DIFFER WIDELY IN VALUATIONS

Owner and Government Engineers Unable to Agree on Oregon City Locks.

WATER POWER INVOLVED

Portland General Electric Company Demanded $1,200,000 for Interests in 1902—Federal Officials Estimated Value $310,500.

SALEM, Or., Jan. 28.—(Special.)—Claiming to be the sole owner of all the water-power of Willamette Falls, the Portland Railway, Light & Power Company, owner of the Oregon City locks, demanded in 1899 $1,200,000 for its interest there, this sum representing not only the value of the locks, but also of the water-power drawn from the falls by the locks. This sum was almost four times the value put on the locks in that year by a special board of United States engineers, which appraised them at $310,500, including $35,000 for right of way.

At the same time the board estimated that the cost of building new locks, according to one project, would be $414,000, or, according to another project, $431,000, both without right of way. At the present time the Government engineers in Portland, under Colonel Roessler, estimate that new locks would cost between $550,000 and $600,000 without right of way, on account of the advanced cost of labor and materials.

That the right of way cost for new locks would greatly swell the total cost of building a new waterway, is evident.

Should the state condemn the present locks, however, there is reason to believe that it could get possession of a boat waterway over the falls considerably cheaper than by trying to force the owners of the present locks to sell them, by threat of constructing new locks on the east side of the river.

Deciding Vote Tomorrow.

The bill of Representative Jones, of Polk County, appropriating $400,000 for free locks at Oregon City, will come up in the House Wednesday morning at 10 o'clock as a special order of business, for final passage. It gives to a State Board authority to condemn right of way for new locks, but not to condemn the present locks.

The question of water ownership is an important one, since, even if the state should acquire the present locks, the electric company, possessing the water, might not supply all the water needed for navigation at low stages of the river. It is the opinion of United States officials that the electric company cannot take water needed for navigation uses, even though it claims the sole ownership of all the water-power.

In November, 1902, a special Board of United States Engineers reported that ownership of the present locks by the United States, or construction of new locks, "would not injure, in a material manner, the operations of the manufacturing enterprises, now in operation or contemplated at the falls of the Willamette River." The board was composed of Major John Millis, Captain W. C. Langfitt and Lieutenant Robert P. Johnston.

Company Demands Compensation.

The company insists, however, that as the locks draw on its water-power, it should be compensated for the use of the water needed for operating the locks, should the United States acquire the present locks or build new ones.

In November, 1899, a special Board of Engineers reported on the actual value of the existing locks and the cost of building new locks. It recommended that the $1,200,000 price be not paid. The board was composed of Major W. H. Heuer, Captain W. C. Langfitt and Captain William W. Harts. Its report in part follows:

Since completion, the ownership of these locks and accessory property has passed through several hands and after various attempts at more or less successful operation, passed into the hands of the Portland General Electric Company about seven years ago (1892). This company claims the present ownership. It claims to have acquired by its original purchase, and otherwise since, ownership to both sides of the river for a long distance (said to be several miles), both above and below the falls on the west side (the canal side) and on the east side, to own from Oregon City, a short distance below the falls, up to several miles above. By virtue of this ownership, it also claims exclusive right to the use of all the water of the river at this place for power, including what is needed for its canal.

The claim of the company is thus set forth by its attorney, F. V. Holman, written in 1899, to H. W. Goode, then general manager:

The Portland General Electric Company derived its right to the water flowing in the Willamette River and the use thereof from its ownership of the lands on each side of the river, at and above the falls, on the west side of the river, to the meander line of the river. . . . So the Portland General Electric Company has exclusive right to the water at, above and below the falls, by reason of its ownership of the lands on each side of the river and therefore to the middle of the thread of the stream. . . . On the condemnation proceedings it (United States) would be compelled to pay not only what the land is worth, but also what the right to use the water is worth, to the Portland General Electric Company, as the owner of the land and the water rights.

Intakes Deplete Canal.

The report of the United States Engineers continues:

The intakes for the water power for the factories below the General Electric Company's plant are directly on the canal and so much water is taken that at low-water stages boats have difficulty in passing in and out of the upper entrance.

