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Carey Land Act in Montana

Bonnie S. Christensen

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THE CAREY LAND ACT IN MONTANA

By
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B.A., University of Montana, 1989

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In response to pressure from irrigation advocates, the U.S. Congress passed the Carey Land Act in 1894. Intended to promote the construction of irrigation projects in the western states, the Carey Act offered up to one million acres of federal land to each state that irrigated and settled those lands. In 1895, the Montana legislature approved a law to administer the Carey Act in the state. Through the Arid Land Grant Commission (1895-1903), and the Carey Land Act Board (1903-1965), Montana created three irrigation districts under the Carey Act and patented 92,000 acres from the federal government.

The Billings Bench district near the city of Billings was the first successful Carey project in the state. In 1920, the construction company transferred title of the Billings Bench project to the water users on the over 13,000-acre district. The largest Carey project in the state, the Valier district, covered 70,000 acres. The other successful project was the Big Timber district, located in Sweet Grass County. Private construction companies built all three projects and made money by selling water rights on the land purchased by settlers.

Although it completed three successful projects, the Carey Land Act Board (CLAB) suffered from lack of state funding and found it difficult to attract investors for Carey projects. The lack of state stream-flow records to gauge water availability for the projects also created problems for the CLAB. Overestimation of available water supplies and underestimation of the high cost of constructing large irrigation projects led to the bankruptcies of several companies and made investors wary of Carey districts.

Records of the Arid Land Grant Commission and the Carey Land Act Board are located in the Montana State Archives at the Montana Historical Society in Helena. These records include letters, financial statements, project reports, minutes and engineering reports. Much of the research included in this paper is from these records.
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Chapter 1

"a small oasis in a vast semi-arid plain"

The westward movement of settlers has characterized American history since the first Europeans landed in Virginia. Farmers, trappers, miners and adventurers moved west to find land, furs, gold and excitement. Individually, most were ordinary people who just wanted to find a better, or perhaps an easier, life. But, as a group, these pioneers, especially the farmers, took on a romantic aura for many Americans. They came to represent the best of America—the virtuous, honest, hardworking, and carried the future of the nation on their sturdy backs. However far removed from reality, this Jeffersonian ideal of the yeoman farmer was eagerly adopted by reformers in the late 19th century who were searching for an antidote to the corruption and vice they found in American industrial society.

To many reformers of the Progressive Era, the continued creation of small farms equaled the preservation of American society. Americans "still believed that the family farm was
the foundation of a healthy economy and essential to the perpetuation of democratic institutions and civic responsibility." As Eastern cities became more crowded and crime ridden, reformers dreamt of moving the "surplus" population of the cities onto the wholesome land of the west where these people could tend the earth and live the simple, virtuous life of Thomas Jefferson's republican farmer. But, by the 1880s the extension of the agricultural frontier was beginning to slow as farmers ventured into what had once been called "The Great American Desert." Although cattle and sheep prospered in this region, farmers struggled. In a land where rainfall averaged less than 20 inches per year, most forms of agriculture could not survive without irrigation. Thus, for those who believed that the future of the United States depended on the continuation of the agricultural frontier into the semi-arid region west of the 100th meridian, irrigation became an obvious necessity. Without irrigation, settlement of the western lands would stop; the mythical "safety valve" would close and the troubles of American cities would continue to escalate.

In addition to social reformers, the irrigation movement also attracted those who hoped to benefit materially from the Anglo settlement of the west. Unlike the Progressives, who wanted to increase arable land to cure

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the social ills of the nation, boosters in the western states and territories wanted to construct irrigation projects to promote stable farms that would strengthen their local economies. A successful irrigation project near a town could revitalize a community by bringing in new people and more money. Irrigated farmland also created a more substantial tax base for the state. Whether motivated by the vision of a utopia of small farmers or by greed, many western businessmen, politicians and farmers supported the development of irrigation systems in the region:

Individual farmers, private businesses and community groups constructed the first irrigation systems in the west. But, by the 1880s, irrigationists like William E. Smythe, publisher of *Irrigation Age*, and Elwood Meade, State Engineer of Wyoming, realized that private capital was not establishing enough reclamation projects. Although private companies did build some canal systems in the hopes of achieving large returns, most of these projects were not successful. The water in the projects was expensive, water users and water suppliers quarreled over prices, and many companies failed because they could not settle their lands quickly enough. According to historian Richard White, by 1900 "90 percent of the private canal companies [were] in financial distress. Most sold out, often on credit, to their water users. Such financial failures did not
encourage further private investment in irrigation systems."

In an attempt to help farmers, and in response to pressure from reformers and western leaders, Congress passed the Desert Land Act in 1877. This new act gave settlers the right to claim up to 640 acres of arid lands, which they could purchase for one dollar an acre after three years if they "improved" a portion of the land by conducting water to it. Designed to attract settlers, this law was more beneficial to ranchers who exploited its vague wording to add more land to their holdings. Westerners who attempted to lure small farmers to their states and territories feared that if ranchers continued to expand their holdings, these states would become little more than cattle baronies without the stable, prosperous communities that yeoman farmers would create. Richard Roeder, in his study of the Progressive Era in Montana, found this desire to make farming more dominant expressed in Montana as well as in other states. "Montanans," he argued, "believed that the farm community would free them from a dependence upon grazing as well as mining...There existed a feeling that land was too valuable to use five acres to feed a cow and that a boundless and

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more stable prosperity would prevail when all arable and
irrigable land was put into small farms."

Representatives from the western states recognized that
they needed more federal assistance to build the bigger
irrigation projects necessary to water the vast acres of
land not adjacent to a water source. As the west
experienced a series of droughts in the 1880s, irrigation
advocates began to call for regional conferences to decide
how to obtain the needed irrigation works. In 1891 the
First Irrigation Congress met in Salt Lake City to discuss a
strategy for pursuing this goal. At the conference,
delegates from states and territories throughout the west
adopted a resolution calling on the federal government to
cede land to the states to finance irrigation. Federal
cession would provide an incentive to develop irrigation
projects because it could mean a great increase in the
state's taxable land. Cession was a half-way measure
between direct federal aid, which many strongly opposed, and
strictly private construction of irrigation systems.

Like other states and territories in the arid west,
Montana had its own boosters and promoters who supported
irrigation as a way to increase the population and
prosperity of the state. According to Richard Roeder,

"Richard Brown Roeder, "Montana in the Early Years of
the Progressive Period," Unpublished Ph.D. Dissertation,

'^Gates, p. 648."
"There was common agreement that federal aid was essential to bringing about a greater future because private capital was not equal to the task of building the necessary canals and reservoirs to utilize the state's waters." Montanan Robert Sutherlin embraced this attitude toward irrigation. Editor of The Rocky Mountain Husbandman from 1875 to 1926, Sutherlin, like others of this time, firmly believed in the virtue of the yeoman farmer. He argued that, because of the harsh climate, in order for farmers to succeed in Montana, they needed the security of irrigation. But large irrigation projects were expensive. Most of the land that could be cheaply irrigated in the state had already been filed on by 1882. Many investors who might have been willing to gamble on irrigation projects believed they could make more money by simply grazing cattle and sheep upon the land. Large irrigation projects were beyond the scope of small farmers and private corporations, so Sutherlin, like other westerners, looked to the federal government for aid.

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"Roeder, p. 73.


'Grant, p. 173.

'Grant, p. 175

'Grant, p. 177
In response to pressure from irrigation supporters, the U.S. Congress passed the "Carey Land Act" on 18 August 1894. Under the Carey Act, which was named for Senator Joseph M. Carey of Wyoming who introduced the bill, the federal government agreed to grant up to one million acres of public land to each western state if the state would reclaim and settle that land within ten years. An essential part of the legislation involved settlement; the act specified that the states could sell Carey land in parcels no larger than 160 acres. Congress expressly sought to benefit farmers, not large ranchers or land speculators.

To apply for Carey land, the state first submitted maps and plans to show how reclamation would proceed on the specified area. If the federal government approved the plans, it then "segregated" the land and permitted the state to begin its reclamation work. After the state adequately "reclaimed" and settled the area, the federal government then granted the state a "patent" for the land, and officially transferred ownership to the state, which then sold the land to settlers. In later amendments to the Carey Act in 1896 and 1901, Congress allowed the Secretary of the Interior to issue patents when an "ample supply of water is actually furnished upon the land...without regard to settlement or cultivation," and extended the original 10-year deadline for reclamation; the state was given 10 years from the time of segregation approval to complete irrigation
and reclamation, but the Secretary of the Interior could extend this deadline at "his discretion". The state could build the irrigation system itself or contract with a construction company to do the work.

Many states did not take greater advantage of the Carey Act because the act did not provide any funds for the state. The Carey Act was really government-sponsored private reclamation, and, "Private capital had taken up and improved the most likely projects which did not require too large an investment and promised quick return in water rents or in accelerating land prices." The donation of federal land helped defray the cost of building Carey projects, but the act did not help states or companies with the money needed to start projects and maintain them until they drew in settlers who would pay for the systems. Like other states, Montana found it difficult to attract investors willing to finance the construction of irrigation projects under the Carey Act since the act offered nothing in funding and no guarantee for the private investment.

Because most states could not take full advantage of the Carey Act due to the financial inadequacies of the legislation, irrigation supporters demanded more government


\[\text{\textsuperscript{12}}\text{Gates, p. 651.}\]
aid. Under the Newlands Reclamation Act of 1902, Congress provided the initial funds to build dams and canals; settlers on the reclamation projects eventually repaid the building expenses. Since the government did not have to satisfy investors, it did not have to worry about immediate returns on the investment of constructing large projects. The Congress had augmented the Carey Land Act with new and better legislation that would create hundreds of irrigation projects throughout the west.

States continued to take advantage of the Carey Act, however, well after it was "replaced" by the Newlands act. In Montana, the Carey Land Act Board, created by the state legislature to administer the act, continued to function until 1965. Although it sometimes took several decades for the Montana board to complete its irrigation systems, three projects were successful and provided irrigated land for hundreds of farmers. The Carey Land Act projects were not as large as the federal projects in the state, but they did demonstrate that private capital under state supervision could construct substantial irrigation works. Although the Carey Land Act never fulfilled the grand dreams of the 19th century irrigationists, it did satisfy some of these promoters and reformers.

When Sutherlin, the ardent irrigation supporter, visited Montana's Valier project in 1917, he discovered, as his biographer wrote, in that "embryonic irrigation
community the symbol of his life's work. 'To the man who has devoted his life to the securing of water on the land in his dear loved Montana home...this great system is an indescribable joy,' he exclaimed. His hopes were affirmed by a small oasis in a vast semi-arid plain."

The "oasis" that so pleased Sutherlin was an irrigation project started and completed under the Carey Land Act of 1894.

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"Grant, p. 421-22."
Chapter 2
The Arid Land Grant Commission, 1895-1903

Montana leaders eagerly accepted the chance to create new irrigation systems and bring more lands onto the state taxrolls; they saw the Carey Act as a way to increase the population and wealth of the state. Six months after Congress passed the Carey Act, the Montana legislature approved a law creating the Arid Land Grant Commission (ALGC) to administer the act within Montana.

The Commission's duties included approving land for cession requests and supervising irrigation projects on those lands. Since the legislators did not want to commit state funds for building vast irrigation systems, the state law provided that the Commission would pay the cost of reclaiming Carey lands "by the issuance of warrants to the person or persons, corporation or corporations undertaking such work, for the full amount of said contract price." These warrants, or bonds, bore a six percent interest and constituted a lien, or first mortgage, on the land, water
rights, and improvements. The Commission would then figure the value of each parcel of Carey land with water right to be "the equitable proportion it shall bear to the total cost of reclamation of [the] district," plus twenty percent of that value added to the total. The ALGC was to place the extra twenty percent into a state fund to help pay for the construction of future Carey projects. The six percent interest accrued from the date the Commission issued the bonds and was added to the price of the land and appurtenant water rights. Contractors could only receive payment for the bonds when settlers purchased the reclaimed land in that irrigation district. The state would charge settlers a minimal price for the land itself; the higher charge was for the inseparable water right.

Under this law, the Commission was responsible for issuing the bonds and warrants that would be used to pay for the irrigation projects. But this system created an awkward and delayed form of payment that caused problems for the

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1State officials used the words "bond" and "warrant" interchangeably to mean the shares sold in an irrigation project. Officials used the more precise meaning of "warrant" to refer to promissory notes given to merchants or other individuals (including ALGC members) as payment for goods or services; individuals could redeem these warrants after the Commission sold the land in the district through which the warrants were issued.

