

# NO CRIME TO STEAL WATER IN OREGON

## Conservation Commission Hears Plain Talk From J. H. Lewis—Webster Attacks Basic Principles of Proposed Legislation.

The Oregon conservation commission met this morning in the hall of the Commercial club for the purpose of discussing proposed legislation for the regulation of water rights in this state. But Judge L. R. Webster, who had been invited to be present and present his views on the subject, threw a bombshell into the midst of the deliberations by vigorously attacking the fundamental principle upon which it is proposed to base such legislation, and declaring that no laws can legally be enacted or enforced which are based upon the proposition that the state owns or can own or control the water in the streams within its borders.

The forenoon session therefore resolved itself into a discussion of the subject by Judge Webster from his standpoint, interrupted at intervals by questions from various members of the commission.

Will E. King, supreme court commissioner, presided at the meeting, and Judge Webster presented a few bouquets to the highest judicial body of the state, severely criticizing some of the opinions which have been handed down. He also paid his compliments to President Roosevelt for pretending to know anything about water rights, saying the president probably knows as much about the subject as he does about a great many other things upon which he claims to be an authority.

**No Title to Water.**  
The members of the commission take the stand that Oregon is greatly in need of legislation which will definitely define water rights and regulate their use. At present, according to J. H. Lewis, there is no such thing as a title to water in Oregon, and the thing which must be done is to pass laws which will give titles to water rights which are as well defined as titles to land.

The recommendations of the Oregon conservation commission in its report of November, this year, to the governor, were made the basis of discussion. The report says:

"Based upon the experience of other states and countries in the enactment of effective water laws, we believe that the conservation and use of Oregon's water resources will be best secured by a law which covers the following fundamental principles:

"1—Complete state control of diversions from streams. No water right in the future should be vested except by appropriation under the laws, rules and regulations prescribed by the state, and the diversion of water without right from a public stream, including all knowingly wrongful interference with the rights of others, to the injury of another, should be made a misdemeanor.

"2—A system whereby the priority and limitations of every existing right to the use of water can eventually be ascertained.

**Record of All Rights.**  
"3—Provision for a reliable record in some central office of all rights to the use of water as determined and of new rights as initiated.

"4—The actual measurements of ditches and streams be made as a basis for the adjudication of existing rights and the initiation of new rights.

"5—To provide a definite procedure whereby rights to the use of water can be acquired.

"6—That beneficial use be made the basis, the measure and the limit of all rights to the use of water, and that water for irrigation purposes should be made appurtenant to the land irrigated.

"7—All rights to the use of water for power development should be limited to some specified time, subject to renewal under certain restrictions.

"8—An efficient administrative system be provided for the control and distribution of the water supply among those entitled to its use.

"9—An adequate system of fees, payable to the state by those benefited, to eventually the system shall become self-supporting.

**Very Representative Body.**  
Chairman Will E. King called the meeting to order. There were not a great many present, but they represented a large number. The preliminary statement was made that the matter of developing a code was one that needed a great deal of investigation, and Chairman Webster called upon the members for a general discussion.

J. H. Lewis was the first to take the floor. He said that what the commission wanted to do was to create a system of titles to water as definite as titles to land. He made the suggestion that the state should own the water, and that the state should be the basis of discussion, and that the first principle, complete state control of diversions from streams, was taken up for discussion.

Mr. Lewis thought the law should be that if any man made a diversion of water from a stream without complying with the state regulations governing such diversions, the water right should be taken up by the state, and it is a question of doubt as to whether such is the case or not. It is not a crime to steal water in Oregon.

**Claims Without Basis.**  
E. R. Lake made the statement that the common report that the water rights of Oregon are all ready all appropriated is erroneous. The claims of men who have put up notices along the streams amount to nothing. But these reports tend to make eastern people afraid to invest their money in Oregon. The fact of the matter is, said Mr. Lake, that only a general utility company can appropriate water by notice.

"At the present time," said J. H. Lewis, "it is not a crime to divert water from public streams. But there is only so much water. If it is put to public use, it should be made a misdemeanor to divert it from above. Before any one could divert water, he should first be obliged to obtain permission from the state. And, at the season of low water, if any one below complained concerning the diversion above, the lower users should be prevented from using more than would leave plenty for those below."

