

TITLE 43--PUBLIC LANDS

CHAPTER 9--DESERT-LAND ENTRIES

Sec. 321. Entry right generally; extent of right to appropriate waters

It shall be lawful for any citizen of the United States, or any person of requisite age who may be entitled to become a citizen, and who has filed his declaration to become such'' and upon payment of 25 cents per acre--to file a declaration under oath with the officer designated by the Secretary of the Interior of the land district in which any desert land is situated, that he intends to reclaim a tract of desert land not exceeding one-half section, by conducting water upon the same, within the period of three years thereafter: Provided, however, That the right to the use of water by the person so conducting the same, on or to any tract of desert land of three hundred and twenty acres shall depend upon bona fide prior appropriation; and such right shall not exceed the amount of water actually appropriated, and necessarily used for the purpose of irrigation and reclamation; and all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manufacturing purposes subject to existing rights. Said declaration shall describe particularly said one-half section of land if surveyed, and, if unsurveyed, shall describe the same as nearly as possible without a survey. At any time within the period of three years after filing said declaration, upon making satisfactory proof to the officer designated by the Secretary of the Interior of the reclamation of said tract of land in the manner aforesaid, and upon the payment to such officer of the additional sum of \$1 per acre for a tract of land not exceeding three hundred and twenty acres to any one person, a patent for the same shall be issued to him. Except as provided in section 3 of the Act of June 16, 1955, as amended, no person may make more than one entry under sections 321 to 323, 325, and 327 to 329 of this title. However, in that entry one or more tracts may be included, and the tracts so entered need not be contiguous. The aggregate acreage of desert land which may be entered by any one person under this section shall not exceed three hundred and twenty acres, and all the tracts entered by one person shall be sufficiently close to each other to be managed satisfactorily as an economic unit, as determined under rules and regulations issued by the Secretary of the Interior.

Sec. 322. Desert lands defined; question how determined

All lands exclusive of timber lands and mineral lands which will not, without irrigation, produce some agricultural crop, shall be deemed desert lands, within the meaning of sections 321 to 323, 325, and 327 to 329 of this title, which fact shall be ascertained by proof of two or more credible witnesses under oath, whose affidavits shall be filed in the land office in which said tract of land may be situated. The determination of what may be considered desert land shall be subject to the decision and regulation of the Secretary of the Interior or such officer as he may designate.

Sec. 323. Application to certain States

Sections 321 to 323, 325, and 327 to 329 of this title shall only apply to and take effect in the States of California, Colorado, Oregon, Nevada, Washington, Idaho, Montana, Utah, Wyoming, Arizona, New Mexico, and North and South Dakota.

Sec. 324. Assignment of entries

No assignment after March 28, 1908, of an entry made under sections 321 to 323, 325, and 327 to 329 of this title shall be allowed or recognized, except it be to an individual who is shown to be qualified to make entry under said sections of the land covered by the assigned entry, and such assignments may include all or part of an entry; but no assignment to or for the benefit of any corporation or association shall be authorized or recognized.

Sec. 325. Resident citizenship of State as qualification for entry

Excepting in the State of Nevada, no person shall be entitled to make entry of desert lands unless he be a resident citizen of the State or Territory in which the land sought to be entered is located.

Sec. 326. Unsurveyed lands not subject to entry; preferential right of entry after survey

From and after March 28, 1908, the right to make entry of desert lands under the provisions of sections 321 to 323, 325, and 327 to 329 of this title, shall be restricted to surveyed public lands of the character contemplated by said sections, and no such entries of unsurveyed lands shall be allowed or made of record: Provided, however, That any individual qualified to make entry of desert lands under said sections who has, prior to survey, taken possession of a tract of unsurveyed desert land not exceeding in area three hundred and twenty acres in compact form, and has reclaimed or has in good faith commenced the work of reclaiming the same, shall have the preference right to make entry of such tract under said sections, in conformity with the public land surveys, within ninety days after the filing of the approved plat of survey in the district land office.

Sec. 327. Filing irrigation plan; association of entrymen

At the time of filing the declaration required in section 321 of this title the party shall also file a map of said land, which shall exhibit a plan showing the mode of 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. Persons entering or proposing to enter separate sections, or fractional parts of sections, of desert lands, may associate together in the construction of canals and ditches for irrigating and reclaiming all of

said tracts, and may file a joint map or maps showing their plan of internal improvements.