ALGC from the beginning. The Commission could not guarantee payment of the bonds and investors were reluctant to finance such risky projects. Poor economic conditions created by the Panic of 1893 increased the problems the Commissioners faced in trying to interest investors in Montana Carey projects.

If it could not sell its bonds, the Commission had to rely on the small yearly allowance provided by the state. As a later report on the Arid Land Grant Commission admitted, "the small appropriation set aside for this purpose [reclamation and settlement], namely one thousand ($1,000.00) dollars per year, so handicapped the commission as to make it impracticable to proceed upon or even to initiate so gigantic an undertaking." Reluctant to create new debts for the state, the legislature refused to provide for anything beyond nominal expenses to aid in the development of Carey projects and the settlement of Carey lands. Even before the members of the Commission began their duties, they were severely handicapped by the State's Carey legislation.

Governor John E. Rickards appointed the first members of the ALGC in 1895. In his Governor's Address earlier that year, Rickards had impressed upon the people of Montana his belief that the state needed to encourage federal aid for

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"Rules and Regulations of the Carey Land Act Board of the State of Montana, 1909, p. 6."
reclamation. "Private capital," he stated, "is not equal to the burden of reclaiming such vast tracts. I am firmly convinced that it is the duty of the general government to aid in adapting the arid belt to the purposes of civilization, and that appropriations for this purpose should be made." Rickards commended the Congress for passing the Carey Act, calling it "The most practicable way of dealing with the irrigation question at the present time." In his attempt to facilitate the administration of the Carey act in Montana, to maintain the integrity of the Commission and to remove any suspicions of favoritism in choosing Carey Land Act districts, Rickards appointed commissioners who had no connections to irrigation enterprises.

Each of the five Commissioners served a six-year term, and the law maintained that the board would be "non-partisan," so "not more than three members shall be appointed from one political party." As compensation, each Commissioner received a per-diem payment of six dollars and traveling expenses for official duties. The Commissioners would receive these payments in warrants drawn from the state Carey Fund, also created by the law.

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These Commissioners held their first meeting on 9 April 1895 and unanimously elected E.W. Beatty as chairman. At this meeting the Commissioners voted to form a committee of three members to locate lands for Carey projects in the state and to "temporarily employ competent engineers" to examine these areas since Montana did not yet have a state engineer. Due to the limited operating budget, the Commissioners resolved to "practice the strictest economy in the discharge of their duties," and formed a committee "to devise some way to raise ready money to carry on the preliminary work of the commission." Finally, the Commissioners resolved that "until the Board shall have made a careful examination of the lands susceptible of irrigation in the State, no contract or agreement for reclamation shall be entered into." This provision would mean little in the future when the ALGC would be so desperate for outside investors that it would accept almost any project as long as someone was willing to fund it.

As early as 4 June 1895, the Commission began looking for "parties in the East" to back its Land Grant warrants. Chairman Beattie expressed optimism about finding investors; he claimed that the bonds would make a good investment.

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"E.W. Beattie to J.T. Armington, 4 June 1895. MHS, RS 31-1-30."
because, "People who settle upon these reclaimed lands will succeed and will make their payments promptly; and we will see to it that we get good people with enough means to make a good start."

Optimism notwithstanding, in his communications with the Commissioner of Arid Lands in Washington State, Beattie admitted that the ALGC was "seriously crippled" by having so little funding. "We are doing some preliminary surveying at private expense," he noted, "but at best it will be unsatisfactory." In August Beattie complained to F.H. Newell of the U.S. Geological Survey that the ALGC was "making very slow progress in our work because of the fact that it's impossible thus far to find people who will cash our warrants."  

The Commissioners hoped that some of the problems with the bonds would be solved after the 1896 court decision of State v. Wright. In this case the Supreme Court of Montana  

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E.W. Beattie to Hugh L. Cooper, New York City, 8 July 1895. MHS, RS 31-1-30.


decided that the law creating the ALGC "was a valid legislative act," and declared that the Commission's warrants were legal. The Court held, however, that these bonds and warrants did "not create a claim against the state." Although constitutional, the ALGC bonds remained a risky proposition because the state refused to bear any responsibility for guaranteeing payment on them.

Beatty and his colleagues were not given further time to work on the problem of luring capitalists into the state. On 2 April 1897 Robert B. Smith, the newly elected governor, requested the resignation of all the board members for political reasons. The Commission resigned en masse. Unlike his predecessor, Smith appointed several members who had direct interests in irrigation to the new commission. The most prestigious member of the new Commission was former Governor of Montana, Joseph K. Toole, whose interest in irrigation dated back at least to his tenure in that office. In his Governor's message for 1891, Toole had predicted the advent of federal aid for irrigation, and had also warned the state to guard "against the demands of those who, eager to monopolize our lands, will doubtless be on hand to urge a hasty and inconsiderate


12ALGC Minutes, 2 April 1897. MHS, RS 31, Volume 2.

13Heathcote, p. 3-4.
Toole's wary approach to reclamation projects put him at odds with other Commission members who favored a more aggressive irrigation program in Montana; but, perhaps out of respect for his political experience and reputation, these men unanimously elected Toole as chairman at the first meeting.

In one of the initial meetings, the Board also authorized Donald Bradford, a Helena Democrat whose irrigation interests included the Dearborn Canal, to make "State Desert Land Selections", to draw up and sign contracts, and to act as agent to select and segregate Carey lands. Having one person responsible for these duties meant that the entire commission did not have to meet to approve land selections; it also meant that Bradford was entrusted with a great deal of personal power to select sites for Carey projects. In addition to Toole and Bradford, the new governor appointed Thomas Marshall from Missoula and C.O. Reed from Helena to the Commission. The fifth appointee, Armistead H. Mitchell of Deerlodge, died in

1"State of Montana, Message of Governor Joseph K. Toole to the Second Legislative Assembly of the State of Montana, January 5, 1891, p. 16.

15ALGC Minutes, 8 April 1897.

16Ibid, 5 May 1897.
1898 and Smith replaced him with David A. Cory, a businessman from Helena."  

Since all of the Commissioners were from either Helena or southwestern Montana, people in other areas of the state feared that their counties might be left out of a possible Carey land boom. The Great Falls Tribune reminded the commission that, "It should not be forgotten...that northern Montana possesses some of the very best lands in the state for irrigation purposes." Since northern Montana had no representatives on the ALGC, the Tribune invited the Commission members to investigate the irrigation possibilities in that area, and cautioned it not to concentrate solely on the southern part of the state." The Commission failed to heed this advice; the four projects begun by the ALGC between 1897 and 1903 were all in the southern part of the state or in Lewis and Clark County (the county in which Helena is located).

The Commission began work on developing projects in 1897 with the selection of over 10,000 acres in the Billings "Bench" area northeast of the city of Billings as the first Carey district in Montana." Although the Commissioners

"Heathcote, p. 3-4.

"Great Falls Tribune, 27 May 1898, p. 2.

"Ibid. "Benchlands" consist of a "continuous, broad, and nearly level high prairie,...which continues to fall slowly in the same direction." In 1889, engineer H.M. Wilson asserted that benchlands, such as those around (continued...)

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believed that they could successfully irrigate the Billings land, they encountered problems floating the Billings bonds because of the vast amount of railroad land included in that district. Investors worried about the legalities of using the Carey Act to construct an irrigation system that would include both federal and private lands. Even after the Commissioners sent a test case before the Montana Supreme Court that ruled that Carey Districts could incorporate private lands, they continued to have problems convincing investors to back the project. Finally, in February 1898, Billings, were ideally suited to irrigation because of the low altitude and rich, deep soil. Wilson, H.M. "The Irrigation Problem in Montana." The National Geographic Magazine, Vol. II, No. 2 (1889 Reprint), p. 216-17.

The land in the Billings Bench District included a little over 10,000 acres of government land and 15,000 acres belonging to the Northern Pacific Railroad. The sections in the district alternated between federal and railroad land due to the federal government’s policy of granting to railroads alternate sections of land on either side of the railroads’ tracks. The government donated this land to encourage the construction of railroads across the American west. The ALGC segregated only the federal lands, but, since any canal system would have to cross railroad land to reach Carey land, investors questioned the integrity of the district.

State of Montana v. Arid Land Grant Commission was a friendly suit initiated by the Commission to establish a ruling about the ability of the Commission to create Carey Districts that included privately held lands. In its decision, the Supreme Court of Montana decided that the Commission should be able to establish such districts. In the opinion of the court, the ALGC’s purpose was to enter into contracts for the "benefit of the state" and it was "evident that the legislative assembly intended to give, and did give, extensive powers to the commission." Since almost any district within the state would include lands claimed by (continued...)

19(...continued)
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21State of Montana v. Arid Land Grant Commission was a friendly suit initiated by the Commission to establish a ruling about the ability of the Commission to create Carey Districts that included privately held lands. In its decision, the Supreme Court of Montana decided that the Commission should be able to establish such districts. In the opinion of the court, the ALGC’s purpose was to enter into contracts for the "benefit of the state" and it was "evident that the legislative assembly intended to give, and did give, extensive powers to the commission." Since almost any district within the state would include lands claimed by (continued...)
the Commission awarded a contract to build the Billings Project (District No. 1) to the Reece Brothers of Billings, the sole bidders on the district.22

When the Commission failed to begin construction on the Billings project by 1900, settlers and businesspeople in that area began to pressure the commission to start work in the district. Bradford responded to this pressure by explaining that the "enterprise is of such magnitude that it requires a large amount of money, and for this reason it is very hard to sell our bonds." He hinted very broadly to these community leaders that he hoped that local capital might help pay some of the construction costs.23 Although local leaders refused to back the struggling project financially, they did form an organization, the Committee of Billings Club, to represent the irrigation interests in the area. This group advised the Commission that since the ALGC had proved unable to reclaim the Billings District, it should return the land to the U.S. Government, which could

21(continued) railroads and other corporations or individuals, the court concluded that prohibiting the state from segregating the land "would be to establish a rule that would be detrimental in the highest degree to the interest and welfare of the state." State of Montana v. Arid Land Grant Commission, February 1898. Copy of decision in MHS, RS 31-2-33.

22ALGC Minutes, 21 February 1898.

23Donald Bradford to E.L. Boardman, Billings, 22 May 1899. MHS, RS 31-1-30.
then open it to general settlement. Private enterprise, the club argued, could then complete the project."

Replying for the ALGC, a pessimistic Thomas Marshall concluded that the ALGC had "given up hopes of being able to successfully promote the project" although it had "made strenuous efforts in this behalf." Either the project was "too large or not sufficiently inviting for capital to take the matter up." By the end of 1902 the Billings project seemed permanently stalled, and the ALGC appeared ready to relinquish the district.

Although it had made no progress on the Billings project, the ALGC continued to search for other lands to irrigate in the state under the Carey Act. Difficulties within the Commission arose from this pursuit, however, when at the 14 October 1897 meeting, with Toole absent, Bradford introduced a resolution to build a canal near Big Timber in Sweet Grass County. The Commission unanimously agreed to this proposal. On 4 November Toole resigned chairmanship of the Board to protest the Commission's decision to accept the Big Timber project. Toole's move may have been

24Committee of Billings Club to ALGC, 12 July 1901. MHS, RS 31-1-30.
26ALGC Minutes, 28 October 1897.
27Ibid, 4 November 1897.
influenced by his desire to devote more time to his preparations to campaign for another term as governor of Montana, but it also reflected his cautious approach to reclamation. Toole continually argued, both as a Commissioner and later as Governor, that the ALGC should proceed slowly in its efforts to initiate new projects. He believed that completing a few good projects would be more beneficial to the state than starting, and not completing, many poorly planned irrigation systems. After resigning as chairman, Toole remained on the Commission until September of 1899. Although he left with kind words, Toole knew of the failures of the ALGC, and after his election as governor he worked to abolish the board.²⁸

The Commission elected Thomas Marshall to replace Toole as chairman.²⁹ Later that month the Commission promoted Bradford to Vice-chairman.³⁰ Because Marshall lived in Missoula, much of the day-to-day work of the Commission fell to Bradford and later to David Cory, whom the Commissioners elected secretary in April of 1899.

