same as those now required to be paid under the homestead laws; therefore, while the fees may not in any one case exceed the maximum fee of $10, required under the general homestead law, the commissions will be determined by the area of land embraced in the entry.

Form of Application.

4. Applications to enter must be submitted upon affidavit, Form No. 4-003, copy of which is annexed hereto.*

The affidavit of applicant as to the character of the lands must be corroborated by two witnesses. It is not necessary that such witnesses be acquainted with the applicant, and if they are not so acquainted their affidavit should be modified accordingly.

Additional Entries.

5. Section 3 of the Act provides that any homestead entryman of lands of the character described in the first section of the Act, upon which entry final proof has not been made, may enter such other lands, subject to the provisions of this Act, contiguous to the former entry, which shall not, together with the lands embraced in the original entry, exceed 320 acres, and that residence upon and cultivation of the original entry shall be accepted as equivalent to residence upon and cultivation of the additional entry.

This section contemplates that lands may, subsequent to entry, be classified or designated by the Secretary of the Interior as falling within the provisions of this Act, and in such cases an entryman of such lands who had not at the time of the classification or designation of the lands made final proof may make such additional entry, provided he is otherwise qualified. Applicants for such additional entries must, of course, tender the proper fees and commissions and must make application and affidavit on the Form No. 4-004, attached hereto. Entrymen who made final proof on the original entries prior to the date of the Act or prior to the classification or designation of the lands as coming within the provisions of the act are not entitled to make additional entries under this Act.

*See page 200 for form.

Final Proofs on Original and Additional Entries—Commutation Not Allowed.

6. Final proofs must be made as in ordinary homestead cases, and in addition to the showing required of ordinary homestead entrymen it must be shown that at least one-eighth of the area embraced in each entry has been continuously cultivated to agricultural crops other than native grasses, beginning with the second year of the entry, and that at least one-fourth of the area embraced in the entry has been continuously cultivated to agricultural crops other than native grasses, beginning with the third year of the entry and continuing to date of final proof.

Final proof submitted on an additional entry must show that the area of such entry required by the Act to be cultivated has been cultivated in accordance with such requirement; or that such part of the original entry as will, with the area cultivated in the additional entry, aggregate the required proportion of the combined entries, has been cultivated in the manner required by the Act.

Proof must be made on the original entry within the statutory period of seven years from the date of the entry; and if it can not be shown at that time that the cultivation has been such as to satisfy the requirements of the Act as to both entries it will be necessary to submit supplemental proof on the additional entry at the proper time. But proof should be made at the same time to cover both entries in all cases where the residence and cultivation are such as to meet the requirements of the Act.

Commutation of either original or additional entry, made under this Act, is expressly forbidden.

Right of Entry.

7. Homestead entries under the provisions of section 2289 of the Revised Statutes, for 160 acres or less, may be made by qualified persons within the States and Territories named upon lands subject to such entry, whether such lands have been designated under the provisions of this Act or not. But those who make entry under the provisions of this Act can not afterwards make homestead entry under the provisions of the general household law* [nor can an entryman who enters under the general homestead law lands designated as falling within the provisions of this Act afterwards enter any lands under this Act].

A person who has, since August 30, 1890, entered and acquired title to 320 acres of land under the agricultural-land laws (which is construed to mean the timber and stone, desert land, and homestead laws), is not entitled to make entry under this Act; neither is a person who has acquired title to 160 acres under the general homestead law entitled to make another homestead entry under this Act, unless he comes within the provisions of section 3 of the Act providing for additional entries of contiguous lands, or unless entitled to the benefits of section 2 of the Act of June 5, 1900 (31 Stat., 267), or section 2 of the Act of May 22, 1902 (32 Stat., 203).

If, however, a person is a qualified entryman under the homestead laws of the United States, he may be allowed to enter 320

*Portion in brackets stricken out by amendment, 40 L. D., 184.

acres under this Act, or such a less amount as when added to the lands previously entered or held by him under the agricultural land laws shall not exceed in the aggregate 480 acres.

Note.—See Circulars Nos. 94 and 99, pages —.

Constructive Residence Permitted on Certain Lands in Utah.

8. The sixth section of the Act under consideration provides that not exceeding 2,000,000 acres of land in the State of Utah, which do not have upon them sufficient water suitable for domestic purposes as will render continuous residence upon such lands possible, may be designated by the Secretary of the Interior as subject to entry under the provisions of this Act; with the exception, however, that entrymen of such lands will not be required to prove continuous residence thereon. The Act provides in such cases that all entrymen must reside within such distance of the land entered as will enable them successfully to farm the same as required by the Act; and no attempt will be made at this time to determine how far from the land an entryman will be allowed to reside, as it is believed that a proper determination of that question will depend upon the circumstances of each case.

Applications to enter under this section of the Act will not be received until lists designating or classifying the lands subject to entry thereunder have been filed and noted in the local land offices. Such lists will be from time to time furnished the Register and Receivers, who will immediately upon their receipt note upon the tract books opposite the tract so listed the words "Designated, section 6, Act February 19, 1909." Stamps for making the notations required by these instructions will be hereafter furnished the local officers. Applications under this section must be submitted upon Form 4-003, copy of which is annexed hereto.

Final Proofs on Entries Allowed Under Section 6—Residence—Commutation Not Allowed.

9. The final proof under this section must be made as in ordinary homestead entries, except that proof of residence on the land will not be required, in lieu of which the entryman will be required to show that from the date of original entry until the time of making final proof he resided within such distance from said land as enabled him to successfully farm the same. Such proof must also show that not less than one-eighth of the entire area of the land entered was cultivated during the second year; and not less than one-fourth during the fourth and fifth years after entry.

Officers Before Whom Application and Proofs May Be Made.

10. The Act provides that any person applying to enter land under the provisions thereof, shall make and subscribe before the proper officer an affidavit, etc. The term "proper officer," as used herein, is held to mean any officer authorized to take affidavits or proof in homestead cases.

Very respectfully,

Fred Dennett,
Commissioner.

Approved, December 14, 1909.

R. A. Ballinger,
Secretary.

[Public—No. 245.]

[S. 6155.]

An Act to Provide for an Enlarged Homestead.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who is a qualified entryman under the homestead laws of the United States may enter, by legal subdivisions, under the provisions of this Act, in the States of Colorado, Montana, Nevada, Oregon, Utah, Washington, and Wyoming, and the Territories of Arizona and New Mexico, three hundred and twenty acres, or less, of nonmineral, nonirrigable, unreserved and unappropriated surveyed public lands which do not contain merchantable timber, located in a reasonably compact body, and not over one and one-half miles in extreme length: Provided, That no lands shall be subject to entry under the provisions of this Act until such lands shall have been designated by the Secretary of the Interior as not being, in his opinion, susceptible of successful irrigation at a reasonable cost from any known source of water supply.

Sec. 2. That any person applying to enter land under the provisions of this Act shall make and subscribe before the proper officer an affidavit as required by section twenty-two hundred and ninety of the Revised Statutes, and in addition thereto shall make affidavit that the land sought to be entered is of the character described in section one of this Act, and shall pay the fees now required to be paid under the homestead laws.

Sec. 3. That any homestead entryman of lands of the character herein described, upon which final proof has not been made, shall have the right to enter public lands, subject to the provisions of this Act, contiguous to his former entry which shall not, together with the original entry, exceed three hundred and twenty acres, and residence upon and cultivation of the original entry shall be deemed as residence upon and cultivation of the additional entry.

Sec. 4. That at the time of making final proofs as provided in section twenty-two hundred and ninety-one of the Revised Statutes the entryman under this Act shall, in addition to the proofs and affidavits required under the said section, prove by two credible witnesses that at least one-eighth of the area embraced in his entry was continuously cultivated to agricultural crops other than native grasses beginning with the second year of the entry, and that at least one-fourth of the area embraced in the entry was so continuously cultivated beginning with the third year of the entry.

Sec. 5. That nothing herein contained shall be held to affect the right of a qualified entryman to make homestead entry in the States named in section one of this Act under the provisions of section twenty-two hundred and eighty-nine of the Revised Statutes, but no person who has made entry under this Act shall be entitled to make homestead entry under the provisions of said section, and no entry made under this Act shall be commuted.

Sec. 6. That whenever the Secretary of the Interior shall find that any tracts of land, in the State of Utah, subject to entry under this Act, do not have upon them such a sufficient supply of water suitable for domestic purposes as would make continuous residence upon the lands possible, he may, in his discretion, designate such tracts of land, not to exceed in the aggregate two million acres, and thereafter they shall be subject to entry under this Act without the necessity of residence: Provided, That in such event the entryman on any such entry shall in good faith cultivate not less than one-eighth of the entire area of the entry during the second year, one-fourth during the third year, and one-half during the fourth and fifth years after the date of such entry, and that after entry and until final proof the entryman shall reside within such distance of said land as will enable him successfully to farm the same as required by this section.

Approved, February 19, 1909. (35 Stat., 639.)

4-003.

[Form approved by the Secretary of the Interior March 25, 1909.]

DEPARTMENT OF THE INTERIOR—HOMESTEAD ENTRY.

[Act February 19, 1909.]

U. S. Land Office, ... No. ....

APPLICATION AND AFFIDAVIT.

I, ... (give full Christian name) ..... (male or female), a resident of .... (town, county, and State), do hereby apply to enter, under the Act of February 19, 1909 (35 Stat., 639), the ..... sec-

tion ....., township ....., range ....., ... meridian, containing ..... acres, within the ..... land district; and I do solemnly swear that I am not the proprietor of more than 160 acres of land in any State or Territory; that I, ... (applicant must state whether native born, naturalized, or has filed declaration of intention to become a citizen. If not native born, certified copy of naturalization or declaration of intention, as case may be, must be filed with this application), ..., citizen of the United States, and am ..... (state whether the head of a family, married or unmarried, or over twenty-one years of age, and if not over twenty-one applicant must set forth the facts which constitute him the head of a family); that my post-office address is .....; that this application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation; that I will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that I am not acting as agent of any person, corporation, or syndicate in making this entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that I do not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for myself, and that I have not directly or indirectly made, and will not make, any agreement or contract, in any way or manner, with any person or persons, corporation, or syndicate whatsoever, by which the title which I may acquire from the Government of the United States will inure in whole or in part to the benefit of any person except myself. I have not heretofore made any entry under the homestead, timber and stone, desert land, or pre-emption laws except ..... (here describe former entry or entries by section, township, range, land district, and number of entry, how perfected, or if not perfected state that fact); that I am well acquainted with the character of the land herein applied for and with each and every legal subdivision thereof, having personally examined same; that there is not to my knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, nor any deposit of coal, placer, cement, gravel, salt spring, or deposit of salt, nor other valuable mineral deposit; that no portion of said land is claimed for mining purposes under local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that my application therefor is not made for the purpose of fraudulently obtaining title to mineral land; that the land is not occupied and improved by any Indian; that the lands applied for do not contain merchantable timber, and no timber except ..... (here fully describe amount and kind of timber, if any), and that it is not susceptible of successful irrigation at a reasonable cost from any known source of water supply, except the following areas: ..... (give the subdivisions and areas of the land, if any, susceptible of irrigation).

.....

(Sign here, with full Christian name.)

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See Sec. 5392, R. S.)

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known, or has been satisfactorily identified before me by ..... (give full name and post-office address); that I verily believe affiant to be a qualified applicant and the identical person hereinbefore described; and that said affidavit was duly subscribed and sworn to before me, at my office, in ..... (town), ... (county and State), within the ..... land district, this .... day of ....., 19..

.....

.....

(Official designation of officer.)

We, ..., of ....., and ....., of ....., do solemnly swear that we are well acquainted with the above-named affiant and the lands described, and personally know that the statements made by him relative to the character of the said lands are true.

.....

.....

I hereby certify that the foregoing affidavit was read to or by affiants in my presence before affiants affixed signatures thereto; that affiants are to me

personally known (or have been satisfactorily identified before me by ....); and that said affidavit was duly subscribed to before me at ....., this .... day of ....., 19..

.....

.....

(Official designation of officer.)

Note.—In cases where the witnesses are not acquainted with the applicant, the following affidavit may be substituted for the one herein contained.

We, ..., of ....., and ....., of ....., do solemnly swear that we are well acquainted with the lands described in the above application, and personally know that the statements made by the applicant relative to the character of the said lands are true.

(37 L. D., 708.)

United States Land Office at....

....., 19....

I hereby certify that the foregoing application is for surveyed land of the class which the applicant is legally entitled to enter under the Act of February 19, 1909, and that there is no prior valid adverse right to the same; and has this day been allowed.

.....

Register.

REVISED STATUTES OF THE UNITED STATES—TITLE LXX.—CHAP 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or other person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Note.—In addition to the above penalty, every person who knowingly or willfully in anywise procures the making or presentation of any false or fraudulent affidavit pertaining to any matter within the jurisdiction of the Secretary of the Interior may be punished by fine or imprisonment.

4-004.

[Form approved by the Secretary of the Interior, March 25, 1909.]

DEPARTMENT OF THE INTERIOR.
APPLICATION AND AFFIDAVIT.
ADDITIONAL HOMESTEAD.
[Act of February 19, 1909.]

Application No..... Land Office at.....

I, ..., of....., do hereby apply to enter under section 3 of the Act of February 19, 1909 (35 Stat., 639), the.....of section ....., township ....., range .....meridian, containing .....acres, as additional to my homestead entry No..... made ..... at ..... Land Office for the ..... section ....., township ....., range ....., ... meridian.

I do solemnly swear that I am not the owner of more than one hundred and sixty acres in any State or Territory, exclusive of the land included in my original entry above described, and that this application is made for my exclusive benefit as an addition to my original homestead entry, and not directly or indirectly for the use or benefit of any other person or persons whomsoever; that this application is honestly and in good faith made for the purpose of actual settlement and cultivation; that I will faithfully and honestly endeavor to comply with all the requirements of law; and that I have not heretofore made an entry under the homestead, timber and stone, desert land, or preemption laws other than that above described, except..... (here describe former entries, if any); that I am well acquainted with the character of the land herein applied for and each and every legal subdivision thereof, having passed over the same; that my personal knowledge of the

land is such as to enable me to testify understandingly with regard thereto; that there is not to my knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal, cement, gravel, or other valuable mineral deposit; that the land contains no salt springs or deposits of salt in any form sufficient to render it valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of the land is worked for minerals during any part of the year by any person or persons, and that my application is not made for the purpose of fraudulently obtaining title to mineral lands; that the land is not occupied and improved by any Indian, and is unoccupied and unappropriated by any person claiming the same under the public land laws other than myself; that the land embraced in the original entry and the land now applied for do not contain merchantable timber, and no timber except.....(here fully describe amount and kind of timber, if any), and that it is not susceptible of successful irrigation at a reasonable cost from any known source of water supply, except the follwing areas: .... (Give the subdivisions and areas of the lands, if any, susceptible of irrigation.

.....
(Sign here, with full Christian name.)

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See sec. 5392, R. S., below.)

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed his signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by ..... [give full name and post-office address]); that I verily believe affiant to be a qualified applicant and the identical person hereinbefore described; and that said affidavit was duly subscribed and sworn to before me, at my office, in ..... (town), ... (county and State), within the ..... land district, this ..... day of ....., 19....

.....,
.....,
(Official designation of officer.)

We, ..., of ...., and ...., of ...., do solemnly swear that we are well acquainted with the above-named affiant and the lands described, and personally know that the statements made by him relative to the character of the said lands are true.

....
....

I hereby certify that the foregoing affidavit was read to or by affiants in my presence before affiants affixed signatures thereto; that affiants are to me personally known (or have been satisfactorily identified before me by ....); and that said affidavit was duly subscribed to before me at ....., this ..... day of ....., 19.....

....
....
(Official designation of officer.)

United States Land Office at .....
....., 19....

I hereby certify that the foregoing application is for surveyed land of the class which the applicant is legally entitled to enter under the Act of February 19, 1909, and that there is no prior valid adverse right to the same; and has this day been allowed.

.....,
Register.

REVISED STATUTES OF THE UNITED STATES—TITLE LXX, CRIMES, CHAP. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, willfully, and contrary to such oath states or subscribes to any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two

thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Note.—In addition to the above penalty, every person who knowingly or willfully in anywise procures the making or presentation of any false or fraudulent affidavit pertaining to any matter within the jurisdiction of the Secretary of the Interior may be punished by fine or imprisonment.

[Circular No. 99.]

ENLARGED HOMESTEADS—SETTLEMENT RIGHTS—ADDITIONAL ENTRIES—INSTRUCTIONS.

Department of the Interior,
General Land Office,
Washington, D. C., April 16, 1912.

Registers and Receivers, United States Land Offices, Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

Gentlemen: The following instructions are issued for your guidance in the administration of the Act of Congress approved February 19, 1909, "to provide for an enlarged homestead" (35 Stat., 639), and are supplemental to, and in modification of, the instructions contained in Circular No. 10, Suggestions to Homesteaders, approved April 20, 1911, pages 17 to 21, inclusive.

An entryman under section 2289, Revised Statutes, who makes an additional entry under section 3 of the enlarged Homestead Act, may continue both residence and cultivation upon the original entry, but final proof may not be made for the land embraced in the additional entry until full compliance with the requirements of said Act has been effected beginning with the date of such additional entry. Final proof must be made on the original entry within the statutory period of seven years.

The cultivation required in such cases is an amount equal to one-eighth and one-fourth of the area embraced in the additional entry, commencing with the second and third years, respectively, of such additional entry. If such proportionate area, or any part thereof, is of land embraced in the original unperfected entry, there must be such additional cultivation of the original entry as would ordinarily be required to perfect the title thereto if it stood alone.

Prior to the designation of land as subject to entry under the Enlarged Homestead Act, a settlement right may be acquired to not more than approximately 160 acres of unsurveyed land, and should such settlement claim be extended, after all the land involved has been designated as subject to entry under the Act, to embrace additional land with a view to entry under the said Act, title may be acquired to the enlarged area only by continued residence, and cultivation as required by section 4 of the Act, for the full period after the date of designation and extension of settlement.

All former instructions not in harmony with the foregoing are vacated, and superseded hereby, and you will mail a copy of this circular to every person having an unperfected entry under the Enlarged Homestead Act in your district. You will also inclose it with each "Suggestions to Homesteaders" which you may hereafter send out in response to inquiries under the homestead laws.

These instructions apply also to the Act of June 17, 1910 (36

Stat., 531), providing for an enlarged homestead in the State of Idaho.

Very respectfully, Fred Dennett,
Commissioner.

Approved:
Samuel Adams,
First Assistant Secretary.

[Circular No. 94.]

ENLARGED HOMESTEADS—ACT OF FEBRUARY 19, 1909 (35 STAT., 639), AND JUNE 17, 1910 (36 STAT., 531)—INSTRUCTIONS.

Department of the Interior,
General Land Office,
Washington, D. C., April 2, 1912.

Registers and Receivers, United States Land Offices,
Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

Gentlemen: Under date of March 22, 1912, the following instructions were issued by the Department to this Office:

The Commissioner of the General Land Office.

Sir: I have your informal memorandum dated March 2, 1912, submitted in connection with a letter prepared in your office for my signature (P. R. S., 1071), addressed to Hon. Charles N. Pray, House of Representatives, the memorandum being in full as follows:

"It is now held by the General Land Office that in cases such as are discussed in the accompanying letter an entry under the enlarged homestead Act for the full area of 320 acres may be allowed when the deficit in area of the former perfected entry, under sectin 2289, Revised Statutes, was such as would entitle the entryman, under the rule of approximation, to make an additional entry under section 6 of the Act of March 2, 1889 (25 Stat., 854), of a legal subdivision of 40 acres."

Differently stated, reference being had to the aforesaid draft of letter, this is the equivalent of saying that it is now held as a rule of administration in the General Land Office that in cases where a homestead entry has been allowed and perfected, under section 2289 of the Revised Statutes, for a quantity of land less than 160 acres, the entryman of the perfected homestead may make a further or additional entry for 320 acres of land under the enlarged homestead Act of February 19, 1909 (35 Stat., 639), in all cases where such deficiency would entitle him to make an additional entry under section 6 of the Act of March 2, 1889, for 40 acres of land.

That this is an erroneous view of the law seems clear. The enlarged homestead Act permits the entry of 320 acres or less of land by any person "who is a qualified entryman under the homestead laws of the United States." Section 6 of said Act of March 2, 1889, qualified a person who has entered "a quantity of land less than 160 acres," and who is otherwise within its provisions, to enter under the homestead laws "so much additional land as added to the quantity previously so entered by him shall not exceed 160 acres." This does not restore such person to the full qualifications of a homestead entryman, but confers a special and limited privilege—limited to the right to make an additional entry for lands of area to be measured by the difference in acreage between 160 acres, the full homestead right given by section 2289 of the Revised Statutes, and the number of acres actually entered thereunder. In other words, the right granted by the Act of March 2, 1889, is the right to enter additional land in amount limited to meet the deficiency existing between that originally entered under the homestead laws and 160 acres. The rule of approximation for administrative convenience may in actual practice either enlarge or reduce this right, but this does not affect the construction of the statute.

So the right of additional entry given by the Act of March 2, 1889, is necessarily confined by its terms to an acreage wholly inconsistent with the theory that 320 acres may be entered under the enlarged homestead Act. Nothing in the enlarged homestead Act precludes the exercise of such right of additional entry within the area designated for entry under that act, but the grant of additional right is not thereby enlarged as to such cases. It is such right only as might be exercised elsewhere upon the public domain of the United States subject to homestead entry.

This question was presented in a somewhat different form in the case of ex parte Saavi Storaasli, decided by this Department July 18, 1911 (40 L. D., 193). That case involved the right of Storaasli to make an entry of 320 acres or to retain an entry of 160 acres of land he had been allowed to make under the enlarged homestead Act. It appeared that he had theretofore made and perfected an entry under section 2289 of the Revised Statutes for 157.33 acres, and he maintained his claim of right to make the enlarged homestead upon the ground that he was in that behalf a qualified entryman by reason of the deficiency of 2.67 acres of his original homestead and consequent additional entry privilege accorded by the Act of March 2, 1889. That claim was denied upon the ground that—

"The fact that the land thus patented lacked a little more than 2 acres of making 160 acres did not give him the status of a qualified homestead entryman or the right to enter under the enlarged homestead Act an additional 320 acres of land."

It was not intended by this to say, even inferentially, that the case would have been different if the deficiency in the original entry had been large enough under the Act of March 2, 1889, as administered, to entitle him to an additional homestead entry for 40 acres of land. That case was decided upon its own facts. The discussion was confined to such facts, and nothing found therein justifies the rule which you say now obtains in your Office with reference to this question.

I have to direct that in the further administration of the enlarged homestead Act your office conform to the views herein expressed.

Very Respectfully,

Samuel Adams,
First Assistant Secretary.

The foregoing instructions supersede any former practice or instructions, and you will be governed accordingly.

Very Respectfully
Fred Dennett, Commissioner.

Approved, April 2, 1912.
Samuel Adams,
First Assistant Secretary.

ENLARGED HOMESTEAD IN IDAHO—ACT OF JUNE 17, 1910.

Instructions.

Department of the Interior,
General Land Office,
Washington, D. C., July 18, 1910.