This water power is considered by far the most important property claimed by the Portland General Electric Company. It amounts to from 25,000 to 30,000 horsepower at the ordinary low stages and is, on account of the formation of the banks, easily adaptable to commercial purposes.

The United States Attorney for Oregon (John H. Hall) was consulted as to the reservation supposed to be made by the United States in passing all titles for private ownership affecting navigable waters, as to the right of the United States to improve the river at any time, for navigation purposes, and to take possession for this purpose, without any compensation, of any land necessary below ordinary high or low water.

Mr. Hall's opinion was the same as that of other United States officials and of engineers, and is held also by Governor Chamberlain of Oregon. In part it is as follows:

Upon the accession of the territory of Oregon to the United States, whether by discovery or whether acquired by the Louisiana purchase, the United States became the owner of the soil and held the fee therein, which included the lands in the bed of the navigable streams extending to high water mark, not only in those streams where the tide ebbs and flows, but also to streams navigable in fact. The title to this class of property was held by the United States as trustee for the future state when created.

Therefore when the State of Oregon was admitted into the Union in 1859, the legal title to said lands in the beds of streams, between ordinary high and low water mark, became and was vested in the state, which the state might dispose of at will, subject, however, and subordinate to the right of the Congress of the United States to regulate the commerce thereon. This right has been construed by a high tribunal as to the right of improving the channel of a stream by removing obstructions therefrom, and that adjacent riparian owners, through having acquired legal title to the land to the middle of the stream, can have or claim no damage from the United States that may accrue to them by virtue of such improvement.

appropriate or demolish the canal and locks that have been already constructed there, under authority of the state, without condemnation proceedings. But the Government has a legal right to construct other canals and locks, although it may impair the use of those already constructed, providing it constructs them over ground that is either at all times covered by the flow of the water or that lies below ordinary high-water mark.

Within these limits, the authority of the General Government for purposes of commerce is supreme and cannot be divested, either by the state or by individual proprietors, and damage might arise that would be an injury without a remedy.

Cost of Duplicate Locks.

The report of the engineers continues:

A survey was made for the board in August, 1899, by D. R. Ogden, United States Assistant Engineer, to determine the amount of work and material necessary to duplicate the locks at the present day. From the facts obtained on this survey, the board finds that to put the locks in good, serviceable condition, approximating that at the time of construction, would require an expenditure of about $38,800, . . . and that the cost of original construction at present prices, or to build the locks anew at the present time, in as good condition as was the original construction, would require $314,300, not including the right of way.

To determine the present value of the locks on the basis of cost of construction, we must therefore deduct the cost of needed repairs, leaving the present value $275,500. To this should be added the original cost of right of way, reported to be about $35,000, making the present value $310,500.

In 1893 a committee of the Oregon Legislature, investigating what the cost of the locks had been, reported:

As nearly as can be ascertained now, the cost of the right of way and the incidental expenditures brought the total cost of the improvement up to about $450,000. The estimates of cost of construction range from $283,000 to $325,000.

The report of the engineers goes on:

The board on its visit to the locality selected a location where it is believed new locks could be constructed in case of any disagreement about the sale price of those already built. The new canal and locks, if no water rights are necessary to purchase, would cost, for right of way and construction, approximately $439,000, including $25,000 for right of way, or $456,000, including the same sum for right of way, depending on which of the two locations is selected.

What Company Offered.

The president of the Portland General Electric Company, P. F. Morey, under date of September 13, 1899, offered to sell to the Government the canal and locks alone for $1,200,000. It is understood from conversation with the general manager of this company, Mr. Goode, that this offer includes the transfer of a narrow strip of land along each side of the canal for buildings, etc., the separation by a concrete wall of the water-power flume from the canal, and a guarantee to supply sufficient water at all times for navigation. If such an offer could be accepted, it would involve relying for the future on this company to keep up its dam in good condition, so that sufficient water should be available in the upper pool at all times.