**Right of Appeal.**  
Mr. Hanley of Harney county thought there should be some appeal in case of such complaints. The water master might act as the first court, the defendant being given the right to appeal from his decision.

State Engineer Johnston of Wyoming, a state which has a system of water laws such as it is proposed to enact in Oregon, was present at the meeting, and was called upon.

Mr. Johnston said: "My coming here is not a matter of course. It has been for several years being profited by the lack of definite water laws in Oregon. The water master has been there from 15 to 20 men come into my office, investors who came to me and said that because Oregon had no definite water laws, they had decided not to invest their money in that state."

but to go elsewhere where their rights were well defined.

"I think that in discussing this matter we should consider the broad underlying principles rather than details which will work themselves out later."

**No Control of Streams.**  
"The national government never assumed to have control of the streams in Oregon. There is nothing in the state constitution that stipulates that the state has any rights in or control of the water in the streams. Now, in Wyoming the water is the property of the state. That the water should remain in the hands of the state is the fundamental theory upon which some understanding should be reached. Then we can build up from that."

"The Supreme court of the United States has held that the state does not have control of the waters within its borders," interrupted Chairman King.

"But the state has not accepted this ruling and defined the responsibilities by law," replied Mr. Johnston. "This question is fundamental, and unless we reach an understanding upon it, any further discussion is useless."

While Engineer Johnston was talking, Judge Webster has come in, and Chairman King called upon him for an expression of his views on the subject.

**Webster Aims His Views.**  
"My ideas," said the judge, rising and laying aside his overcoat preparatory to getting into action, "are, I know, antagonistic to many of the notions prevalent in this water legislation. I know that I am laying myself open to the charge of appearing in the behalf of special interests, to the charge of being a lobbyist—one is a lobbyist when he opposes the law, and I believe, but not when he favors it—but notwithstanding that, I think there are many questions to be considered before any legislation is proposed."

"First, the state doesn't own any water and never can own it. The public doesn't own it. The state can't own a drop of public water in Oregon and never can. Legislation can't create property, and it can't take property away without paying for it."

"There are only two possible questions for legislation on this subject. In the first place, this legislation can be nothing but the laying down of methods of procedure to simplify the regulation of property already in existence and already the property of somebody."

**Need of Legislation.**  
"There ought to be some legislation regulating the appropriation of water. And the term appropriation should be defined. In the ordinary sense it is to take water out of the stream for use. But in the language of the water laws of this country, it means the taking of water according to the provisions of the act of congress of 1866. By that act congress gave the right to anybody to go upon the land and take the water and put it to some useful purpose. The government as the owner of the land had the same rights as anybody else. But the government said, through congress, we relinquish our riparian rights to anyone who will go upon the land and use the water, and in issuing patents to land, we will reserve those rights to the public."

"But there is no doubt in my mind that the state can regulate the taking up of water on public land. And with most streams, the water that can be utilized for irrigation flows through private land, and this land fastens upon the stream riparian rights pertaining to that ownership. Congress gave this right as a land owner, not as a law maker. Any private ownership in a stream is sacred against any one taking water from it so far as the riparian rights are concerned."

**No Crying Need.**  
"I don't think there is any crying need of water legislation in this state. Notwithstanding what has been said about it. But there probably is some need of legislation."

Whatever is the extent, they are a property right. The law respecting riparian rights will control them. The property rights that have been said to be controlled by the laws of today. The state is no sacred thing. It can't acquire property by a declaration of the legislature.

"The right to make a reasonable use of the water on the land is right of property. The right to use the water belongs to the owner of the land. It is appurtenant to the ownership of the land itself." The judge then read a supreme court decision to the above effect.

"There is a real deal of light talk about riparian rights, and a good deal of pooh-poohing of their existence, but it is a part of the law of Oregon that the land itself. The judge then read a supreme court decision to the above effect.

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# PORTLAND MAY REGAIN TRADE Through Service Over O. R. & N. to Lewiston Not Unlikely to Be Resumed.