Registers and Receivers, United States Land Offices in Idaho.

Gentlemen: The following instructions are issued for your guidance in the administration of the Act of Congress, approved June 17, 1910 (Public 214), entitled "An Act to provide for an enlarged homestead," a copy of which may be found at the end of these instructions.

Homestead Entries for 320 Acres—Kind of Land Subject to Such Entry.

1. The first section of the Act provides for the making of homestead entry for an area of 320 acres, or less, of arid, nonmineral, nontimbered, nonirrigable public land in the State of Idaho.

The terms "arid" or "nonirrigable land," as used in this Act are construed to mean land which, as a rule, lacks sufficient rainfall to produce agricultural crops without the necessity of resorting to unusual methods of cultivation, such as the system commonly known as "dry farming," and for which there is no known source of water supply from which such land may be successfully irrigated at a reasonable cost.

Therefore, lands containing merchantable timber, mineral lands, and lands within a reclamation project, or lands which may be irrigated at a reasonable cost from any known source of water supply, may not be entered under this Act. Minor portions of a legal subdivision susceptible of irrigation from natural sources, as, for instance, a spring, will not exclude such subdivision from entry under this Act, provided, however, that no one entry shall embrace in the aggregate more than forty acres of such irrigable lands.

Designation or Classification of Lands—Applications to Enter.

2. From time to time lists designating the lands which are subject to entry under this Act will be sent you, and immediately upon receipt of such lists you will note upon the tract books opposite the tracts so designated, "Desig-

nated, Act June 17, 1910." Until such lists have been received in your office, no applications to enter should be received and no entries allowed under this Act, but after the receipt of such lists it will be competent for you to dispose of applications for lands embraced therein under the provisions of this Act, in like manner as other applications for public lands, without first submitting them to the General Land Office for consideration.

The fact that lands have been designated as subject to entry is not conclusive as to the character of such lands, and should it afterwards develop that the land is not of the character contemplated by the above Act, the designation may be canceled, but where an entry is made in good faith under the provisions of said Act, such designation will not thereafter be modified to the injury of any one who, in good faith, has acted upon such designation. Each entryman must furnish affidavit as required by Section 2 of the Act.

Compactness—Fees.

3. Lands entered under this Act must be in a reasonably compact form, and in no event exceed one and one-half miles in lenth.

The Act provides that the fees shall be the same as those now required to be paid under the homestead laws; therefore, while the fees may not in any one case exceed the maximum fee of $10, required under the general homestead law, the commissions will be determined by the area of land embraced in the entry.

Form of Application.

4. Applications to make entry under this Act must conform to the forms prepared for use under the Act of February 19, 1909, 35 Stat., 639 (see circular December 14, 1909, 38 L. D., 361), except that such form must be properly modified as to the date of the Act. Applications to enter must be submitted upon affidavit Form No. 4-005, properly modified.

The affidavit of applicant as to the character of the lands must be corroborated by two witnesses. It is not necessary that such witnesses be acquainted with the applicant, and if they are not so acquainted their affidavit should be modified accordingly.

Additional Entries.

5. Section 3 of the Act provides that any homestead entryman of lands of the character described in the first section of the Act, upon which entry final proof has not been made, may enter such other lands, subject to the provisions of this Act, contiguous to the former entry, which shall not, together with the lands embraced in the original entry, exceed 320 acres, and that residence upon and cultivation of the original entry shall be accepted as equivalent to residence upon and cultivation of the additional entry.

This section contemplates that lands may, subsequent to entry, be classified or designated by the Secretary of the Interior as falling within the provisions of this Act, and in such cases an entryman of such lands who had not at the time of the classification or designation of the lands made final proof, may make such additional entry, provided he is otherwise qualified. Applicants for such additional entries must, of course, tender the proper fees and commissions and must make application and affidavit on the Form No. 4-004, properly modified as to date of the Act. Entrymen who made final proof on the original entries prior to the date of the Act or prior to the classification or designation of the lands as coming within the provisions of the Act are not entitled to make additional entries under this Act.

Validation of Entries.

[Public—No. 328.]

[H. R. 21826.]

An Act Validating certain homestead entries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all pending homestead entries made in good faith prior to September first, nineteen hundred and eleven, under the provisions of the enlarged homestead laws, by persons who, before making such enlarged homestead entry, had acquired title to a technical quarter section of

land under the homestead law, and therefore were not qualified to make an enlarged homestead entry, be, and the same are hereby, validated, if in all other respects regular, in all cases where the original homestead entry was for less than one hundred and sixty acres of land.

Approved August 24, 1912.

Final Proofs on Original and Additional Entries—Commutation Not Allowed.

6. Final proofs must be made as in ordinary homestead cases, and in addition to the showing required of ordinary homestead entrymen it must be shown that at least one-eighth of the area embraced in each entry has been continuously cultivated to agricultural crops other than native grasses, beginning with the second year of the entry, and that at least one-fourth of the area embraced in the entry has been continuously cultivated to agricultural crops other than native grasses, beginning with the third year of the entry, and continuing to date of final proof.

Final proof submitted on an additional entry must show that the area of such entry required by the Act to be cultivated has been cultivated in accordance with such requirement; or that such part of the original entry as will, with the area cultivated in the additional entry, aggregate the required proportion of the combined entries, has been cultivated in the manner required by the Act.

Proof must be made on the original entry within the statutory period of seven years from the date of the entry; and if it cannot be shown at that time that the cultivation has been such as to satisfy the requirements of the Act as to both entries it will be necessary to submit supplemental proof on the additional entry at the proper time. But proof should be made at the same time to cover both entries in all cases where the residence and cultivation are such as to meet the requirements of the Act.

Commutation of either original or additional entry, made under this Act, is expressly forbidden.

Right of Entry.

7. Homestead entries under the provisions of Section 2289 of the Revised Statutes, for 160 acres or less, may be made by qualified persons within the State named upon lands subject to such entry, whether such lands have been designated under the provisions of this Act or not. But those who make entry under the provisions of this Act cannot afterwards make homestead entry under the provisions of the general homestead law, nor can an entryman who enters under the general homestead law lands designated as falling within the provisions of this Act afterwards enter any lands under this Act.

A person who has, since August 30, 1890, entered and acquired title to 320 acres of land under the agricultural-land laws (which is construed to mean the timber and stone, desert land, and homestead laws), is not entitled to make entry under this Act; neither is a person who has acquired title to 160 acres under the general homestead law entitled to make another homestead entry under this Act, unless he comes within the provisions of Section 3 of the Act providing for additional entries of contiguous lands, or unless entitled to the benefits of Section 2 of the Act of June 5, 1900 (31 Stat., 267), or Section 2 of the Act of May 22, 1902 (32 Stat., 203).

If, however, a person is a qualified entryman under the homestead laws of the United States, he may be allowed to enter 320 acres under this Act, or such a less amount as when added to the lands previously entered or held by him under the agricultural-land laws shall not exceed in the aggregate 480 acres.

Constructive Residence Permitted on Certain Lands.

8. The sixth section of the Act under consideration provides that not exceeding 320,000 acres of land in the State of Idaho, which do not have upon them sufficient water suitable for domestic purposes as will render continuous residence upon such lands possible, may be designated by the Secretary of the Interior as subject to entry under the provisions of this Act; with the exception, however, that entrymen of such lands will not be required to prove continuous residence thereon. The Act provides in such cases that after six months from date of entry and until final proof, all entrymen must reside not more than twenty miles from the land entered and be engaged personally in preparing the soil for seed, seeding, cultivating and harvesting crops upon the land during the usual seasons for such work, unless prevented by sickness or other unavoid-

able cause. It is further provided by said Act that leave of absence from a residence established under this section may be granted upon the same terms and conditions as are required of other homestead entrymen.

Applications to enter under this section of the Act will not be received until lists designating or classifying the lands subject to entry thereunder have been filed and noted in the local land offices. Such lists will be from time to time furnished the registers and receivers, who will immediately upon the receipt note upon the tract books opposite the tract so listed, the words "Designated, Section 6, Act June 17, 1910." Stamps for making the notations required by these instructions will be hereafter furnished the local offices. Applications under this section must be submitted upon Form 4-003, properly modified as to date and section of the Act.

Final Proofs on Entries Allowed Under Section 6—Residence—Commutation Not Allowed.

9. The final proof under this section must be made as in ordinary homestead entries, except that proof of residence on the land will not be required, in lieu of which the entryman will be required to show that, from the expiration of six months after the date of original entry and until the time of making final proof, he resided not more than twenty miles from the land entered and was personally engaged in farming the same as required by said Act. Such proof must also show that not less than one-eighth of the entire area of the land entered was cultivated during the second year; not less than one-fourth during the third year; and not less than one-half during the fourth and fifth years.

Officers Before Whom Application and Proofs May Be Made.

10. The Act provides that any person applying to enter the land under the provisions thereof shall make and subscribe before the proper officer an affidavit, etc. The term "proper officer," as used herein, is held to mean any officer authorized to take affidavits or proof in homestead cases.

Very respectfully,

Fred Dennett,
Commissioner.

Approved:
Frank Pierce,
Acting Secretary.

[Public—No. 214.]

An Act to Provide for an Enlarged Homestead.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who is a qualified entryman under the homestead laws of the United States, may enter, by legal subdivision, under the provisions of this Act, in the State of Idaho, three hundred and twenty acres or less of arid, nonmineral, nonirrigable, unreserved, and unappropriated surveyed public lands which do not contain merchantable timber, located in a reasonably compact body and not over one and one-half miles in extreme length: Provided, That no lands shall be subject to entry under the provisions of this Act until the lands shall have been designated by the Secretary of the Interior as not being, in his opinion, susceptible of successful irrigation, at a reasonable cost, from any known source of water supply.

Sec. 2. That any person applying to enter land under the provisions of this Act shall make and subscribe before the proper officer an affidavit as required by section twenty-two hundred and ninety of the Revised Statutes, and in addition thereto shall make affidavit that the land sought to be entered is of the character described in section one of this Act, and shall pay the fees now required to be paid under the homestead laws.

Sec. 3. That any homestead entryman of lands of the character herein described, upon which final proof has not been made, shall have the right to enter public lands, subject to the provisions of this Act, contiguous to his former entry, which shall not, together with the original entry, exceed three hundred and twenty acres, and residence upon and cultivation of the original entry shall be deemed as residence upon and cultivation of the additional entry.

Sec. 4. That at the time of making final proofs as provided in section twenty-two hundred and ninety-one of the Revised Statutes, the entryman under this Act shall, in addition to the proofs and affidavits required under

said section, prove by two credible witnesses that at least one-eighth of the area embraced in his entry was continuously cultivated to agricultural crops other than native grasses beginning with the second year of the entry, and that at least one-fourth of the area embraced in the entry was so continuously cultivated beginning with the third year of the entry.

Sec. 5. That nothing herein contained shall be held to affect the right of a qualified entryman to make homestead entry in the State of Idaho under the provisions of section twenty-two hundred and eighty-nine of the Revised Statutes, but no person who has made entry under this Act shall be entitled to make homestead entry, under the provisions of said section, and no entry made under this Act shall be commuted.

Sec. 6. That whenever the Secretary of the Interior shall find that any tracts of land in the State of Idaho subject to entry under this Act do not have upon them such a sufficient supply of water suitable for domestic purposes as would make continuous residence upon the lands possible, he may, in his discretion, designate such tracts of land, not to exceed in the aggregate three hundred and twenty thousand acres, and thereafter they shall be subject to entry under this Act without the necessity of residence upon the land entered: Provided, That the entryman shall in good faith cultivate not less than one-eighth of the entire of the area during the second year, one-fourth during the third year and one-half during the fourth and fifth years after the date of said entry, and that after six months from date of entry until final proof the entryman shall reside not more than twenty miles from said land and be engaged personally in preparing the soil for seed, seeding, cultivating, and harvesting crops upon the land during the usual seasons for such work unless prevented by sickness or other unavoidable cause. Leave of absence from a residence established under this section may, however, be granted upon the same terms and conditions as are required of other homestead entrymen.

Approved, June 17, 1910.

LAWS RELATING TO TOWNSITES, PARKS, AND CEMETERIES.

Subject Index.

3. Townsites in Blackfeet and Fort Peck lands.
(i) In Washington; see Regulations (17 i).
1. Townsites in Colville lands.
2. Townsites in Spokane lands.
(j) In Idaho; see Regulations (17 j).
1. Townsites in Coeur d'Alene lands.
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1. Townsites in Yuma and Colorado River lands.
8. Townsites in Reclamation projects; see Regulations (18).
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UNITED STATES LAWS RELATING TO TOWNSITES, PARKS, AND CEMETERIES.

Department of the Interior,
General Land Office,
Washington, D. C., August 7, 1909.

(1) County Seat Townsites.

Sec. 2286. There shall be granted to the several counties or parishes of each State and Territory, where there are public lands, at the minimum price for which public lands of the United States are sold, the right of preemption to one quarter section of land, in each of the counties or parishes, in trust for such counties or parishes, respectively, for the establishment of seats of justice therein; but the proceeds of the sale of each of such quarter sections shall be appropriated for the purpose of erecting public buildings in the county or parish for which it is located, after deducting therefrom the amount originally paid for the same. And the seat of justice for such counties or parishes, respectively, shall be fixed previously to a sale of the adjoining lands within the county or parish for which the same is located.

Act approved May 26, 1824 (4 Stat., 50, sec. 1.)

(2) Townsites Reserved by President.

Sec. 2380. The President is authorized to reserve from the public lands, whether surveyed or unsurveyed, townsites on the shores of harbors, at the junction of rivers, important portages, or any natural or prospective centers of population.

Sec. 2381. When, in the opinion of the President, the public interests require it, it shall be the duty of the Secretary of the Interior to cause any of such reservations, or part thereof, to be surveyed into urban or suburban lots of suitable size, and to fix by appraisement of disinterested persons their cash value, and to offer the same for sale at public outcry to the highest bidder, and thence afterward to be held subject to sale at private entry according to such regulations as the Secretary of the Interior may prescribe; but no lot shall be disposed of at public sale or private entry for less than the appraised value thereof. And all such sales shall be conducted by the Register and Receiver of the land office in the district in which the reservations may be situated, in accordance with the instructions of the Commissioner of the General Land Office.

Act approved March 3, 1863 (12 Stat., 754.)

(3) Townsites Platted by Occupants.

Sec. 2382. In any case in which parties have already founded, or may hereafter desire to found, a city or town on the public lands, it may be lawful for them to cause to be filed with the recorder for the county in which the same is situated, a plat thereof, for not exceeding six hundred and forty acres, describing its exterior boundaries according to the lines of the public surveys, where such surveys have been executed; also giving the name of such city or town, and exhibiting the streets, squares, blocks, lots, and alleys, the size of the same, with measurements and area of each municipal subdivision, the lots in which shall each not exceed four thousand two hundred square feet, with a statement of the extent and general character of the improvements; such map and statement to be verified under oath by the party acting for and in behalf of the persons proposing to establish such city or town; and within one month after such filing there shall be transmitted to the General Land Office a verified transcript of such map and statement, accompanied by the testimony of two witnesses that such city or town has been established in good faith, and when the premises are within the limits of an organized land district, a similar map and statement shall be filed with the Register and Receiver, and at any time after the filing of such map, statement, and testimony in the General Land Office it may be lawful for the President to cause the lots embraced within the limits of such city or town to be offered at public sale to the highest bidder, subject to a minimum of ten dollars for each lot; and such lots as may not be disposed of at public sale shall thereafter be liable to private entry at such minimum, or at such reasonable increase or diminution thereafter as the Secretary of the Interior may order from time to time, after at least three months' notice, in view of the increase or decrease in the value of the municipal property. But any actual settler upon any one lot, as above provided, and upon any additional lot in which he may have substantial improvements shall be entitled to prove up and purchase the same as a preemption, at such minimum, at any time before the day fixed for the public sale.

Sec. 2383. When such cities or towns are established upon unsurveyed lands, it may be lawful, after the extension thereto of the public surveys, to adjust the extension limits of the premises according to those lines, where it can be done without interference with rights which may be vested by sale; and patents for all lots so disposed of at public or private sale shall issue as in ordinary cases.

Sec. 2384. If within twelve months from the establishment of a city or town on the public domain, the parties interested refuse or fail to file in the General Land Office a transcript map, with the statement and testimony called for by the provisions of section twenty-three hundred and eighty-two, it may be lawful for the Secretary of the Interior to cause a survey and plat to be made of such city or town, and thereafter the lots in the same shall be disposed of as required by such provisions, with this exception, that they shall each be at an increase of fifty per centum on the minimum of ten dollars per lot.

Act approved July 1, 1864 (13 Stat., 343, secs. 2, 3, and 4).

Sec. 2385. In the case of any city or town, in which the lots may be variant as to size from the limitation fixed in section twenty-three hundred and eighty-two, and in which the lots and buildings, as municipal improvements, cover an area greater than six hundred and forty acres, such variance as to size of lots or excess in area shall prove no bar to such city or town claim under the provisions of that section; but the minimum price of each lot in such city or town, which may contain a greater number of square feet than the maximum named in that section, shall be increased to such reasonable amount as the Secretary of the Interior may by rule establish.

Sec. 2386. Where mineral veins are possessed, which possession is recognized by local authority, and to the extent so possessed and recognized, the title to town lots to be acquired shall be subject to such recognized possession and the necessary use thereof; but nothing contained in this section shall be so construed as to recognize any color of title in possessors for mining purposes as against the United States.

Act approved March 3, 1865 (13 Stat., 530, sec. 2). (See sec. 2392, Rev. Stats., and sec. 16, Act of March 3, 1891, 26 Stat., 1101, infra.)

(4) Townsites Entered by Corporate Authorities or Judges of County Courts as Trustees.

Sec. 2387. Whenever any portion of the public lands have been or may be settled upon and occupied as a townsite, not subject to entry under the agricultural preemption laws, it is lawful, in case such town be incorporated, for the corporate authorities thereof, and, if not incorporated, for the judge of the county court for the county in which such town is situated, to enter at the proper land office, and at the minimum price, the land so settled and occupied in trust for the several use and benefit of the occupants thereof, according to their respective interests; the execution of which trust, as to the disposal of lots in such town, and the proceeds of the sales thereof, to be conducted under such regulations as may be prescribed by the legislative authority of the State or Territory in which the same may be situated. (35 L. D., 320; 36 L. D., 85.)

Sec. 2388. The entry of the land provided for in the preceding section shall be made, or a declaratory statement of the purpose of the inhabitants to enter it as a townsite shall be filed with the Register of the proper land office, prior to the commencement of the public sale of the body of land in which it is included, and the entry or declaratory statement shall include only such land as is actually occupied by the town, and the title to which is in the United States; but in any Territory in which a land office may not have been established, such declaratory statements may be filed with the Surveyor-General of the surveying district in which the lands are situated, who shall transmit the same to the General Land Office.

Sec. 2389. If upon surveyed lands, the entry shall in its exterior limit be made in conformity to the legal subdivisions of the public lands authorized by law; and where the inhabitants are in number one hundred, and less than two hundred, shall embrace not exceeding three hundred and twenty acres; and in cases where the inhabitants of such town are more than two hundred, and less than one

thousand, shall embrace not exceeding six hundred and forty acres; and where the number of inhabitants is one thousand and over one thousand, shall embrace not exceeding twelve hundred and eighty acres; but for each additional one thousand inhabitants, not exceeding five thousand in all, a further grant of three hundred and twenty acres shall be allowed. (35 L. D., 559.)

* * * * * *

Sec. 2391. Any act of the trustees not made in conformity to the regulations alluded to in section twenty-three hundred and eighty-seven shall be void.

Act approved March 2, 1867 (14 Stat., 541). (See similar Act approved May 23, 1844, 5 Stat., 657, repealed by Act approved July 1, 1864, 13 Stat., 344, sec. 5.)

Acts approved June 23, 1874 (18 Stat., 254, sec. 3), and March 3, 1877 (19 Stat., 392).

Sec. 2392. No title shall be acquired, under the foregoing provisions of this chapter, to any mine of gold, silver, cinnabar, or copper; or to any valid mining-claim or possession held under existing laws.

Act approved March 2, 1867 (14 Stat., 542), and Act approved June 8, 1868 (15 Stat., 67). (See sec. 2386, Rev. Stats., supra, and sec. 16, Act of March 3, 1891, 26 Stat., 1101, infra.)

Sec. 2393. The provisions of this chapter shall not apply to military or other reservations heretofore made by the United States, nor to reservations for light-houses, custom-houses, mints, or such other public purposes as the interests of the United States may require, whether held under reservations through the Land Office by title derived from the Crown of Spain, or otherwise.

Act approved March 2, 1867 (14 Stat., 542).

Sec. 2394. The inhabitants of any town located on the public lands may avail themselves, if the town authorities choose to do so, of the provisions of sections twenty-three hundred and eighty-seven, twenty-three hundred and eighty-eight, and twenty-three hundred and eighty-nine; and, in addition to the minimum price of the lands embracing any townsite so entered, there shall be paid by the parties availing themselves of such provisions all costs of surveying and platting any such townsite, and expenses incident thereto incurred by the United States, before any patent issues therefor; but nothing contained in the sections herein cited shall prevent the issuance of patents to persons who have made or may hereafter make entries, and elect to proceed under other laws relative to townsites in this chapter set forth.

Act approved June 8, 1868 (15 Stat., 67).

(5) Additional Townsites, Etc.

* * * * * *

That the existence or incorporation of any town upon the public lands of the United States shall not be held to exclude from preemption or homestead entry a greater quantity than twenty-five hundred and sixty acres of land, or the maximum area which may be entered as a townsite under existing laws, unless the entire tract claimed or incorporated as such townsite shall, including and in excess of the area above specified, be actually settled upon, inhabited, improved, and used for business and municipal purposes.

Sec. 2. That where entries have been heretofore allowed upon lands afterwards ascertained to have been embraced in the corporate limits of any town, but which entries are or shall be shown, to the satisfaction of the Commissioner of the General Land Office, to include only vacant unoccupied lands of the United States, not settled upon or used for municipal purposes, nor devoted to any public use of such town, said entries, if regular in all respects, are hereby confirmed and may be carried into patent: Provided, That this confirmation shall not operate to restrict the entry of any townsite to a smaller area than the maximum quantity of land which, by reason of present population, it may be entitled to enter under said section twenty-three hundred and eighty-nine of the Revised Statutes.

Sec. 3. That whenever the corporate limits of any town upon the public domain are shown or alleged to include lands in excess of the maximum area specified in section one of this Act, the Commissioner of the General Land Office may require the authorities of such town, and it shall be lawful for them, to elect what portion of said lands, in compact form and embracing the actual site of the municipal occupation and improvement, shall be withheld from preemption and homestead entry; and thereafter the residue of such lands shall be open to disposal under the homestead and preemption laws. And upon default of said town authorities to make such election within sixty days after notification by the Commissioner, he may direct testimony respecting the actual location and extent of said improvements, to be taken by the Register and Receiver of the district in which such town may be situated; and, upon receipt of the same, he may determine and set off the proper site according to section one of this Act, and declare the remaining lands open to settlement and entry under the homestead and preemption laws; and it shall be the duty of the secretary of each of the Territories of the United States to furnish the surveyor-general of the Territory for the use of the United States a copy duly certified of every Act of the legislature of the Territory incorporating any city or town, the same to be forwarded by such secretary to the surveyor-general within one month from date of its approval.