It would not permit the United States to modify in any way the dam or other accessories should such modifications be needed for navigation. It would also place, to a certain extent, the discretion with the company, instead of with the United States, as to how much water is necessary for boats. Such a condition would probably be a constant source of complaint.

Our method to determine the present value of the locks, from a business standpoint, is to capitalize the earning power. In the case of the locks on the Monongahela River, the average of the net earnings for a period of years was capitalized at 5 per cent to determine one estimate of their value.

The average annual net profit for tolls for the past five years (Oregon City locks) would be $21,057, which, capitalized at 5 per cent, amounts to $421,147, or, in round numbers, $421,000.

Another method of obtaining their value is to deduct the cost of repairs necessary to put them in as good condition as when first built, from the cost of original construction, computed at present prices for labor and materials. As stated above, this fixes the present value at $275,500. To this should be added, however, the cost of right of way, about $35,000, making the present value about $310,500.

Further, the price to be paid by the United States for the old locks and canal should not be in excess of what a new canal with new locks of equal capacity can be built for, at or near the same place. The board estimates that such new locks and canal can be built around the falls, on the east side of the river, at either of two locations, for $439,000 and $456,000, respectively. The estimate, $456,000, is, therefore, given as a limit of price which, in the opinion of the board, should be paid for the old locks.

The board cannot recommend the acceptance of the offer of the Portland General Electric Company to sell the canal and locks for $1,200,000, as this price is considered excessive.

In the opinion of the board, the public interests to be benefited and the commerce, present and prospective, of the Willamette River, will not justify the United States in acquiring possession of the present canal and locks, unless the total cost for construction, right of way, water rights and land necessary, including separation of the canal from the water-power intake, shall not exceed approximately $456,000.

If satisfactory terms of transfer of the old canal and locks to the United States, including land, necessary water rights, etc., cannot be obtained for this amount, it is recommended that the construction of a new system of locks and canal be undertaken by the General Government, practically as indicated in the plans submitted.

NEW BILLS IN HOUSE.

Twenty-three Measures Added to the Grand Total.

SALEM, Or., Jan. 28.—(Special.)—Twenty-three new bills were introduced in the House this afternoon, as follows:

249 (Dye)—Establishing union high school districts from two or more contiguous districts.

250 (Davey)—Requiring County Clerks to enter into book for permanent record summary of votes cast for all officers and on all questions at all elections in his county.

251 (Davey, by request)—Authorizing County Court to grant petition for vacation of lot, street or alley, in an unincorporated town on petition of two-thirds of interested property-owners.

252 (Davey, by request)—Appropriating $100,000 for veterans of Indian War, 1855-56, and members of Ninth Regiment, Oregon militia, while actually in service, for use and risk of their horses, at per diem of $2, and appraised value of every animal that was killed or rendered unfit for service.

253 (Davey, by request)—Authorizing Governor, Secretary of State and State Treasurer, composing Board of Public Building Commissioners, to procure site by purchase or condemnation, and construct building for state printing plant, and appropriating $20,000 therefor.

254 (Davey, by request)—Placing State Printer on flat salary of $3000 per annum, appropriating funds for purchase of supplies and equipment of office.

255 (Eaton)—Appropriating $50,000 for topographic maps, $12,000 for hydrographic surveys, including investigation of underground water, and $8000 for investigation by director of experiment station of Department of Agriculture as to duty of water and best methods of utilizing water resources of state.

256 (Beals)—Appropriating $50,000 for deepening and improving Tillamook and channel in Tillamook Bay, and authorizing Governor to appoint commission of five persons to supervise its expenditure.

257 (Rothchild, by request)—For relocation of State Deaf Mute School, and appropriating $14,000.

258 (Dye)—Requiring acknowledgment of consent in writing of property-owners before street or alley can be vacated.

259 (Belknap)—Fixing salary of School Superintendent, Crook County, at $1000 per annum.

260 (Belknap)—Creating Crook County into the First Central Oregon Agricultural District, authorizing holding of an annual district fair at Prineville, and appropriating $1000 and printing to amount of $200 therefor.