In spite of Toole’s resignation as chairman, the ALGC members decided to continue efforts toward reclaiming over 50,000 acres in the Big Timber district (District No. 2), but work proceeded very slowly since problems with the

²⁸Ibid, 2 September 1899.
²⁹Ibid, 4 November 1897.
³⁰Ibid, 19 November 1897.
weather and delays from lack of supplies hindered progress. The board also had difficulties convincing Andrew Wormser, whose Holland Irrigation Canal Company had first expressed interest in the area, to offer a formal bid to reclaim District No. 2. The board informed Wormser that it would accept bids first in June, then September and finally in November of 1898; Wormser forgot to bid the first two times, and, since the board received no other bids for the district, it had to keep requesting more bids and reminding Wormser to file a bid. Finally in November the Board awarded the contract to Wormser at $12.50 per acre, the highest cost allowed by law.

Trouble hit the Big Timber project in 1900 when the principal backer of the District No. 2 bonds suddenly died. Although the ALGC had already extended Wormser's starting date for construction, and had stipulated that it would not "consider any further request of this kind," pressure from Cory convinced the Commissioners to extend the commencement date to 1 April 1901 because Wormser was experiencing difficulties in locating a new backer for the

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31 Donald Bradford to W.S. Fortiner, 22 December 1897. MHS, RS 31-1-1.

32 ALGC Minutes, 15 November 1898.

33 Ibid, 9 May 1900.

34 Ibid, 1 July, 1900.
enterprise. The Commission later extended this date to 1 July 1901 and then again to 1 August 1901. Such an extension of deadlines would become a standard feature of the state’s actions in Carey districts. Project financiers and state leaders continually underestimated the amount of time and money required to reclaim arid land. As officials tried to tighten their control over the projects, they found themselves faced with a decision either to accept delays and extensions or to relinquish the districts.

In the case of the Big Timber project, the ALGC agreed to extend deadlines, but demanded in turn that Wormser sell ownership of the canal and water rights to the Commission for $100,000 in District No. 2 bonds. The Commissioners hoped that the transfer of ownership would give the state more control over the project, and also give Wormser an added incentive to complete the canal system: if the Holland Irrigation Company failed to reclaim and settle the land, the $100,000 in bonds would be worthless. By the end

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35Ibid, 1 November 1900.
36Ibid, 27 March 1901.
37D.A. Cory to C.O. Reed, 14 July 1901. MHS, RS 31-1-30.
38ALGC report to Governor Joseph K. Toole, 22 January 1902. MHS, Manuscript Collection (MC) 35, Montana Governor’s Papers, Agency and Special Subject Files: Arid Land Grant Commission, State Engineer, Carey Land Act Board, Box 175, Folder 12.
of 1902, the Big Timber project, like the Billings district, remained little more than a hope.

Despite its failures on these two projects, the Commission developed an interest in starting a new irrigation project on the Clark Fork River near the town of Bridger in early 1899. The Bridger irrigation project (District No. 3) began as an optimistic attempt to have settlers build the canal system themselves; the contracting company would pay them in warrants which would be "received in payment for water rights and for supplies." The Commission restricted participants to those settlers who possessed "a team and scraper" and could support themselves during the period of construction. The first year promised to be difficult, but, as Bradford assured an inquirer from Wisconsin, Bridger farmers would be able to put in a crop within a year." Bradford boasted to a potential investor that the Bridger project was "the first instance in the history of the country where a State has undertaken to put settlers upon the land and give them employment, so that they could be supported during the first year or two of residence on the land." Bradford equated the terms of payment as actually being a seven percent loan on the water rights payment."

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*Donald Bradford to Frank Vanderob of Wisconsin, 8 May 1899. MHS, RS 31-1-30.
*Donald Bradford to J.E. Forrest of Chicago, 3 June 1899. MHS, RS 31-1-30.
Unfortunately for the Commission and for the settlers who had come to Bridger expecting to begin work on a canal system, the Commissioners did not have a financial backer for District No. 3. Bradford and the other Commissioners had proceeded with plans for the project based on an agreement signed by A.H. Withey, a secretary of Butte Copper King W.A. Clark. On Withey's assurances, the Commissioners believed that Clark would agree to finance the project and then relinquish control of it to the settlers upon payment of the bonds. But, on his return to the state, Clark refused to honor his secretary's agreement.Bradford and the Commission were unable to attract another backer, and the settlers who arrived were left idle and waiting for direction and materials to begin building. Clark continually avoided meeting with the ALGC to discuss the matter, which left Bradford anxious about the state of the project and about the settlers who had already arrived. "These people are poor," Bradford wrote to Withey, "are they to be sacrificed?"

As negotiations dragged on, the Commissioners could do little more for the settlers than encourage them to "keep a

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"Donald Bradford to Frank Banderob, Bridger, 28 June 1899. MHS, RS 31-1-30.

"Donald Bradford to A.H. Withey, 30 June 1899. MHS, RS 31-1-30.
stiff upper lip" and assure them that the "canal will be constructed." By mid-1900, at least one settler's lip had unstiffened enough to start a lawsuit against the Commission in an attempt to force it to begin construction. When informed of this action, Bradford responded angrily, "You went down there with your eyes open and should not now undertake to lay the blame upon me. Just corral your impatience." This reaction contrasts sharply with Bradford's early contentions that the Board was "acting for the engineers and settlers." It was easy for Bradford to advise patience; he had not moved to the state with the expectation of being able to put in a crop on irrigated land within a year. These settlers had already sat through one growing season; if work on the project did not begin soon, they would lose another entire season. Work never did start on this project, and in its 1902 report, the ALGC stated that it had abandoned the project "because of difficulties that...arose."

Faced with the failures of these three attempts to irrigate land under the Carey Act, the ALGC turned a hopeful

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* Donald Bradford to E.M. Strife, Red Lodge, 19 April 1900. MHS, RS 31-1-30.
* Donald Bradford to A.H. Wethey, 30 June 1899. MHS, RS 31-1-30.
* ALGC report to Governor Joseph K. Toole, 22 January 1902. MHS, MC 35-175-12.
gaze toward the Dearborn District. The ALGC learned of the Dearborn land because of Bradford's interests in it. Bradford had filed on 300,000 inches (7,500 cubic feet per second) of Dearborn River water on 18 July 1888. Later that year he had conveyed this water right to the Dearborn Canal Company. The trustees named in the company's articles of incorporation included Bradford and Henry Semple Ames, assistant trust officer of the Mississippi Valley Security and Trust Company of St. Louis. The St. Louis company later purchased the entire project and administered it through Ames. Original work on the system included the construction of a dam and the building of the upper section of the ditch, but work had ceased in 1890. For ten years the project remained stalled, a victim of poor economic conditions in the state following the Panic of 1893. Since an incomplete irrigation system possessed no value, the trustees needed to find a way to complete the project or lose their investment.

"The "inch" has been replaced by the acre-foot as the standard unit of water measurement. "The 'inch' was the amount of water that could be delivered through a hole, one inch square in a vertical board dam under a certain pressure, varying in different localities...A second foot is one cubic foot of water every second." An acre-foot is the amount of water needed to cover an acre of land to a depth of one foot. State of Montana, First Biennial Report of the State Engineer and the Carey Land Act Board, (Helena: Independent Publishing Company, 1904), p. 17-18.

When the ALGC advertised for sealed bids "to construct water systems to irrigate and reclaim" the 36,000 acres of the Dearborn district (District No. 4) in late 1900, the Mississippi Valley Security and Trust Company, which controlled all the water in the district, safely offered the sole bid to reclaim the Dearborn area at $12.50 per acre.

Because construction of the Dearborn canal system had begun a decade earlier, the Commissioners hoped that this project would begin operations almost immediately. These hopes seemed realized in October of 1901 when the Commissioners prepared a large ceremony to celebrate the completion of the upper section of the Dearborn Canal and the reclamation of almost 11,000 acres. The Commissioners invited Governor Rickards and other prominent men from around the state to view the October 5 festivities, "This being the first Irrigation Canal owned and operated by a state on the American Continent..."  

In spite of this apparently auspicious beginning of the Dearborn project, the ALGC soon began to encounter serious difficulties keeping settlers on the land. Although the Commission received numerous inquiries about the land and its potential, settlers refused to stay in the district.

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50 ALGC Minutes, 1 November 1900.


52 D.A. Cory to Governor John E. Rickards, 1 October 1901. MHS, RS 31-1-31.
Engineer George E. Wickes, the supervisor of the project, reported that "great unnecessary outlays" and "gross mismanagement [sic]" had characterized the project in the past, and Marshall expressed apprehension over allegations that the Commission had issued to the Dearborn Canal Company bonds out of proportion to the work done.

A later report by a special investigator from the Interior Department concluded that, without an extensive reservoir system, the water supply was not sufficient to irrigate properly the 10,104.03 patented acres in the district, and that the Dearborn Canal Company had constructed only one small lateral to carry water from the canal to individual tracts of land. Without laterals, the canal water did not benefit the settlers because they could not get that water on their land. When the state conducted a survey of the Dearborn land in 1904, it found only two settlers residing there; this was three years after state officials celebrated the opening of this area to settlers and Commission Chairman Marshall had predicted that the district would soon be "teeming with the multitudinous

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54Thomas Marshall to D.A. Cory, 22 January 1902. MHS, RS 31-1-29.
55E.A. Keyes, Special Agent, to Secretary of the Interior, 20 November 1909, Forwarded to Governor Edwin Norris. MHS, MS 35-201-12.
56First Biennial Report, 1903-1904, p. 27.
hum of an industrious community." Although it appeared to be an example of a successful operation, the Dearborn project, like the other three irrigation districts, had actually reclaimed very little, if any, land by the end of 1902.

Although the ALGC had segregated land in four districts in Montana, it failed to construct a working irrigation system on any of them. Toole argued that the Commission had spread itself too thin in starting so many projects instead of concentrating on one and finishing it. But Commission members felt that it was not that the ALGC had overextended itself, but that it could not obtain adequate funding for any of the districts. As Marshall complained, the ALGC had been "born and set adrift without food or clothes," so the commission had to rely on its own attempts to interest financiers in ALGC bonds. Like the members of the Rickards' Commission, the Smith appointees repeatedly tried to convince potential backers that the ALGC bonds were a good and sound investment opportunity; but the example of failed irrigation bonds in California continued to hurt these efforts. At least one potential investor demanded certification from an engineer on the amount of water available for a project, since "$25,000,000 have been lost

Thomas Marshall to D.A. Cory, 15 November 1901. MHS, RS 31-1-29.

ALGC Report to Governor Joseph K. Toole, 22 January 1902. MC 35-175-12.
in California canals on account of insufficiency of water supply.\textsuperscript{59} In response to these complaints, Commissioner Bradford argued that such a loss would not occur in Montana because the Montana laws were "passed with a full knowledge of the California statutes and their effect." Montana bonds constituted a lien on the land and were secured by the improvement created by the expenditure. If the principle were not paid, then the mortgage could be foreclosed.\textsuperscript{60} But financiers were not willing to risk their investments in irrigation projects that had a history of failure unless the state agreed to guarantee their interest payments.

Board members agreed that a state guarantee would vastly improve their ability to obtain financing for the bonds. If the state would guarantee the interest on ALGC bonds, Cory predicted, "we would have had fully half a million acres reclaimed and settled." He added that although the Carey bonds were a good proposition, "investors seem to want better security than land and water rights."\textsuperscript{61} Large investment institutions, Reed reported, refused to touch the ALGC bonds; "they prefer," he stated, "to have their funds lie idle in the vaults than to take these bonds

\textsuperscript{59}C.O. Reed to D.A. Cory, 19 May 1900. MHS, RS 31-1-26.

\textsuperscript{60}Donald Bradford to A.D. Mahon of New York, 20 June 1899. MHS, RS 31-1-30.

\textsuperscript{61}D.A. Cory to C.E. Wentland of Denver, 5 October 1900. MHS, RS 31-1-30.
at any price." The legislature continually refused to add such a guarantee to the ALGC bonds. Although many state leaders recognized the benefits of irrigation, they wanted it achieved at no cost to the state.

In an attempt to offset the ALGC’s inability to guarantee investment in the projects, the Commissioners issued the bonds on Districts No. 2 and 4 at the highest price permitted under the state Carey law, $12.50 an acre. According to the provisions of the act creating the State Arid Land Grant Commission, issuing the bonds at $12.50 per acre meant that, on average, each acre of land with perpetual water right in these districts would have to be sold for $15.00 to meet the contractor’s price plus the twenty percent the Commission deposited in the state’s fund for Carey projects. In addition, each year the average price per acre would increase by six percent to cover the interest on the bonds. The Commission raised the price per acre to the maximum allowed to attract investors; but the increased price meant that Carey settlers would have to pay more to purchase the land and water rights. Although examples from Idaho showed that farmers were willing to pay up to $25 per acre for irrigated land with water rights,

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"C.O. Reed to D.A. Cory, 8 May 1901. MHS, RS 31-1-26."
they were not as willing to pay such high prices for Montana land that was not fully irrigated."