Sec. 4. It shall be lawful for any town which has made, or may hereafter make entry of less than the maximum quantity of land named in section twenty-three hundred and eighty-nine of the Revised Statutes to make such additional entry, or entries, of contiguous tracts, which may be occupied for town purposes as when added to the entry or entries theretofore made will not exceed twenty-five hundred and sixty acres. Provided, That such additional entry shall not together with all prior entries be in excess of the area to which the town may be entitled at date of the additional entry by virtue of its population as prescribed in said section twenty-three hundred and eighty-nine.

Act approved March 3, 1877 (19 Stat., 392).

(6) Townsites on Mineral Lands.

* * * * * *

Sec. 16. That townsite entries may be made by incorporated towns and cities on the mineral lands of the United States, but no title shall be acquired by such towns or cities to any vein of gold,

silver, cinnabar, copper, or lead, or to any valid mining claim or possession held under existing law. When mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof, and when entry has been made or patent issued for such townsites to such incorporated town or city, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: Provided, That no entry shall be made by such mineral-vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral-vein applicant.

* * * * * *

Act approved March 3, 1891 (26 Stat., 1101). (See secs. 2386 and 2392, Rev. Stats., supra.)

(7) Townsites on Ceded Indian Reservations.

(a) IN OKLAHOMA.

RESERVATIONS FOR PARKS, SCHOOLS, ETC., AND OKLAHOMA HOMESTEAD COMMUTATIONS FOR TOWNSITES.

* * * * * *

Sec. 22. That the provisions of Title thirty-two, chapter eight of the Revised Statutes of the United States relating to "reservation and sale of townsites on the public lands" shall apply to the lands open, or to be opened to settlement in the Territory of Oklahoma, except those opened to settlement by the proclamation of the President on the twenty-second day of April, eighteen hundred and eighty-nine: Provided, That hereafter all surveys for townsites in said Territory shall contain reservations for parks (of substantially equal area if more than one park) and for schools and other public purposes, embracing in the aggregate not less than ten nor more than twenty acres; and patents for such reservations, to be maintained for such purposes, shall be issued to the towns respectively when organized as municipalities: Provided further, That in case any lands in said Territory of Oklahoma, which may be occupied and filed upon as a homestead, under the provisions of law applicable to said Territory, by a person who is entitled to perfect his title thereto under such laws, are required for townsite purposes, it shall be lawful for such person to apply to the Secretary of the Interior to purchase the lands embraced in said homestead or any part thereof for townsite purposes. He shall file with the application a plat of such proposed townsite, and if such plat shall be approved by the Secretary of the Interior, he shall issue a patent to such person for land embraced in said townsite, upon the payment of the sum of ten dollars per acre for all the lands embraced in such townsite, except the lands to be donated and maintained for public purposes as provided in this section. And the sums so received by the Secretary of the Interior shall be paid over to the proper authorities of the municipalities when organized, to be used by them for school purposes only.

* * * * * *

Act approved May 2, 1890 (26 Stat., 91, sec. 22).

HOMESTEADS COMMUTED FOR TOWNSITE PURPOSES IN WICHITA, COMANCHE, KIOWA, AND APACHE LANDS.

* * * * * *

That that portion of section twenty-two of the Act approved May second, eighteen hundred and ninety, entitled "An Act to provide a temporary government for the Territory of Oklahoma, to enlarge the jurisdiction of the United States court in the Indian Territory, and for other purposes," providing for the commutation for townsite purposes of homestead entries in certain instances, be, and the same is hereby, made applicable to the lands in the Territory of Oklahoma ceded to the United States by the Wichita and affiliated bands of Indians and the Comanche, Kiowa, and Apache tribes of Indians, under agreements, respectively, ratified by the Acts of Congress of March second, eighteen hundred and ninety-five, and June sixth, nineteen hundred.

Act approved March 11, 1902 (32 Stat., 63).

TOWNSITES VACATED IN COMMUTED HOMESTEADS.

* * * That in all cases where a townsite, or an addition to a townsite, entered under the provisions of section twenty-two of an Act entitled "An Act to provide a temporary government for the Territory of Oklahoma, to enlarge the jurisdiction of the United States court in the Indian Territory, and for other purposes," approved May second, eighteen hundred and ninety, shall be vacated in accordance with the laws of the Territory of Oklahoma, and patents for the public reservations in such vacated townsite, or addition thereto, have not been issued, it shall be lawful for the Commissioner of the General Land Office, upon an official showing that such townsite, or addition thereto, has been vacated, and upon payment of the homestead price for such reservations, to issue a patent for such reservations to the original entryman.

If the original entryman shall fail or neglect to make application for the reservations within six months from the vacation of such townsite, or from the passage of this Act, the reservations shall be subject to disposal under the provisions of section twenty-four hundred and fifty-five of the Revised Statutes of the United States, as amended by the Act approved February twenty-sixth, eighteen hundred and ninety-five.

Sec. 2. That if a patent has already issued, or shall hereafter issue, for any such reservation, to any town or municipality, such town or municipality, upon the vacation of the townsite or addition thereto, as aforesaid, may sell the same at public or private sale to the highest bidder after thirty days' public notice of such sale, and convey said lands to the purchaser by proper deed of conveyance, and cover the proceeds of such sale into the school fund of such town or municipality: Provided, That where, by reason of the vacation of an entire townsite and all its additions, the municipal organization has ceased to exist, the reservations in such vacated townsite which may have been patented to the town may be disposed of as isolated tracts under the provisions of section twenty-four hundred and fifty-five of the Revised Statutes of the United States, as amended by the Act approved February twenty-sixth, eighteen hundred and ninety-five.

Sec. 3. That all laws and parts of laws, in so far as they conflict with this Act, are hereby repealed.

Act approved May 11, 1896 (29 Stat., 116).

(b) IN MINNESOTA.

TOWNSITES IN CEDED INDIAN LANDS.

* * * * * *

That chapter eight, title thirty-two, of the Revised Statutes of the United States, entitled "Reservation and sale of townsites on the public lands," be, and is hereby, extended to and declared to be applicable to ceded Indian lands within the State of Minnesota. This Act shall take effect and be in force from and after its passage.

Act approved February 9, 1903 (32 Stat., 820).

(c) IN SOUTH DAKOTA.

TOWNSITES IN ROSEBUD INDIAN LANDS IN TRIPP COUNTY.

* * * * * *

Sec. 2. That the land shall be disposed of by proclamation, under the general provisions of the homestead and townsite laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation.

* * * * * *

Sec. 4. That the Secretary of the Interior is authorized to reserve from said lands such tracts for townsite purposes as in his opinion may be required for the future public interests, and he may cause the same to be surveyed into blocks and lots and disposed of under such regulations as he may prescribe, in accordance with section twenty-three hundred and eighty-one of the United States Revised Statutes. The net proceeds derived from the sale of such lands shall be credited to the Indians as hereinafter provided. * * *

Approved March 2, 1907 (34 Stat., 1230 and 1231). See paragraph 9, proclamation of August 24, 1908 (37 L. D., 122).

(d) IN NORTH AND SOUTH DAKOTA.

TOWNSITES IN CHEYENNE RIVER AND STANDING ROCK LANDS.

* * * * * *

Sec. 2. That the lands shall be disposed of by proclamation under the general provisions of the homestead and townsite laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation:

* * * * * *

Sec. 5. That the Secretary of the Interior is authorized to reserve from said lands such tracts for townsite purposes as in his opinion may be required for the future public interests, and he may cause the same to be surveyed into blocks and lots and disposed of under such regulations as he may prescribe, in accordance

with section twenty-three hundred and eighty-one of the United States Revised Statutes. The net proceeds derived from the sale of such lands shall be credited to the Indians as hereinafter provided.

* * * * * *

Approved May 29, 1908 (35 Stat., 461 and 463).

(e) IN UTAH.

TOWNSITES IN UINTAH LANDS.

* * * * * *

That the said unallotted lands, excepting such tracts as may have been set aside as national forest reserve, and such mineral lands as were disposed of by the Act of Congress of May twenty-seventh, nineteen hundred and two, shall be disposed of under the general provisions of the homestead and townsite laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof; and no person shall be permitted to settle upon, occupy, or enter any of said lands, except as prescribed in said proclamation, until after the expiration of sixty days from the time when the same are thereby opened to settlement and entry. * * *

Act approved March 3, 1905 (33 Stat., 1069). See Acts approved May 27, 1902 (32 Stat., 263), March 3, 1903 (32 Stat., 998), and April 21, 1904 (33 Stat., 207). Also see proclamations of July 14, 31, and August 14, 1905 (34 Stat., 3122, 3139, and 3143).

(f) IN NEVADA.

TOWNSITES IN WALKER RIVER LANDS.

* * * * * *

And when such allotments shall have been made, and the consent of the Indians obtained as aforesaid, the President shall, by proclamation, open the land so relinquished to settlement, to be disposed of under existing laws.

* * * * * *

Act approved May 27, 1902 (32 Stat., 261). See proclamation of September 26, 1906 (34 Stat., 3237).

(g) IN WYOMING.

TOWNSITES IN SHOSHONE OR WIND RIVER LANDS.

* * * * * *

Sec. 2. That the lands ceded to the United States under the said agreement shall be disposed of under the provisions of the homestead, townsite, coal and mineral land laws of the United States and shall be opened to settlement and entry by proclamation of the President of the United States on June fifteenth, nineteen hundred and six, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, and enter said lands except as prescribed in said proclamation until after the expiration of sixty days from the time when the same are opened to settlement and entry, * * *.

Lands entered under the townsite, coal and mineral-land laws shall be paid for in amount and manner as provided by said laws.

* * * * * *

Act approved March 3, 1905 (33 Stat., 1021). See proclamation of June 2, 1906 (34 Stat., 3212).

(h) IN MONTANA.

TOWNSITES IN CROW LANDS.

* * * * * *

Sec. 5. * * * That the lands not withdrawn for irrigation under said Reservation Act, which lands shall be determined under the direction of the Secretary of the Interior at the earliest practical date, shall be disposed of under the homestead, townsite, and mineral-land laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof; and no person shall be permitted to settle upon, occupy, or enter any of said lands, except as prescribed in such proclamation, until after the expiration of sixty days from the time when the same are opened to settlement and entry; * * *

That the price of said lands shall be four dollars per acre, when entered under the homestead laws, * * *

Lands entered under the townsite and mineral-land laws shall be paid for in amount and manner as provided by said laws, but in no event at a less price than that fixed herein for such lands, if entered under the homestead laws, * * *.

Act approved April 27, 1904 (33 Stat., 360 and 361). See proclamation of May 24, 1906 (34 Stat., 3204).

* * * * * *

TOWNSITES IN FLATHEAD LANDS.

Sec. 17. That the Secretary of the Interior is hereby authorized and directed to reserve and set aside for townsite purposes, and to survey, lay out, and plat into town lots, streets, alleys, and parks not less than forty acres of said land at or near each of the present settlements of Arlee, Dayton, Ravalli, Dixon, and Ronan, and not less than eighty acres at the present settlements of Saint Ignatius and Polson, and at such other places as the Secretary of the Interior may deem necessary or convenient for townsites, in such manner as will best subserve the present needs and the reasonable prospective growth of said settlements.

Such townsites shall be surveyed, appraised, and disposed of as provided in section twenty-three hundred and eighty-one of the United States Revised Statutes: Provided, That any person who, at the date when the appraisers commence their work upon the land, shall be an actual resident upon any one such lot and the owner of substantial and permanent improvements thereon, and who shall maintain his or her residence and improvements on such lot to the date of his or her application to enter, shall be entitled to enter, at any time prior to the day fixed for the public sale and at the appraised value thereof, such lot and any one additional lot of which he or she may also be in possession and upon which he or she may have substantial and permanent improvements: Provided further, That before making entry of any such lot or lots the applicant

shall make proof, to the satisfaction of the register and receiver of the land district in which the land lies, of such residence, possession, and ownership of improvements, under such regulations as to time, notice, manner, and character of proof as may be described by the Comissioner of the General Land Office, with the approval of the Secretary of the Interior: Provided further, That in making their appraisal of the lots so surveyed, it shall be the duty of the appraisers to ascertain the names of the residents upon and occupants of any such lots, the character and extent of the improvements thereon, and the name of the reputed owner thereof, and to report their findings in connection with their report of appraisal, which report of findings shall be taken as prima facie evidence of the facts therein set out. All such lots not so entered prior to the date fixed for the public sale shall be offered at public outcry in their regular order, with the other unimproved and unoccupied lots. That no lot shall be sold for less than ten dollars: And provided further, That said lots when surveyed, shall approximate fifty by one hundred and fifty feet in size.

Act of June 21, 1906 (34 Stat., 354, amending Acts April 23, 1904, 33 Stat., 302, and March 3, 1905, 33 Stat., 1048).

TOWNSITES IN BLACKFEET AND FORT PECK LANDS.

The paragraph relating to "Townsites" in the Act approved March 1, 1907 (34 Stat., 1039), relative to the townsites of Browning and Babb and such other townsites as may be reserved in the Blackfeet Indian Reservation, and section 14 of the Act approved May 30, 1908 (35 Stat., 563), relative to the townsite of Poplar and such other townsites as may be reserved in the "Fork Peck Indian Reservation," are in substance the same as section 17 in the Flathead Act above quoted, except that the Act concerning townsites in the Fort Peck Reservation grants a preference right of entry to five instead of two lots.

(i) IN WASHINGTON.

TOWNSITES IN COLVILLE LANDS.

* * * * * *

Sec. 11. That nothing contained in this Act shall prohibit the Secretary of the Interior from reserving from said lands, whether surveyed or unsurveyed, such tracts for townsite purposes, as in his opinion may be required for the future public interests, and he may cause any such reservation, or parts thereof, to be surveyed into blocks and lots of suitable size, and to be appraised and disposed of under such regulations as he may prescribe, and the net proceeds derived from the sale of such lands shall be paid to said Indians, as provided in section six of this Act:

* * * * * *

Approved March 22, 1906 (34 Stat., 82).

TOWNSITES IN SPOKANE LANDS.

* * * * * *

Sec. 4. That the Secretary of the Interior * * * is further authorized and directed to reserve and set aside such tracts as he may deem necessary or convenient for townsite purposes, and he may cause any such reservations to be surveyed into lots and blocks of suitable size and to be appraised and disposed of under such regulations as he may prescribe, and the net proceeds derived from the

sale of such lands shall be deposited in the Treasury of the United States to the credit of the Indians of the Spokane Reservation.

* * * * * *

Act approved May 29, 1908 (35 Stat., 459).

(j) IN IDAHO.

TOWNSITES IN COEUR D'ALENE LANDS.

* * * * * *

That the Secretary of the Interior shall reserve from said lands, whether surveyed or unsurveyed, such tracts for townsite purposes as in his opinion may be required for the future public interests, and he may cause any such reservations, or parts thereof, to be surveyed into blocks and lots of suitable size, and to be appraised and disposed of under such regulations as he may prescribe, and the net proceeds derived from the sale of such lands shall be paid to said Indians as provided in section seven of this Act:

* * * * * *

Act Approved June 21, 1906 (34 Stat., 337).

(k) IN CALIFORNIA AND ARIZONA

TOWNSITES IN YUMA AND COLORADO RIVER LANDS.

* * * * * *

There is also appropriated out of any money in the Treasury not otherwise appropriated, the further sum of five thousand dollars, or so much thereof as may be necessary, to enable the Secretary of the Interior to reserve and set apart lands for townsite purposes in the Yuma Indian Reservation, California, and the Colorado River Indian Reservation in California and Arizona, and to survey, plat, and sell the tracts so set apart in such manner as he may prescribe, the net proceeds to be deposited in the Treasury of the United States to the credit of the Indians of the reservations, respectively, to be reimbursed out of the funds arising from the sale of the lands.

* * * * * *

Act approved April 30, 1908 (35 Stat., 77).

(8) Townsites in Reclamation Projects.

* * * 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 appraisement 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 corpora-

tions the said reservations shall be conveyed to such corporations by the Secretary of the Interior, subject to the condition that they shall 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 the municipal purposes, any surplus power or power privilege, and the moneys 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 efficiency of the irrigation project.

Act approved April 16, 1906 (34 Stat., 116).

AMENDMENT TO ABOVE ACT.

* * * * * * *

Sec. 4. * * * Whenever, in the opinion of the Secretary of the Interior, it shall be advisable for the public interest, he may withdraw and dispose of townsites in excess of one hundred and sixty acres under the provisions of the aforesaid Act, approved April sixteenth, nineteen hundred and six, and reclamation funds shall be available for the payment of all expenses incurred in executing the provisions of this Act, and the aforesaid Act of April sixteenth, nineteen hundred and six, and the proceeds of all sales of townsites shall be covered into the reclamation fund.

* * * * * * *

Act approved June 27, 1906 (34 Stat., 520).

(9) Aliens May Acquire Town Lots in the Territories.

* * * * * * *

Sec. 2. * * * This Act shall not be construed to prevent any persons not citizens of the United States from acquiring or holding lots or parcels of lands in any incorporated or platted city, town, or village, * * * in any of the Territories of the United States.

* * * * * * *

Act approved March 2, 1897 (29 Stat., 618).

(10) Parks and Cemeteries.

That incorporated cities and towns shall have the right, under rules and regulations prescribed by the Secretary of the Interior, to purchase for cemetery and park purposes not exceeding one-quarter section of public lands not reserved for public use, such lands to be

within three miles of such cities or towns: Provided, That when such city or town is situated within a mining district, the land proposed to be taken under this Act shall be considered as mineral lands, and patent to such land shall not authorize such city or town to extract mineral therefrom, but all such mineral shall be reserved to the United States, and such reservation shall be entered in such patent.

Act approved September 30, 1890 (26 Stat., 502).

(11) Cemeteries.

That the Secretary of the Interior be, and he is hereby, authorized to sell and convey to any religious or fraternal association, or private corporation, empowered by the laws under which such corporation or association is organized or incorporated to hold real estate for cemetery purposes, not to exceed eighty acres of any unappropriated non-mineral public lands of the United States for cemetery purposes, upon the payment therefor by such corporation or association of the sum of not less than one dollar and twenty-five cents per acre: Provided, That title to any land disposed of under the provisions of this Act shall revert to the United States, should the land or any part thereof be sold or cease to be used for the purpose herein provided.

Act approved March 1, 1907 (34 Stat., 1052).

TOWNSITE REGULATIONS.

(12) County-Seat Townsites.

Under Section 2286, U. S. Rev. Stats., 160 acres of public land may be entered, at the minimum price therefor, by a county or parish, for the establishment therein of a seat of justice, the proceeds of the sale of a tract so entered to be devoted to the erection of public buildings in the county or parish making the entry.

The application should cite said section of the statute and describe the land applied for by legal subdivisions, and be signed by an officer of the county or parish authorized to do so by an order of the county or parish board, and such application should be filed in the proper local land office, together with the notice of intention to make proof in the form prescribed by Act approved March 3, 1879 (20 Stat., 472).

Proof and Payment.—The land must be paid for at the government price per acre after proof has been furnished satisfactorily showing—

First. Six weeks' publication and posting of notice of making proof as in homestead and other cases.

Second. The official character of the officer filing the application and the properly certified record proof of his authority therefor.

Third. The due establishment, under the laws of the State or Territory, of the seat of justice for the county upon the land applied for, and also a reference to the law creating such county.

Fourth. That the land applied for is unappropriated public land.

The corporate name of the county must be inserted in the granting clause of the certificate of entry.

(13) Townsite Reserved by President.

Under Section 2380, U. S. Rev. Stats., public land may be reserved by the President for townsite purposes on his own motion, or peti-

tions may be addressed to him therefor, setting forth facts warranting his action under said section, duly verified by the affidavit of one or more persons, such petitions to be filed with the President, the Department, or this office, or with the local officers for transmission to this office.

Survey and Appraisal.—Townsites reserved under section 2380, or under any other 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.

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.

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.

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.

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.

Combinations in restraint of the sale or 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.

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.

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.

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.

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.

(14) Townsites Platted by Occupants.

Title to lots and blocks in an established town on public land may be acquired under sections 2382 to 2386, inclusive, U. S. Rev. Stats.

Survey and Plat.—The occupants, at their own expense, must cause a survey of the land into lots, blocks, streets and alleys to be made, and the plat and field notes thereof to be filed with the Recorder of the county in which the land is situated. The plat must show (1) that the land does not include an area in excess of 640 acres, unless the lots, buildings, and improvements cover a greater area, and then only to the extent so occupied and improved; (2) that the boundaries of the land are correctly shown and described thereon according to the lines of the public surveys, or if not so surveyed, then that the exterior lines of the townsite survey are tied to a designated, permanent, and thoroughly identified monument; (3) that the streets, squares, blocks, lots, and alleys, the dimensions of the same, with measurements, courses, and area of each municipal subdivision, and the name of the town are correctly delineated thereon; and (4) the exterior lines of all existing railroad rights of way and station grounds. The lots should not exceed 4,200 square feet, except in cases where the configuration necessitates a different area. The above required facts should be verified by the oath of the surveyor entered upon the margin of the plat.

A statement of the extent and general character of the improvements on the land must be filed with the plat and field notes, and such plat and statements must be verified by the oath of the party acting for and in behalf of the occupants of the land.

Transcript of Plat and Statement.—Within one month after filing such plat, field notes, and statement, a transcript thereof in duplicate, each duly verified by the certificate of the County Recorder, and accompanied by the testimony of two witnesses that such town has been established in good faith, and showing the number of inhabitants thereof, and when it was so established, shall be filed with the Register and receiver of the land office in which the townsite is located, who will immediately transmit the same to this Office for consideration, and upon the approval thereof one of said

duplicate plats and statements will be returned to the local officers for their files.

Notice of Filing Plat.—On filing such plat and statement the Register and Receiver will prepare and conspicuously post in their office a notice to the effect that the official plat of such townsite has been filed in their office, and that they are ready to receive applications by lot occupants to make proof for and purchase the lots occupied by them, respectively. The newspapers in the vicinity should be given copies of the notice as an item of news, and such other publicity should be given it as can be done without expense.

Adjustment to Lines of Public Survey.—When the townsite is upon land over which the township surveys have not been extended, the Surveyor-General will be notified of the townsite survey and be furnished by this Office with an outline plat showing the exterior lines thereof, with courses and distances, the date of the survey and the approval thereof, and thereafter when the township surveys have been extended over the land the exterior lines of the townsite may be adjusted thereto where it can be done without impairing vested rights.

Department May Make Townsite Survey.—Refusal or failure to file such transcript, plat, field notes, and statement, with the testimony, as above required, within twelve months from the establishment of a town on the public domain, will authorize the Secretary of the Interior to cause a survey and plat to be made thereof, the lots in which shall be disposed of at an increase of fifty per centum on the minimum price.

