Chapter 555

2011 EDITION

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RECLAMATION UNDER CAREY ACT

555.010 Acceptance by state of conditions of Carey Act and grants thereunder. The State of Oregon hereby accepts the conditions of section 4 of the Act of Congress approved August 18, 1894 (28 Stat. 422), and amendments thereto, known as the "Carey Act," together with all grants of land to the state under the provisions of that Act.

555.020 Water Resources Commission to manage lands; general powers; transfer of powers of former state boards. The selection, management, and disposal of the land referred to in ORS 555.010 shall be vested in the Water Resources Commission. The commission may employ necessary assistance, purchase material and supplies, and shall have charge and control of all reclamation work undertaken, contracted for, or initiated by the State Land Board prior to the passage of chapter 226, Oregon Laws 1909, or by the Desert Land Board prior to the passage of chapter 434, Oregon Laws 1927, and of the reclamation companies which were operating under either of those boards.

555.030 Duties of Water Resources Commission. The Water Resources Commission, or some authorized assistant, shall:

(1) Have custody of all the records and files under the provisions of ORS 555.010 to 555.160, which shall be public records and open to inspection by the public during office hours.

(2) Receive and file all proposals for construction of irrigation works to reclaim lands selected under the provisions of ORS 555.010 to 555.160.

(3) Keep for public inspection maps or plats of all land selected.

(4) Receive entries of settlers on these lands.

(5) Do any and all work necessary in carrying out the provisions of ORS 555.010 to 555.160. [Amended by 1955 c.707 §68]

555.040 Powers of Water Resources Commission as to contracts with Secretary of Interior for lands to be reclaimed; lien for expenses. Upon application, made as provided in ORS 555.050, by any person desiring to reclaim any of the desert government lands in this state, the Water Resources Commission shall make proper application for the lands which the applicant undertakes to reclaim, and make and enter into contract or agreement with the Secretary of the Interior for the donation and patent to the state, free of cost for survey or price, of such desert lands. The commission may make and enter into such contracts and agreements, and create and assume such obligations in relation to and concerning the lands, as may be necessary to induce and cause such reclamation thereof as is required by the contract with the Secretary of the Interior and the Acts of Congress. The commission may create a lien which shall be valid on and against the separate legal subdivisions of land reclaimed, for the necessary expenses of reclamation, and reasonable interest thereon from the date of reclamation until the lien is satisfied; provided that in no event, in no contingency, and under no circumstances, shall the state be in any manner directly or indirectly liable for any amount of any such lien or liability, in whole or in part.

555.050 Application to Water Resources Commission for lands to be reclaimed; selection and withdrawal of lands. (1) Any person desiring to construct ditches, canals or other irrigation works to reclaim land under the provisions of ORS 555.010 to 555.160 shall, at the expense of the person, file with the Water Resources Commission an application for selection on behalf of the state, by the commission, of the land to be reclaimed. The application shall conform to all requirements of the federal laws and rulings thereunder, and be accompanied by the necessary land office fees and such additional data as may be prescribed by the commission, including a preliminary estimate of costs and the amount of lien asked for. If the application is made in proper form, and it appears that the proposed plan is feasible, that the applicant is financially able to complete the work, and that its completion will be to the best interests of the state, then the commission, at the expense and cost of the applicant, shall make proper application for the selection and withdrawal of the lands included in the application.

(2) The commission may do all things necessary to secure the withdrawal of lands on behalf of the commission by the Secretary of the Interior, and let a contract to the lowest responsible bidder for the reclamation and colonization of the same when withdrawn.

555.060 Deposit by applicant; disposition of money. A deposit shall accompany each application in a sum not less than 10 cents per acre up to 1,000 acres, and two cents per acre for each acre over that amount, which sum shall be deposited with the Water Resources Commission and held in trust as a guarantee of good faith on the part of the applicant, to whom it shall be returned at the time of execution of a contract between the state and the applicant. In case the person making the application shall, upon segregation by the Secretary of the Interior of any or all of the lands mentioned

therein, refuse to enter into a contract with the state, the deposit shall be forfeited to the state and credited to the Oregon Irrigation Fund.