Upon assuming the governorship in 1901, Joseph Toole began to investigate the ALGC more thoroughly and discussed repealing the legislation creating the commission. "He asked State Examiner W. Hudnall to examine the operations of the ALGC" and in November of 1901 requested from Marshall a "full and complete report" of the commission." In his Governor's message of January 1901, Toole had little positive to say about the Commission. Toole stated that although the ALGC had segregated four districts in Montana, "it does not appear from any information at hand that any land has ever been reclaimed." He argued that although Carey enterprises had the potential to be of great benefit to the state, he wanted the Commission to refrain from trying to start so many different projects and instead

"In 1903 Idaho began construction on the Twin Falls South Side Project, the largest Carey Act project in the nation. The contracting company had "little difficulty attracting settlers, who paid $25 an acre for water rights." Dunbar, Robert G., Forging New Rights in Western Water, (Lincoln: University of Nebraska Press, 1983), p. 41. Other projects in Idaho and Wyoming were not always so successful, but the price paid per acre at the Twin Falls project demonstrates that good irrigated land in the region commanded high prices.

"D.A. Cory to C.O. Reed, 14 December 1900. MHS, RS 31-1-30.


"Governor Joseph K. Toole to Thomas Marshall, 18 November 1901. MHS, RS 31-1-39."
"concentrate its energies towards getting some material results from one or more of the schemes said to be under way." Toole recommended that the state prohibit the ALGC from starting any more new projects and permit it to work only on those projects already inaugurated, "and such of these only as in justice and fair dealing under contractual relations ought to proceed to completion." 

In response to this and other attacks on state-sponsored irrigation projects and the ALGC, Donald Bradford contributed an article to the Great Falls Tribune in December of 1901 defending the Commission and extolling its contributions to the state. Bradford argued that irrigation projects were better left to the states. If the federal government were to control these projects, he argued, the big cattle ranchers would take advantage of the opportunity to control even more water and land than they already had; ranchers had done just that under the federal Desert Land Act of 1877. An even greater expansion of grazing lands would be disastrous for the state, since large ranchers opposed the population growth that Bradford and others favored as a way to increase the state's wealth. Bradford claimed that "home rule" was best for Montana, and stated that the ALGC had already made a "beginning" in that direction. The ALGC, according to Bradford, had "constructed a system of canals...as comprehensive and as

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"Great Falls Tribune, 9 January 1901, p. 1 and 3."
scientific as would the government." He further asserted that the ALGC rules provided "absolute justice" in distributing water at a minimal cost. All that Bradford asked from the government was for it to lend its credit to guarantee irrigation district bonds. Bradford and the other Commissioners had often argued that if the ALGC bonds were guaranteed, then they would sell easily and the state could initiate a multitude of successful irrigation projects."

Bradford failed to admit the patent failures of the Commission or to acknowledge that although ALGC rules provided "absolute justice" in water matters, no Carey settlers had yet received any water from the Commission's projects. Bradford's position revealed his ignorance of irrigation engineering and expressed the commonly held belief that building canals and reservoirs meant nothing more than digging a ditch or throwing up a dam. "There is no great mystery attached to the building of canals and reservoirs...," Bradford informed the Tribune's readers, "The land is here; so is the water and reservoir sites can be found in every coulee and depression in the mountains." 

But Bradford failed to add that most of the sites that could be easily irrigated had already been reclaimed. Fellow Commissioner David Cory had admitted to an inquirer a month earlier that the Commission had experienced problems

"Great Falls Tribune. 22 December 1901, p. 11.
"Ibid.
because, "all the land capable of inexpensive irrigation has been taken." The extensive reservoirs and canal systems needed to reclaim the remaining arid land had to be carefully designed and constructed; such efforts would require more work and money than implied by Bradford's casual statement about filling coulees with water. Bradford, the official entrusted with the most authority for initiating Carey projects in Montana, underestimated the amount of time and money needed to reclaim arid districts because he continued to follow this simplistic view toward the construction of irrigation systems.

In the ALGC report to Toole in January of 1902, Marshall outdid Bradford in extolling the tremendous opportunities available to the state through the Carey Act. The Commission, Marshall wrote, "has begun the great work of making homes for the masses." Marshall admitted that the ALGC had only made a beginning in its quest to reclaim government land, but put much of the blame for its slow beginning on the legislation creating the commission. The legislature, he complained, had given the commission the semblance of power and opportunity for good, but it was only the semblance of power and opportunity, because no funds were placed at its disposal and only the running streams and dry prairies were given it as a basis for credit with which to build great canals and

"D.A. Cory to John R. Commons, N.Y., 19 December 1900. MHS, RS 31-1-30.
resevoirs [sic] and reclaim vast areas for the support of hundreds and thousands of souls."

According to Marshall, if given the proper power, the ALGC could fulfill its promise and help the state enter a new era of prosperity.

In spite of his flowery rhetoric and overly optimistic view of the potential for Carey projects, Marshall made a strong point. The legislature had created the ALGC to perform miracles at almost no cost to the state. The state wanted irrigated land and prosperous farmers, but state officials did not want to pay for the process of obtaining them. The ALGC officials had to face the humiliation of being continually rejected in their attempts to secure financing from outside sources for their projects. This rejection had resulted in the acceptance of several ill-planned, ill-surveyed projects simply because someone had expressed a willingness to invest in them. Considering the limitations of the Carey legislation in the state, it is surprising that the ALGC managed to interest anyone in these projects; it should not be surprising that these weaknesses prevented the projects from succeeding. Although Marshall overestimated what the Carey Act could do (none of the Western states ever patented the full 1,000,000 acres permitted them), he had observed that other states, such as Wyoming and Idaho, were able to make the act work and

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"ALGC report to Governor Joseph K. Toole, 22 January 1902. MHS, MC 35-175-12."
correctly argued that the weaknesses of the Commission resulted from the deficiencies of the state law. If Montana wanted to reclaim land under the Carey Act, it would have to provide more support for the Arid Land Grant Commission.

Although most continued to maintain an optimistic view of their work, some Commissioners did admit to the limitations of their work. In September of 1902, when the Commission was facing investigations by Toole and State Examiner Hudnall, Cory lamented that although "Considerable work could have been done" by the Commission with a little more cooperation from the state, the "government scheme for building reservoirs for reclamation of our arid lands is really the proper one and I think the only practical one for reclaiming the millions of acres of now almost valueless lands." Cory realized that in comparison to the huge amounts of money that the federal government could pour into reclamation projects, the efforts of the ALGC to create a few small irrigation systems seemed feeble at best. Toole and his administration were left to determine the fate of the Arid Land Grant Commission and the Carey Land Act in Montana.

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*D.A. Cory to C.B. Guittard, Assistant Librarian, Ohio State U., 15 September 1902. MHS, RS 31-1-30.*
Chapter 3
The Carey Land Act Board, 1903-1965

Although the ALGC had failed to reclaim any land in Montana, State Examiner Hudnall and Assistant State Examiner F.H. Ray both advised Governor Toole to maintain some state agency to take advantage of the Carey Act. They did, however, recommend changes to make that agency more effective. Instead of abolishing the ALGC entirely, they advised Toole, the state should improve the Commission to make it more efficient and less costly. Ray argued that, "The future of Montana, her growth in wealth and homes, depends first and most on the development of her agricultural resources and that means irrigation." Since Montana was "only one of sixteen" states included under the Federal Reclamation Act of 1902, it "ought not depend entirely on National aid." Ray compared Montana's Carey Act efforts to those of Wyoming and Idaho; these states
possessed "less natural advantages" for irrigation, yet were continuing to benefit from the Carey Act.

Hudnall’s report concluded that the ALGC suffered from a lack of funds and want of a state engineer. The primary problem with funding came from the unwillingness of the legislature to appropriate money for the Commission and the reluctance of private investors to buy the ALGC bonds. Hudnall suggested that state officials be included as board members to eliminate salary costs and most travel expenses.

Like Ray, Hudnall pointed to the examples of Idaho and Wyoming to show that the Carey Act could work; both rejected Toole’s tentative plan to end completely the state’s attempts to irrigate Carey land.

In 1903, the legislature repealed the law that had created the Arid Land Grant Commission and replaced it with legislation establishing the Carey Land Act Board (CLAB) and the Office of the State Engineer. The legislature created the CLAB to administer the Carey Act within Montana and included as permanent Board members the State Engineer as chairman, the Secretary of State and the State Examiner. The law specified that the state would not pay these Board

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members any additional salary for their Carey duties, but it
did allow for the payment of travel expenses. In March,
the Governor appointed John W. Wade as State Engineer at a
salary of $2,500 per year. Secretary of State George M.
Hays and Examiner Hudnall joined Wade as the first members
of the Board.

Initially the powers of the Board were very limited and
confined primarily to supervising the projects begun by the
now-defunct ALGC. These limitations reflected Toole's
belief that the State should complete the districts already
segregated before it attempted to initiate more Carey
projects. Since it could not begin any new projects, the
CLAB had to focus its attention on the Billings, Big Timber
and Dearborn Districts.

Like the previous legislation that created the ALGC,
the new act specified in several places that the new Board
could not create any debts that the state was obliged to
pay. As originally established, the Carey Land Act Board

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1 According to the legislation, the State Engineer was
to be appointed by the governor and confirmed by the Senate;
he served a four-year term. Rules and Regulations of the

2 Governor Joseph K. Toole to State Engineer John W.
Wade, 7 March 1903. MHS, MS 35-201-10.

would simply complete the ALGC contracts still outstanding and "protect the State's interest.""

Reacting both to the failures of the ALGC in its efforts to initiate large irrigation projects and the new competition from the federal government, the Board members decided to concentrate on small, isolated tracts of land, "each too small too [sic] engage the Government service, so that the Government will not undertake their reclamation. These comparatively smaller tracts are logical fields for State enterprise." The CLAB members realized that they could not compete with the Federal Government and its easy payment terms for settlers on Reclamation land, so the Board could not afford to attempt the construction of large projects. But, as the Board pointed out, national funds had already been allocated for the Milk River project in Montana; since the government had to spread its efforts across all the arid states, Montana was not likely to receive any new projects for some time. Thus, the state needed to look to the Carey Act to increase irrigation in the state.'

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In 1905, the state legislature increased the Board's powers. Most notably it gave the CLAB the authority to enter into new contracts to reclaim and to settle Carey lands. The legislature also added limitations to the act to try to force the Board and its contracting companies to complete all projects in a reasonable amount of time. The new legislation stated that, "No contract shall be made by the Board which requires a greater time than five years for the construction of the works, and all contracts shall state that the work shall begin within one year from the date of contract, and thereafter to be prosecuted diligently to completion." If a company failed to begin construction within the specified time or in accordance to the contract, the State could declare the contract null and void. The act also specified that, although the contracting company would maintain and operate the irrigation system during the settlement process, when 90% of the perpetual water rights in the project had been sold, the construction company would transfer the system to the settlers and others who owned the water rights.  

One of the most important changes the legislature made in the state Carey legislation was in the method of payment for the irrigation systems. The legislature did not permit

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"Rules and Regulations of the Carey Land Act Board, 1909, p. 11.

Ibid."
the CLAB to issue bonds or warrants to support its projects. Attracting investors for the irrigation projects was left to contracting companies; it was no longer part of the Board’s duties. But the legislature did give the CLAB the responsibility of paying off the ALGC debt. The authors of the 1905 law estimated that the ALGC owed $5,707.65 to the state and $18,697.45 to bondholders. They assumed the Board would use the money brought in through the sale of Carey lands to pay CLAB expenses, settle the ALGC debt, and create a fund to reclaim other arid lands.

The 1905 law set the price for Carey land at a minimum of fifty cents and a maximum of two dollars and fifty cents per acre. It also stated that every application for entry had to be accompanied by a contract for perpetual water right for those acres and the maximum price per acre of the water right had to be included in the contract under which the project would be constructed. The contract also had to state the amount of water the canal company guaranteed for each water right share purchased by the settler. In most contracts the water share entitled the purchaser to 1 1/2 acre feet for each acre with a water right. If a settler failed to make proper payments for the water right, the

11These figures on the ALGC debt do not include the 6% interest attached to the bonds; the interest accrued from the date of issuance. Rules and Regulations of the Carey Land Act Board, 1909, p. 16.

