

**Carey Land Act Board, Contracts With. Irrigation Projects,
Contracts to Install.**

Where the Carey land act board has entered into a contract for the reclamation of arid lands providing that work in certain districts shall be completed on or before a definite date, the contractor is not in default until that date even though work is not commenced with a sufficient time to allow its completion on the prescribed date.

Helena, Montana, November 10, 1910.

Carey Land Act Board,
Helena, Montana.

Gentlemen:—

I am in receipt of your letter of October 26th, signed by your chairman, John W. Wade, wherein you state that the Billings Land & Irrigation Co., of Billings, have been up to the present time diverting water from the Yellowstone river for their project through temporary headworks; that it was agreed between the irrigation company and the Carey board when the general plan of the system was approved by the state engineer that the position of the headworks should be placed permanently at a point some half mile above the present temporary headgate. It appears also that through correspondence had by the board with the Billings Land & Irrigation Co., it was agreed that the headworks to be constructed on the permanent site would be in place and in operation on or before May 1, 1911.

A further statement is made that the board has repeatedly warned the company of the passing time and the improbability of putting in these headworks before May 1, 1911. You request advice as to whether or not it is your duty to give further directions in this matter or take other action to bring about initiation of work on this intake. You are advised that in my opinion you could not take any legal action to enforce the commencement of work by the company prior to May 1, 1911, even though you might feel morally certain that unless the work is speedily commenced it cannot be completed. I do not believe that you are in a position to abrogate the contract prior to the date mentioned, and in my opinion the company has not as yet forfeited its rights under your various agreements with it. Of course, there is no objection to the board taking any means that may seem advisable to the board to expedite the work, but I cannot think of any action that the board might take to compel the company to begin the work at any particular time.

Yours very truly,

ALBERT J. GALEN,
Attorney General.