555.070 Contract for reclamation of land; contents; examination and report by Water Resources Commission; sale of water right to settlers; bond of contractor; deposit to secure purchasers of water rights. Upon withdrawal of the land by the Department of the Interior, the Water Resources Commission shall enter into a contract for the reclamation of such land with the person submitting the application, which contract shall contain plans and specifications of the proposed irrigation works; provided, that no contract shall be executed by the commission until after an examination by the commission concerning the feasibility of the proposed plan of reclamation, sufficiency and availability of the water supply, and reasonableness of the estimate of cost and the lien requested. The contract shall provide for the sale of the water right to settlers on the land in satisfaction of the reclamation lien allowed. This contract shall not be entered into on the part of the state until the withdrawal of the lands by the Department of the Interior and the filing of a satisfactory bond on the part of the proposed contractor, which bond shall be in a penal sum not less than two percent of the lien to be allowed, and shall be conditioned upon the faithful performance of the provisions of the contract with the state; provided, that in case the contractor is the irrigation district such bond need not be filed. The commission may, however, require the contractor to make a deposit at the time of application for entry of land by settlers to insure the transfer of the system in good condition and repair to the purchasers of water rights as herein provided, which deposit shall be returned by the commission at the time of such transfer. [Amended by 1955 c.707 §69]

555.080 Reclamation works; control by contractor; transfer to purchasers of water rights. For such time as is specified in the contract, and not to exceed 10 years from the date thereof, the control and management of the reclamation works shall be vested in the person having contract with the state. At the expiration of such time the clear and unencumbered title to the reclamation works and all franchises thereunto belonging, also the control and management thereof, shall pass to the purchasers of water rights from the reclamation works in the manner to be prescribed in the contract, the contractor retaining an interest in the works proportional to the amount of water right unsold.

555.090 Time for construction of works; date of commencement; securing of water rights; cessation of work as causing forfeiture; extension of time. No contract shall be made by the Water Resources Commission which requires a greater time than five years for construction of the works. All contracts shall state that the work shall begin within six months from date of contract; that the contractor shall secure for the use and benefit of the reclamation system all necessary water rights, rights of way, reservoir sites, or other property necessary for its construction and operation; that construction shall be prosecuted diligently and continuously to completion; and that a cessation of work under the contract with the state for a period of six months, without the sanction of the commission, will forfeit to the state all rights under the contract. The commission may extend the time in which to begin the construction of works, or for the completion of work, on account of delay caused by physical or engineering difficulties beyond the power of the contractor to control.

555.100 Nonperformance by contractor; forfeiture; notice of forfeiture; sale of incomplete works; disposal of proceeds. (1) Upon the failure of any parties having contracts with the state for the construction of irrigation works, to begin the same within the time specified by the contract, or to complete the same within the time or in accordance with the specifications of the contract with the state, to the satisfaction of the Water Resources Commission, the commission shall give the parties written notice of such failure. If after a period of 60 days from the sending of such notice they have failed to proceed with the work or to conform to the specifications of their contract with the state, or secure an extension of time, their contract and all works constructed thereunder shall be at once forfeited to the state.

(2) In case of any forfeiture, cancellation, or relinquishment of any contract to the state, the commission shall so declare and give notice once each week, for four weeks, in some newspaper of general circulation in the county in which the work is situated, and in one newspaper at the state capital in like manner and for a like period, of the forfeiture, cancellation, or relinquishment of the contract, and that upon a fixed day proposals will be received at the office of the commission for purchase of the incompleted works and for completion of the irrigation works in accordance with plans, specifications and other conditions prescribed by the commission, the time for receiving bids to be at least 60 days subsequent to the issuing of the last notice of forfeiture. The money re-

ceived by the commission from sale of the partially completed works under the provisions of this section shall first be applied to the expenses incurred by the state in their forfeiture and disposal, and the surplus, if any exists, shall be paid to the original contractors with the state.