Sec. 328. Expenditures and cultivation requirements

No land shall be patented to any person under sections 321 to 323, 325, and 327 to 329 of this title unless he or his assignors shall have expended in the necessary irrigation, reclamation, and cultivation thereof, by means of main canals and branch ditches, and in permanent improvements upon the land, and in the purchase of water rights for the irrigation of the same, at least \$3 per acre of whole tract reclaimed and patented in the manner following: Within one year after making entry for such tract of desert land as aforesaid the party so entering shall expend not less than \$1 per acre for the purposes aforesaid; and he shall in like manner expend the sum of \$1 per acre during the second and also during the third year thereafter, until the full sum of \$3 per acre is so expended. Said party shall file during each year with the officer designated by the Secretary of the Interior proof, by the affidavits of two or more credible witnesses, that the full sum of \$1 per acre has been expended in such necessary improvements during such year, and the manner in which expended, and at the expiration of the third year a map or plan showing the character and extent of such improvements. If any party who has made such application shall fail during any year to file the testimony aforesaid the lands shall revert to the United States, and the 25 cents advanced payment shall be forfeited to the United States, and the entry shall be canceled. Nothing herein contained shall prevent a claimant from making his final entry and receiving his patent at an earlier date than hereinbefore prescribed, provided that he then makes the required proof of reclamation to the aggregate extent of \$3 per acre: Provided, That proof be further required of the cultivation of one-eighth of the land.

Sec. 329. Issue of patent on final proof; citizenship requirement as to patentee; limit as to amount of holding

At any time after filing the declaration, and within the period of four years thereafter, upon making satisfactory proof to the officer designated by the Secretary of the Interior of the reclamation and cultivation of said land to the extent and cost and in the manner aforesaid, and substantially in accordance with the plans herein provided for, and that he or she is a citizen of the United States, and upon payment to such officer of the additional sum of \$1 per acre for said land, a patent shall issue therefor to the applicant or his assigns; but no person or association of persons shall hold by assignment or otherwise prior to the issue of patent, more than three hundred and twenty acres of such arid or desert lands, but this section shall not apply to entries made or initiated prior to March 3, 1891: Provided, however, That additional proofs may be required at any time within the period prescribed by law, and that the claims or entries made under sections 321 to 323, 325, and 327 to 329 of this title shall be subject to contest, as provided by the law, relating to homestead cases, for illegal inception, abandonment, or failure to comply with the requirements of law, and upon satisfactory proof thereof shall be canceled, and the lands, and moneys paid therefor, shall be forfeited to the United States.

Sec. 330. Desert-land entry in addition to homestead entry

The right to make a desert-land entry shall not be denied to any applicant therefor who has already made an enlarged homestead entry of three hundred and twenty acres: Provided, That said applicant is a duly qualified entryman and the whole area to be acquired as an enlarged homestead entry and under the provisions of this section does not exceed four hundred and eighty acres.

Sec. 331. Reclamation requirements waived in favor of disabled soldiers, etc.

Any entryman under the desert-land laws, or any person entitled to preference right of entry under section 326 of this title, who after application or entry for surveyed lands or legal initiation of claim for unsurveyed lands, and prior to November 11, 1918, enlisted or was actually engaged in the United States Army, Navy, or Marine Corps during the war with Germany, who has been honorably discharged and because of physical incapacities due to service is unable to accomplish reclamation of and payment for the land, may make proof without further reclamation thereof or payments thereon under such rules and regulations as may be prescribed by the Secretary of the Interior, and receive patent for the land by him so entered or claimed, if found entitled thereto: Provided, That no such patent shall issue prior to the survey of the land.

Sec. 332. Omitted

Sec. 333. Extension of time for completion of irrigation works

Any entryman under sections 321 to 323, 325, and 327 to 329 of this title who shall show to the satisfaction of the Secretary of the Interior or such officer as he may designate that he has in good faith complied with the terms, requirements, and provisions of said sections, but that because of some unavoidable delay in the construction of the irrigating works intended to convey water to the said lands, he is, without fault on his part, unable to make proof of the reclamation and cultivation of said land, as required by said sections, shall, upon filing his corroborated affidavit with the land office in which said land is located, setting forth said facts, be allowed an additional period of not to exceed three years, within the discretion of the Secretary or such officer, within which to furnish proof as required by said sections of the completion of said work.

Sec. 334. Further extension of time for final proofs

The Secretary of the Interior may, in his discretion, in addition to the extension authorized by section 333 of this title or other law existing prior to April 30, 1912, grant to any entryman under the desert-land laws a further extension of the time within which he is

required to make final proof: Provided, That such entryman shall, by his corroborated affidavit filed in the land office of the district where such land is located, show to the satisfaction of the Secretary that because of unavoidable delay in the construction of irrigation works intended to convey water to the land embraced in his entry he is, without fault on his part, unable to make proof of the reclamation and cultivation of said lands as required by law within the time limited therefor; but such extension shall not be granted for a period of more than three years, and this section shall not affect contests initiated for a valid existing reason: Provided, That the total extension of the statutory period for making final proof that may be allowed in any one case under this section, and any other statutes existing prior to April 30, 1912, of either general or local application, shall be limited to six years in the aggregate.