12Ibid.
company selling the water right had a first lien on the land and could foreclose on it. The act also permitted the CLAB to set other terms of sale,\textsuperscript{13} and to lease Carey land, provided "that such occupancy shall not preclude any person desiring to settle upon such lands from doing so at any time."\textsuperscript{14}

Board members were optimistic about their new duties and responsibilities. Citing the results of the past two years, in which considerable progress had been made in the construction of the Billings Bench project, the Board concluded in 1906 that it was "entirely practicable, and even desirable, for the State to continue to avail itself of the privilege" of the Carey Act.\textsuperscript{15}

Governor Toole continued to work closely with the Board until February of 1908, when, citing ill health, he resigned from office and was replaced by Lieutenant Governor Edwin Norris of Dillon. In his statement of resignation, Toole reflected on the changes that had occurred during his tenure in office, including the advances in reclamation and dry land farming, "making homes for thousands and adding millions of dollars annually to our permanent wealth."\textsuperscript{16}


\textsuperscript{14}Ibid, p. 16.

\textsuperscript{15}Second Biennial Report, 1905-1906, p. 3.

\textsuperscript{16}The Helena Independent, 2 February 1908, p. 2.
Although Norris lacked Toole's intimate experience with the ALGC and CLAB, he also took an active interest in the state's Carey projects. During his six years as governor, Norris helped to guide the CLAB and to defend it against critics. 17

There were many critics of the Board in its early years. Like the Arid Land Grant Commissioners, the CLAB members were often so intent on creating viable irrigation projects that they permitted applications on land that could not be easily irrigated, and allowed continuous delays on the part of construction companies. Their desire to prove the new Board a success led the CLAB members to accept excuses and extend deadlines that made the Board look incompetent, or at least unsuccessful. The problems of the Dearborn Project illustrate well the difficulties encountered by the Board as it struggled to construct viable and profitable irrigation projects under the provisions of the new state laws.

DEARBORN PROJECT

When State Engineer Wade accepted his new duties, he conducted investigations of the Carey projects begun by the

17 A Great Falls Tribune story, written the day after Norris' death on 25 April 1924, praised Norris for helping Montana make the "transition from an era of 'wide open spaces' to an agricultural state." According to this story, Norris, who served as governor from 1908-1913, played a "vital part in establishing the state in its new sphere." Great Falls Tribune, 26 April 1924, p. 1.
After Wade presented his report on the Dearborn District to the Governor, Toole expressed outrage and denounced the "discreditable conduct in the irrigation project." This conduct included the overpricing of water rights, the overissuing of bonds, and the failure of the construction company to build laterals to carry water from the main canals to individual tracts of land.¹⁸

Representatives of the Dearborn Canal Company, especially Henry Semple Ames, conducted a spirited defense of the project through letters and two days of hearings before the Board. Board members and Ames argued extensively over the definition of reclamation, the necessity of laterals, and whether or not the Board should accept the work done on the district. When Ames decided to pursue the issue in court, Wade scathingly condemned the Dearborn Canal district as "a disgrace to the fair name of our State."¹⁹ In its Biennial report published in 1906, the Board recommended legislative action, "whereby all proceedings in the District No. 4, known as the Dearborn Canal Scheme, be declared null and void."²⁰ Governor Toole agreed with this conclusion.²¹

¹⁸Governor Joseph K. Toole to CLAB, 30 March 1904. MHS, MC 35-201-10.


²⁰Ibid, p. 28.

In spite of all its angry rhetoric, however, the Board eagerly accepted an offer from Ames to draw up a new contract to reclaim the Dearborn District. Faced with the prospect of losing over 30,000 acres of Carey land, the Board decided that it would be worthwhile for the state to give the Dearborn Company one more chance. The Board had not yet completed a project, and the Dearborn district still seemed tantalizingly promising. In an abrupt about-face, the Board reported in 1908 that the new plans for the district appeared "good and sufficient" to settle the area during the year 1909. "There now seems little doubt," the Board stated, "that the District will soon be a settled community."  

This optimistic statement provided an interesting contrast to an allegation by the Board just two years earlier that it was "impossible for the State to complete the reclamation of said lands." The Board members, and especially State Engineer Wade, still hoped for the best out of the Dearborn district. They continued to feel pressure to produce a successful project. By 1909, Montanans were enthusiastically supporting the dry land farming movement, which threatened popular support for irrigation projects. From the Board members' actions, it would appear that the

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24 CLAB to Governor Joseph K. Toole, 2 November 1905, MHS, MC 35-201-10,

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CLAB was so anxious to prove its legitimacy that the members were willing to take chances that in 1904 they had decided not to risk.

The Board even contested an extremely negative report on the Dearborn District submitted by a special agent of the Department of the Interior. The Board assured Governor Norris that "it never has before been questioned nor in the slightest degree doubted that this project is feasible." 24 Instead of proceeding with plans to cancel the project, Norris and the Board asked the Department of the Interior for deadline extensions in the District so the Dearborn Canal Company could complete its work. 25 The Board then accepted two transfers of ownership of the canal project before it finally voted to void the construction contract in 1910.

Frustrated with its continued failure to reclaim and settle the Dearborn lands, the Board eventually concluded that it would be best for the state to relinquish all the lands in the district. In its Fourth Biennial Report, the Board explained its reasons for relinquishing the lands as well as its previous reluctance to make this final decision.

This Board has been exceedingly loth to take this stand--thus possibly shutting the door of opportunity in our faces which seemed fully open to us to place


upon this splendid tract of now desert land a community of prosperous and happy farmers, and thus bring to the State a great and permanent benefit."

Although reluctant to part with the lands, the Board decided that the Dearborn fiasco had tainted the efforts of the state to irrigate lands in Montana through the Carey Act. Since the CLAB was beginning to receive some positive recognition for its progress in the Billings and Big Timber districts, it did not want the negative publicity surrounding the Dearborn project to tarnish its new image of success. The Board may also have simply been tired of the Dearborn District. For over 10 years the state had pursued the elusive dream of reclaiming 33,000 acres in the Dearborn Valley; the CLAB finally decided the effort was not worth the sacrifice. But through its experiences with District No. 4, the Board, the Governor and the state legislature became aware of the larger problems with the state's Carey legislation and began work to change the law to make it more effective.

By 1912, the legislature had made significant changes in the Board. These changes reflected some of the lessons learned from the experiences with the Dearborn project. Although the State Engineer remained as an adviser to the

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Board, the Governor replaced him as chairman in order to allow the engineer more time for field investigation of irrigation projects. New legislation also removed the State Examiner, who usually possessed little expertise in irrigation matters, from the Board and replaced him with the State Attorney General, a person qualified to interpret contracts and water laws.

The Board also took steps to maintain more control over Carey projects in an attempt to check abuses by contracting companies. "The principal reason for the difficulties of the past," the Board admitted, "seem [sic] to have been lack of experience and precedents in the operation and administration" of the Carey Act. The rules were strict enough, but the actual operation of the Board was lax; the Board had not adequately investigated the lands to be segregated. A more intensive investigation of the Dearborn lands, for example, would have alerted the state at the beginning about the difficulties of irrigating that area. As part of its new program the Board began to relinquish lands, such as District No. 4, and to reduce materially the acreage of other projects "to conform to the probable water supply available for reclamation." Taking such strict measures to maintain feasible projects at

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reasonable prices would serve notice to others "that
dilatory tactics would not be countenanced, but projects
must be taken up in a businesslike manner and pushed to
consummation with all due diligence or the segregation would
be cancelled." 

In its Fifth Biennial Report, the Board noted the
cancellation of the Dearborn Project (36,586.42 acres), the
Red River Project (7,885.52 acres) and the Franklin Project
(5,142.30 acres). Although it continued to carry several
other non-productive districts, the Board's willingness to
relinquish segregated lands reflected part of a new
commitment to feasible projects. Part of the lesson of the
Dearborn project had been learned. The Board realized that
not every site in Montana could be profitably irrigated and
not every company would perform its irrigation duties fully
and honestly.

But, again, the Board's rhetoric was more impressive
than its actions. Although it did cancel three projects in
1911 and 1912, it carried other "non-quiescent" projects for
several decades before finally relinquishing them. In spite
of its expressed determination to cancel projects rather
than to allow their construction deadlines to be extended
indefinitely, the Board continued to permit extensions on
all of its remaining projects. The CLAB extended one

"Ibid.

district's deadline for completion by almost 40 years. It was easier to discuss terminating projects than it was actually to cancel the segregations and to lose the opportunity of creating successful, prosperous districts. Every acre less than the 1,000,000 acres offered to the state under the Carey Act that the state did not irrigate and thus obtain from the federal government, was seen as lost land. Reports of successes in Idaho and Wyoming also contributed to the desire of Montana officials to take advantage of the government offer."

After the demise of the Dearborn District, Board members continued to extend deadlines, but tended to focus more attention on those projects that showed real progress toward construction of viable irrigation systems. Most of the CLAB papers after 1910 deal with the Valier and Billings projects, both of which succeeded in reclaiming land and selling that land and water rights to "actual" settlers. The CLAB's first triumph came on the Billings Bench project. The Billings success justified the Board's existence and proved that Montana could build a working irrigation system under the Carey Land Act.

BILLINGS

The Billings Bench project (District No. 1) became the first Carey Land Act project in Montana to be completed

"First Biennial Report, 1903-1904, p. 30."
successfully and transferred to the water users of the district. In 1903 the CLAB signed a contract with the Billings Land and Irrigation Company. Under this energetic company, construction of the irrigation system progressed rapidly. By 1905, the Billings Land and Irrigation Company had completed construction of a 1,847-foot tunnel, a 900-foot flume, and almost 100 miles of canals and laterals.

Trouble arose on the Billings Bench District, however, when that project neared completion and negotiations began for the transferal of the irrigation system to the water users of the area, who, according to the dictates of the law, had formed the Billings Bench Water Users Association (BBWUA). In 1908 these water users hired a former Montana State College professor and engineer, E. Tappan Tannatt, to examine the project in preparation for the transfer of ownership. Tannatt discovered serious problems with the system including seepage and "dangerous and inadequate" wooden headgates. He advised the BBWUA to demand an immediate examination by the State Engineer and to "insist that he require the company to live up to its promises and plans." Tannatt seemed to trust the State Engineer and

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"CLAB Minutes, 20 June 1903. MHS, RS 32-3-21.

"Second Biennial Report, 1905-1906, p. 5."
recommended that the Billings settlers rely on Wade to remedy the alleged problems."

District settlers expressed concern when apprised of Tannatt's report because they did not want to pay for construction errors in the system that, they assumed, the construction company should remedy. After the settlers assumed control of the project, they would have to pay all maintenance and repair costs; if they could force the company to improve the system before the transfer, they could avoid the payment for these improvements and repairs.

Learning of Tannatt's report, State Engineer Wade assured the settlers that "both contractor and settler shall have, at our hands, simple justice." He promised that the Board would protect the settlers "against mistakes inadvertent, or frauds intentional on the part of the contracting company." To Governor Norris, however, Wade suggested that some of the settlers' complaints were unwarranted. "I feel," he wrote, "that the whole matter of

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"E. Tappan Tannatt, Engineer, to J. T. Connall of the BBWUA, 5 September 1908. MHS, MC 35-202-4. According to the Methods of Procedure published by the CLAB in 1909, the policy of the Board was "to faithfully protect the interests of the settler with proper regard to the rights of the contractor." Rules and Regulations of the Carey Land Act Board, 1909, p. 18.

"State Engineer John Wade to W.M. Johnson, Attorney from Billings, 7 November 1908. MHS, MC 35-201-11."
their complaints arises from their lack of knowledge of irrigation; this a little time will help."

After conducting his own "careful review...of the entire line and of all the works of this irrigation system," Wade described Tannatt's report as a "merciless and unprofessional attack." Wade accused Tannatt of reporting only what the BBWUA wanted him to report. According to Wade, Tannatt's only motivation to produce the condemnatory report on the Billings project was financial."

Predictably, the Billings settlers reacted with anger to Wade's conclusions. They expressed suspicion that the chief engineer of the Billings Land and Irrigation Company, who lived in Washington State, had accompanied Wade on his inspection. Wade had not informed the BBWUA of his examination, so no representative of the settlers was on hand. This, the settlers argued, "does not look exactly right to us." Their lawyer informed Governor Norris that, "I may say that Mr. Wade admits that he is prejudiced in favor of the Company, and his actions certainly show that this is true." After this negative report, the Billings

3"State Engineer John Wade to Governor Edwin Norris, 7 November 1908. MHS, MC 35-201-11.