555.110 State's liability. Nothing in ORS 555.010 to 555.160 shall be construed as authorizing the Water Resources Commission to obligate the state to pay for any work constructed under any contract, or to hold the state in any way responsible to settlers for the failure of contractors to complete the work according to the terms of their contracts with the state.

555.120 Conditions precedent to entry onto land and sale of water rights; form of applications for purchase or for release of lien; "date of reclamation." No land shall be open to entry and no water rights shall be sold by the parties under contract with the Water Resources Commission until the construction of the works is sufficiently advanced to insure a water supply, and the entry of an order by the commission opening the land or any portion thereof to entry and sale. All applications to purchase lands, or for release of lien for construction of the reclamation works, shall be upon the forms provided by the commission. The "date of reclamation," for the purposes of ORS 555.010 to 555.160, shall be the date shown by the proof furnished the Secretary of the Interior by the commission at which water was furnished available for the reclamation of each tract in the list of lands.

555.130 Application to enter; contract for purchase of water rights and release of lien; payment for land. Any citizen of the United States, or any person having declared an intention to become such, over the age of 21 years, may make application, under oath, to the Water Resources Commission, upon forms prescribed by the commission, to enter any of the lands reclaimed under the provisions of ORS 555.010 to 555.160, in an amount not to exceed 160 acres for any one person. Each application shall be accompanied by a contract, made and entered into by the applicant with the person who has undertaken the reclamation of the tract in question, which contract shall show that the applicant has made proper arrangement for purchase of the necessary water rights and the release of the construction lien. Each application to the commission shall in addition be accompanied by a payment of not less than $1 per acre for each acre included in the application, which payment shall be made by the contractor out of the first payment by the applicant, and shall be deposited by the commission with the State Treasurer, who shall credit it to the Oregon Irrigation Fund. If the application is not approved, the $1 payment shall be returned to the contractor.

555.140 Deeds to land; execution; form; title conveyed; record; preservation of copies; copies as evidence. Upon filing with the Water Resources Commission a satisfactory release of the construction lien apportioned by the commission against the land in any application, accompanied by satisfactory proof of reclamation, cultivation and settlement, as required by the rules of the commission, it shall be the duty of the commission to deed to the applicant, or the assignee of the applicant, the land described in the application. The deeds shall be in form of a quitclaim and shall operate to convey only such title as the state may have in the land conveyed. The deeds, without acknowledgment, or copies thereof duly certified and attested under seal by the commission, certified from the official copy in the keeping of the commission, shall be admitted to record. The commission shall preserve, in a suitable book, a true copy of the deeds, with an alphabetical index of the names of the grantees, and such copies or certified copies thereof certified and attested as aforesaid shall be primary evidence of such conveyances.

555.150 Rules. The Water Resources Commission shall provide suitable rules for the filing of applications for constructing irrigation works, prescribing the nature of final surveys, and the gathering of engineering data upon which the contract with the state is to be based, the manner in which the plans and specifications shall be submitted, and for the entry of and payment for the land and water rights by settlers and for the settlement or forfeiting of entry by settlers, and such other rules and regulations as are necessary to carry out the provisions of ORS 555.010 to 555.160.

555.160 Report of work, expenditures and condition of funds; recommendations for legislation. The Water Resources Commission shall issue, on or before September 30 of each even-numbered year, a full report of the work of the commission under the provisions of ORS 555.010 to 555.160, including a statement of expenditures and condition of all funds, and such recommendations for legislation as are deemed advisable. [Amended by 2011 c.545 §62]

555.170 Oregon Irrigation Fund. The Oregon Irrigation Fund is hereby created. Payments to and disbursements from the fund shall be made as provided by law.