The minimum price for all lots of 4,200 square feet or less is $10 per lot, except in cases where the Secretary of the Interior causes the survey into lots and blocks to be made by the Government, in which case the minimum price is $15 per lot for such lots. The minimum price for all lots in excess of 4,200 square feet will be computed by adding to said minimum price of $10 or $15, as the case may be, the sum of $4 for each additional 1,000 square feet or fractional part thereof in excess of 4,200 square feet.

A preemption right of purchase at the minimum price, at any time before the day fixed for the public sale, of not exceeding two lots, is accorded an actual resident, to secure which he must file in the local Office his application therefor, and therein state the date of settlement, the value and character of his improvements thereon, that he is 21 years of age or over or the head of a family, and that he is a citizen of the United States or has declared his intention to become such. The notice of intention to make proof must be filed and the notice for publication must be issued, published, and posted at the applicant's expense as in ordinary cases and in manner and form and for the time as provided in the Act of March 3, 1879 (20 Stat., 472).

Preemption proof may be made before the Register and Receiver, or any officer duly authorized by law, and must show by record or documentary evidence where such evidence is usually required, and where not so required by the testimony of witnesses, (1) due publication of the Register's notice; (2) the claimant's age; (3) his citizenship; and (4) his actual residence upon one lot and substantial improvements on the second lot, if two lots be included in

the application. The proof must embrace the testimony of the applicant and of at least two of his advertised witnesses. The purchase price for the lot or lots must be paid to the Receiver when the proof is made. Entry of public lands under other laws, or in other townsites, or ownership of more than 320 acres, will not disqualify an applicant from making such entry. No entry can be made of an improved lot on which the claimant does not reside unless his residence lot is included in the same or a previous entry.

Hearings will be ordered and conducted in accordance with the Rules of Practice where two or more adverse applications are filed for the same lot, or where a sufficient contest affidavit is filed against an application, on or before the day fixed for making proof, but no purchase money will be collected from the applicants until the final determination of the case, whereupon the successful applicant will be required to pay the purchase price within thirty days from notice thereof.

Mineral surveys, locations, applications, and entries covering lots in such townsites will not prevent the entry of such lots hereunder and the issuance of patent thereon, but such mineral claims, if held under prior and valid mineral rights, are amply protected by the law from prejudice by the allowance of such town-lot entries and patents, and paramount patents may be issued thereafter to such mineral claimants.

Mineral Patents.—Lots wholly covered by outstanding mineral patents are not subject to entry under the townsite law, and applications therefor will be rejected. Lots partly covered by mineral patents may be entered at the price fixed for the whole lot, but the certificate and receipt must contain at the end of the description an exception clause as follows: "Excepting and excluding the portion of said lot (or lots) embraced in mineral patent (or patents) heretofore issued."

Millsites.—The continued use and occupation within a townsite of a duly located millsite claim under section 2337, U. S. Rev. Stats., from a time prior to a settlement and occupation thereon for townsite purposes, will defeat the rights of the claimant under the townsite laws to any part of the land within such millsite.

Railroad rights of way and station grounds, when approved by the Department, are subject to all valid rights existing at the date of filing the application for such rights of way or station grounds.

Forfeiture of Preemption Right.—All right to preempt and purchase occupied and improved lots for which no entry has been allowed prior to or on the date fixed for the public sale will be forfeited unless a contest be pending thereon as hereinbefore provided, and such lots will be offered for sale together with the unoccupied lots. When notified of the date fixed for the public sale, the Register and Receiver will refuse to receive or consider any such application for entry where due publication could not be had and proof made thereon prior to the date so fixed for the public sale.

Public Sale.—The notice of public sale will be prepared and published in the form and manner herein provided for the sale of town lots under section 2381, U. S. Rev. Stats., and the sale will be conducted in the same manner and subject to the same restrictions, except that no lot shall be sold for less than the minimum price

herein fixed therefor, and such lots as may not be so disposed of shall thereafter be liable to private entry at such minimum, or at such reasonable increase or diminution as the Secretary of the Interior may order from time to time after at least three months' notice. Certificates and applications for private entry must be issued and filed in manner and form as provided in the regulations under said section 2381.

(15) Townsites Entered by Corporate Authorities or Judges of County Courts as Trustees.

Segregation by Townsite Settlement.—Public lands settled upon and occupied as a townsite are thereby segregated from entry under the agricultural land laws, and may be entered under sections 2387 to 2389, subject to the restrictions contained in sections 2386 and 2391 to 2393, inclusive, U. S. Rev. Stats.

Entries, by Whom Made.—If the town is incorporated the entry must be made by the corporate authorities or by the Mayor or other principal officer authorized so to do by resolution or ordinance of the Town Board or City Council. If the town is not incorporated, the entry must be made by the Judge of the County Court upon petition addressed to him therefor, signed by such number of actual occupants of lots therein as may be required by the laws of the State or Territory in which the town is situated. Private individuals, organizations, or corporations are not authorized to make such entries.

A Double Trust.—The entry must be made in trust (1), as to the occupied lots, for the several use and benefit of the occupants thereof according to their respective interests, and (2) as to the unoccupied lots, for the use and benefit of the municipality, the public, or the occupants collectively as a community. Such entries can not be made for the benefit of one individual, or organization, or corporation, but only for the benefit of the actual inhabitants and occupants of an established town. Prospective townsites can not be so entered.

The execution of the trust as to the disposal of the lots and the proceeds of sales is to be conducted under regulations prescribed by the State or Territorial laws. Acts of trustees not in accordance with such regulations are void.

The amount of land that may be entered under this Act is proportionate to the number of inhabitants. One hundred and less than two hundred inhabitants may enter not to exceed 320 acres; two hundred and less than one thousand inhabitants may enter not to exceed 640 acres; and where the inhabitants number one thousand and over an amount not to exceed 1,280 acres may be entered; and for each additional one thousand inhabitants, not to exceed five thousand in all, a further amount of 320 acres may be allowed. When the number of inhabitants of a town is less than one hundred the townsite shall be restricted to the land actually occupied for town purposes, by legal subdivisions.

Unsurveyed public land upon which a town has been established may be entered hereunder. In such case a special survey should be procured by application to the Surveyor-General therefor, the cost of which survey will be paid out of the general appropriations for public surveys. When the plat of such survey is filed in the local Office, application may be made to enter the land described therein.

Declaratory statements may be filed as the initiatory step for the

entry of the land in all cases where the occupants are not ready to apply for entry, and should be so filed in order to protect their rights. The statement should be signed and filed by the officer entitled to make entry under the law, and should show the number of inhabitants, that the land is occupied for trade, business, and other townsite purposes, and the date when first so occupied, and declare the purpose of the occupants to enter it under the townsite laws. It should include only such lands as the town is entitled to enter by Government subdivisions where surveyed, and if not surveyed the land should be described so it may be easily identified.

Proof.—The notice of intention to make proof must be filed and the notice for publication must be issued, published, and posted at the applicant's expense as in ordinary cases, and in manner and form and for the time provided in the Act of March 3, 1879 (20 Stat., 472). The proof may be made before the Register and Receiver or any officer duly authorized by law, and must show, by record or documentary evidence, where such evidence is usually required, and where not so required by the testimony of at least two of the advertised witnesses, (1) due publication of the Register's notice; (2) if an incorporated town, proof of incorporation, which should be a certified copy of the order of incorporation, or if by legislative enactment, a citation to such act; (3) certified record evidence of the election, qualification, and the authority of the officer making entry; (4) the number of townsite occupants and claimants on each occupied Government subdivision; (5) the number of inhabitants in the townsite; (6) the character, extent, and value of townsite improvements located on each Government subdivision; and (7) the date when the land was first used for townsite purposes.

Restrictions.—First. Area.—Entry can not be made hereunder of a greater quantity of land than 2,560 acres, unless the excess in area is actually settled upon, inhabited, improved, and used for business and municipal purposes.

Second. Unpatented Mineral Claims.—Under said sections 2386, 2392, and section 16 of the Act of March 3, 1891 (26 Stat., 1101), the title to lands acquired hereunder will be subject to all valid prior rights to unpatented mining claims or possessions held under existing law, and paramount patents may be issued thereafter to such mineral claimants, notwithstanding the prior townsite patent.

Third. Patented Mineral Claims.—All lands covered by patented mineral claims must be omitted from the townsite entries hereunder. Government subdivisions of land, made fractional by the omission of such patented claims, will be designated by lot numbers on a segregation diagram prepared by the Surveyor-General.

Fourth. Reservations for the use of the United States Government are not subject to entry hereunder.

Fifth. Millsites.—The continued use and occupation within a townsite of a duly located millsite claim under section 2337, U. S. Rev. Stats., from a time prior to a settlement and occupation thereof for townsite purposes, will defeat the rights of the claimant under the townsite laws to any part of the land within such millsite.

Sixth. Railroad rights of way and station grounds, when approved by the Department, are subject to all valid rights existing at the date of filing the application for such rights of way or station grounds.

Change of Method of Entry.—Where proceedings have been had for the entry of lots under sections 2382 to 2386, inclusive, U. S. Rev. Stats., but no patent has issued thereunder, the occupants may avail themselves, if the town authorities choose to do so, of the provisions of said sections 2387 to 2389 and make proof and entry thereunder: Provided, however, that in addition to the minimum price for the land applied for there shall be paid, before patent issues therefor, by the parties applying for such change of entry, all costs of surveying and platting such townsite and expenses incident thereto incurred by the Government under the provisions of said sections 2382 to 2386. On application to this Office the applicants will be informed of the amount of said expense to be paid in excess of the purchase price of the land in order to effectuate such change of entry.

Additional Entries.—Where townsite entry has been or may hereafter be made, under the provisions of said sections 2387 to 2393, additional entries may be made, under the provisions of section 4 of the Act approved March 3, 1877 (19 Stat., 392), of such contiguous tracts as may be occupied for townsite purposes, but such additional entry shall not, together with all prior entries made for such townsite, be in excess of the area to which the town may be entitled at date of the additional entry by virtue of its population as prescribed in said section 2389: Provided, however, that such area shall not exceed 2,560 acres. Such additional entries will be made in the same manner and under the same regulations as are herein provided for entries under said sections 2387 to 2393, inclusive.

Entry and Payment.—When townsite proof has been submitted hereunder the Register and Receiver will, if they approve the same, forward it to this office with their recommendation thereon, without collecting the purchase money and without issuing the final papers. If the proof submitted to this office is found satisfactory the local officers will be notified thereof, and if no objections exist in their office they will notify the applicant thereof, and on payment of the minimum price fixed by the law for the purchase of the land they will issue the final papers. (See Circular of January 6, 1904, 32 L. D., 481.)

(16) Townsites on Mineral Lands.

In view of the numerous inquiries touching the rights of claimants for mineral lands situated within townsites, as opposed to rights which may be acquired to such lands under the townsite laws, it is deemed appropriate to herein recite the principal rules applicable to the subject, so far as they seem clear from the law itself or are indicated by the trend of adjudicated cases.

The general townsite laws, comprised in secs. 2380 to 2394, U. S. Rev. Stats., authorize the entry of townsites, or the sale of lots therein, upon public lands which may include unpatented mineral claims, but the rights of mineral claimants upon any land entered or sold under said townsite laws are expressly protected by secs, 2386 and 2392. These two sections recognize the superior rights, as against any townsite claimant—whether corporate, community, or individual—of all claimants for mineral veins possessed agreeably to local custom, or for any valid mining claim or possession held

under existing law. The precedence and superiority so accorded to mineral claims, however, depend in final analysis upon the question of fact whether, at date of townsite entry or lot sale, the lands claimed under the mining laws were "known to contain minerals of such extent and value as to justify expenditures for the purpose of extracting them" (31 L. D., 87). Where an affirmative showing in such behalf is made in due course by the mineral claimant, his right to a patent for the land (subject to the distinction hereinafter noted as to incorporated towns) will not be prejudiced by any previous townsite entry, deed, or patent covering the same land (26 L. D. 144; 29 L. D., 426; 32 L. D., 211; 34 L. D., 276 and 596).

Under said general townsite laws, as construed by the Department and the courts, an entry including unpatented mineral lands may be made for an incorporated town as well as for an unincorporated town, the law requiring that in the former case the entry shall be made by the corporate authorities, and in the latter by the County Judge (34 L. D., 24). While such general right of entry by or for incorporated towns and cities is therefore independent of anything contained in sec. 16 of the Act of March 3, 1891 (26 Stats., 1095), it will be seen that that section in terms announces the right to enter mineral lands. The protection afforded to mineral claims by the body of sec. 16 is similar to that given generally in said secs. 2386 and 2392, Rev. Stats., but the proviso to sec. 16 is as follows:

> Provided, That no entry shall be made by such mineral-vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral-vein applicant.

This Department has never viewed said proviso as warranting, under any circumstances, the allowance of entry for a mineral vein independently of "the surface ground appertaining thereto," nor is such an entry provided for in the general mining laws. But said proviso creates one distinction between unincorporated and incorporated towns as regards the relative rights of townsite occupants and mineral claimants, which is, that whereas the townsite patent will, in either case, carry absolute title to any mineral not known to exist at the date of townsite entry, the adverse rights of mineral and town-lot claimants within incorporated towns are hinged, upon priority of initiation. That is to say, that after entry is made for such town, no entry by a mineral-vein applicant will be allowed for any land owned and occupied under the townsite law by a party whose possession antedated the inception of the mineral applicant's claim, even though such land was known, at date of the townsite entry, to contain valuable minerals.

Subject to the distinction above noted, the foregoing principles apply to all mineral claims within townsites entered or disposed of under any of the laws above mentioned, and also to mineral claims within townsites disposable under special Acts containing no reference to the rights of mining claimants.

The law does not require that townsite entries shall exclude any mineral claim or possession except such as may have been patented (29 L. D., 21). Mineral claims which have not been patented may be excluded from a townsite entry at the option of the townsite applicant, who must, in that event, furnish satisfactory proof that the exclusion covers a "valid mining claim or possession held under existing law" (33 L. D., 542). The exclusion of a millsite claim

from a townsite entry is necessary only in cases where the millsite claimant shall have been in occupation of the ground, under regular location, from a time antedating its occupation for townsite purposes. The issue of priority in such cases may be raised by the townsite applicant, the millsite claimant, or the Government.

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(17) Townsites on Ceded Indian Reservations.

(a) IN OKLAHOMA.

How Entered.—Under section 22 of the Act approved May, 2, 1890 (26 Stat., 91), townsite entries may be made in the same manner, under the same regulations, and for the same purchase price herein provided for entries under sections 2380 and 2381, 2382 to 2386, or 2387 to 2394, U. S. Rev. Stats., except that the following additional proof is required:

Public Reserves.—Triplicate plats of the survey of the townsite into lots and blocks must be made and filed with the local officers at the time of submitting proof, showing the reservation of not less than ten nor more than twenty acres for park, school, and other public purposes. Such plats shall be made on tracing linen and on a scale of 100 feet to 1 inch, and be provided with a margin sufficient to contain the verifications of the surveyor and the applicant acting for the town and the approval thereof by the proper officer of the Land Department. The name of the townsite must be stated on the plats, and they must contain a description of the land and the exterior boundaries thereof, according to the lines of the public surveys, and must exhibit the streets, squares, blocks, lots, and alleys, the courses and distances of the exterior lines of the squares, the width and courses of the streets and alleys, the size of the regular lots and blocks, and if a lot or block is irregular in shape the dimensions and courses of the lines of each should be indicated, so the area thereof may be readily computed, and the area of each reserve and the particular public purpose for which the reserve is made must be designated thereon. The exterior lines of all existing railroad rights of way and station grounds should also be delineated on the plat. Whenever an entry is made adjacent to a town already in existence, the streets must conform to the streets already established, and this must be stated in the affidavit of the surveyor upon the margin of each plat, which affidavit must also contain a statement showing the correctness of the survey and plats of the land, describing it, and giving the aggregate area of the tracts reserved for public purposes. The affidavit of the applicant upon the margin of each plat shall contain the statement that the application for the described tract of land as the townsite of ——— is made under the provisions of section 22 of the Act of May 2, 1890 (26 Stat., 91); that all streets, alleys, parks, and reservations are dedicated to public use and benefit; and that the plat is correct according to the survey made by the proper surveyor. Upon the receipt of such proof and plat by this office, if found to be satisfactory, the plats will be approved by the Commissioner, and two of them will be returned to the local officers, one to be retained in their files and one to be given to the applicant for filing with the Recorder of the proper county, and the local officers will be directed to take such

further action as may be prescribed by the law and regulations under which the application is made.

Homestead Commutations for Townsites.—Applications to commute homestead entries, or portions thereof, for townsite purposes under the provisions of the second proviso of section 22 of the Act approved May 2, 1890 (26 Stat., 91); will be addressed to the Secretary of the Interior and be filed in the District Land Office. The application may be on Form 4-001, and may be made for the commutation of the whole or a part of the homestead entry, but must be by full legal subdivisions, and any application for less than a full legal subdivision or for land involved in any contest will not be recognized.

Proof.—Notice of intention to make proof and the notice for publication shall be the same in all respects as that required of a claimant in making final homestead proof, with the addition that it shall state that said proof will be made under section 22 of the Act of May 2, 1890. Proof by the claimant and two of his advertised witnesses must be furnished showing—

First. Due publication of notice as in ordinary cases.

Second. That the land is required for townsite purposes.

Third. Due compliance by the entryman with the provisions of the law and of the President's proclamation under which settlement of the land became permissible.

Fourth. The claimant's citizenship and qualifications in all other respects as a homesteader, the same as in making final homestead or commutation proof.

Fifth. Due compliance by the claimant with all the requirements of the homestead law up to the date of submitting proof.

Plats.—At the time of submitting proof the entryman shall file therewith triplicate plats of the survey of the land into lots, blocks, streets, and alleys, in the same form and manner, and containing reservations of not less than ten nor more than twenty acres, as required by the regulations herein for the entry of townsites under said section 22, the same to be duly verified by himself and the surveyor as in said regulations required, except that his oath shall show that his application is made under the provisions of the second proviso of said section 22.

Purchase Price.—At the time of submitting the proof and plats, except as hereinafter provided, the claimant shall tender to the Receiver a draft on New York, made payable to the order of the Secretary of the Interior, for the purchase price of the land, exclusive of the portions reserved for public purposes, at the rate of ten dollars per acre. The Register and Receiver will thereupon transmit the application, proof, and plats to this office with their joint report as to the status of the land, and at the same time they will transmit the draft to the Secretary of the Interior, making reference in each letter to the other.

Approval.—If the proof and plats are found by this office to be in accordance with these regulations and sufficient in form and substance, they will be forwarded to the Secretary of the Interior with recommendation that they be approved. Should they be so approved and the receipt of the purchase price of the land be acknowledged by the Secretary, one of the plats will be retained in this office and the other two will be returned to the District Land officers , one to

be retained by them and the other delivered to the applicant to be by him filed in the office of the Recorder of Deeds of the proper county, and the Register will be directed to issue his certificate for the land embraced in said plats, excepting and excluding therefrom the tracts reserved for public purposes as designated on said plats. Receipts of the purchase money having been acknowledged by the Secretary of the Interior, no receipt will be issued by the Receiver.

Notation on Records.—On the issuance of the certificate of entry the Register and Receiver will note on their records the commutation of the applicant's homestead entry, in whole or in part, as the case may be. When patent is ready for delivery the entryman will be required, before the patent shall be delivered, to surrender his duplicate homestead receipt for transmittal to this office, if the entire homestead entry is commuted, or to have the commuted entry noted thereon and the same then returned to him, if commuted only in part.

Contests and Protests.—Where an affidavit of contest or protest against the allowance of an application hereunder is filed at the time of submitting proof, or prior thereto, containing sufficient allegations, made and corroborated under oath to warrant a hearing, and the further allegation that the same is not initiated for the purpose of harassing the claimant and extorting money from him under a compromise, but in good faith to prosecute the same to a final determination, the Register and Receiver will take appropriate action thereon in accordance with the Rules of Practice. The local officers will not require tender of the purchase price of the land until the final determination of the case favorable to the application to purchase, and when so advised they must require the applicant to immediately tender a New York draft for such purchase price, made payable to the Secretary of the Interior, and on receipt thereof they will transmit it to the Secretary and advise this office thereof. Contest or protest affidavits filed after transmittal of proof will not be considered by the Register and Receiver, but will be immediately transmitted to this office. Appeals lie from the decisions of the Register and Receiver to this office, and from the decision of this office to the Secretary of the Interior, as in other cases, and all procedure thereon will be governed by the Rules of Practice.

Disposition of Proceeds.—The moneys derived from the commutation of homestead entries for townsite purposes will be paid over to the proper authorities of the municipalities when organized, upon the receipt of the following required proof:

First. A duly certified copy, under seal of the order of the board of County Commissioners, declaring that the specified territory shall, with the assent of the qualified voters, be an incorporated town; also the notice for a meeting of the electors, as required by paragraph 5 of article 1, chapter 16, of the statutes of Oklahoma.

Second. A like certified copy of the statement of the inspectors filed with the Board of County Commissioners, also a like certified copy of the order of said board, declaring that the town has been incorporated, as provided by paragraph 9 of said article 1.

Third. A like certified copy of the statement of the inspectors, filed with the County Clerk, declaring who were elected to the

office of trustees, clerk, marshal, assessor, treasurer, and justice of the peace, as provided by paragraph 16 of said article 1.

Fourth. A like certified copy, by the town clerk, of the proceedings of the board of trustees electing one of their number president; also a copy of the qualifications to act, by each of the officers mentioned, as provided by paragraph 19 of said article 1.

Fifth. A certified copy by the town clerk, of the proceedings of the board of trustees, designating some officer of the municipality to make application for and to receive the money to be paid by the Secretary of the Interior.

Sixth. A proper application for the money by said designated officer.

Said application shall be addressed to the Secretary of the Interior and may either be filed in the District Land Office for transmittal to this office or forwarded by the municipal authorities direct to this office. When the same is received by this office, if the application and accompanying evidence are in accordance with the requirements herein mentioned, it will be transmitted to the Secretary of the Interior and when approved by him the money will be paid over to the designated officer to be used by the municipality for school purposes only as required.

Public Reserves, How Entered.—Applications for patents to the tracts reserved for public purposes, in all towns in Oklahoma created under said section 22 or under any other Act where tracts have been reserved for such purposes under said section 22, may be filed on behalf of the municipalities whose corporate limits cover the land in which such reservations are situated. The application should be made by the Mayor or other proper municipal officer, and describe the reservations to be patented according to the approved plats of said townsite, and the same should be accompanied with the proof of the municipal organization of the town similar to that above provided for the disposition of the proceeds derived from the commutation of homestead entries for townsite purposes under said section 22, and proof must also be filed therewith of the authority of the officer filing the application to make the same with the proper record evidence of his election and qualification as such officer. The application and proof must be filed in the District Land Office, and if the officers thereof find the same sufficient under these regulations the Register will issue the certificate of entry in the form provided therefor.

