CODIFICATION

Section was formerly classified to section 471*o* of Title 48, Territories and Insular Possessions.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

CHAPTER 9—DESERT-LAND ENTRIES

Sec.
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§ 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.

(Mar. 3, 1877, ch. 107, § 1, 19 Stat. 377; Aug. 30, 1890, ch. 837, § 1, 26 Stat. 391; Mar. 3, 1891, ch. 561, § 2, 26 Stat. 1096; Oct. 28, 1921, ch. 114, § 1, 42 Stat. 208; Mar. 3, 1925, ch. 462, 43 Stat. 1145; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100; Pub. L. 85–641, § 1, Aug. 14, 1958, 72 Stat. 596.)

REFERENCES IN TEXT

Section 3 of the Act of June 16, 1955, referred to in text, is section 3 of act June 16, 1955, ch. 145, 69 Stat. 138, as amended, which is set out as an Additional Desert-Land Entry note under section 83 of Title 30, Mineral Lands and Mining.

CODIFICATION

The original text provided for the sale of 640 acres. The aggregate quantity which any person could acquire under all the land laws was limited, however, to 320 acres by act Aug. 30, 1890 (set out as section 212 of this title) except in the case of mineral lands.

AMENDMENTS

1958—Pub. L. 85–641 permitted entry on one or more tracts, not contiguous, but sufficiently close to each other to be managed satisfactorily as an economic unit.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out under section 1451 of this title.

''Officer designated by the Secretary of the Interior'' and ''such officer'' substituted for ''register'' on authority of section 403 of Reorg. Plan No. 3 of 1946, which abolished all registers of district land offices and transferred functions of district land offices to Secretary of the Interior. See section 403 of Reorg. Plan No. 3 of 1946, set out as a note under section 1 of this title.

Previously, references to register and receiver changed to register by acts Mar. 3, 1925 and Oct. 28, 1921, which consolidated offices of register and receiver and provided for a single officer to be known as register.

ARIZONA ENTRIES DEPENDENT UPON PERCOLATING WATERS

Act Aug. 4, 1955, ch. 548, 69 Stat. 491, provided: ''The requirement of section 1 of the Desert Land Act of March 3, 1877 (19 Stat. 377) [this section], that the right to the use of water by a desert land entryman 'shall depend upon bona fide prior appropriation' shall be waived in the case of all desert land entries which have heretofore been allowed and are subsisting on the effective date of this Act [Aug. 4, 1955] which are dependent upon percolating waters for their reclamation, and which are situated in the State of Arizona under the laws of which the percolating waters upon which the entries are dependent are not subject to the doctrine of prior appropriation but are usable under State law for irrigation and reclamation purposes.''

SECTION AS UNAFFECTED BY SUBMERGED LANDS ACT

Provisions of this section as not amended, modified or repealed by the Submerged Lands Act, see section 1303 of this title.

§ 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.

(Mar. 3, 1877, ch. 107, §§ 2, 3, 19 Stat. 377; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.)

CODIFICATION

The first paragraph of this section is from section 2 of act Mar. 3, 1877.

The second paragraph of this section is from the last clause of section 3 of act Mar. 3, 1877. The first clause of section 3 is incorporated in section 323 of this title.

TRANSFER OF FUNCTIONS

''Secretary of the Interior or such officer as he may designate'' substituted for ''Commissioner of the General Land Office'' on authority of section 403 of Reorg. Plan No. 3 of 1946, which abolished General Land Office and Commissioner thereof and transferred functions of General Land Office to a new agency in Department of the Interior to be known as Bureau of Land Management. See section 403 of Reorg. Plan No. 3 of 1946, set out as a note under section 1 of this title.

SECTION AS UNAFFECTED BY SUBMERGED LANDS ACT

Provisions of this section as not amended, modified or repealed by the Submerged Lands Act, see section 1303 of this title.

§ 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.

(Mar. 3, 1877, ch. 107, §§ 3, 8, 19 Stat. 377; Mar. 3, 1891, ch. 561, § 2, 26 Stat. 1097; Jan. 6, 1921, ch. 12, 41 Stat. 1086.)

CODIFICATION

Section is from the first clause of section 3 of act Mar. 3, 1877, and the first clause of section 8 of act Mar. 3, 1877, as added by act Mar. 3, 1891.

The second clauses of section 3 and 8 of act Mar. 3, 1877, are incorporated in the second paragraph of section 322 and section 325 of this title, respectively.

The first clause of section 3 of act Mar. 3, 1877, provided that ''this act shall only apply to and take effect in the States of California, Oregon and Nevada, and the Territories of Washington, Idaho, Montana, Utah, Wyoming, Arizona, New Mexico and Dakota''.

The first clause of section 8 of act Mar. 3, 1877, as added by act Mar. 3, 1891, provided for the inclusion of Colorado.

The Territories of Washington, Idaho, Montana, Utah, Wyoming, Arizona, New Mexico and Dakota have become States since the enactment of act Mar. 3, 1877, the Territory of Dakota being divided, to form the States of North and South Dakota.

SECTION AS UNAFFECTED BY SUBMERGED LANDS ACT

Provisions of this section as not amended, modified or repealed by the Submerged Lands Act, see section 1303 of this title.

§ 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.

(Mar. 28, 1908, ch. 112, § 2, 35 Stat. 52.)

§ 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.

(Mar. 3, 1877, ch. 107, § 8, as added Mar. 3, 1891, ch. 561, § 2, 26 Stat. 1097; amended Jan. 6, 1921, ch. 12, 41 Stat. 1086.)

CODIFICATION

Section is comprised of the second clause of section 8 of act Mar. 3, 1877, as added by act Mar. 3, 1891. The first clause of section 8 of act Mar. 3, 1877, is incorporated in section 323 of this title.

Act Jan. 6, 1921, inserted introductory exception phrase.

SECTION AS UNAFFECTED BY SUBMERGED LANDS ACT

Provisions of this section as not amended, modified or repealed by the Submerged Lands Act, see section 1303 of this title.

§ 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*,