555.171 Transfers from Oregon Irrigation Fund to General Fund. Notwithstanding the provisions of ORS 555.170, all moneys in the Oregon Irrigation Fund created by ORS 555.170 on February 18, 1955, and all moneys paid into such fund after February 18, 1955, are to be transferred to the General Fund to be available for general governmental expenses. [1955 c.23 §1]

555.180 Payment for irrigation of acreage in excess of contract; notice by Water Resources Commission; price per acre. Wherever an irrigation system has been constructed under contract with the State of Oregon pursuant to the Act of Congress known as the Carey Act, and under and pursuant to ORS 555.010 to 555.160, and it develops that the acreage of land actually irrigated in any smallest legal subdivision of the land is greater than the acreage made subject to the lien in the reclamation contract for said smallest legal subdivision and the waters for the excess acres actually irrigated in such legal subdivision over and above the amount fixed in the contract for lien have not as yet been paid for, nor the amount to be paid therefor agreed upon, the Water Resources Commission upon request of the company supplying water to the excess acres shall notify the person using the water upon the excess acres to pay for the same or enter into an arrangement with the company furnishing the water providing for the price to be paid therefor and the manner of payment; provided, the company furnishing the water shall not exact a price per acre for such excess acres greater than the price per acre as now fixed by the commission.

555.190 Notice to be in writing; service; noncompliance; effect. The notice given by the Water Resources Commission shall be in writing and may be served by registered mail or by certified mail with return receipt. If the user of the water does not comply with the notice and either pay for the excess water or enter into a definite arrangement with the company for payment thereof within 30 days from the mailing of the notice, the commission shall, upon notice from the company furnishing the water, cancel the right of the landowner to the excess acres and thereafter, without further application for permission so to do, the company furnishing the water may sell and deliver the water to other lands. Upon effecting the sale of the water to other lands the company shall notify the commission of the lands to which the water is transferred. [Amended by 1991 c.249 §57]

TUMALO PROJECT

555.310 Reclamation of lands in Tumalo Project; contracts for. The Water Resources Commission is authorized and empowered to contract for the completion of the reclamation of lands in the Tumalo Project or any part thereof, and to otherwise carry out the provisions of ORS 555.310 to 555.410, with any irrigation district, organized pursuant to the laws of Oregon, including lands in the project or any part thereof, or with any other irrigation district, or with the federal government, or with any person.

555.320 Project manager; duties and authority. (1) The Water Resources Commission shall appoint, at a salary to be fixed by the commission, a project manager for the Tumalo Project, who shall hold office and serve at the pleasure of the commission, but not longer than two years without reappointment. In the selection of a project manager, due consideration shall be given the recommendations of the Board of Directors of the Water Users' Association of the Tumalo Project, which project was designated in chapter 119, Oregon Laws 1913, as the Columbia Southern Irrigation Project. The project manager shall have complete charge of the operation, maintenance and management of all matters pertaining to the project, and shall have authority to collect maintenance fees and issue receipts therefor, to employ necessary assistants, purchase materials and supplies, make proper and necessary repairs, renewals and alterations in the irrigation system when required, necessary or authorized by the commission, and to furnish inventories of machinery, equipment and materials at stated intervals.

(2) All machinery, materials, supplies and land acquired by the state under the provisions of chapter 119, Oregon Laws 1913, not required in the future operation of the project, shall be sold by the project manager under the direction of the commission, and the funds arising therefrom shall be placed in the Tumalo Project Fund. The project manager shall render a monthly report to the commission covering the operation of the project and such other matters as the commission may direct. The project manager shall furnish a good and sufficient surety bond in the sum of $5,000 running to the State of Oregon, subject to the approval of the Attorney General, and conditioned upon the faithful performance of duties.

555.330 Rules. The Water Resources Commission shall make all necessary rules and regulations for properly carrying out the provisions of ORS 555.310 to 555.410.