Reservations in Vacated Townsites.—Under the Act approved May 11, 1896 (29 Stat., 116), where a townsite or an addition to a townsite, in a homestead commuted to a townsite entry under the second proviso of section 22 of the Act Approved May 2, 1890 (26 Stat., 91), has been vacated under the laws of Oklahoma, and patents for the public reservations therein have not been issued, such reservations will be disposed of in the following manner:

First. Application and Proof by the Original Entryman.—Application for a patent to such reservations may be filed by the original entryman within six months from the vacation of the townsite, and proof must be filed by him, with the Register and Receiver, of the due vacation of such townsite in accordance with the requirements of the laws of Oklahoma, which proof must consist of a copy of the record evidence of such vacation duly certified Such proof

must also be accompanied with evidence that the corporate authorities of the municipality, if one be organized, in which the reservations were situated prior to such vacation, have been personally served thirty days prior to making such proof with notice of the application and of the date the proof will be made. If the proof be found sufficient the entry will be allowed for the reservations as described in the townsite plat upon receipt of the payment of the homestead price. If the municipality is represented at the time of making proof, it may be heard in opposition to the application and decision be rendered thereon subject to appeal as in other cases.

Second. Reservations Disposed of as Isolated Tracts.—In case of the failure of the original entryman to apply for patent to such reservations within six months from the vacation of such townsite, or in case such reserves have been patented to the municipality and it has ceased to exist by reason of such vacation, the reservations will be disposed of as isolated tracts under the provisions of section 2455, U. S. Rev. Stats., and the acts amendatory thereof, and the regulations issued thereunder.

Third. Reservations may be sold by an existing municipal corporation, upon the vacation of the townsite, where patent has been issued to such municipality therefor, the proceeds of such sale to be covered into the school fund of such corporation. See case of City of Enid (30 L. D., 352).

(b) IN MINNESOTA.

Townsites in ceded Indian lands under the Act approved February 9, 1903 (32 Stat., 820), will be disposed of in accordance with the regulations herein provided for townsites created under sections 2380 and 2381, 2382 to 2386, or 2387 to 2393, U. S. Rev. Stats.

(c) IN SOUTH DAKOTA.

Townsites in Rosebud ceded Indian lands in Tripp County, under the Act approved March 2, 1907 (34 Stat., 1230 and 1231), will be disposed of in accordance with the regulations herein provided for the disposal of townsites under section 2381, U. S. Rev. Stats.

(d) IN NORTH AND SOUTH DAKOTA.

Townsites in Cheyenne River and Standing Rock Indian lands, under the Act approved May 29, 1908 (35 Stat., 461 and 463), will be disposed of in accordance with the regulations herein provided for the disposal of townsites under section 2381, U. S. Rev. Stats.

(e) IN UTAH.

Townsites in the Uintah Indian lands, under Act approved March 3, 1905 (33 Stat., 1069), will be disposed of in accordance with the regulations herein provided for townsites created under sections 2380 and 2381, 2382 to 2386, or 2387 to 2393, U. S. Rev. Stats.

(f) IN NEVADA.

Townsites in the Walker River Indian lands, under Act approved May 27, 1902 (32 Stat., 261), will be disposed of in accordance with the regulations herein provided for townsites created under sections 2380 and 2381, 2382 to 2386, or 2387 to 2393, U. S. Rev. Stats.

(g) IN WYOMING.

Townsites in Shoshone or Wind River Indian lands, under Act approved March 3, 1905 (33 Stat., 1021), will be disposed of in accordance with the regulations herein provided for townsites created under sections 2380 and 2381, 2382 to 2386, or 2387 to 2393, U. S. Rev. Stats.

(h) IN MONTANA.

Townsites in Crow Indian lands, under Act approved April 27, 1904 (33 Stat., 360 and 361), will be disposed of in accordance with the regulations herein provided for townsites created under sections 2380 and 2381, 2382 to 2386, or 2387 to 2393, U. S. Rev. Stats.

Townsites in Flathead Indian Lands—Survey and Appraisal.—Under the Act approved June 21, 1906 (34 Stat., 354), townsites may be selected and reserved by the Secretary of the Interior, and thereafter they will be surveyed and platted into lots, blocks, streets, and alleys, and the lots appraised in accordance with the regulations in this circular provided for townsites surveyed, platted, and appraised under section 2381, U. S. Rev. Stats., but the appraisers shall, in addition to the work in such regulations required, also ascertain the names of the residents upon, and occupants of, any lots in such townsite, the character and extent of the improvements on such lots, and the name of the reputed owner thereof, and they shall report their findings thereon in connection with their report of appraisals, which report of findings shall be taken as prima facie evidence of the facts therein set out.

Filing of Plat and Appraisement.—When the plat and appraisement lists are approved, the same will be sent to the Register and Receiver for filing, and immediately on receipt thereof they will prepare a notice to the effect that such plat and list have been filed with them, stating the date thereof, and that they are ready to receive applications to make proof and entry for improved lots by persons claiming a preference right to enter the same at the appraised price, which applications and the proof thereon must be filed and made in time to secure entry prior to the date fixed for the public sale. Such notice will be given publicity by posting a copy thereof in a conspicuous place in the Register's office, by giving copies thereof to the local newspapers as an item of news, by transmitting copies thereof to the postmaster in each townsite in which there is a post-office, and where there is none, then to the postmaster nearest the land, with a request that he post the same in a conspicuous place in his office, and by giving such further publicity thereto as may be done without incurring expense.

Preference Right, Application, and Proof.—A preference right of entry, at the appraised price, of not exceeding two lots, is accorded an actual resident, to secure which entry the claimant must file in the District Land Office, in time to make proof and secure entry thereof prior to the date of public sale, an application therefor, showing that at the date the appraisers commenced their work upon the land the claimant was an actual resident upon one of the lots applied for, and the owner of substantial and permanent improvements thereon, and also the owner at said date of sub-

stantial and permanent improvements upon the other lot, if two are applied for, and that such residence and improvements have been maintained thereon to date of filing application. A notice of intention to make proof must be filed and the notice for publication must be issued, published, and posted at the applicant's expense, as in ordinary cases, and in manner and form and for the time provided in the Act approved March 3, 1879 (20 Stat., 472).

The proof may be made before the Register and Receiver or any officer duly authorized by law, and must show, by record or documentary evidence where such evidence is usually required, and where not so required, by the testimony of witnesses, (1) due publication of the Register's notice; (2) the applicant's possession of and actual residence upon one of the lots applied for and his or her ownership of substantial and permanent improvements thereon at the date the appraisers commenced their work upon the land; (3) his or her possession and ownership of substantial and permanent improvements upon the other lot at the date the appraisers commence their work upon the land, if two lots are applied for; (4) the maintenance of such residence, possession, and improvements to date of filing the application; and (5) applicant's age, and if a minor or a married woman, whether he or she lives separate and apart from his or her parents and husband. The proof must embrace the testimony of the applicant and of at least two of his advertised witnesses. The appraised purchase price of each lot must be paid to the Receiver at the time of submitting proof, except as hereinafter provided, and if the proof is found sufficient entry will be issued thereon.

Forfeiture, Qualification, and Restrictions.—All preference right of entry of improved or occupied lots, unentered on the day fixed for the public sale, will be forfeited, unless a contest be pending thereon as hereinafter provided, and such lots will be offered at public outcry in their regular order with the other unimproved and unoccupied lots. When notified of the date fixed for the public sale, the Register and Receiver will refuse to receive or consider any such application for entry where due publication could not be had and proof made thereon prior to the date so fixed for the public sale. Entry of public land under other laws, or in other townsites, or ownership of more than 320 acres will not disqualify an applicant. No entry can be made of an improved lot on which the claimant does not reside, unless his or her residence lot is included in the same or a previous entry.

Contests.—Hearings will be allowed and conducted in accordance with the Rules of Practice where two or more adverse applications are filed for the same lot, or where a sufficient contest or protest affidavit is filed against an application on or before the day fixed for making proof, but no purchase money will be collected from the applicants until the final determination of the case, whereupon the successful applicant will be required to pay the purchase price within thirty days from notice thereof.

Public Sale.—The notice of public sale will be prepared and published in the form and manner herein provided for the sale of town lots under section 2381, U. S. Rev. Stats., and the sale will be conducted in the same manner and be subject to the same restric-

tions, and the certificates and applications for private entry must also be issued and filed in manner and form as provided in the regulations under said section 2381.

Townsites in Blackfeet and Fort Peck Indian Lands.—That portion of the Act approved March 1, 1907 (34 Stat., 1039), relating to townsites in the Blackfeet Indian lands, and section 14 of the Act approved May 30, 1908 (35 Stat., 563), relating to townsites in the Fort Peck Indian lands, will be administered in accordance with the regulations in this circular provided for townsites in the Flathead Indian lands, except that in townsites in the Fort Peck Indian lands five lots instead of two may be awarded preference-right claimants, under the conditions and restrictions provided in said regulations for the entry of two lots.

(i) IN WASHINGTON.

Townsites in Colville and in Spokane Indian lands under the Acts approved March 22, 1906 (34 Stat., 82, sec. 11), and May 29, 1908 (35 Stat., 459, sec. 4), respectively, will be selected and reserved by the Secretary of the Interior, and will thereafter be surveyed, appraised, and disposed of in accordance with the regulations in this circular provided under section 2381, U. S. Rev. Stats.

(j) IN IDAHO.

Townsites in Coeur d'Alene Indian lands, under Act approved June 21, 1906 (34 Stat., 337), will be selected and reserved by the Secretary of the Interior and thereafter surveyed, appraised, and disposed of in accordance with the regulations in this circular provided under section 2381, U. S. Rev. Stats.

(k) IN CALIFORNIA AND ARIZONA.

Townsites in Yuma and Colorado River Indian lands, under that portion of the Act approved April 30, 1908 (35 Stat., 77), relating to townsites in said lands, will be selected and reserved by the Secretary of the Interior and will be thereafter surveyed, appraised, and disposed of in accordance with the regulations in this circular provided under section 2381, U. S. Rev. Stats.

(18) Townsites in Reclamation Projects.

Withdrawal, Survey, Appraisement, 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 the regulations in this circular provided under section 2381, U. S. Rev. Stats. See Amendment, page 391½.

The public reservations in each town shall be improved and maintained by the town authorities at the expense of the town; and upon the organization thereof as a municipal corporation, said reservations shall be conveyed to such corporation in its corporate name, subject to the condition that they shall be used forever for public purposes. To secure such conveyances the municipality shall

apply through its proper officer for a patent to such reservations, and furnish proof in manner, form, and substance as required under the regulations in this circular for patents to public reserves in Oklahoma townsites under section 22 of the Act approved May 2, 1890 (26 Stat., 91).

(19) Parks and Cemeteries.

The right of entry under the Act approved September 30, 1890 (26 Stat., 502), is restricted to incorporated cities and towns, and each of such cities and towns shall be allowed to make entries of tracts of unreserved and unappropriated public land, by Government subdivisions, not exceeding, in all entries hereunder by such city or town, a quarter section in area, all of which must lie within three miles of the corporate limits of the city or town for which the entries are made.

Where on Unsurveyed Land.—If the public surveys have not been extended over the land sought by any city or town under the provisions of said Act, it shall first be necessary for the proper corporate authority to apply to the surveyor-general of the district in which the tract in question is located for a special survey of the outboundaries of such tract. The application should describe the character of the land sought to be surveyed and, as accurately as possible, its area and geographical location. Tracts covered by such special surveys must be as nearly as practicable in square form, and entries of the same will not be allowed until after the surveys shall have been approved by the surveyor-general and accepted by the Commissioner of the General Land Office. The current appropriation for "surveying the public lands" being applicable to the survey of "lines of reservations," as well as to the extension of the ordinary lines of the system of public-land surveys, the cost of the surveys of all unsurveyed lands selected under the provisions of said Act of September 30, 1890, will be paid for out of said appropriation, the same as the special surveys of the outboundaries of townsites and for like reasons (see case of Fort Pierre, 18 C. L. O., 117), and the deputies employed by the surveyor-general to execute such special surveys will report whether the land is either mineral in character or within an organized mining district.

Application and Proof.—An application for the purposes indicated herein can only be made by the municipal authorities of an incorporated city or town; and in all cases the entries will be made and patents issued to the municipality in its corporate name, for the specific purpose or purposes mentioned in said Act.

The land must be paid for at the Government price per acre, after proof has been furnished satisfactorily showing—

First—Six weeks' publication of notice of intention to make entry, in the same manner as in homestead and other cases.

Second. The official character and authority of the officer or officers making the entry.

Third. A certificate of the officer having custody of the record of incorporation, setting forth the fact and date of incorporation of the city or town by which entry is to be made, and the extent and location of its corporate limits.

Fourth. The testimony of the applicant and two published witnesses to the effect that the land applied for is vacant and unap-

propriated by any other party, and as to whether the same is either mineral in character or located within an organized mining district or within a mining region.

Fifth. In case the land applied for is described by metes and bounds, as established by a special survey of the same, that the applicant and two of the published witnesses have testified from personal knowledge obtained by observation and measurements that the land to be entered is wholly within 3 miles of the corporate limits of the city or town for which entry is to be made.

Certificates.—Where the proof shows that the land is mineral in character, located in a mining district, or is within a region known as mineral lands, the certificate of entry shall contain the following proviso:

Provided, That no title shall be hereby acquired to any mineral deposits within the limits of the above-described tract of land, all such deposits therein being reserved as the property of the United States.

(20) Cemeteries.

Who May Enter.—Under the Act approved March 1, 1907 (34 Stat., 1052), the right to purchase public land for cemetery purposes is limited to religious, fraternal, and private corporations or associations, empowered to hold real estate for cemetery purposes by the laws under which they are organized. Such corporation or association shall be allowed to make but one entry of not more than eighty acres of contiguous tracts by Government subdivisions of nonmineral, unreserved, and unappropriated public land.

Where on Unsurveyed Land.—If the public surveys have not been extended over the land so sought to be entered, the corporation or association should first apply to the proper surveyor-general for a special survey of the exterior lines of the tract desired, describing the topographical character of the land and its area and geographical location as accurately as possible. Such tracts must be as nearly as practicable in a rectangular form, and after the survey and plat thereof has been made, approved by the surveyor-general, accepted by this office, and filed in the local office, application may them be made for the entry of the land under said Act. The cost of such surveys will be paid out of the current appropriation for "surveying the public lands," and the deputies employed will report whether the land is mineral in character.

The proof must satisfactorily show—

First. The filing of a notice of intention to make proof, the issuance, in manner and form so far as possible as in other cases provided, of the publication notice, to be published and posted for the time and in the manner provided by the Act of March 3, 1879 (20 Stat., 472), and the regulations thereunder.

Second. The official character of the officer or officers applying on behalf of the association or corporation to make the entry, and his or their express authority to do so conferred by action of the association.

Third. A copy of the record, certified by the officer having charge thereof, showing the due incorporation and organization and date thereof of the association or corporation and its location and address. The law under which it is organized and by which it

derives its authority to hold real estate for cemetery purposes must also be cited.

Fourth. That the land applied for is nonmineral, vacant, and unappropriated public land, and the extent to which it is used for cemetery purposes, and when first so used, if it is so used, which must be shown by the testimony of the applicant and two of the advertised witnesses.

Price.—The land must be paid for at such price per acre as shall be determined by the Commissioner of the General Land Office, provided that in no case shall the price be less than $1.25 per acre.

Entries under this Act must issue to the association or corporation in its corporate name, and the granting clause in the certificate should state that the patent to be issued for the tract described is "for cemetery purposes, subject to reversion 'to the United States should the land or any part thereof be sold or cease to be used for the purpose' in said Act provided." Inasmuch, however, as the Commissioner of this office determines the amount of the purchase price under the existing conditions in each particular case, the Register and Receiver will, when proof is made to their satisfaction, immediately forward such proof to this office with their recommendation thereon without collecting any money as the purchase price and without issuing the final papers. If this office finds the proof satisfactory, the Commissioner will fix the purchase price, and the local officers will, on being notified thereof and no objection appearing thereto in their office, notify the applicant of the amount required and allow him thirty days from service of such notice to pay such purchase price, and on receipt thereof the entry will be issued.

Special order to Commissioner of June 11, 1896, is reissued as follows:

In addition to cases specified in departmental order of January 29, 1896 (22 L. D., 120), you are directed to transmit for disposition as "current work" all cases involving townsite entries.

In all cases classified as current work, when sending out notice of your decisions, you will inform the parties interested of that fact, and that the rules relating to filing arguments will be strictly enforced. 22 L. D., 675.

Fred Dennett,
Commissioner.

This circular approved, August 7, 1909.
Jesse E. Wilson,
Acting Secretary.

APPENDIX.

FORMS.

SCHEDULE OF APPRAISEMENT.

Valuation of lots and blocks in the townsite of ———, State of ———, appraised under—

Block.	Lot.	Area.	Valuation. Dollars.	Valuation. Cents.	Character of land.	Remarks.
.....	.....	.....	.....	.....	.....	.....

——— ———, ——— —, 19—.

We, the undersigned, constituting the Board of Appraisers appointed under ——— ——— ———, to examine and appraise the surveyed and platted lots

described in the foregoing list and designated on the approved plat of the townsite of ——— ———, do hereby certify that on the —— day (or days) of ——, 19—, we visited and examined each of said town lots; and that the valuation placed upon each lot as designated in the foregoing list is the fair, just, and full cash value thereof according to the best of our judgment.

——— ———
——— ———
——— ———

Board of Appraisers.

———

No. ——.

APPLICATION UNDER SECTION 2387, U. S. REV. STATS.

Department of the Interior,
Land Office at ———, ———,
——— ———, 19—.

—, ——— ———, as ——— ———, of ——— County, State of ———, do hereby apply to purchase, under sections 2387 to 2393, inclusive, U. S. Rev. Stats., ——— ———, Sec. ——, T. ——, R. —— of ——— Principal Meridian, containing ——— acres, at the sum of $ ——— for the townsite of ———.

My post-office address is ———, ———.

——— ———.

I hereby certify that the land above described contains ——— acres, and that the purchase price therefor is $———.

——— ———, Register.

———

No. ——.

APPLICATION TO PURCHASE TOWN LOTS.

Department of the Interior,
Land Office at ———, ———,
——— ———, 19—.

—, ——— ———, of ——— County, State of ———, do hereby apply to purchase, under ———, Lot ——, Block No. ——, in the townsite of ———, ———, as delineated and designated in the approved plat thereof, containing ——— ———, at the sum of $———.

My post-office address is ———, ———.

——— ———.

I hereby certify that the land above described contains ——— ———, and that the purchase price therefor is $———.

——— ———, Register.

———

No. ——.

APPLICATION TO PREEMPT TOWN LOTS.

Department of the Interior,
Land Office at ———, ———,
——— ———, 19—.

I, ——— ———, of ——— County, State of ———, do hereby apply to purchase, under ———, lot No. ——, in Block No. ——, in the townsite of ———, ———, as delineated and designated in the approved plat thereof, containing ———, at the sum of $———, basing said application on the following facts: That I am — years of age (and, if under 21 years of age, add, and the head of a family); that I am a native-born citizen of the United States (or have declared my intention to become a citizen of the United States); that my post-office address is ———, ———; and that my settlement, the date thereof, and the value and character of my improvements on said lot are as follows: ——— ———.

——— ———.

I hereby certify that the lot above described contain- ———, and that the purchase price thereof is $———.

——— ———, Register.

———

No. ——.

APPLICATION FOR PREFERENCE RIGHT OF ENTRY IN FLATHEAD INDIAN LANDS, MONTANA.

Department of the Interior,
Land Office at ———, ———,
——— ———, 19—.

I, ——— ———, of ——— County, State of ———, do hereby apply to purchase, under the Act approved June 21, 1906 (34 Stat., 354), Lot No. ——,

in Block No. ——, in the townsite of ———, ———, as delineated and designated on the plat thereof approved by the Department of the Interior on ——— —, 19—, containing ———, at the appraised price of $———, basing said application on actual residence and ownership of substantial and permanent improvements on said lot as follows: ——— ———.

——— ———.

I hereby certify that the lot above described contain- ———, and that the appraised purchase price thereof is $———.

——— ———, Register.

NOTICE OF INTENTION TO MAKE PROOF.

Department of the Interior,
Land Office at ———, ———,
——— ———, 19—.

—, ——— ———, as ——— ———, having applied to purchase, under ——— ———, the ——— ———, hereby give notice of ——— intention to make proof, to establish ——— right under said law to enter the land above described, before the ——— ———, at ———, ———, on ——— —, 19—, by two of the following witnesses:

——— ———, of ———, ———.
——— ———, of ———, ———.
——— ———, of ———, ———.
——— ———, of ———, ———.

——— ———.

Notice of the above application will be published in the ——— ———, printed at ———, ———, which I hereby designate as the newspaper published nearest the land described.

——— ———, Register.

NOTICE FOR PUBLICATION OF MAKING PROOF.

Department of the Interior,
Land Office at ———, ———,
——— ———, 19—.

Notice is hereby given that ——— ———, as ——— ———, has filed notice of his intention to make proof of his right to enter, under ——— ———, the ——— ———, and that said proof will be made before ——— ——— at ———, ———, on ——— —, 19—, and he names as his witnesses in making such proof—

——— ———, of ———, ———.
——— ———, of ———, ———.
——— ———, of ———, ———.
——— ———, of ———, ———.

——— ———, Register.

NOTICE OF PUBLIC SALE.

Department of the Interior,
Land Office at ———, ———,
——— ———, 19—.

Notice is hereby given that on the ——— day of ———, 19—, at ———, ———, beginning at 10 a. m. of that day and continuing thereafter from day to day as long as may be necessary, we will offer at public outcry to the highest bidder for cash at not less than the appraised value thereof ——— ———, in the townsite of ———, ———, as delineated and designated on the plat of said townsite, approved ——— —, ——, now on file in our office.

The purchase price must be paid in cash to the receiver before the close of his office on the day the bid is accepted.

All parties are warned under the penalty named in section 2373, U. S. Rev. Stats., against any combination or action tending to hinder or embarrass the sale of said lots or to prevent free competition between bidders.

——— ———, Register.
——— ———, Receiver.

No. ——.

CERTIFICATE OF ENTRY UNDER SECTION 2387.

Department of the Interior,
Land Office at ———, ———,
——— ———, 19—.

I hereby certify that, in pursuance of sections 2387 to 2393, U. S. Rev.

Stats., ——— ———, of ——— County, State of ———, ha— this day purchased for the sum of $———, the ——— ——— of section No. ——, in township No. ——, of range No. ——, of the ——— Principal Meridian, containing ——— acres, at the rate of $——— per acre for the townsite of ———.

Now, therefore, be it known that on the presentation of this certificate to the Commissioner of the General Land Office, the said ——— ——— shall be entitled to receive a patent for the land above described, in trust for the several use and benefit of the occupants thereof, according to their respective interests.

——— ———, Register.

No. ——.

CERTIFICATE OF ENTRY FOR TOWN LOTS.

Department of the Interior,
Land Office at ———, ———,
——— ———, 19—.

I hereby certify that in pursuance of ——— ———, ——— ———, of ——— County, has this day purchased for the sum of $———, Lot ——, No. ——, in Block No. ——, in the townsite of ———, ———, containing ——— ———, as the same ——— delineated and designated on the plat of said townsite, approved by the Secretary of the Interior on ——— ——, ———.

Now, therefore, be it known, that on the presentation of this certificate to the Commissioner of the General Land Office the said purchaser shall be entitled to receive patent to said lot ——.

——— ———, Register.