Sec. 335. Further extension in cases not covered by sections 333 and 334 of this title

The Secretary of the Interior may, in his discretion, extend the time within which final proof is required to be submitted upon any lawful pending desert-land entry made prior to March 4, 1915, such extension not to exceed three years from the date of allowance thereof: Provided, That the entryman or his duly qualified assignee has, in good faith, complied with the requirements of law as to yearly expenditures and proof thereof, and shall show, under rules and regulations to be prescribed by the Secretary of the Interior, that there is a reasonable prospect that, if the extension is granted, he will be able to make the final proof of reclamation, irrigation, and cultivation required by law: Provided further, That the foregoing shall apply only to cases wherein an extension or further extension of time may not properly be allowed under sections 333 and 334 of this title or other law existing prior to March 4, 1915: Provided further, That in cases where such entries have been assigned prior to March 4, 1915, the assignees shall, if otherwise qualified, be entitled to the benefit hereof.

Sec. 336. Further extension in addition to that authorized by sections 333 to 335 of this title

The Secretary of the Interior may, in his discretion, in addition to the extensions authorized by sections 333 to 335 of this title or other law existing prior to February 25, 1925, grant to any entryman under the desert-land laws of the United States a further extension of time of not to exceed three years within which to make final proof: Provided, That such entryman shall, by his corroborated affidavit, filed in the land office of the district where such land is located, show to the satisfaction of the Secretary that because of unavoidable delay in the construction of the irrigation works intended to convey water to the land embraced in his entry, he is, without fault on his part, unable to make proof of the reclamation and cultivation of said lands as required by law within the time limited therefor: And provided further, That the entryman, his heirs, or his duly qualified assignee, has in good faith complied with the requirements of law as to yearly expenditures and proof thereof, and shall show, under rules and regulations to be prescribed by the Secretary of the Interior, that there is a reasonable prospect that if the extension is granted he will

be able to make the final proof of reclamation, irrigation, and cultivation required by law.

Secs. 336a, 336b. Repealed. Pub. L. 94-579, title VII,  
Sec. 702, Oct. 21, 1976, 90 Stat. 2787

Sec. 336c. Omitted

Sec. 336d. Repealed. Pub. L. 94-579, title VII, Sec. 702, Oct.  
21, 1976, 90 Stat. 2787

Sec. 337. Entry, after expenditures, perfected as homestead entry

Where it shall be made to appear to the satisfaction of the Secretary of the Interior, under rules and regulations to be prescribed by him, with reference to any lawful pending desert-land entry made prior to March 4, 1915, under which the entryman or his duly qualified assignee under an assignment made prior to March 4, 1915, has, in good faith, expended the sum of \$3 per acre in the attempt to effect reclamation of the land, that there is no reasonable prospect that, if the extension allowed by section 335 of this title or any law existing prior to March 4, 1915, were granted, he would be able to secure water sufficient to effect reclamation of the irrigable land in his entry or any legal subdivision thereof, the Secretary of the Interior may, in his discretion, allow such entryman or assignee five years from notice within which to perfect the entry in the manner required of a homestead entryman: Provided, That in cases where such entries have been assigned prior to March 4, 1915, the assignees shall, if otherwise qualified, be entitled to the benefit hereof.

Sec. 338. Election to perfect entry; final proof

Any desert-land entryman or his assignee entitled to the benefit of section 337 of this title may, if he shall so elect within sixty days from the notice therein provided, pay to the officer designated by the Secretary of the Interior of the local land office the sum of 50 cents per acre for each acre embraced in the entry, and thereafter perfect such entry upon proof that he has upon the tract permanent improvements conducive to the agricultural development thereof of the value of not less than \$1.25 per acre, and that he has, in good faith, used the land for agricultural purposes for three years and the payment to the officer, at the time of final proof, of the sum of 75 cents per acre: Provided, That in such case final proof may be submitted at any time within five years from the date of the entryman's election to proceed as provided in this section, and in the event of failure to perfect the entry as herein provided, all moneys theretofore paid shall be forfeited and the entry canceled: Provided, That in cases where such entries have been assigned prior to March 4, 1915, the assignees shall, if otherwise qualified, be entitled to the benefit hereof.

Sec. 339. Perfection of title to entry; supplementary provisions to sections 335, 337, and 338

Where it shall be made to appear to the satisfaction of the Secretary of the Interior with reference to any lawful pending desert-land entry made prior to July 1, 1925, under which the entryman or his duly qualified assignee under an assignment made prior to March 4, 1929, has in good faith expended the sum of \$3 per acre in the attempt to effect reclamation of the land, that there is no reasonable prospect that he would be able to secure water sufficient to effect reclamation of the irrigable land in his entry or any legal subdivision thereof, the Secretary of the Interior may, in his discretion, allow such entryman or assignee ninety days from notice within which to pay to the officer designated by the Secretary of the Interior of the United States land office 25 cents an acre for the land embraced in the entry and to file an election to perfect title to the entry under the provisions of this section, and thereafter within one year from the date of filing of such election to pay to such officer the additional amount of 75 cents an acre, which shall entitle him to a patent for the land: Provided, That in case the final payment be not made within the time prescribed the entry shall be canceled and all money theretofore paid shall be forfeited.