555.340 Water rights; sale price; lien on lands; lien list; expenditures of state; repayment from sale of lands and rights; replacement or surrender of contracts with Columbia Southern Irrigation Company. (1) Subject to ORS 555.350, the prices to be paid for the sale of water rights on private lands as well as Carey Act lands, in the Tumalo Project, shall be $40, with interest at five percent from the date of contract of sale, in addition to which there shall be a charge of $2.50 per acre for the nonirrigable Carey Act lands; provided, however, that no new lien shall be placed upon any lands having a complete vested water right on June 3, 1913. A certified copy of the lien list shall be prepared by the Water Resources Commission, showing the price to be paid for water rights for each small subdivision or farm unit of Carey Act land in the project. A certified copy of the lien list shall be filed in the records of Crook County. From and after the date of reclamation of any tract designated in the list a valid lien in favor of the State of Oregon shall exist against each tract in the list for the amount designated therein until the same, together with accruing interest, has been paid in full.

(2) The total amount to be realized from the sale of Carey Act lands and water rights for private lands shall insure the return to the state of all money expended by it in the reclamation of the lands in the project with interest at five percent from the date of the contract of sale, in addition to any further sums or amounts which are found necessary to be paid on account of the project.

(3) Any person who holds a contract with the Columbia Southern Irrigation Company or its successors in interest, for any tract in the project, may execute a new contract with the state for reclamation, under the provisions of ORS 555.310 to 555.410, of the land described in the original contract with the company, or a new selection, receiving credit thereon for the principal paid to the company under the original contract; or, may surrender the contract and receive, in cash, the full amount of principal paid to the company on the contract; provided, however, that no contract holder shall be entitled to a refund of the money as herein provided unless an assignment of all rights, title and interest in and to the contract and the land described therein was filed with the Desert Land Board on or before July 1, 1917; provided, further, that refunds shall be made to contract holders pro rata as funds may become available from time to time after July 1, 1915. The failure to comply with the above option by any contract holder under the old Columbia Southern Project shall render the contract void and the lands embraced therein shall revert to the state and be subject to reentry.

555.350 Increase of lien against unsold land; reduction of amount due to state. The Water Resources Commission may increase the reclamation lien against the land not now sold in the Tumalo Project as fixed in ORS 555.340, if such increase is necessary or expedient in the completion of the project. The commission may reduce the amount due the state on account of the construction of the Tumalo Project by the amount expended by any such district or the federal government in completing the reclamation of the lands embraced within the project or any amount which may be expended in discharging the obligations of the state incurred under and pursuant to ORS 555.320, 555.340 and 555.380, or otherwise.

555.360 Arrangements to settle, cultivate and reclaim Carey Act lands; contract provisions; sale of water rights to private lands; rules; fees. The Water Resources Commission shall make all necessary arrangements to secure the settlement, cultivation and reclamation of Carey Act lands in the Tumalo Project; accept applications for the entry of the lands; make contracts for the purchase of water rights and release of lien for the lands; make rules for their cultivation and settlement; and prescribe the forms to be used for such purposes. Each contract with purchasers shall provide for payment of the full amount of lien assessed against the tract covered by the contract within a period of not to exceed 20 years, with interest on deferred payments at five percent per annum, and shall also provide for payment of an annual maintenance fee, to be fixed by the commission. Contracts executed before May 27, 1913, may be brought under the terms of ORS 555.310 to 555.410, and the rate of interest thereunder shall be five percent from and after December 1, 1916. Contracts for the sale of water rights to private lands within the project shall be upon the same terms and conditions as for Carey Act lands, and the commission shall in addition require the purchaser to give a first mortgage on such private lands, to the state, as security for the payments due under the contract. The contracts with purchasers, both on Carey Act and private lands, shall provide for the sale of a proportionate interest in the reclamation system to each purchaser, and for transfer of the reclamation system to the purchasers when the water rights for a majority of the lands in the project have been fully paid for, the state retaining an interest proportionate to the unpaid balance on the contracts.