5"W. M. Johnson, Billings Attorney, to Governor Edwin Norris, 3 December 1908. MHS, MC 35-201-11.
settlers communicated directly with Norris, rather than going through either Wade or the CLAB.

Billings settler L.W. Burg wrote a personal letter to Norris relating stories of district settlers who were unable to obtain water from the project. He told of Ennis Gill, who had been "trying for three years to get a crop." Gill lived "about 12 miles East of billings [sic] and faithfully put in a crop each year, with a promise of water, he has had a hard row to hoe...he has done all on his part, but lack of water has been his undoing." It was "certainly heart rending," Burg wrote, "to see the field all tilled and an effort made for a crop, with nothing to show for the farmers [sic] efforts, except a blighted crop, all for the lack of water." Burg accused the Billings Land and Irrigation Company of providing some farmers with water, because that "was necessary so as to have a sample to show prospective easy marks, so as to sell more land."

It is not clear what impact Burg's sad story had on Governor Norris, but Wade continued to favor the Billings Land and Irrigation Company against the attacks of the settlers and Tannatt. In his next report to the CLAB on the Billings District, Wade clearly sided with the contracting company against any criticisms of the engineers sent by the CLAB to inspect the project. In spite of some criticisms

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L.W. Burg, Billings Settler, to Governor Edwin Norris, 17 May 1909. MHS, MC 35-201-12.
from one of the inspecting engineers, Wade concluded that, "it is manifest that...no call for other or extra work or for any sort of emendation can be made upon the company."

Wade continued to fight the settlers over the condition of the Billings irrigation system. Tannatt swore to Norris that he would fight to his last dollar to expose Wade, "as I feel that it is but justice to the citizens of Montana and to my profession that men of this stamp and disposition be publically [sic] known and understood." The CLAB had already preferred charges against Tannatt with the State Board of Education. In return, Tannatt, who stated that he had received "outrageous treatment" from Wade in Billings, vowed to file charges with the legislature against Wade for "improper official conduct and for incompetency."

Wade's refusal to consider the settlers' complaints was the result, perhaps, of his almost fervent dedication to irrigation. He believed that only through irrigation could Montana prosper. Wade's convictions may have colored his judgement in the Billings District. It seems probable that Wade became convinced that he had to support the construction company because that company had built a successful project. The CLAB found it relatively easy to find farmers who wanted to purchase irrigated land; the

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"E. Tappan Tannatt, Engineer, to Governor Edwin Norris, 21 November 1910. MHS, MC 35-201-13."
Board members found it much more difficult to find a competent irrigation company to build a relatively sound canal system. Wade sided with the company that had helped him toward the achievement of his goal--the creation of irrigated farmland in Montana. He was willing to dismiss the complaints of the project's farmers who could not appreciate how difficult it had been for the state to build a successful irrigation system under the Carey Act. The almost total lack of concern shown by Wade for the complaints of the settlers demonstrated clearly where his sympathies lay.

Wade supported the benefits provided by the Billings Bench project as depicted by the Billings Land and Irrigation Company in the 1910 CLAB Report. In the project summary provided for the Biennial Report, the Billings Land and Irrigation Company extolled the success of the Billings District. "Here, where six years ago was a desert covered with sage-brush...giving sustenance to nothing except a few sage hens and jack-rabbits, there is now a thriving community of prosperous and happy farmers." The farmers in this district had paid over $15,000 in taxes for the year of 1910, and, the company estimated, the project had added three million dollars in taxable wealth to the city of Billings and had doubled the city's population. The company reported that it had sold 5,985.13 acres of the project to

"Fourth Biennial Report, 1909-1910, p. 4."
"actual settlers," who were "more than ordinarily prosperous and contented." The project was almost complete, except for some "small ditches and laterals." This report fulfilled many of the hopes of the Board and Wade for a successful irrigation district that contributed to the economic prosperity and stability of the state. Faced with the seeming culmination of his wishes, it is hardly surprising that Wade chose to believe the construction company that had provided this boon to the state.

In early 1911, Wade's second term as State Engineer ended and Norris appointed Archibald Mahon to succeed him. The biennial reports of the Board and State Engineer do not relate if Wade decided not to continue as State Engineer or whether Norris asked him to resign, but pressure from Tannatt's suit and hostility from the Billings settlers probably contributed to Wade's decision to leave his position.

After seven years of fighting, the Billings Land and Irrigation Company and the BBWUA finally reached an agreement in 1915 "for the turning over of the canal to the water users." The Merchants' Loan Company of Billings accepted trusteeship of the project until its completion.

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"Ibid, p. 3-4.
"R.E. Shepard, President of BL&I Company, to State Engineer Archibald Mahon, 8 May 1915. MHS, RS 32-2-1.
and arranged with the BBWUA that the settlers would "maintain, operate and improve the canal as required by the State." The Billings Land and Irrigation Company agreed to complete the canal while the water users operated the system. The CLAB could not officially recognize this agreement, however, until it had accepted the entire project as complete; until then it continued to hold the Billings Land and Irrigation Company responsible "for the faithful fulfilment of their contract."

Bank officials experienced the same difficulties with the water users as had the construction company. Only a few weeks after the Billings bank assumed the trusteeship of the project, one of the bank officers informed Mahon that the Board would have to act quickly to "take the Ditch off our hands." The officer had apparently already become the focus of settler abuse. He wrote to Mahon that "the only solution to the matter is to have the ditch in the farmers [sic] hands to stop their numerous complaints."

The Bank had to suffer these complaints until 20 December 1920, when the state relinquished control of the Billings District to the BBWUA. To this date the district had segregated 13,223.54 acres, had colonized 12,264.62


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acres, and irrigated annually 17,000 acres of crops on Carey Act land and non-Carey Act land. A total of $504,000 had been expended on the project." By 1926, the Billings project was providing water to 18,000 acres of diversified crops, including sugar beets, beans, alfalfa and small grains. The BBWUA reported that the "Billings Bench is in the best condition of its history, as most of the poor farmers have been weeded out and the project is now being farmed by industrious farmers who know their trade and are making a success of their endeavors." Only 857.85 acres of Carey land remained unsold in the district by 1927."

The Billings Bench project provided the CLAB with a clear success story. In spite of problems with the transfer of land from the construction company to the settlers, the irrigation system had passed into the hands of the water owners. Settlement of the project was almost complete, and the project provided water to over 18,000 acres of land near

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"Tenth Biennial Report of the State Engineer and of the Carey Land Act Board, 1921-1922, p. 15. MHS, MC 35-202-2. The Billings Bench project provided water to all the Carey land settlers and also to settlers on non-Carey lands. When the ALGC segregated the district, it had to contend with privately held lands in the area and agreed that the Billings Land and Irrigation Company could sell excess water to farmers on these lands as long as it did not take away from the guaranteed water rights of the Carey settlers.


Billings, directly improving the prosperity of that city. The project also illustrated how difficult it could be for the CLAB to reconcile the desires of both the settlers and the construction company in the matter of the transferal of the irrigation system.

The Board experienced similar problems a few decades later on its largest irrigation district. Although construction on the Valier project began in 1909, the transfer of ownership in the project did not occur until 1953. A larger district than the Billings Bench project, the Valier project also experienced a more prolonged period of development and suffered through an even more tumultuous period of transferal of ownership than that experienced in the Billings area. But, like the Billings project, the success of the Valier district showed that in fertile areas with easily accessible water Carey projects could succeed if the companies building them could secure the money to back them.

**VALIER PROJECT**

In May of 1909, the Board entered into a contract to reclaim what would be its third successful district, the Valier project. The contract also established the Teton County Canal and Reservoir Company, a settlers' corporation. When the CLAB accepted the Valier system as complete and 90%
of the water rights to the district were sold, the
construction company had to convey the entire system to the
Teton County Canal and Reservoir Company. Stock in this
company consisted of water rights; the water right to one
acre of land constituted one share of stock. All works on
the project were "subject to approval" of the Carey Board,
which had to accept the system in its entirety before the
transfer to the settlers' corporation. ⁵⁰

The contract for the district experienced numerous
revisions, most of which were extensions of the deadline for
completion of the system and colonization. The first
contract of 1909 required that the construction company
complete building in 1912 and settle the land by 1916. ⁵¹
Later contracts extended the deadline eventually to 1951.
The Board also authorized increases in the price per acre
for water rights from $40 in 1909, to $50 in 1912, $60 in
1918, and $80 in 1921. ⁵² The Board granted these
modifications for various reasons that included the
bankruptcy of the company and colonization difficulties

MHS, RS 32-3-7.

⁵¹Ibid.

⁵²The Valier Company argued that it needed to increase
the price of water rights to $80 an acre, "for the reason
that the cost of constructing and completing said irrigation
Project is far greater than was originally anticipated at
the time the foregoing Contracts were executed." Petition
of The Valier-Montana Land and Water Company to CLAB, 1
caused by World War I. Again, the CLAB demonstrated its willingness to ignore the intent of Carey legislation in the state and its own regulations about deadline extensions in order to continue to hold onto a potentially successful district.

The various construction companies on the Valier project experienced financial difficulties primarily because of problems with colonization. With insufficient sales of water rights to settlers, the companies found it difficult to retire the project's bonds. Company leaders complained about the "menace" of federal reclamation projects, which competed for settlers. Even when it did attract settlers, the construction companies often found that these farmers knew little about irrigation agriculture; many of them defaulted on their settlement payments. Several times, the company requested the CLAB to send warning letters to settlers who were delinquent in making their final proofs. One report acknowledged that, "In securing settlers no

"The company constructing the Valier project underwent a variety of name changes. The company was first called the Conrad Land and Water Company, then the Valier-Montana Land and Water Company, The Valier-Montana Land and Water Company, and finally in 1944 it became The Valier Company.


"This was not uncommon among farmers on new irrigation projects. F.H. Newell, head of the Reclamation Service from 1902 to 1915, observed that most irrigation farmers were "'inexperienced' or 'adventurers' who expected 'easier things.'" Donald Pisani, "Reclamation and Social Engineering," p. 58.
attention was paid to the colonists' former occupation, and it took longer to convert bookkeepers, clerks, dentists, etc into good farmers than had been anticipated. In 1926, company officials reported that 30% of its settlers had not made payments over the last three years, and 58% had paid less than $5.00 an acre during the last three years. Without a firm policy dispossessing these delinquent settlers, the company could not bring in enough money to satisfy its bondholders and complete the project. The project ran at an operating loss of $35,000 in 1925.

By 1926, company officials wanted to complete the project as quickly as possible and turn it over to the Pondera County Land and Irrigation Company, the successor to the Teton County Canal and Reservoir Company. Time was running out. Investors had to be paid, the physical structure of the project was "rapidly deteriorating", and maintenance costs were rising.

State Engineer J.S. James investigated the Valier project in 1930 in response to a request from The Valier-Montana Land and Water Company (the third company working under a CLAB contract to build the irrigation system at Valier) for an examination to show that the project was


"Ibid, p. 12."
complete according to the contract. Although James found some deterioration of the system, he concluded that if the company completed a few specific repairs and additional construction, the project could be approved by the CLAB. In spite of this positive report, by 1 October 1930, The Valier-Montana Company was in default of its contract for completion of the Valier project. In its last meeting for more than 10 years, the Board met in 1932 to extend The Valier-Montana Company’s deadline to 1935 for completing the project. After The Valier-Montana Company declared bankruptcy in 1942, the CLAB signed a new contract with The Valier Company to complete the project.

The final phase in the development of the Valier project began in 1947, when the project’s developers, settlers and engineers fought each other and state officials over the transferal of the system to the settlers. In that year The Valier Company asked the local district court to determine the legalities of the transfer of the Valier project to the settlers’ corporation. Part of the CLAB’s concern in this matter was the question of land The Valier

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"R.J. Kelly, Assistant Secretary of State Water Conservation Board, to Governor Sam C. Ford, 4 September 1947. MHS, RS 32-3-14.
Company had acquired from delinquent purchasers. The Valier Company owned 20,000 of the 70,000 Carey acres within the district; thus, it controlled almost 30% of the stock in the Pondera County Land and Irrigation Company. The Valier Company contended that since these water rights and lands had already been sold once, they should no longer be subject to the restrictions of the Carey Act; it also contended that the sales should count toward the achievement of the 90% level of water rights sales that The Valier Company needed to reach before the project could be turned over to the settlers’ corporation.

