

Carey Land Act Board, Authority of Contracts.

The Carey Land Act board may enter into a supplemental contract or change the provisions of an existing contract but where the contracting company is in the hands of a receiver the supplemental contract should run to the receiver and should embody the order of the court appointing the receiver and also the order authorizing the receiver to enter into the proposed contract. Where it is proposed to have a new company take over the property of the defaulting company the Carey Land Act Board cannot contract with such a new company until it is properly organized and in existence.

March 21, 1911.

Carey Land Act Board,
Helena, Montana.

Gentlemen:

I am in receipt of your letter of February 8th, 1911, wherein you

ask my opinion upon the proper action to be taken by your board with reference to the execution of a supplemental contract with the Conrad Land & Water Co. who are under contract with your board to reclaim certain lands of the United States government described in Official List No. 8;. Your statement of facts is briefly this: That on July 23, 1909, your board entered into a contract with the Conrad Land & Water company; that thereafter the irrigation system of the company was mortgaged to secure an issue of \$300,000 first mortgage bonds; that this mortgage included all the rights, privileges and franchises acquired by the company under the contract of July 23rd, 1909. You state that the company defaulted on the interest on these bonds January 1st, 1911, and is otherwise financially involved; you state further that it is proposed to completely re-organize the company by having the mortgage foreclosed and a new corporation organized to take over the business of the Conrad Land & Water company. The new company desires some slight amendments to the contract of July 23, 1909, and these you state have been agreed to by the board. Under this state of facts, you desire to be advised with whom the Carey land act board should enter into this supplemental contract. It seems that the Conrad Land & Water Co., is now in the hands of receivers who are officers of the court—at the present time then, you must necessarily deal with the court and the supplemental contract should run to the receivers appointed by the court, and it should embody the order of the court appointing the receivers and the order of the court directing the receivers to enter into the proposed contract. The new company which proposes to take over the defaulting company is, you say, not yet in existence and you could not therefore possibly contract with it.

Your second question is as to whether or not a second mortgage may be placed upon the property of the contractors. The contract of July 23, 1909, provides expressly that the irrigation system and the interest of the party of the second part in the lands may be mortgaged. The only limitation being that the mortgage must be approved by the attorney general. I can see no valid reason why a second mortgage might not be placed upon the property and the only person who would be concerned would be the mortgagee holding the second mortgage, or if it is a trust mortgage to secure an issue of bonds, the purchasers of the bonds would only have to satisfy themselves that the security was ample to justify the lien of the first mortgage in addition to securing the lien of the second.

Yours very truly,

ALBERT J. GALEN,

Attorney General.