555.370 Cancellation of contract upon default. Upon failure of any purchaser having a contract with the Water Resources Commission to make payments of principal and interest according to the terms of the

contract, the commission shall notify the purchaser by registered mail or by certified mail with return receipt of the default. If the default continues for a period of six months after the sending of such notice, the commission may cancel the contract, and all payments made thereunder shall be forfeited to the state and placed in the irrigation fund. The commission may reopen the lands covered by the canceled contract for entry, and resell water rights to the land to some other purchaser. Nothing in this section, however, shall be construed so as to prevent the commission from extending the time to make any payment due under any contract with a purchaser, when in the judgment of the commission the purchaser is entitled to an extension. [Amended by 1991 c.249 §58]

555.380 Tumalo Project Fund; rules. (1) All moneys received as maintenance fees on the Tumalo Project shall be applied to the cost of maintaining, repairing, operating and distributing water for the project. The money shall be collected and disbursed by the project manager under the direction of the commission, who shall prescribe rules and regulations governing such collections or disbursements.

(2) All moneys derived from the Tumalo Project from whatsoever source, except as maintenance fees, shall be placed in the Tumalo Project Fund in the hands of the State Treasurer, which fund is hereby created. Disbursements from the Tumalo Project Fund shall be made to repay contract holders as provided in ORS 555.310 to 555.410, and to defray the expenses of construction, extension and operation of the project; except that no repayments to contract holders shall be made which shall reduce the Tumalo Project Fund to less than $5,000, which amount shall be held as an emergency fund to be disbursed for the project in case of an emergency. After all payments to contract holders have been made, all moneys in the fund, except $1,000 for an emergency, shall be placed to the credit of the General Fund of the state and credited as payment to the state on account of the original appropriation for the construction of the Tumalo Project and interest on same. From and after that date all money derived from the sale of land and water rights shall be deposited in the General Fund until all expenses incurred by the state in connection with the project, including five percent interest on all money advanced from the date of sale of the lands, have been repaid, after which time all money received from the sale of lands and water rights shall be deposited in the Oregon Irrigation Fund.

(3) All expenditures for the Tumalo Project from the Tumalo Project Fund shall be paid at the same time and in the same manner as state officers are paid.

(4) All fees payable to the office of the commission in connection with or incident to the completion of applications and the issuance of permits for the appropriation, diversion, storage and use of waters in the Tumalo Project are hereby remitted to the project, and payment thereof shall not be required by the commission.

555.390 Transfer of state's interest to irrigation districts or to federal government. The Water Resources Commission may, with due regard to the interests of the state, transfer all the right, title and interest of the state in and to the Tumalo Project, and all rights or franchises thereunto appertaining, to any irrigation district or to the federal government, whenever it appears to the commission that such transfer will be in the best interests of the project.

555.400 Preferred purchasers. In the sale of water and water rights and the entry upon lands now remaining unsold in the Tumalo Project, honorably discharged soldiers and sailors, marines, and Red Cross nurses of the Mexican, Spanish or Indian wars and of World War I shall have a preferred right to the purchase and acquiring of the same for such period of time as may be designated by the Water Resources Commission.

555.410 Repayment of appropriation from receipts of sale of lands; expenditures. The sum of $10,000, which was appropriated by section 2, chapter 424, Oregon Laws 1917, shall be considered a loan to the Tumalo Project and shall be returned to the General Fund, together with interest at the legal rate from the date on which the money is made available, from the receipts of the sale of project lands. All expenditures incurred under the provisions of ORS 555.340, 555.360 and 555.380 shall be paid at the same time and in the same manner as state officers, upon vouchers approved by the Water Resources Commission.

CHAPTERS 556 AND 557

[Reserved for expansion]