The Pondera Company (the settlers’ corporation), was concerned with the system’s maintenance. Company leaders wanted the State Engineer to report on the construction and maintenance needed on the project. However, Assistant State Engineer Oscar Moberg’s careful investigation of the system prompted criticism from both The Valier Company and the settlers. The Valier Company, through its lawyer, Forrest H. Anderson, complained that Moberg was being much too thorough in his examination, especially since the CLAB had approved the Valier work once already—in 1932 with the


"J.P. Freeman, Attorney for Pondera County Co., to State Engineer Fred Buck, 31 October 1947. MHS, RS 32-3-10.
acceptance of James' report. The settlers also protested that Moberg was moving too slowly and thoroughly in his inspection. Officials from the settlers' corporation wrote to the CLAB in July of 1949, that "ample time has been appropriated and used for the performance of the inspection of the system." They blamed the Board for the heightening of tensions around the project caused by "delayed information." The settlers worried that extensive demands on the construction company might result in another bankruptcy that would delay completion even further.

Although they appeared to be completely at odds with each other, both companies wanted the same thing--completion of the system and its transferal to the settlers' corporation. Each appealed to the CLAB to get these goals accomplished in a way favorable to its side, but protested if the Board's actions hindered progress toward the transfer of the system. Moberg's report, which found fault with both the CLAB and The Valier Company, seemed to endanger that progress. Moberg blamed the CLAB for extending the deadline for completion of the project, "thus making the time for completion of reclamation and settlement a period of 42 years where four years was originally given and not to exceed 15 years was intended under the terms of the Federal


"J.P. Seifert, Pondera County Canal and Reservoir Company, to CLAB, 2 July 1949. MHS, RS 32-3-10."
Carey Act." The Valier Company deserved criticism, Moberg stated, for creating "a lousy system" that it was trying to "ram down" the water users' throats. "It is my firm belief," he concluded, "that the present construction Company (The Valier Company) is not competent nor in a position to complete the construction of the Valier Irrigation Project according to the terms and specifications of the contract with the State."*'

Pressure from the settlers and The Valier Company caused Moberg to resign from the investigation in mid-1949. "It was intimated," he wrote in a statement concerning his resignation, "that the report would be so severe in its requirements on the Valier Company [sic] that the company would go broke again and would be unable to put the project in an acceptable condition."**

The Valier Company's engineer, George Ebner, argued that Moberg gave a "much-too-doleful picture, as to the maintenance work."* * Reacting to pressure from the settlers and from The Valier Company to ensure the completion of the system's transfer, State Engineer Buck worked with Ebner to produce a joint recommendation on the project that was less

*Statement by Oscar E. Moberg, 20 July 1949. MHS, RS 32-3-14.

* Ibid.

severe in its requirements of The Valier Company than was Moberg's report. Buck presented the report to a meeting of settlers and The Valier Company officials in December of 1950 in Conrad. Two years later stockholders finally approved the agreement reached at this meeting. The Valier Company agreed to perform certain construction work and pay $6,350 in lieu of other work; the Pondera County Company's acceptance of the money meant the acceptance of the project as "fully completed." After forty-four years, the settlers and the construction company reached an agreement on the project's transfer. Although Engineer Moberg had severely faulted the project, the water users apparently were willing to accept what they could get to help construct some repairs and secure the system under their control.

The question of the extensive shares of water stock held by The Valier Company was solved when the state legislature passed special legislation to allow the company to sell the land and appurtenant water rights. In June of 1952, The Valier Company sold 20,699.48 acres of land and

"State Engineer Fred Buck to CLAB, 8 January 1951. MHS, RS 32-3-14.

14,052 shares of water stock. No Carey Act land remained for homesteading."

On 27 October 1953, Buck called the last formal meeting of the Carey Land Act Board." At that meeting, Governor Hugo Aronson approved the Board's resolution to transfer the property of the Valier project to the Pondera County Company. This meeting ended the state's involvement in the Valier project."

Other CLAB projects were not as successful as the Billings and Valier districts. The Board continued to carry three "non-quiescent" projects (the Teton, Flatwillow and Little Missouri Projects) until 1926 and 1931. These projects, on which little or no construction was ever attempted, attracted claims of fraud and scandal and damaged the developing prestige of the CLAB. A "real minature [sic] Oklahoma land rush" started on one project in 1913 as speculators tried to claim land in the irrigation district. Local people complained about bribes and kickbacks being


"State Engineer Fred Buck to CLAB, 24 November 1953. MHS, RS 32-3-6.

"CLAB Minutes, 27 November 1953. MHS, RS 32-3-15.
used to ensure the purchase of Carey land." In a later investigation of the project, State Engineer Mahon found that the submitted proposal for the district established water rights at "almost four times as much as the greatest flood of record.""

Such an overestimation was not uncommon during this period. In his examination of reclamationists in Montana, Stanley Davison observed that people often exaggerated the amount of water in streams, especially when influenced by spring runoffs. "Even engineers often were misled by the apparent volume of water, and proceeded with irrigation works to distribute quantities of water that were not there except briefly during the seasonal runoff."" This problem was exacerbated by the state's failure to compile the needed data on stream flows and to provide a central system for filing water rights claims. "[T]here is scarcely a State in the arid and semi-arid West," complained Engineer Wade in 1910, "that is so slow in the compilation of data that is absolutely necessary to make use of what is not now already

"R.H. Dunn, Harlowton Businessman to CLAB Secretary Ray, 5 August 1913. MHS, RS 32-1-2.

"State Engineer Archibald Mahon to CLAB, 15 June 1914, 35-201-13.

appropriated of these waters." State Engineer Mahon observed a few years later that demands from the Interior Department that the state provide water-flow records over a five-year period on proposed Carey projects hurt the CLAB's efforts. Such demands held up irrigation projects because the state did not have records on most streams. Mahon argued that estimates gave "fairly close results" and should be accepted."

"Estimates" of stream flow and construction costs, however, created the biggest difficulties with the implementation of the Carey Act. The CLAB had to attract construction companies and investors into the state to build the Carey projects, so it had to offer attractive figures that promised high and quick returns to those who invested in the ventures. Underestimating the cost of construction and overestimating the available supply of water and fertile land served the initial purpose of the CLAB. But, because actual prices of construction were higher and irrigable acres were less than they had been led to expect, the investors invariably had to spend more and wait longer to realize any return on their investment. Many companies went bankrupt waiting for their projects to become successful. Montana also suffered a lack of accreditation procedures for


"State Engineer Archibald Mahon to Governor Samuel V. Steward, 15 October 1913. MHS, RS 32-1-2.
engineers. As a CLAB secretary noted as late as 1940, "No law requiring registration [sic] or licensing of engineers" existed in Montana. "Anyone may practice this profession." Although not qualified to practice irrigation engineering, project promoters could claim in their proposals the availability of vast amounts of unclaimed water in their areas. The false promises and history of failed irrigation companies discredited the Carey efforts and thus made it more difficult for the state to attract investors."

Although Mahon acknowledged that serious problems existed on some of the Board's segregations, he reacted vehemently to any accusations that the CLAB was not acting in "entire good faith" on the projects. A vocal defendant of the Carey Act, Mahon extolled the advantages that state-sponsored private irrigation could bring to the state. He attacked the "present attitude of the Reclamation Service

"H.M. Tice, CLAB Assistant Secretary, to Henry L. Gray, Seattle, 14 October 1940. MHS, RS 32-1-14.

"This vicious cycle hurt Carey projects throughout the west, even in Idaho, the most successful "Carey state." There the general rule was that the final cost of a project was usually twice the estimated cost. In addition to the increased cost of construction, often only one-third of the acreage originally included in the project could actually be irrigated. Williams, p. 80-81. In Montana the problems were more acute because the state possessed less of the rich, even land found in southern Idaho that made irrigation in that area easier and more productive.

"State Engineer Archibald Mahon to Governor Samuel Stewart, 16 October 1913. MHS, RS 32-1-2.
and the Secretary of the Interior...that private and Carey projects are not a success." It was not, Mahon argued, that these private companies could not build the projects, it was the "heavy over-head charges of the projects that arise from the slow settlement of the lands and the resulting heavy interest charges against the investment for construction and maintenance, without sufficient revenue to support it," that caused problems for the private companies." When in competition with the federal projects, private companies, which could not offer the delayed and low-interest payments of the government enterprises, could not attract as many settlers to their lands. Without fairly rapid settlement, companies did not receive enough from purchases of water rights to make their own payments to investors. Without continued support from investors, many companies simply could not afford to complete their projects. The Billings, Big Timber and Valier projects in Montana all suffered from slow settlement due, in part, to competition from federal reclamation projects.

In addition to competition from the Reclamation Bureau's projects, the Carey districts also lost potential settlers to the dry land farming movement that swept through the state in the 1910s. Board members blamed advocates of

"State Engineer Archibald Mahon to "38 Individuals and Canal Companies," 23 February 1914, Copy. MHS, MC 35-201-13."
dry land farming for slow sales of Carey land after 1909."

After dry land advocates arrived upon the scene, "instead of a throng of irrigation farmers coming into our state, as the Board expected, the greatest part of the settlers that did come took up dry land farming."

Montana experienced a "flood" of settlers between 1910 and World War I, but few of the immigrants settled on irrigated Carey land. The new farmers were attracted by extensions in the Homestead Act, dry land farming propaganda, and a cycle of above-average rainfall; they settled on land where they could practice the new "scientific" form of dry land farming. Irrigation advocates like Robert Sutherlin of the Rocky Mountain Husbandman lamented the attraction that the "Campbell Method" of dry land farming had in Montana. To the dismay of irrigationists, even the Agricultural Station that had been established at Montana State College in Bozeman began

"In an attempt to redeem outstanding ALGC warrants, the CLAB had raised the price on Carey land from $.50 an acre to $1.50, but, after brisk land sales in 1908 and 1909 (primarily in the Billings Bench District), the Board was able to attract few settlers onto Carey lands. CLAB Assistant Secretary George Davies to Governor Samuel V. Stewart, 12 December 1914. MHS, MC 35-201-13.

"Ibid.

"Roeder, p. 52. Hardy Webster Campbell promoted a system of dry land farming in the 1890s that is named after him. This system involved the use of deep plowing, light seeding and summer fallowing. Grant, p. 299-300.
to support the Campbell system." Everyone seemed to be abandoning the old Progressive dream of irrigated farmland for the "get-rich-quick" attraction of dry land farming.

According to historian Richard Roeder, the enthusiasm for dry land farming in the state was perfectly understandable; "the state had between twelve and fifteen million acres of non-irrigable land most of which could be farmed successfully under the new methods." Cities like Great Falls fully supported the Campbell System because they greatly benefitted from it. Settlers filed 1,100 claims at the Great Falls land office in the first three weeks of October, 1909; the Fort Shaw Federal Reclamation Project, 30 miles west of Great Falls, when completed, produced just 206 irrigated farms." There was a great deal more business for Great Falls in dry land farming than in irrigated farmland because more people could afford the cheaper dry land, especially since they did not have to spend additional money to purchase water rights and to pay for canal maintenance.

The dry land farming boom, fueled by good harvests and the wartime demands for grain, continued until the droughts of 1917 and 1918 and the lower grain prices after the war

"Grant, p. 323-335, 365.

"Roeder, p. 77-78.

"Grant, p. 392, in footnote 61. Grant also noted that underfunding of irrigation projects "was a national problem" during this period. By 1910, the Sun River Project at Fort Shaw was only 7% completed. p. 387-89.
destroyed many of the dry land farmers. Following the drought, irrigated farming gained new supporters. The drought had several effects on Montanans, according to a later report of the State Engineer. People became more interested in irrigation again as they realized that "irrigation in some form is generally essential to the agricultural development of the State." Montanans, the report continued, were no longer interested in getting rich quickly, but instead wanted to settle and be stable. They were "interested in the future of the state" which depended largely upon the proper use and development of our water resources...It has largely been these irrigated acres which have stabilized our agriculture and helped to carry us along during these years of drought and depression."