261 (King)—Amending law relating to licensing domestic and foreign corporations, joint stock companies and associations.

262 (King)—Fixing salary of Assessor of Harney County at $1560 per annum.

263 (Chapin)—Making Lincoln's birthday legal holiday, also every Saturday afternoon so far as transaction of business in public offices of state and subdivisions thereof.

264 (Burns)—Substituting card system for register of electors now required in registration law, and authorizing County Clerks to send deputies into county to register electors.

265 (Pike)—Authorizing State Land Board to sell northeast quarter of southeast quarter, section 21, township 20 south, range 5 west, devised by late George A. Himes, and place proceeds in fund for benefit of Soldiers' Home at Roseburg.

266 (Pike)—To authorize commandant of Oregon Soldiers' Home to issue regular rations to those soldiers, inmates of Home, who with wives live in cottages built by state on grounds surrounding Home.

267 (Jackson)—Providing that, without leave of court, suit in equity in nature of bill of review of any final decision or decree of Supreme or Circuit Courts of state shall not be commenced within four years from entry of such decree in Circuit Court on mandate of Supreme Court, and allowance of second suit of said character after determination of first suit within time limited shall be discretionary with Supreme Court alone.

268 (Gray, Jackson and Vawter)—Appropriating $27,000 for maintenance and support of Central Oregon State Normal School.

269 (Gray)—Giving Justice Courts jurisdiction over bawdy houses.

270 (Vawter)—Requiring applicant for admission to bar on examination to pay clerk of Supreme Court fee of $5, and applicant for admission on certificate from another state to pay $20, funds so raised to be used in purchasing new books for State Library.

271 (Freeman)—Making dogs personal property.

Tax Titles to Be Considered.

SALEM, Or., Jan. 28.—(Special.)—Representative Driscoll, chairman of the Multnomah delegation, says he expects soon to call a meeting of the delegation from that county when the Port of Portland Commission matter and other subjects of interest to Multnomah County will be considered. At this same meeting, some action may be taken towards protecting Multnomah County from any possible loss of taxes in the recent decision of Circuit Judge Gantenbein relative to the validity of titles to property sold for delinquent taxes.

CONCEALED A JOKER

Farrell of Multnomah Detects Danger in His Own Bill.

TIDELAND GRAB PLANNED

Father of House Measure Takes Steps to Kill It—Schemers Misrepresented Its Purpose to Him.

SALEM, Or., Jan. 28.—(Special.)—A scheme of tideland owners to grab accretions that by natural forces have been added to their holdings has been nipped in the bud by the House committee on Federal relations, of which Farrell of Multnomah is chairman.

The grab was concealed in House bill 78, introduced by Farrell himself. He presented the bill at the request of individuals who represented to him that it came from the State Land Department. Such was not the case, and Farrell, after finding it out, was one of the first to oppose the measure.

The committee will recommend that the accretions be sold by the state to the contiguous owners, who shall have prior right in buying them.

This will cut out the "joker." That the bill was a "bad one" is clear after the exposure. It was framed for the benefit of special interests, which sought to profit from its passage. It is in line with a number of bills presented in both houses, curing defects in land titles, which are faulty for reasons in many cases unknown. As the effect of these curative bills would not be perceived until after their application, so that of the "joker" tideland bill would not be known until then. So bold is the bill that it contains an emergency clause. It reads as follows:

Where the "Joker" Lay.

Section 1. The accretions to all tidelands and tideflats not adjacent to the shore or connected to the shore in the waters of this state, which tidelands and tideflats have been heretofore sold, or may hereafter be sold to purchasers by the State of Oregon, where the purchaser has, in good faith, actually paid or does pay to the state the purchase price, and the same has been or shall be received by the state, are hereby granted and confirmed to all such purchasers and grantees of the state, or to their lawful heirs or assigns, together with all right, title, or interest which the state might or could have in any of said accretions to said tidelands or tideflats, as they may or do form to such tidelands and tideflats, and without further compensation to the state or purchase therefrom.