No. ——.

OKLAHOMA TOWNSITE RESERVATION CERTIFICATE.

Department of the Interior,
Land Office at ———,
——— ———, 19—.

I hereby certify that, pursuant to the provisions of section 22 of the Act of May 2, 1890 (26 Stat., 81), and the regulations thereunder, ——— ——— (mayor or trustee) of the town (or city) of ———, in ——— County, Oklahoma, has made application for patent to said town (or city) for ——— ——— in the townsite of ———, located on ———, Sec. ——, T. ——, R. ——, I. M., Oklahoma, reserved for said public purposes and delineated and designated on the plats of said townsite, approved by ——— ——— on ——— ——, ———, said application being accompanied by satisfactory proof of the organization of said municipality, and of said ——— ——— authority to make application for patent for said reservations.

Now, therefore, be it known that on presentation of this certificate to the Commissioner of the General Land Office, the said town (or city) of ——— shall be entitled to a patent for the tract (or tracts) of land above described, to be maintained for said public purposes as provided in the Act herein mentioned.

——— ———, Register.

[Public—No. 417.]
[S. 10574.]

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.

REAPPRAISEMENT AND SALE OF UNSOLD LOTS IN RECLAMATION TOWN SITES.

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 said Acts.

Sec. 2. That in the sale of town lots under the provision 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.

(Public No. 206, Approved June 11, 1910.)

INDEX.

LAWS.

REGULATIONS.

INDEX TO CONTENTS.

GENERAL LAND OFFICE REGULATIONS CONCERNING THE SELECTION OF DESERT LANDS BY CERTAIN STATES AND TERRITORIES UNDER THE ACT OF CONGRESS APPROVED AUGUST 18, 1894, WITH AMENDMENTS, AND THE MAKING OF FINAL PROOF FOR DESERT LANDS SEGREGATED THEREUNDER. APPROVED APRIL 9, 1909.

STATUTES.

(A) Section 4 of the Act of August 18, 1894, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1895, and for other purposes" (28 Stat., 372-422), authorizes the Secretary of the Interior, with the approval of the President, to contract and agree to patent to the States of Washington, Oregon, California, Nevada, Idaho, Montana, Wyoming, Colorado, North Dakota, South Dakota, and Utah, or any other States, as provided in the Act, in which may be found desert lands, not to exceed 1,000,000 acres of such lands to each State, under certain conditions.

The text of the Act is as follows:

Sec. 4. That to aid the public-land States in the reclamation of the desert lands therein, and the settlement, cultivation, and sale thereof in small tracts to actual settlers, the Secretary of the Interior, with the approval of the President, be, and hereby is, authorized and empowered, upon proper application of the State, to contract and agree, from time to time, with each of the States in which there may be situated desert lands as defined by the Act entitled "An Act to provide for the sale of desert land in certain States and Territories," approved March third, eighteen hundred and seventy-seven, and the Act amendatory thereof, approved March third, eighteen hundred and ninety-one, binding the United States to donate, grant, and patent to the State free of cost for survey or price such desert lands, not exceeding one million acres in each State, as the State may cause to be irrigated, reclaimed, occupied, and not less than twenty acres of each one hundred and sixty-acre tract cultivated by actual settlers, within ten years next after the passage of this Act, as thoroughly as is required of citizens who may enter under the said desert-land law.

Before the application of any State is allowed or any contract or agreement is executed or any segregation of any of the land from the public domain is ordered by the Secretary of the Interior, the State shall file a map of the said land proposed to be irrigated, which shall exhibit a plan showing the mode of the contemplated irrigation and which plan shall be sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary agricultural crops and shall also show the source of the water to be used for irrigation and reclamation, and the Secretary of the Interior may make necessary regulations for the reservation of the lands applied for by the States to date from the date of the filing of the map and plan of irrigation, but such reservation shall be of no force whatever if such map and plan of irrigation shall not be approved. That any State contracting under this section is hereby authorized to make all necessary contracts to cause the said lands to be reclaimed, and to induce their settlement and cultivation in accordance with and subject to the provisions of this section; but the State shall not be authorized to lease any of said lands or to use or dispose of the same in any way whatever, except to secure their reclamation, cultivation, and settlement.

As fast as any State may furnish satisfactory proof, according to such rules and regulations as may be prescribed by the Secretary of the Interior, that any of said lands are irrigated, reclaimed, and occupied by actual settlers, patents shall be issued to the State or its assigns for said lands so reclaimed and settled: Provided, That said States shall not sell or dispose of more than one hundred and sixty acres of said lands to any one person, and any surplus of money derived by any State from the sale of said lands in excess of the cost of their reclamation, shall be held as a trust fund for and be applied to the reclamation of other desert lands in such State. That to enable the Secretary of the Interior to examine any of the lands that may be selected under

the provisions of this section, there is hereby appropriated out of any moneys in the Treasury not otherwise appropriated one thousand dollars.

In the Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1897, and for other purposes, approved June 11, 1896 (29 Stat., 413-434), there is, under the head of appropriation for "Surveying public lands," the following provision:

That under any law heretofore or hereafter enacted by any State providing for the reclamation of arid lands, in pursuance and acceptance of the terms of the grant made in section four of an Act entitled "An Act making appropriations for the sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five," approved August eighteenth, eighteen hundred and ninety-four, a lien or liens is hereby authorized to be created by the State to which such lands are granted and by no other authority whatever, and when created shall be valid on and against the separate legal subdivisions of land reclaimed, for the actual cost and necessary expenses of reclamation and reasonable interest thereon from the date of reclamation until disposed of to actual settlers; and when an ample supply of water is actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, to reclaim a particular tract or tracts of such lands, then patents shall issue for the same to such State without regard to settlement or cultivation: Provided, That in no event, in no contingency, and under no circumstances shall the United States be in any manner directly or indirectly liable for any amount of any such lien or liability, in whole or in part.

(B) The limitation of time in the above-quoted section 4 was modified by section 3 of the Act entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1902, and for other purposes," approved March 3, 1901 (31 Stat., 1133-1188), which provides as follows:

Sec. 3. That section four of the Act of August eighteenth, eighteen hundred and ninety-four, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," is hereby amended so that the ten years' period within which any State shall cause the lands applied for under said Act to be irrigated and reclaimed, as provided in said section as amended by the Act of June eleventh, eighteen hundred and ninety-six, shall begin to run from date of approval by the Secretary of the Interior of the State's application for the segregation of such lands; and if the State fails within said ten years to cause the whole or any part of the lands so segregated to be so irrigated and reclaimed, the Secretary of the Interior may, in his discretion, continue said segregation for a period of not exceeding five years, or may, in his discretion, restore such lands to the public domain.

By the Act of March 1, 1907 (34 Stat., 1057), the provisions of the foregoing Acts were extended to the desert lands within the former Southern Ute Indian Reservation in Colorado.

Said Act is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of section four of "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," approved August eighteenth, eighteen hundred and ninety-four, and the acts amendatory thereof, approved June eleventh, eighteen hundred and ninety-six, and March third, nineteen hundred and one, respectively be, and are hereby, extended over and shall apply to the desert lands included within the limits of the former Southern Ute Indian Reservation in Colorado not included in any forest reservation: Provided, That before a patent shall issue for any of the lands aforesaid under the terms of the said act approved August eighteenth, eighteen hundred and ninety-four, and amendments thereto, the State of Colorado shall pay into the Treasury

of the United States the sum of one dollar and twenty-five cents per acre for the lands so patented, and the money so paid shall be subject to the provisions of section three of the Act of June fifteenth, eighteen hundred and eighty, entitled "An Act to accept and ratify the agreements submitted by the confederated bands of Ute Indians in Colorado for the sale of their reservation in said State, and for other purposes, and to make the necessary appropriation for carrying out same."

Sec. 2. That no lands shall be included in any tract to be segregated under the provisions of this Act on which the United States Government has valuable improvements or which have been reserved for Indian schools or farm purposes.

(C) In the Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1909, and for other purposes, approved May 27, 1908 (35 Stat., 317-347), there is under the head of "Arid lands in Idaho and Wyoming," the following provision:

That an additional one million acres of arid lands within each of the States of Idaho and Wyoming be made available and subject to the terms of section four of an Act of Congress entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," approved August eighteenth, eighteen hundred and ninety-four, and by amendments thereto, and that the States of Idaho and Wyoming be allowed under the provisions of said Acts said additional area or so much thereof as may be necessary for the purposes and under the provisions of said Acts.

(D) The Act of February 18, 1909 (Public, No. 244), extending the provisions of section 4, Act of August 18, 1894, supra, and the amendments thereof, to the Territories of New Mexico and Arizona, reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the provisions of section four of the Act of Congress approved August eighteenth, eighteen hundred and ninety-four, being chapter three hundred and one to Supplement to Revised Statutes of the United States, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," and the amendments thereto be, and the same are hereby, extended to the Territories of New Mexico and Arizona, and that said Territories upon complying with the provisions of said Act shall be entitled to have and receive all of the benefits therein conferred upon the States.

Sec. 2. That this Act shall be in full force and effect from and after its passage.

(E) The provisions of said section 4, Act of August 18, 1894, and the amendments thereof, were also extended to the desert lands within the former Ute Indian Reservation in Colorado, by the Act of February 24, 1909 (Public, No. 255). The text of which is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provision of section four of "An Act making appropriation for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," approved August eighteenth, eighteen hundred and ninety-four, and the amendments thereof, approved June eleventh, eighteen hundred and ninety-six, and March third, nineteen hundred and one, respectively, be, and are hereby, extended over and shall apply to the desert lands within the limits of all that portion of the former Ute Indian Reservation, not included in any national forest, in the State of Colorado, described and embraced in the Act entitled "An Act relating to lands in Colorado lately occupied by the Uncompahgre and White River Ute Indians," approved July

twenty-eighth, eighteen hundred and eighty-two: Provided, That before a patent shall issue for any of the lands aforesaid under the terms of the Act approved August eighteenth, eighteen hundred and ninety-four, and amendments thereto, the State of Colorado shall pay into the Treasury of the United States the sum of one dollar and twenty-five cents per acre for the lands so patented, and the money so paid shall be subject to the provisions of section three of the Act of June fifteenth, eighteen hundred and eighty, entitled, "An Act to accept and ratify the agreements submitted by the confederated bands of Ute Indians in Colorado for the sale of their reservation in said State, and for other purposes, and to make the necessary appropriation for carrying out same."

Sec. 2. That no lands shall be included in any tract to be segregated under the provisions of this Act on which the United States Government has valuable improvements, or which have been reserved for any Indian schools or farm purposes.

REGULATIONS.

1. Under the provisions of the Acts quoted the States and Territories are allowed ten years from the date of the approval of the application for the segregation of the land by the Secretary of the Interior, in which to irrigate and reclaim them. The Secretary of the Interior may, however, in his discretion, extend the time for irrigating and reclaiming the lands for a period of five years, or he may restore to the public domain the lands not reclaimed at the expiration of the ten years, or of the extended period.

2. The lands selected under these Acts must all be desert lands as defined by the Acts of 1877 and 1891, and the decisions and regulations of this department therein provided for.

Lands which produce native grasses sufficient in quantity, if unfed by grazing animals, to make an ordinary crop of hay in usual seasons, are not desert lands. Lands which will produce an agricultural crop of any kind in amount sufficient to make the cultivation reasonably remunerative are not desert. Lands containing sufficient moisture to produce a natural growth of trees are not to be classed as desert lands.

Lands occupied by bona fide settlers and lands containing valuable deposits of coal or other minerals are not subject to selection.

3. The second paragraph of section 4, before quoted, provides that before the application of any State is allowed or any contract or agreement is executed or any segregation of any of the land from the public domain is ordered by the Secretary of the Interior, the State shall file a map of the land selected and proposed to be irrigated, which shall exhibit a plan showing the mode of contemplated irrigation and the source of the water. In accordance with the requirements of the Act, the State must give full data to show that the proposed plan will be sufficient to thoroughly irrigate and reclaim the land and prepare it to raise ordinary agricultural crops; for which purpose a statement by the state engineer of the amount of water available for the plan of irrigation will be necessary. The other data required can not be fully prescribed, as it will depend upon the nature of the plan submitted. All information necessary to enable this office to judge of its practicability for irrigating all the land selected must be submitted. Upon filing of the map showing the plan of irrigation, and the lands selected, such lands will be withheld from other disposition until final action is had thereon by the Secretary of the Interior. If such final action be a disapproval of the map and plan, the lands selected shall, without further order, be subject to disposition as if such reservation had

never been made; and the local officers will make the appropriate notations on the tract books and plat books, opposite those previously made, in accordance with the requirements of paragraph 7.

4. The map must be on tracing linen, in duplicate, and must be drawn to a scale not greater than 1,000 feet to 1 inch. A smaller scale is desirable, if the necessary information can be clearly shown. The map and field notes in duplicate must be filed in the local land office for the district in which the land is located. If the lands selected are located in more than one district, duplicate map and field notes need be filed in but one district and single sets in the others. Each legal subdivision of the land selected should be clearly indicated on the map by a check mark, thus: √. The map and field notes must show the connections of termini of a canal or of the initial point of a reservoir with public survey corners, the connections with public survey corners wherever section or township lines are crossed by the proposed irrigation works, and must show full data to admit of retracing the lines of the survey of the irrigation works on the ground.

5. The map should bear an affidavit of the engineer who made or supervised the preparation of the map and plan, Form 1, page 11, and also of the officer authorized by the State to make its selections under the Act, Form 2, page 11. The map should be accompanied by a list in triplicate of the lands selected, designated by legal subdivisions, properly summed up at the foot of each page, and at the end of the list. If the lands selected are located in more than one district, a list in triplicate must be filed in each office, describing the lands selected in that district. Clear carbon copies are preferred for the duplicate and triplicate lists. The lists should be dated and verified by a certificate of the selecting agent, Form 3, page 12. The party appearing as agent of the State must file with the Register and Receiver written and satisfactory evidence, under seal, of his authority to act in the premises; such evidence once filed need not be duplicated during the period for which the agent was appointed. The State should number the lists in consecutive order, beginning with No. 1, regardless of the land office in which they are to be filed. Form of title page to be prefixed to the lists of selections will be found on page 12, marked "A." Lists received at this office containing erasures will not be filed, but will be returned in order that new ones may be prepared. When a township has not been subdivided, but has had its exteriors surveyed, the whole township may be designated, omitting, however, the sections to which the State may be entitled under its grant of school lands. When the records are in such condition that the proper notations may be made, a section or part of a section of unsurveyed land may be designated in the list; but no patent can issue thereon until the land has been surveyed.

6. A contract in the form herein prescribed (Form 5, p. 13), in duplicate, signed by the state officer authorized to execute such contract, must also be filed. A carbon copy of the contract will not be accepted.* The person who executes the contract on behalf of the State must furnish evidence of his authority to do so.

*Printed copies of the contract, in which the list of lands can be inserted, will be furnished to the State, or to parties dealing with it, on application to the General Land Office.

7. The lists must be carefully and critically examined by the Register and Receiver, and their accuracy tested by the plats and records of their office. When so examined and found correct in all respects, they will attach a certificate at the foot of each list (Form 4, page 12). The Register must note on the map, lists, contracts, and all papers the name of the land office and the date of filing over his written signature and will thereupon post the selections in ink in the tract book after the following manner: "Selected ———, 19—, by ——— ———, the State ———, as desert land, Act of August 18, 1894, serial No. ——," and on the plats he will mark the tracts so selected "State desert land selection." After the selections are properly posted and marked on the records, the lists, maps, and all papers will be transmitted to the General Land Office.

For rejected selections a new list will be required, upon which the Register will note opposite each tract the objections appearing on the records and indorse thereon his reasons in full for refusing to certify the same. The State will be allowed to appeal in the manner provided for in the Rules of Practice. It is required that clear lists of approvals shall in every case be made out by the selecting agents, if after the above examination one or more tracts have been rejected, showing clearly and without erasure the tracts to which the Register is prepared to certify. On the map of lands selected the Register will mark rejected such tracts as he has rejected on the lists.

8. When the canals or reservoirs required by the plan of irrigation cross public land not selected by the State, an application for right of way over such lands under sections 18 to 21, Act of March 3, 1891 (26 Stat., 1085), should be filed separately, in accordance with the regulations under said Act.

9. In the preceding paragraphs instructions are given for the designation of the lands by the proper State authorities. Upon the approval of the map of the lands and the plan of irrigation, the contract is executed by the Secretary of the Interior and approved by the President, as directed by the Act. Upon the approval of the map and plan, the lands are reserved for the purposes of the Act, said reservation dating from the date of the filing of the map and plan in the local land office. A duplicate of the approved map and plan, and of the list of lands, is transmitted for the files of the local land office, and a triplicate copy of the list is forwarded to the State authorities.

10. When patents are desired for any lands that have been segregated, the State should file in the local land office a list, to which is prefixed a certificate of the presiding officer of the State land board, or other officer of the State who may be charged with the duty of disposing of the lands which the State may obtain under the law (Form 6, page 14); and followed by an affidavit of the State engineer, or other State officer whose duty it may be to superintend the reclamation of the lands (Form 7, page 15).

11. The certificate of Form 6 is required in order to show that the State laws accepting the grant of the lands have been duly complied with.

12. The affidavit of Form 7 is required in order to show compliance with the provisions of the law, that an ample supply of water

has been actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, for each tract in the list, sufficient to thoroughly irrigate and reclaim it, and to prepare it to raise ordinary agricultural crops. A separate statement by the State engineer must be furnished, giving all the facts as to the water supply and the nature, location, and completion of the irrigation works.

If there are some high points which it is not practicable to irrigate, the nature, extent, location, and area of such points should be fully stated. If no part of a legal subdivision is susceptible of irrigation, such legal subdivision must be relinquished. Lands upon which valuable deposits of coal or other minerals are discovered will not be patented to the State under these Acts.

13. These lists will be called "lists for patent," and should be numbered by the State consecutively, beginning with No. 1. The list should also show, opposite each tract, the number of the approved segregation list in which it appears. The aggregate area should be stated at the foot of each page and at the end of the list.

14. Upon the filing of such list the local officers will place thereon the date of filing and note on the records opposite each tract listed: "List for patent serial No.———, filed —— ——," giving the date.

15. When said list is filed in the local land office there shall also be filed by the State a notice, in duplicate, prepared for the signature of the register and receiver, describing the land by sections, and portions of sections, where less than a section is designated (Form 8, p. 15). This notice shall be published at the expense of the State once a week in each of nine consecutive weeks, in a newspaper of established character and general circulation, to be designated by the Register as published nearest the land. One copy of said notice shall be posted in a conspicuous place in the local office for at least sixty days during the period of publication.

16. At the expiration of the period of publication the State shall file in the local office proof of said publication and of payment for the same. Thereupon the Register and Receiver shall forward the list for patent to the General Land Office, noting thereon any protests or contests which may have been filed, transmitting such papers, and submitting any recommendations they may deem proper. They will also forward proofs of publication, of payment therefor, and of the posting of the list in their office.

17. Before patents are issued for lands within the former Southern Ute and the Ute Indian Reservations in Colorado, the State will be required to pay the price ($1.25 per acre) fixed by the Acts of March 1, 1907, and February 24, 1909. The State will be advised of the number of acres which will be included in the patent and payment shall be made to the Receiver of the proper land office, who will issue a receipt as in other cases. The money will be accounted for in the same manner as other moneys received from the disposal of such lands.

18. Upon the receipt of the papers in the General Land Office such action will be taken in each case as the showing may require, and all tracts that are free from valid protest or contest, and respecting which the law and regulations have been complied with,

will be certified to the Secretary of the Interior for approval and patenting.

Fred Dennett,
Commissioner, General Land Office.

Approved April 9, 1909.
R. A. Ballinger,
Secretary of the Interior.

FORM 1.

State of ————,
County of ————, ss:

——— ———, being duly sworn, says he is the engineer under whose supervision the survey and plan hereon were made (or is the person employed to make, etc.); that the tracts shown hereon to be selected are each and every one desert land as contemplated by the Act of Congress approved August 18, 1894 (28 Stat., 372-422), the Act of June 11, 1896 (29 Stat., 434); and the Act of March 3, 1901 (31 Stat., 1133-1188);* that he is well acquainted with the character of the land herein applied for, having personally examined same; that there is not to his knowledge within the limits thereof any vein or lode or quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, nor any deposit of coal, placer, cement, gravel, salt spring, or deposit of salt, nor other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that the land is not occupied by any settler; that the plan of irrigation herewith submitted is accurately and fully represented in accordance with ascertained facts; that the system proposed is sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary crops; and that the survey of said system of irrigation is accurately represented upon this map and the accompanying field notes.

——— ———,
——— ———.

Subscribed and sworn to before me this —— day of ———, 19—.
[Seal.]
——— ———,
Notary Public.

FORM 2.

State of ————,
County of ————, ss:

——— ———, being duly sworn, says that he is the ——— (designation of office) authorized by the State of ——— to make desert-land selections under the Act of Congress approved August 18, 1894 (28 Stat., 372-422), the Act of June 11, 1896 (29 Stat., 434), and the Act of March 3, 1901 (31 Stat., 1133-1188);* that the plan of irrigation and survey herewith is submitted under authority of the State of ———; and that the tracts shown hereon to be selected are each and every one desert land, as contemplated by the said Act of Congress, none being of the classes designated as timber or mineral lands.

——— ———,
——— ———.

Subscribed and sworn to before me this —— day of ———, 19—.
[Seal.]
——— ———,
Notary Public.

*The States of Idaho and Wyoming must insert here a reference to the Act of May 27, 1908 (35 Stat., 317-347).

The State of Colorado must insert here a reference to the Act of March 1, 1907 (34 Stat., 1057), when the lands are within the former Southern Ute Indian Reservation, and to the Act of February 24, 1909 (Public No. 255), when the lands are within the former Ute Indian Reservation.

A.

State of ————,
United States Land Office,
——— ———, 19—.

——— ———, the duly authorized agent of the State of ———, under

and by virtue of an Act of Congress approved August 18, 1894 (28 Stat., 372-422), the Act of June 11, 1896 (29 Stat., 434), and the Act of March 3, 1901 (31 Stat., 1133-1188),* and in pursuance of the rules and regulations prescribed by the Secretary of the Interior, hereby makes and files the following list of desert public lands which the State is authorized to select under the provisions of the said Acts of Congress:

FORM 3.

State of ————,
County of ————, ss:

I, ——— ———, being duly sworn depose and say that I am ——— (designation of office) authorized by the State of ——— to make desert-land selections under the Act of Congress approved August 18, 1894 (28 Stat., 372-422), the Act of June 11, 1896 (29 Stat., 434), and the Act of March 3, 1901 (31 Stat., 1133-1188);* that the foregoing list of lands which I hereby select is a correct list of lands selected under said Acts; that the lands are vacant, unappropriated, are not interdicted timber nor mineral lands, and are desert lands as contemplated by the said Acts of Congress.

——— ———.

Subscribed and sworn to before me this —— day of ———, 19—.
[Seal.]
——— ———,
Notary Public.

FORM 4.

United States Land Office,
——— ———,
——— ———, 19—.