Obviously a supporter of irrigation, the State Engineer exaggerated the influence of irrigation in Montana and the attitude change in its people. He correctly noted that much of the dry land farms in eastern Montana were abandoned to cattle ranching after the drought years. In the northern part of the state, however, farmers continued to use dry land farming techniques successfully. Irrigation was one part of agriculture in Montana, but not the only, or even

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9Grant, p. 378-380. According to Grant's research, Montana suffered the highest farm bankruptcy rate in the United States in the 1920s. Grant, p. 415-16.

most important, component of agricultural success. The engineer was probably reacting to the lack of prestige in which irrigation had been held during the boom years of dry land farming in the 1910s.

Even during the lean years of the 1910s the CLAB managed to remain virtually self-sufficient," but in the 1920s and 1930s, the Board’s work slowed down. The CLAB had not started a successful Carey project since 1909, and with the successful transfers of the Valier and Big Timber projects to the water users of those districts in the 1950s, the work of the CLAB was almost finished.

Before the Board could end its involvement in the Carey districts, however, it had first to ensure that all of the districts’ lands had been transferred from state ownership, either through sales to settlers or relinquishment to the federal government. Based on information from Idaho and Oregon, the Board decided that, “if any tract of Carey land is not reclaimable and subject to irrigation and sold to an actual settler, the tracts should be reconveyed to the Government.”

"All operating expenses of the Board during this period derived from land sales and filing fees. The Board made no appropriations from the Carey Land Act Fund until 1921 when it withdrew money to pay the Board’s expenses. State Engineer to State Board of Examiners, 23 June 1923. MHS, RS 32-1-3.

Additional difficulties arose over the sale of this remaining land because it was "marginal." According to the Revised Codes of Montana of 1921, the state had to provide five acres of water rights for each 40 acres of Carey lands. The CLAB could not "sell any of this land unless it [was] to be reclaimed by irrigation." When Frank Van Driest wanted to purchase some of remaining unclaimed land in the Billings District in 1948, he found that he would have to pay $35 per acre for water on the land, even though the assistant state engineer who examined the area declared that it was "so small and inaccessible that I would frankly say that it is not feasible to irrigate." The engineer asked the board if it could "possibly close one eye and make the sale" without the charge for water rights." As a representative from the Billings Bench Water Users Association pointed out, such Carey lands that were left on the project were "marginal lands in every sense of the word or they would have been entered upon years ago...Under these circumstances it seems highly ridiculous to go through all the red tape and routine which was formerly required under the Carey Act."

"CLAB to E.E. Tiffany, Secretary of BBWUA, 25 August 1927. MHS, RS 32-2-1.

"Gerald J. Oravetz, Assistant State Engineer, to Buck, 6 April 1948. MHS, RS 32-2-2.

"E.E. Tiffany, Secretary of BBWUA, to CLAB, 8 April 1948. MHS, RS 32-2-2.
Upon examining these marginal Carey lands, State Engineer Buck recommended to the Board that they should "attempt to get these tracts out of the hands of the Carey Land Board into individual hands and be placed on the tax rolls." He figured that the state had a total of 1,160 acres of such land remaining in 11 different tracts." The General Land Office advised the Board that if "the patented lands are unsuitable for irrigation and reclamation, the State may reconvey the lands to the United States." After the reconveyance, the Bureau of Land Management would consider how to dispose of the lands under public land laws."

Even selling the land to settlers presented problems for the Board. By 1943, the Board had sold no Carey land for "some years," so when Louis Dousman wanted to buy land in the Billings Bench District, it took the Board almost a year to complete the process for the sale, because no one knew the procedure." Once it began actively selling land again, the Board managed to sell off some of the remaining marginal lands to settlers who owned adjoining tracts. Between 1 December 1944 and 30 November 1946, the CLAB

"State Engineer Fred E. Buck to CLAB, 16 April 1948. MHS, RS 32-2-2.

"W.O. Hancock, Chief of Branch of Land Disposal Division of Adjudication, Department of Interior, to Albert Anderson, Attorney for CLAB, 6 August 1948.

"E.E. Tiffany, Secretary of BBWUA, to State Engineer Fred E. Buck, 12 July 1943. MHS, RS 32-2-1.
received $2,664.88 from land sales and other payments; it received $3,329, primarily through land sales, for the biennium between 1 December 1946 and 30 November 1948.\(^{100}\)

Finally, in the middle of 1957, the CLAB applied to the Secretary of the Interior for a quit claim deed to unsold Carey lands in the state.\(^{101}\) In early 1958, State Engineer Buck began to return lease checks to settlers, explaining that the CLAB had "made application to the U.S. Land Management Board to transfer all the tracts of land that are being leased to the State Land Department."\(^{102}\) In 1959, Buck reported to the CLAB members that, "We have only a few tag ends left to clean up the operation of the Carey Land Act Board."\(^{103}\) In January of 1959, the Bureau of Land Management issued to Montana a quit claim deed to the unsold Carey lands.\(^{104}\)

With the relinquishment of these final lands back to the U.S. government, and the successful transferal of the

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\(^{103}\) State Engineer Fred E. Buck to CLAB members, 9 January 1959. MHS, RS 32-1-13.

three projects to the settlers, the Carey Land Act Board completed its duties. In its 1963 and 1965 sessions, the legislature repealed the legislation creating the Carey Land Act Board and the office of the State Engineer. The State Water Conservation Board was given many of the State Engineer’s duties, including that of measuring stream flows and negotiating with other states on the allocation of streams. The legislature provided that the CLAB and State Engineer would transfer their funds and records to the State Water Conservation Board. 105

With very little fanfare (except for the photo opportunity provided by the meeting to transfer the Valier Project to the settlers in 1953) the Carey Land Act Board and the Office of the State Engineer faded out of existence.

Chapter 4
Conclusion

Progressive reformers and western boosters had pictured the west as a vast, fertile plain that needed only to have water conducted to it to create a verdant garden. They believed, as had Donald Bradford of the Arid Land Grant Commission, that there was "no great mystery" attached to the process of watering the west. But, there was not enough water in the west to satisfy everyone's demands. And even where water was plentiful, it was not always easily accessible.

Carey projects suffered from the overestimation of available water and the underestimation of the amount of work needed to put that water onto farmland. John Wesley Powell, author of "Report on the Lands of the Arid Region of the United States," had informed anyone who would listen in the 1890s that there was not enough water to irrigate all the land in the west. But, in their desire to create a greener, wealthier, more stable region, few wanted to listen to the voice of caution. In 1889, Powell had estimated that
up to thirty-five million acres in Montana could be "reclaimed" through irrigation. But, he cautioned, such an effort would mean that the state would have to utilize "all its waters--it means that...no drop of water falling within the area of the state shall flow beyond the boundaries of the state. It means that all the waters falling within the state will be utilized upon its lands for agriculture."¹

Fifteen years later, Montana State Engineer John Wade reported that, "after twenty-five years of travel over this great State, I am convinced that all our arable lands can be irrigated--every arid acre that can be utilized for grain or grass can be reclaimed."² Unlike Powell, Wade did not elaborate on where all the water to irrigate Montana's lands would come from; it was just there. Everyone knew that there was plenty of water in the west, it only had to be captured and channeled to the right areas. Looking at the Dearborn River during the period of spring runoff, how could one not believe that this one river could irrigate more than 36,000 acres? But spring runoffs lasted only for weeks or days; droughts lasted for years.

Success on Carey projects depended upon how easy it was to irrigate land in the district, how much capital a company could obtain to build the irrigation system, and how quickly

¹John Wesley Powell, Speech before the Montana Constitutional Convention of 1889. In Grant, p. 188.

²First Biennial Report, 1903-1904, p. 15.
farmers settled the land. All three of these considerations interacted. The easier land was to irrigate, the more likely it was to attract investors because they could get a faster and surer return on their investments. When contractors had enough money to build a solid system, they could sell land more readily because farmers were more likely to purchase land in a successful district. Once an energetic company began work on the Billings Bench project and completed some canals and laterals, farmers moved onto the district. Of the more than twelve projects contemplated by the CLAB and ALGC in Montana, only three were finished. Each of these successful districts was located on land close to an easily accessible water supply.

Faced with restricted funds and lack of easily irrigable land, states did not meet the expectations of the Carey Act authors. But, the Carey Land Act was not a failure. Although the act never succeeded to its full potential—no state ever reclaimed the full one million acres offered by the government—it did offer an alternative to federal irrigation, and eight western states eventually patented over one million acres of government land under the act. Idaho and Wyoming took the greatest advantage of the act. In all, Idaho patented 617,334 Carey acres and Wyoming claimed 203,311 acres. The largest Carey project, the Twin Falls South Side Project in Idaho, irrigated 192,750 acres. Montana patented the third highest number of Carey acres,
and constructed three irrigation systems under the act that provided 92,000 irrigated acres for Montana settlers.1

Perhaps Montana could have taken greater advantage of the Carey Land Act. If the legislature had been willing to guarantee the interest on ALGC bonds, more financiers may have been willing to invest in Montana projects. If the state had established guidelines for licensing engineers and spent more money to gauge stream flows, the Carey boards might have had a better reputation for correct estimations of the amount of money and time needed to complete projects. Montana probably could have built more Carey projects if the state had been willing to support the Carey boards more fully. But, new laws, such as the Newlands Act, and new ideas, like the Campbell Method of dry land farming, lessened the state's "need" for irrigated Carey land. If state officials could increase the population of Montana and the number of farmers without direct state aid, they would do so. Overwhelmed by these other movements, the Carey Act in Montana gave way to the better-funded projects of the Bureau of Reclamation and the popularity of dry land farming.

The great social experiment begun with the Carey Land Act succeeded in a small part, but failed to achieve the earlier Progressive dream of a flowering garden in the desert west. Government land grants could provide the

impetus to reclaim some land, but not much of it. Carey projects succeeded where the land was good and companies could build relatively inexpensive systems. Even where Carey projects succeeded, however, the settlers on the land were not the impoverished victims of urban depravity that the Progressive reformers had sought to help. Letters of inquiry about Carey land in Montana came from Minnesota, Kansas, Nebraska, Iowa, Colorado. Carey settlers were people looking for new opportunities, but they were not the destitute of the eastern cities. Indeed, project managers on Carey districts lamented about problems caused by farmers unfamiliar with irrigation techniques--imagine their complaints if city dwellers, with no farming experience at all, had moved onto these projects. Progressive rhetoric aside, Carey Land Act officials wanted hardworking, experienced farmers on their districts who could make a quick and steady profit from the land, pay off their water share purchases as soon as possible, and remain on the land to increase the prosperity and stability of the district. Nowhere in the Carey Land Act was there any mention of funds or programs to move poor people from the eastern cities onto Carey projects.

Instead of "making homes for the masses," Montana officials created a few working projects that are now controlled by the water users and whose land is owned by family farmers, ranchers and businesses. These projects
contribute to the financial stability of the surrounding regions and provide taxable land for the state. The state of Montana, which contributed almost no financing for these projects, thus benefitted in a real, albeit small, way from the Carey Land Act of 1894.
### APPENDIX I

**Progress of States under the Carey Act by 1958**

<table>
<thead>
<tr>
<th>STATE</th>
<th>AREA APPLIED FOR*</th>
<th>AREA SEGREGATED</th>
<th>AREA PATENTED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oregon</td>
<td>791,615</td>
<td>388,876</td>
<td>73,442</td>
</tr>
<tr>
<td>Washington</td>
<td>155,649</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arizona</td>
<td>31,266</td>
<td>13,745</td>
<td></td>
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<tr>
<td>Idaho</td>
<td>3,819,181</td>
<td>1,335,767</td>
<td>617,334</td>
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<tr>
<td>Nevada</td>
<td>185,455</td>
<td>36,808</td>
<td>1,578</td>
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<tr>
<td>Utah</td>
<td>606,704</td>
<td>141,814</td>
<td>37,239</td>
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<tr>
<td>Colorado</td>
<td>461,707</td>
<td>284,653</td>
<td>37,708</td>
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<tr>
<td>Montana</td>
<td>609,828</td>
<td>248,698</td>
<td>92,280</td>
</tr>
<tr>
<td>New Mexico</td>
<td>10,204</td>
<td>7,604</td>
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<tr>
<td>Wyoming</td>
<td>1,796,274</td>
<td>1,396,869</td>
<td>203,311</td>
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<tr>
<td>Totals</td>
<td>8,467,834</td>
<td>3,852,880</td>
<td>1,067,835</td>
</tr>
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</table>

*in acres

APPENDIX II
Montana Carey Districts

- Valier District
- Great Falls
- Dearborn District
- Helena
- Big Timber District
- Billings Bench District
APPENDIX III

Billings Bench District

APPENDIX IV
Valier District

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