Section 2. Whereas, doubt exists as to the ownership of accretions to tidelands and tideflats in the waters of this state, an emergency is hereby declared to exist, and this Act shall take effect from and after its approval by the Governor.

The tideland bill is contrary to the recommendation of Governor Chamberlain in his message to the Legislature. The Governor recommended that all tidelands be withdrawn from sale for a period of ten years. The bill proposes that accretions to tideland on islands be given away.

Briefly summed up, the bill would be of advantage to persons who own or wish to own fishing grounds in the Lower Columbia River. As everyone knows, the sand islands in the Columbia are continually changing their shape and location. In one season an island will double its size or a new island will appear. The islands are so low that they are covered at each tide, and they are therefore sold by the state as tideland. The usual price is about $2 an acre. If the currents of the river throw up debris enough to form a small island at low water, some one who makes a business of watching for such opportunities files an application for the purchase of the land. For the fraction of an acre the state gets a very small sum. As the island increases in size, the state "sells" the additional land.

Effect of the "Joker."

Under the proposed bill, a man who bought the land that first appeared would become the owner of all that might be added to it, without paying the state or any one else for the valuable rights thus acquired.

The state has never received more than a small fraction of the value of the tidelands it has sold in the Columbia River. That these lands are valuable is shown by the eagerness with which the title to them is secured and the litigation that is undertaken in order to secure the right to purchase. The law suit over the boundary line between Oregon and Washington grew out of the question whether one state or the other had the right to convey title to the island fishing grounds in the river.

Governor Chamberlain's idea is that if the state would withdraw these lands from sale for ten years the changes in the area of the islands would be sufficient to enable the state to offer for sale a sufficient area to encourage bidders, and the state could realize enough to make the sale worth while. As it is, the state is selling the land in small tracts and getting practically nothing for it.

It is understood that D. H. Welch, of Astoria, is here urging the passage of the Farrell bill.

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CLEAN UP OLD ORCHARDS.

Marion County Fruit Inspector Will Hold Public Meeting.

SALEM, Or., Jan. 28.—(Special.)—County Fruit Inspector E. C. Armstrong has made arrangements to hold local horticultural meetings at Turner on Wednesday afternoon of this week, at Marion on Thursday forenoon, and at Maclay on Saturday. He will discuss the subject of pruning, spraying and cleaning up old and neglected orchards.

At the recent meeting of the Marion County Horticultural Society the following were appointed a committee to arrange for the annual cherry fair, to be given in Salem next Spring: M. McDonald, C. F. Lansing, L. M. Gilbert, H. S. Gile, L. T. Reynolds, H. B. Thielsen, George F. Rodgers, G. W. Weeks, Mrs. Claud Gatch.

The following were appointed to take the initiative in the organization of a fruitgrowers' union, the special purpose of which will be to promote the interests of berry growers: W. W. Hall, A. M. La Follette, S. H. Hatch, G. W. Weeks, L. T. Reynolds, A. M. Aspinwall, E. C. Armstrong.

The new officers of the society are: President, L. M. Gilbert; vice-presidents, A. M. La Follette, Andrew Vercler, L. T. Reynolds; secretary-treasurer, E. C. Armstrong.

HOLDS IT UP TO RIDICULE

State Makes Its Argument in Thompson Murder Case.

TACOMA, Wash., Jan. 28.—(Special.)—Such was the crowd that flowed into the Courthouse for the purpose of hearing the arguments in the Thompson murder trial this afternoon, that less than half could be allowed into the court room.

Promptly at 2 o'clock General Vance rose to make the opening argument for the state. Except in a few isolated instances he seemed to have carefully eliminated all attempts at rhetoric, and during the course of his address harped continually on "facts, facts, facts and common sense." With ill concealed sarcasm he drove in blow after blow at the immense structure behind which the defense is taking shelter, ridiculed the mass of metaphysical distinctions and testimony of the physicians, and with ruthless hand tore down the claims and contention of the attorneys for the prisoner. He cleverly brought the details of the trial to a logical basis, followed it to the end, held it up for ridicule and then dropped it.

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