We hereby certify that we have carefully and critically examined the foregoing list of lands selected ——— ——, 19—, by ——— ———, the duly authorized agent of the State of ———, under the provisions of the Act of Congress approved August 18, 1894 (28 Stat., 372-422), the Act of June 11, 1896 (29 Stat., 434), and the Act of March 3, 1901 (31 Stat., 1133-1188);* that

*See footnotes under Forms 1 and 2.

we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct. And we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and that the same are not nor is any part thereof returned and denominated as mineral or timber lands; nor is there any homestead or other valid claim to any portion of said lands on file or of record in this office; and that the said lands are, to the best of our knowledge and belief, desert lands, as contemplated by the said Acts of Congress; and that the fees, amounting to $———, have been paid upon the said area of ——— acres.

——— ———, Register.
——— ———, Receiver.

FORM 5.

These articles of agreement, made and entered into this ———* day of ———,* A. D. 19—,* by and between ——— ———,* Secretary of the Interior, for and on behalf of the United States of America, party of the first part, and ——— ———, for and on behalf of the State of ———, party of the second part, witnesseth:

That in consideration of the stipulations and agreements hereinafter made, and of the fact that said State has, under the provisions of section 4 of the Act of Congress approved August 18, 1894, of the Act of Congress approved June 11, 1896, and of the Act of Congress approved March 3, 1901,† through ——— ———, its proper officer, thereunto duly authorized, presented its proper application for certain lands situated within said State and alleged to be desert in character and particularly described as follows, to wit: List No. — (here insert list of lands and total area), and has filed a map of said lands and exhibited a plan showing the mode by which it is proposed that said lands shall be irrigated and reclaimed and the source of the water to be used for

that purpose, the said party of the first part contracts and agrees, and, by and with the consent and approval of ——— ———,* President thereof, hereby binds the United States of America to donate, grant and patent to said State, or to its assigns, free from cost for survey or price,‡ any particular tract or tracts of said lands, whenever an ample supply of water is actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, to reclaim the same, in accordance with the provisions of said Acts of Congress, and with the regulations issued thereunder, and with the terms of this contract, at any time within ten years from the date of the approval of the said map of the lands.

It is further understood that said 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; and that in selling and disposing of them for that purpose the said State may sell or dispose of not more than 160 acres to any one person, and then only to bona fide settlers who are citizens of the United States or who have declared their intention to become such citizens; and it is distinctly understood and fully agreed that all persons acquiring title to said lands from said State prior to the issuance of patent, as hereinafter mentioned, will take the same subject to all the requirements of said Acts of Congress and to the terms of this contract, and shall show full compliance therewith before they shall have any claim against the United States for a patent to said lands.

It is further understood and agreed that said State shall have full power, right, and authority to enact such laws, and from time to time to make and enter into such contracts and agreements, and to create and assume such obligations in relation to and concerning said lands as may be necessary to induce and cause such irrigation and reclamation thereof as is required by this contract and the said Acts of Congress; but no such law, contract, or obligation shall in any way bind or obligate the United States to do or perform any act not clearly directed and set forth in this contract and said Acts of Congress, and then only after the requirements of said Acts and contract have been fully complied with.

Neither the approval of said application, map, and plan, nor the segregation of said land by the Secretary of the Interior, nor anything in this contract, or in the said Acts of Congress, shall be so construed as to give said State any interest whatever in any lands upon which, at the date of the filing of the map and plan hereinbefore referred to, there may be an actual settlement by a bona fide settler, qualified under the public land laws to acquire title thereto, or which are known to be valuable for their deposits of coal or other minerals.

It is further understood and agreed that as soon as an ample supply of water is actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, to reclaim a particular tract or tracts of said lands the said State or its assigns may make proof thereof under and according to such rules and regulations as may be prescribed therefor by the Secretary of the Interior, and as soon as such proof shall have been examined and found to be satisfactory patents shall issue to said State, or to its assigns, for the tracts included in said proof.

The said State shall, out of the money arising from its disposal of said lands, first reimburse itself for any and all costs and expenditures incurred by it in irrigating and reclaiming said lands, or in assisting its assigns in so doing; and any surplus then remaining after the payment of the cost of such reclamation shall be held as a trust fund, to be applied to the reclamation of other desert lands within said State.

This contract is executed in duplicate, one copy of which shall be placed of record and remain on file with the Commissioner of the General Land Office, and the other shall be placed of record and remain on file with the proper officer of said State, and it shall be the duty of said State to cause a copy thereof, together with a copy of all rules and regulations issued thereunder or under said acts of Congress, to be spread upon the deed records of each of the counties in said State in which any of said lands shall be situated.

*These blanks should be left vacant by the state agent.

‡The words "or price" must be eliminated before the contract is signed on behalf of the State of Colorado when the lands involved are within the former Southern Ute or Ute Indian reservations.

In testimony whereof the said parties have hereunto set their hands the day and year first herein written.

———— ————,
Secretary of the Interior.
State of ————.
By ———— ————.

APPROVAL.

To all to whom these presents shall come, greeting:

Know ye, that I, ———— ————,* President of the United States of America, do hereby approve and ratify the attached contract and agreement, made and entered into on the ————* day of ————,* 19—,* by and between ———— ————,* Secretary of the Interior, for and on behalf of the United States, and ———— ————, for and on behalf of the State of ————, under section 4 of the Act of Congress approved August 18, 1894, the Act approved June 11, 1896, and the Act approved March 3, 1901.†.

———— ————.

FORMS FOR VERIFICATION AND PUBLICATION OF LISTS FOR PATENT

FORM 6.

I, ———— ————, do hereby certify that I am the ———— ————, (designation of office) of the State of ———— ————; that I am charged with the duty of disposing of the lands granted to the State in pursuance of section 4, Act of August 18, 1894 (28 Stat., 372-422), the Act of June 11, 1896 (29 Stat., 434), and Act of March 3, 1901 (31 Stat., 1133-1188),† and that the laws of the said State relating to the said grant from the United States have been complied with in all respects as to the following list of lands, which is hereby submitted on behalf of the said State for the issuance of patent under said acts of Congress.

———— ————,

[Here add list of lands.]

FORM 7.

To follow list of lands.

State of ————,
County of ————, ss:

———— ————, being duly sworn, deposes and says that he is the ———— ———— (designation of office) of the State of ————, charged with the duty of supervising the reclamation of lands segregated under section 4, Act of August 18, 1894 (28 Stat., 372-422), the Act of June 11, 1896 (29 Stat., 434), and the Act of March 3, 1901 (31 Stat., 1133-1188),† that he has examined the lands designated on the foregoing list, and that an ample supply of water has been actually furnished (in a substantial ditch or canal, or by artesian wells or reservoirs) for each tract in said list, sufficient to thoroughly irrigate and reclaim it, and to prepare it to raise ordinary agricultural crops.

———— ————,
———— ————.

Subscribed and sworn to before me this —— day of ————, 19—.
[Seal.]

———— ————,
Notary Public.

FORM 8.

Form for published notice.

United States Land Office,
———— ————, 19—.

To whom it may concern:

Notice is hereby given that the State of ———— has filed in this office the following list of lands, to wit, ————, and has applied for a patent for said lands under the Acts of August 18, 1894 (28 Stat., 372-422), June 11, 1896 (29 Stat., 434), and March 3, 1901 (31 Stat., 1133-1188),† relating to the granting of not to exceed a million acres‡ of arid land to each of certain States; and

*These blanks should be left vacant by the state agent.

†See footnotes under Forms 1 and 2.

‡In the cases of Idaho and Wyoming 2,000,000 acres.

that the said list, with its accompanying proofs, is open for the inspection of all persons interested, and the public generally.

Within the next sixty days following the date of this notice, protests or contests against the claim of the State to any tract described in the list, on the ground of failure to comply with the law, on the ground of the non-desert character of the land, on the ground of a prior adverse right, or on the ground that the same is more valuable for mineral than for agricultural purposes, will be received and noted for report to the General Land Office at Washington, D. C.

———— ————, Register.
———— ————, Receiver.

SELECTIONS UNDER CAREY ACT—WITHDRAWALS—ACT OF MARCH 15, 1910.

Regulations.

Supplemental to regulations concerning the selection of desert lands by certain States and Territories, approved April 9, 1909 (37 L. D., 624).

By the Act of March 15, 1910 (Public No. 87), section four, Act of August 18, 1894 (28 Stat., 372, 422), commonly known as the Carey Act, was amended so as to authorize the Secretary of the Interior, under application of a beneficiary State or Territory, to temporarily withdraw from settlement or entry public lands of the United States, pending survey and investigation preliminary to the filing of application for the segregation of such lands under said Act of August 18, 1894.

The text of the Act is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to aid in carrying out the purposes of section four of the Act of August eighteenth, eighteen hundred and ninety-four, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending eighteen hundred and ninety-five, and for other purposes," it shall be lawful for the Secretary of the Interior, upon application by the proper officer of any State or Territory to which said section applies, to withdraw temporarily from settlement or entry areas embracing lands for which the State or Territory proposes to make application under said section, pending the investigation and survey preliminary to the filing of the maps and plats and application for segregation by the State or Territory: Provided, That if the State or Territory shall not present its application for segregation and maps and plats within one year after such temporary withdrawal the lands so withdrawn shall be restored to entry as though such withdrawal had not been made.

Approved March 15, 1910.

1. Under the provisions of this Amendatory Act, public lands of the United States may be temporarily withdrawn upon proper application by a beneficiary State or Territory that proper surveys may be prepared and investigation made preliminary to the filing of application by such State or Territory, for the segregation of such lands under the Carey Act.

If such application is not filed within one year from the date of withdrawal, the lands so withdrawn will, as directed by the Act, be immediately restored to entry.

No provision is made for the extension of such a temporary withdrawal.

2. To obtain the benefits of this amendatory Act, the State or Territory, through its proper official, will be required to file in the local land office in the land district within which the lands sought to be withdrawn lie, an application therefor (see appended Form B) which shall set forth the name of the individual or corporation proposing to reclaim the lands; that all the forms and conditions imposed by the State law upon such proposer, prior to segregation, have been complied with; that, from the showing made by the proposer (or state other source of information), it is believed that sufficient water to irrigate the whole of the lands asked to be withdrawn, over and above prior appropriations, is available, and that the proposer has either acquired title to such water, or applied for the same, and that the lands are desert in character.

Appended to the application should be a list of the lands asked to be withdrawn; if the lands are unsurveyed, the fact should be set forth, together

with a statement that an application for the survey thereof has been filed in the office of the surveyor-general.

3. Accompanying such application should be filed an affidavit (see appended Form C), based upon personal examination, that the lands sought to be withdrawn are desert in character, as contemplated by the Carey Act, and are nonmineral.

This affidavit should be made either by the proposer, his or its engineer, or by the State or Territorial engineer, or one of his assistants.

4. Where the lands sought to be withdrawn are situated in more than one land district, a list must be filed in each district, describing the lands in that district.

5. Upon the filing of such application, the register will at once note the same upon his records and will thereafter reject all applications to enter, purchase or select any such lands, excepting when settlement or application to enter, purchase or select prior to the date of filing of the State's application is alleged, or disclosed of record; he will then at once transmit the application to this office for further action, first noting thereon the date of filing, over his written signature.

6. Within three months after date of filing the application for withdrawal in the local office, the State must file a corroborated affidavit by the proposer, his or its engineer, or the State engineer, that the work of surveying and laying out the proposed irrigation system has been actually commenced in the field and is being energetically prosecuted; this affidavit should show the work accomplished and the result.

In default of such showing by the State, the withdrawal will be promptly revoked.

7. In the event that any of the tracts withdrawn are found to be above the proposed irrigation works, or for any other reason not susceptible to irrigation, the fact and description of the non-reclaimable land by smallest legal subdivisions should be at once communicated to this office, that they may be relieved from the withdrawal.

8. If at any time after withdrawal it is shown that the State is not energetically prosecuting the investigation and survey of the lands, that the same are not reclaimable by the proposed system of reclamation, are not desert in character, or for any other reason are not subject to the provisions of the Carey Act, or that the proposer is not proceeding in good faith, the withdrawal will be at once revoked.

9. The one year mentioned in the Act as the period of withdrawal will commence to run from the date of the filing of the application for withdrawal in the local land office.

FORM B.

State of .....,
United States Land Office,
....., ..., 19..

....., the duly authorized agent of the State of ....., under and by virtue of an Act of Congress approved August 18, 1894 (28 Stat., 372, 422), and the acts amendatory thereof, and in pursuance of the rules and regulations prescribed by the Secretary of the Interior, hereby makes and files the following list of desert public lands, which the State is authorized to select under the provisions of the said Act of Congress, as an application for the temporary withdrawal of such lands under the provisions of the amendatory Act of March 15, 1910 (Public No. 87), preliminary to the survey and investigation thereof, with a view to their selection under said Act of August 18, 1894, and I hereby certify that this application is made at the instance of ....., who (which) has filed with the State Land Board (or other proper official or body) a proposition to reclaim such of the lands in said list as may be found susceptible of irrigation and reclamation; that said proposer has complied with all the forms and condition imposed by the laws of the State ....., upon such proposer prior to segregation; that from the showing made by him (or it), and from other data at my command, I verily believe that sufficient water to irrigate the whole of the lands withdrawn, over and above prior appropriations, is available and that the proposer has acquired title to such water (or applied for or appropriated such water, as the case may be), and that the lands are desert in character (if the lands are unsurveyed, state the fact), and that application for the survey thereof has been made by the State to the surveyor-general.

FORM C.

State of ....., County of ....., ss.

...., being duly sworn, says that he is the State (or Territorial) engineer of the State (or Territory) of ..... (if the affidavit is made by any one other than the State engineer he should be so described as to identify him with the State or the project); that the tracts described in the accompanying application under the amendatory Act of March 15, 1910 (Public No. 87), the temporary withdrawal of which is asked, pending survey and investigation preliminary to the inclusion thereof in State Segregation List No ...., are each and every one desert land as contemplated by the Act of Congress approved August 18, 1894 (28 Stat., 372, 422), the Act of June 11, 1896 (29 Stat., 434), and the Act of March 3, 1901 (31 Stat., 1133, 1188); that he is well acquainted with the character of the land herein applied for, having personally examined same; that there is not to his knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, tin, lead or copper, nor any deposit of coal, placer, cement, gravel, salt spring, or deposit of salt, nor any other deposit of valuable mineral; that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons, and that said land is essentially nonmineral land.

Sworn to before me this ..... day of ....., 19..

....,
Notary Public.
Certificate expires .....

Approved April 25, 1910:
R. A. Ballinger,
Secretary.

EXTENSION OF TIME FOR RECLAMATION PROJECTS UNDER CAREY ACT.

Instructions.

Instructions governing the extension of time for irrigation and reclamation plants, under Sec. 4, of the Act of August 18, 1894, as amended by Sec. 3 of the Act of March 3, 1901.

Secretary Ballinger to the Commissioner of the General Land Office, May 13, 1909:

Referring to that portion of the Act of Congress, above cited (31 Stat., 1188), which authorizes the Secretary of the Interior in his discretion to continue segregation of lands for a period of not exceeding five years, or to restore them to the public domain, where a State has failed to reclaim lands segregated under the Carey Act within the period of ten years, prescribed by law, you are advised that all such applications must be submitted to me with your report and recommendation, and applications for extension of time will only be entertained upon a showing of the happening of some event preventing completion of the reclamation which could not have been reasonably anticipated or guarded against, such as:

1. Destruction of dams, reservoirs, canals, ditches, or other works constructed, or partly constructed, by storms, floods, or other unavoidable casualties.

2. Inability to complete construction of reservoirs, ditches, canals, etc., within ten years because of unforeseen structural or physical difficulties encountered, in cases where construction was promptly begun and diligently prosecuted.

3. Error or misjudgment in surveying and locating ditches, canals, etc., necessitating new surveys and construction in order to effect proper and permanent reclamation.

4. Financial failures on the part of the contractor under the State, which delayed or prevented reclamation and which could not have been foreseen or reasonably anticipated.

5. Other reasons not above specified but falling within the general scope of these instructions will be considered if presented; but in all cases showing made must be by or through the proper State authorities and clearly and specifically set forth all the facts and reasons which prevented the completion of the contract or reclamation of the land within the ten-year period.

CAREY ACT LEGISLATION, 1911.

6. One million acres additional in Nevada subject to State selections under Carey Act.

An additional one million acres of arid lands within the State of Nevada is hereby made available and subject to the terms of section four of an Act of Congress entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes." Approved August eighteenth, eighteen hundred and ninety-four, and by amendments thereto, and the State of Nevada is allowed under the provisions of said Acts said additional area, or so much thereof as may be necessary for the purposes and under the provisions of said Acts.

(Part of Public No. 525, approved March 4, 1911.)

WYOMING.

7. Carey Act, allowing State selections, extending to land in former military reservation in Wyoming.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the provisions of section four of the Act of August, eighteen hundred and ninety-four, and Acts amendatory thereto, be, and the same are hereby, made applicable to the lands in the former Fort Bridger Military Reservation in Uinta County, Wyoming.

(Public No. 381, approved February 16, 1911.)

IDAHO.

8. (No. 28.) Joint resolution providing for additional lands for Idaho under the provisions of the Carey Act.

Resolved, By the Senate and House of Representatives of the United States of America in Congress assembled, That an additional one million acres of arid lands within the State of Idaho be made available and subject to the terms of section four of an Act of Congress entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," approved August eighteenth, eighteen hundred and ninety-four, and by amendments thereto, and that the State of Idaho be allowed, under the provisions of said Acts, said additional area, or so much thereof as may be necessary for the purposes and under the provisions of said Acts.

Approved May 25, 1908. Sixtieth Congress, 1907-1908.

See "Idaho under Carey Act."

DESERTED WIVES—MARRIED WOMEN.

(See Three-Year Homestead Law.)

1. A married woman who has all of the other qualifications of a homesteader may make a homestead entry under any one of the following conditions:

(a) Where she has been actually deserted by her husband.

(b) Where her husband is incapacitated by disease or otherwise from earning a support for his family and the wife is really the head and main support of the family.

(c) Where the husband is confined in a penitentiary and she is actually the head of the family.

(d) Where the married woman is the heir of a settler or contestant who dies before making entry.

(e) Where a married woman made improvements and resided on the lands applied for before her marriage, she may enter them after marriage if her husband is not holding other lands under an unperfected homestead entry at the time she applies to make entry.

2. If an entryman deserts his wife and abandons the land covered by his entry, his wife then has the exclusive right to contest the entry if she has continued to reside on the land, and on securing its cancellation she may enter the land in her own right, or she may continue her residence, and make proof in the name of and as the agent for her husband, and patent will issue to him.

3. If an entryman deserts his minor children and abandons his entry after the death of his wife, the children have the same right

to make proof on the entry as the wife could have exercised had she been deserted during her lifetime.

4. The marriage of the entrywoman after making entry will not defeat her right to acquire title if she continues to reside upon the land and otherwise comply with the law. A husband and wife can not, however, maintain separate residences on homestead entries held by each of them, and if, at the time of marriage, they are each holding an unperfected entry on which they must reside in order to acquire title, they can not hold both entries. In such case they may elect which entry they will retain and relinquish the other.

5. A widow, if otherwise qualified, may make a homestead entry notwithstanding the fact that her husband made an entry and notwithstanding she may be at the time claiming the unperfected entry of her deceased husband.

(a) A married woman, not the head of a family, is not qualified under the provisions of Sec. 2 of the Act of June 5, 1872, to make entry of lands in the Bitter Root Valley opened to settlement by said Act.

See case of Matilda C. Humble (34 L. D., 313).

6. The husband who has deserted the wife can not defeat the rights of the wife to the land, providing she is in possession of and occupying the same at the time of the filing of relinquishment in the land office for the district in which the land is situated. The doctrine that the relinquishment can not defeat the rights of one in possession of land embraced in an uncontested entry is well settled. "Relinquishment opens the land to settlement at once; and the right of a settler then on the land is superior to that of one who makes entry immediately after the relinquishment." A discussion of this question will be found under title "Relinquishments." It is mentioned here to show that aside from the rights of a married woman who has been deserted by the husband, she would be entitled to the benefit of the rule as applied to other persons in possession of lands at the time of filing a relinquishment. Citation of authority will be found in the title "Relinquishments."

7. Where a wife has been divorced from her husband or deserted so that she is dependent upon her own resources for support, she may make homestead entry as the head of a family or as a femme sole.

The Department will determine the question of desertion irrespective of the judgment of any court as to such fact.

8. "Where a married woman makes an application for homestead entry as a deserted wife, and subsequently procures a divorce on the ground of desertion and entry upon her application is afterwards allowed, in a contest against such entry on the ground of fraud and collusion, the Department is not bound by the finding of fact made by the court in the divorce proceeding, but may determine from the proof whether or not she was a deserted wife at the time of her application."

See Jacoby v. Kubal (31 L. D., 382).

9. "Separation of a husband and wife by mutual consent does not constitute the wife the head of a family within the meaning of Sec. 2289 of the Revised Statutes, or authorize her to make a homestead entry as the deserted wife."

See Roberts v. Seymour (36 L. D., 258).

10. The right to make a homestead entry is conferred upon every person who is the head of a family or who has arrived at the age of twenty-one years and who is a citizen of the United States or who has filed his declaration of intention to become such."

11. "The right of a deserted wife to make entry rests in the statutory privilege accorded to the 'head of a family'; but the fact of desertion must be affirmatively shown before the right of entry accrues."

See Porter v. Maxfield (5 L. D., 42); Giblin v. Moeller's Heirs (6 L. D., 296); Brown v. Neville (14 L. D., 459).

RESIDENCE.

(See Commutation Proof.)

12. "The legal residence of the wife is presumed to be that of her husband and where both husband and wife at the time of marriage have an unperfected homestead entry, they can not thereafter maintain separate residence upon and perfect both entries; but where at the time of marriage the wife only has an unperfected homestead entry and thereafter continues to reside thereon and otherwise comply with the law, she is entitled to perfect the entry notwithstanding her husband in the meantime is maintaining a separate residence upon his own patented homestead entry to which he had perfected title prior to their marriage." The case of Patrick Flynn, 39 L. D., 593, citing with approval the case of Jane Mann, 18 L. D., 116, and Anderson v. Hillerud, 33 L. D., 335.

13. Where two persons hold homestead entries and intermarry before the submission of final proof upon one or the other of the entries, patent could not be obtained in both cases because of the necessity of maintaining two separate residences. The usual practice, or perhaps it would be better to say custom, prevailing is for one or the other of the parties contemplating marriage to submit a legal final proof upon one of the entries, which would obviate the necessity of maintaining two residences after marriage. Residence might be continued upon the unperfected entry and patent would issue upon the submission of proper final proof on the same.

14. In 1900 Congress passed an Act which was approved June 6, 1900, and which is embodied in 31 Statute, 683, and will be found on page —. This Act amended the Act of May 14, 1880, "An Act for the Relief of Settlers on the Public Lands." By this Act it is provided:

"Where a married woman who has heretofore settled or may hereafter settle upon a tract of public land, improve, establish and maintain a bona fide residence thereon, with the intention of appropriating the same for a home, subject to the homestead law, and has married, or shall hereafter marry, before making entry of said land, or before making application to enter said land, she shall not, on account of such marriage, forfeit her right to make entry and receive patent for the land: Provided, That she does not abandon her residence on said land, and is otherwise qualified to make homestead entry: Provided further, That the man whom she married is not, at the time of their marriage, claiming a separate tract of land under the homestead law."

"That this Act shall be applicable to all unpatented lands claimed by such entrywoman at the date of passage."

(See case Margart J. Dingman, 39 L. D., 363.)

(Also 30 L. D., 313.)

15. A married woman has the right to make desert land entry, timber and stone entry, the purchase of isolated tracts, and the

acquirement of lands under the mineral public land laws irrespective of her marriage. See Desert land, timber and stone entry, and isolated tracts. There are some exceptions in States which do not permit of women holding real estate as femme sole.

A married woman who makes homestead and marries is not estopped from making additional entry under the Enlarged Homestead Act. 39 L. D., 164.

"Under the provisions of the homestead law which confers upon the widow of a deceased entryman the right to complete the entry, the wife of an entryman sentenced to the penitentiary for life is entitled to perfect the entry in like manner as if the entryman were actually dead."

STATUTES AND REGULATIONS GOVERNING ENTRIES AND PROOFS UNDER THE DESERT-LAND LAWS.

1. Laws governing making of desert-land entries, assignments, and proofs.
2. States and Territories in which desert-land entries may be made.
3. Lands that may be entered as desert land.
4. Who may make a desert-land entry.
5. Quantity of land that may be entered.
6. Land must be in compact form.
7. How preference right may be acquired on unsurveyed land.
8. How to proceed to make a desert-land entry.
9. Personal knowledge of the land by the entryman required.
10. Place of actual residence of applicants and witnesses must be given.
11. What officers to take acknowledgments.
12. Acquiring of water right.
13. Filing of map of irrigation.
14. Assignments.
15. Qualifications for taking land by assignment.
16. Recording of deed of assignment.
17. Annual proof.
18. Expenditures.
19. Time for submitting annual proof.
20. Final proof.
21. Notice, publication of.
22. Submission of proof.
23. Irrigation, cultivation, and water rights.
24. Amount of land which must be irrigated.
25. Actual tillage must be shown.
26. Proof of compliance with law in regard to water right must be shown.
27. Modification of rule with regard to water right proof.
28. Notice that final proof is due.
29. Extension of time in submitting proof under certain conditions.
30. Payments—Fees.
31. Fees required.
32. Contests.
33. Relinquishments.
34. Desert-land entries within reclamation project.
35. Persons to whom above act applies.
36. Application for excuse from compliance with desert-land laws.
37. Report of engineer in charge of recalamation project upon application.
38. Delay in making annual proof.
39. Delay and hindrance in making final proof.
40. Excuse from making final proof.
41. Abandonment, date of; restoration.
42. Entryman not compelled to accept the conditions of Act of June 17, 1902.
43. Relinquishment of all lands in excess of 160 acres.
44. All previous rulings and instructions not in harmony herewith are hereby vacated.

STATUTES.

A. Sale of desert lands in certain States and Territories.
B. Three hundred and twenty acre limitation.

C. An Act to repeal timber-culture laws, and for other purposes.
D. Sec. 2294, United States Revised Statutes, as amended by Act of March 4, 1904 (33 Stat., 59).
E. An Act providing for the subdivision of lands entered under the reclamation Act, and for other purposes.
F. An Act providing for second desert-land entries.
G. An Act limiting and restricting the right of entry and assignment under the desert-land law and authorizing an extension of time within which to make final proof.
H. An Act for the protection of the surface rights of entrymen.
I. An Act to provide for agricultural entries on coal lands.
J. An Act for the relief of assignees in good faith of desert lands in Imperial County, California.
Extension of time for submitting final proof on desert-land entries.
Desert entries in Weld and Larimer Counties, Colorado, extension of time.

GENERAL LAND OFFICE—STATUTES AND REGULATIONS GOVERNING ENTRIES AND PROOF UNDER THE DESERT-LAND LAWS, TOGETHER WITH SUGGESTIONS TO PERSONS DESIRING TO MAKE ENTRIES UNDER SAID LAWS. APPROVED SEPTEMBER 30, 1910.

Department of the Interior,
General Land Office,
Washington, D. C., September 30, 1910.

1. The laws, or portions of laws, governing the making of desert-land entries, assignments thereof, and the proofs required, will be found printed in full at the end of this circular, and are as follows: Act of March 3, 1877 (19 Stat., 377); March 3, 1891 (26 Stat., 1095); August 30, 1891 (26 Stat., 391); June 27, 1906 (34 Stat., 519); March 26, 1908 (35 Stat., 48); March 28, 1908 (35 Stat., 52); March 4, 1904, amending section 2294, Revised Statutes of the United States (33 Stat., 59); June 22, 1910 (36 Stat., 583); March 3, 1909 (35 Stat., 844); June 25, 1910 (36 Stat., 867), and the Act of June 22, 1910 (36 Stat., 583).

STATES AND TERRITORIES IN WHICH DESERT-LAND ENTRIES MAY BE MADE.

2. The Act of March 3, 1877, provided for the making of desert-land entries in the States and Territories of California, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming, Arizona, and New Mexico. The Act of March 3, 1891, extended the provisions of the desert-land laws to Colorado.

LANDS THAT MAY BE ENTERED AS DESERT LAND.

3. Lands which, by reason of a lack of rainfall, or of sufficient dampness in the soil, will not produce native grasses sufficient in quantity, if unfed by grazing animals, to make an ordinary crop of hay in usual seasons, nor produce an agricultural crop of any kind in amount to make the cultivation thereof reasonably remunerative, and do not contain sufficient moisture to produce a natural growth of trees may be classed as desert in character and, if surveyed and unappropriated, may be entered under the desert-land law.

Lands situated within a notoriously arid or desert region, and themselves previously desert within the meaning of the desert-land law, do not necessarily lose their character as desert lands merely because on account of unusual rainfall for a few successive seasons their productiveness was increased and larger crops were raised thereon; and, under such circumstances, a strong preponderance of

evidence will be required to take them out of the class of desert lands. The final proof, however, of one who makes desert entry of such lands will be closely scrutinized as to the sufficiency of his water supply and the adequacy of his ditches and laterals. (37 L. D., 522.)

While lands which border upon streams, lakes, and other bodies of water, or through or upon which there is any stream, body of water, or living spring, may not produce agricultural crops without irrigation, such lands are not subject to entry under the desert-land laws until the clearest proof of their desert character is furnished.

WHO MAY MAKE A DESERT-LAND ENTRY.

4. Any citizen of the United States, 21 years of age, or any person of that age who has declared his intention of becoming a citizen of the United States, and who can make the affidavit specified in paragraphs 8 and 9 of these regulations, can make a desert-land entry. Thus, a woman, whether married or single, who possesses the necessary qualifications, can make a desert-land entry, and, if married, without taking into consideration any entries her husband may have made.

At the time of making final proof, however, entrymen of alien birth must have been admitted to full citizenship, which must be shown by a duly certified copy of the certificate of naturalization.

QUANTITY OF LAND THAT MAY BE ENTERED.

5. Under the Act of March 3, 1877, desert-land entries to the maximum of 640 acres were allowed, but by the Act of March 3, 1891, the area that may be embraced in a desert entry was reduced to 320 acres as the maximum. This limitation must, however, be read in connection with the Act of August 30, 1890 (26 Stats., 391), which limits to 320 acres, in the aggregate, the amount of land to which title may be acquired under all the public land laws, except the mineral laws. Hence, a person having initiated a claim under the homestead, timber and stone, preemption, or other agricultural land laws, or under all such laws, since August 30, 1890, say, to 160 acres in the aggregate, and acquired title to the land so claimed, or who is claiming such an area under subsisting entries at the date of his desert-land application, if otherwise qualified, may enter 160 acres of land under the desert-land laws. In other words, he may make a desert-land entry for such a quantity of land as, taken together with land acquired by him under the agricultural land laws, since August 30, 1890, and claimed by him under such laws, does not exceed 320 acres in the aggregate. It is to be noted, also, that the Act of June 22, 1910 (Public, No. 227), provides that desert-land entries made for lands withdrawn or classified as coal lands, or valuable for coal, shall not exceed 160 acres in area.

A person's right of entry under the desert-land law is exhausted either by making an entry or by taking an assignment of an entry, in whole or in part, whether the maximum quantity of land, or less, is entered or received by assignment; except, however, that under the Act of March 26, 1908, if a person, prior to the passage of that Act, has made an entry and has abandoned, lost, or forfeited the same, or has relinquished without receiving a valuable consideration

therefor, such person may make a second entry. In such case, however, it must be shown when the former entry was abandoned, lost, or forfeited, that it was not assigned, in whole or in part, canceled for fraud, or relinquished for a valuable consideration, and it must be so described by section, township, and range, or by date and number, as to be readily identified on the records of the General Land Office. The showing required must be by affidavit of applicant wherein the facts upon which is based his claim of right to make a second desert-land entry are set forth fully and in detail. This affidavit must be corroborated, as far as possible, by the affidavit of one or more persons having personal knowledge of the facts stated by applicant. Registers and Receivers are authorized to allow a second desert-land entry in any case wherein it is shown that applicant is entitled to make such entry under the provisions of said Act of March 26, 1908. Otherwise the application will be noted on the district office records and forwarded to the General Land Office with appropriate recommendation.

LAND MUST BE IN COMPACT FORM.

6. Land entered under these laws should be in compact form, which means that it should be as nearly a square form as possible. Where, however, it is impracticable on account of the previous appropriation of adjoining lands, or on account of the topography of the country, to take the land in a compact form, all the facts regarding the situation, location, and character of the land sought to be entered, and the surrounding tracts, should be stated, in order that the General Land Office may determine whether, under all the circumstances, the entry should be allowed in the form sought. Entrymen should make a complete showing in this regard, and should state the facts and not the conclusions they derive from the facts, as it is the province of the Land Department of the Government to determine whether or not, from the facts stated, the entry should be allowed.

HOW PREFERENCE RIGHT MAY BE ACQUIRED ON UNSURVEYED LAND.

7. Prior to the Act of March 28, 1908, a desert-land entry could embrace unsurveyed lands, but since the date of that Act desert-land entries may not be made of unsurveyed lands. This Act provides, however, that if a duly qualified person shall go upon a tract of unsurveyed desert land and reclaim, or commence to reclaim, the same, he shall be allowed a preference right of ninety days after the filing of the plat of survey in the local land office to make entry of the land. To preserve this preference right the work of reclamation must be continued up to the filing of the plat of survey, unless the reclamation of the land is completed before that time, and in that event the claimant must continue to cultivate and occupy the land until the survey is completed and the plat filed. A mere perfunctory occupation of the land, such as staking off the claim, or posting notices thereof on the land claimed, would not secure the preference right as against an adverse claimant, but occupation in entire good faith, accompanied by acts and works looking to the ultimate reclamation of the land, are necessary and required.

HOW TO PROCEED TO MAKE A DESERT-LAND ENTRY.

8. A person who desires to make entry under the desert-land laws must file with the Register and Receiver of the proper land office a declaration, or application, under oath, showing that he is a citizen of the United States, or has declared his intention to become such citizen; that he is 21 years af age or over; and that he is also a bona fide resident of the State or Territory in which the land sought to be entered is located. He must also state that he has not previously exercised the right of entry under the desert-land laws by making an entry or by having taken one by assignment; that he has personally examined every legal subdivision of the land sought to be entered; that he has not, since August 30, 1890, acquired title, under any of the agricultural-land laws, to lands which, together with the land applied for, will exceed, in the aggregate, 320 acres; and that he intends to reclaim the lands applied for by conducting water thereon, within four years from the date of his application. This declaration must contain a description of the land, by legal subdivisions, section, township, and range.

9. Special attention is called to the terms of this application, as they require a personal knowledge by the entryman of the lands intended to be entered. The affidavit, which is made a part of the application, may not be made by an agent or upon information and belief, and the Register and Receiver must reject all applications in which it is not made to appear that the statements contained therein are made upon the applicant's own knowledge and that it was obtained from a personal examination of the lands. The blank spaces in the application must be filled in with a complete statement of the facts, showing the applicant's acquaintance with the land and how he knows it to be desert land. This declaration must be corroborated by the affidavits of two reputable witnesses, who also must be personally acquainted with the land, and they must state the facts regarding the condition and situation of the land upon which they base the opinion that it is subject to desert entry.

The statements in the blank form of declaration and accompanying affidavits, as to present character of the land, may be modified so as to show the facts, in any case wherein application is made for entry of lands reclaimed, or partially reclaimed, by applicant, before survey, under the provisions of the Act of March 28, 1908; as to a former entry, in case application is made for a second entry under the provisions of the Act of March 26, 1908, and as to the character of the land, with respect to coal deposits in case application is made, under the provisions of the Act of June 22, 1910, for lands withdrawn or classified as coal lands, or valuable for coal.

10. Applicants and witnesses must in all cases state their places of actual residence, their business or occupation, and their postoffice addresses. It is not sufficient to name only the county or State in which a person lives, but the town or city must be named also, and where the residence is in a city, the street and number must be given. It is especially important to claimants that upon changing their postoffice addresses they promptly notify the local officers of such change, for upon failure to do so their entries may be canceled upon notice sent to the address of record, but not received by claimant. The Register and Receiver will be careful to note the postoffice address on their records.

11. The application and corroborating affidavits, and all other proofs, affidavits, and oaths of any kind whatsoever, required by law to be made by applicants and entrymen and their corroborating witnesses, must be sworn to before the Register or Receiver of the land district in which the land is located, or before a United States commissioner, if the lands are within the boundaries of a State, or a commissioner of a court exercising federal jurisdiction, if in a Territory, or before a judge or clerk of a court of record, in the county, or land district, in which the land is situated. The only conditions permitting the taking of such evidence outside the proper land district is where the county in which the land is situated lies partly in two or more land districts, in which case such evidence may be taken anywhere in the county. In case the application and affidavits are not made before either of the local officers, or in the county in which the land is located, they must be made before some one of the officers above named, in the land district nearest to, or most accessible from, the land, which latter fact must be shown by affidavit of applicant. The declaration of applicant and the affidavits of his two witnesses must, in every instance, be made at the same time and place and before the same officer.

12. Persons who make desert-land entries must acquire a clear right to the use of sufficient water to irrigate and reclaim the whole of the land entered, or as much of it as is susceptible of irrigation, and of keeping it permanently irrigated. Therefore, if a person makes an entry before he has taken steps to acquire a water right, he does so at his own risk, because, ordinarily, one entry will exhaust his right and he will not be repaid the money paid at the time of making the entry.

13. At the time of filing his application with the Register and Receiver the applicant should also file a map, showing the plan by which he proposes to conduct water upon the land and the manner by which he intends to irrigate the same, and at the same time he must pay the Receiver the sum of 25 cents per acre for the land applied for. The Receiver will issue a receipt for the money, and the Register and Receiver will jointly issue a certificate showing the allowance of the entry. This application will be given its proper serial number at the time it is filed, and at the end of each month an abstract of collections under these laws will be transmitted to the General Land Office.

ASSIGNMENTS.

14. While by the Act of March 3, 1891, assignments of desert-land entries were recognized, the Land Department, largely for administrative purposes, held that a desert-land entry might be assigned as a whole, or in its entirety, but refused to recognize the assignment of only a portion of an entry. The Act of March 28, 1908, however, provides for the assignment of such entries, in whole or in part; but this does not mean that less than a legal subdivision may be assigned. Therefore, no assignment, otherwise than by legal subdivisions, will be recognized.

15. The Act of March 28, 1908, also provides that no person may take a desert-land entry by assignment, unless he is qualified to enter the tract so assigned to him. Therefore, if a person is not a resident citizen of the State or Territory wherein the land involved

is located, or, if he has made a desert-land entry in his own right, he can not take such an entry by assignment. The language of the Act indicates that the taking of an entry by assignment is equivalant to the making of an entry, and this being so, no person is allowed to take more than one entry by assignment. The desert-land right is exhausted either by making an entry or by taking one by assignment.

However, in view of the practice that obtained in the General Land Office prior to March 28, 1908, of recognizing the right of a person to make an entry, and also to take one or more entries by assignment, the aggregate area of the land embraced in all such entries not exceeding 320 acres, such entries and assignments so made or taken will not now be disturbed. But all assignments and entries made subsequent to the approval of the Act of March 28, 1908, must be governed by the terms of that Act, which is held to mean that the desert-land right is exhausted either by making an entry or by taking one by assignment. Said Act provides that no assignment to, or for the benefit of, any corporation or association shall be authorized or recognized.

16. As stated above, desert-land entries may be assigned, in whole or in part, and, as evidence of the assignment, there should be transmitted to the General Land Office the original deed of assignment, or a certified copy thereof. Where the deed of assignment is recorded, a certified copy may be made by the officer who has custody of the record. Where the original deed is presented to an officer qualified to take proof in desert-land cases, a copy certified by such officer will be accepted. Attention is called to the fact that copies of deeds of assignment certified by notaries public or justices of the peace, or, indeed, any other officers than those who are qualified to take proofs and affidavits in desert-land cases, will not be accepted.

An assignee must file, with his deed of assignment, an affidavit (Form 4-274a) showing his qualifications to take the entry assigned to him. He must show what entries have been made by, or assigned to, him under the agricultural laws, and he must also show his qualifications as a citizen of the United States, that he is 21 years of age or over, and also that he is a resident citizen of the State or Territory in which the land assigned to him is situated. In short, the assignee must possess the qualifications necessary to enter the land proposed to be assigned were it subject to entry. Desert-land entries are initiated by the payment of 25 cents per acre, and no assignable right is acquired by the applicant prior to such payment. (6 L. D., 541; 33 L. D., 152.) An assignment made on the day of such payment, or soon thereafter, is treated as suggesting fraud, and such cases will be carefully scrutinized. The provision of law authorizing the assignments of desert entries, in whole or in part, furnishes no authority to a claimant under said law to make an executory contract to convey the land after the issuance of patent, and to thereafter proceed with the submission of final proof in furtherance of such contract. The sale of the land embraced in an entry at any time before final payment is made must be regarded as an assignment of the entry, and in such cases the person buying the land must show that he possesses all the qualifications required of an assignee. (29 L. D., 459.) The assignor of a desert-land entry

may execute the assignment papers wherever he may be before any officer authorized to take acknowledgments, but the assignee must execute the affidavit (Form 4-274a), and all other required oaths and affidavits, before some one of the officers specified and in the manner set out in paragraph 11 of this circular.

No assignments of desert-land entries or parts of entries are conclusive until examined in the General Land Office and found satisfactory and the assignment recognized. When recognized, however, the assignee takes the place of the assignor as effectually as though he had made the entry, and is subject to any requirement that may be made relative thereto. The assignment of a desert-land entry to one disqualified to acquire title under the desert-land law, and to whom, therefore, recognition of the assignment is refused by the General Land Office, does not of itself render the entry fraudulent, but leaves the right thereto in the assignor.

ANNUAL PROOF.

17. In order to test the sincerity and good faith of the claimant under the desert-land laws, and to prevent the reservation or segregation of tracts of public land in the interest of persons having no intention of reclaiming the land, but rather, by payment of the initial sum of 25 cents per acre, hoping to gain the use of the land for a number of years, Congress in the Act of March 3, 1891, made the requirement that a map be filed at the initiation of the entry, showing the mode of contemplated irrigation and the proposed source of the water supply, and that there be expended yearly for three years from the date of the entry not less than $1 for each acre of the tract entered, making a total of not less than $3 per acre, in the necessary irrigation, reclamation, and cultivation of the land, in permanent improvements thereon, and in the purchase of water rights for the irrigation thereof, and that at the expiration of the third year a map or plan be filed showing the character and extent of the improvements placed on the claim. The said Act, however, authorizes the submission of final proof at an earlier date than four years from the time the entry is made in cases wherein reclamation has been effected and expenditures of not less than $3 per acre have been made. Proof of these expenditures must be made before some officer authorized to administer oaths in desert-land cases. (See par. 11 hereof.) This proof, which is known as yearly or annual proof, must be made by applicant, whose affidavit must be corroborated by affidavits of two reputable witnesses, all of whom must have personal knowledge that the expenditures were made for the purpose stated in the proof.

18. Expenditures for the construction and maintenance of storage reservoirs, dams, canals, ditches, and laterals to be used by claimant for irrigating his land, for roads where they are necessary, for erecting stables, corrals, etc., for digging wells, where the water therefrom is to be used for irrigating the land, and for leveling and bordering land proposed to be irrigated will be accepted. Expenditures for fencing all or a portion of the claim may be accepted, in case it is clearly shown that the fence is necessary for the protection of a portion of the land being prepared for irrigation and cultivation or for the protection of canals, ditches, etc., thereon. Expenditures for surveying, for the purpose of ascertaining the levels

for canals, ditches, etc., and for the first breaking or clearing of the soil may be accepted.

Expenditures for cultivation after the soil has been first prepared may not be accepted, because the claimant is supposed to be compensated for such work by the crops to be reaped as a result of cultivation. Expenditures for surveying the claim in order to locate the corners of same may not be accepted. The cost of tools, implements, wagons, and repairs to same, used in construction work may not be computed in the cost of construction. Expenditures for material of any kind will not be allowed unless such material has actually been installed or employed in and for the purpose for which it was purchased. For instance, if credit is asked for posts and wire for fences or for a pump or other well machinery, it must be shown that the fence has been actually constructed or the well machinery actually put in place. Annual proofs must contain itemized statements showing the manner in which expenditures were made.

No expenditure for stock or interest in an irrigating company, through which water is to be secured for irrigating the land, will be accepted as satisfactory annual expenditure until a special agent, or other authorized officer, has submitted a report as to the resources and reliability of the company, including its actual water right, and such report has been favorably acted upon by the department. The stock purchased must carry the right to water, and it must be shown that payment in cash has been made at least to the extent of the amount required in connection with the annual proof submitted, and such stock must be actually owned by the claimants at the time of the submission of final proof. A certificate of the Secretary, or other qualified officer of the company involved, must be furnished, showing the extent of actual water appropriation by the company, to what extent water had been previously disposed of, quantity of water carried under the stock or interest purchased by the desert claimant, and a statement showing the previous ownership of the shares of stock forming the basis of proffered proof, and a description of the land in connection with which such stock has been previously issued or used. Circumstances in connection with stock which has been previously made the basis of proof or annual expenditure will be carefully scrutinized and inquired into.

Registers and Receivers are instructed to carefully examine all annual proofs filed and are authorized to suspend same, with notice to claimants to cure defects within thirty days, or to reject, subject to the usual right of appeal to the Commissioner of the General Land Office. These proofs are to be forwarded with the regular monthly returns.

At the end of each year, if the required proof of actual expenditures has not been made, the Register and Receiver will send the entryman notice and allow him sixty days in which to submit such proof. If the proof is not furnished as required, the fact that notice was served upon the claimant should be reported to the General Land Office, with evidence of service, whereupon the entry will be canceled. Registers and Receivers should keep on hand a sufficient supply of blank forms used in notifying the entrymen that annual proofs are due, and they should send such notices whenever necessary, without waiting for instructions from the General Land Office.