J. F. O'Brien, general manager of the Oregon Railroad & Navigation company, has returned from a trip of inspection over the new joint line of the O. R. & N. and the Northern Pacific between Riparian and Grangeville, and as a result of conferences that are to be held in the next few weeks over the operation of the new line by the two roads it is possible that through service over the O. R. & N. to Lewiston and Grangeville may be restored.

The Riparian-Grangeville line, under a stipulation entered into by the Northern Pacific and the O. R. & N. was to be a joint road. The O. R. & N. constructed that part from Riparian to Lewiston and the Northern Pacific that part from Lewiston to Grangeville. Each road is now temporarily operating that part which it constructed. It was to be thoroughly acquainted himself with conditions on the Lewiston-Grangeville line in anticipation of these conferences that Mr. O'Brien went to Lewiston last week. He is not ready yet to announce the results of his inspection of how the joint line should be operated and as to whether the O. R. & N. and the Northern Pacific should have joint trains on each run as far as Grangeville.

One thing is certain, however—whatever traffic the O. R. & N. had between Lewiston and Portland has been lost since the change in time between the two cities and the dropping of the through train to Lewiston. The suspicion that the rival roads had entered into an agreement to give all the Lewiston traffic to Spokane instead of dividing it with Portland has been strong in the breasts of a good many Portland wholesalers for some weeks.

The change in time so distinctly in Spokane's favor has already resulted in the transferring of considerable business from Portland to Spokane wholesalers.

**Volume of Water Varies.**  
"Another reason is that the amount of water in the streams varies. Sometimes there is not half as much as at others. It is very attractive to say that the title to water should be made as exact as the title to land. This would be very easy if the streams never rose or fell. It's a beautiful theory but it's hobbled and can't walk."

Some member asked why, if other states have laws such as are proposed for this state, Oregon should not be able to have them, too.

"I don't know anything about the other states," replied Judge Webster. "It may be that their streams are different from ours. Anyway, I'm not in favor of emulating all the vices and follies of our neighbors."

"Is there nothing to be said in favor of the riparian owner?" I am not in the employ of anyone except the public. I want it understood.

"Let us suppose I have a specific instance in mind—that a man comes here in the early days, when there is an empire from which to select his land. He goes upon a stream of water and locates his farm there and builds his home—let us say because of the water, because the view is beautiful, because he has a lot of money in his pocket. I am not so sure that a family raised among beautiful surroundings is not the better for it."

"Now we can't use the water for irrigation because his land is too high, and he doesn't need it, anyway. He waters a few neat cows and on moonlight nights he sits on the veranda and watches the water rippling past."

"Now, what comes of this?—who wants to make happy homes—dam the river above him and take away the water leaving him nothing but the foul bed of an abandoned stream."

"I say he has the right to stop this. I think something is to be said in favor of my old friend who has a beautiful home a beautiful stream. Of course,

# NEW LINE TAPS RICH WHEAT DISTRICT

## Work on Electric Road From Dayton, Wash., to Columbia River Will Begin Within Few Days, Says Dr. Blalock.

Construction work on the Walla Walla & Columbia Traction company's proposed line from Dayton, Wash., to the Columbia river will begin inside of 10 days, according to N. G. Blalock, president of the traction company, who is in Portland today, settling up matters of business connected with the beginning of work on the line.

When the new road is completed it will give the farmers of the Walla Walla valley a road of their own for the transportation of wheat and other crops of southeastern Washington to the Columbia river, where they will be transferred to the Open River Navigation company's steamers for Portland.

"Nothing in the way of railroad construction in eastern Washington and Oregon that has been done for the past 10 years will compare in importance with the construction of the new electric line from Dayton to the river," said Dr. Blalock. "It is especially important to Portland because it will insure the carrying of the wheat and products of the tremendously rich Walla Walla valley to Portland."

"Our object is to have the farmers own their own line so that they can fix their own rates in conjunction with the Open River Navigation company's steamers. The line is to be a standard

gauge electric 74 miles long and will connect Dayton, Walla Walla, Whiteburg and other points in the Walla Walla valley with the Columbia river, both at Wallula and Pasco. At these two points our freight can be transferred to the river steamers for transportation to tide waters.

According to Dr. Blalock the new road should be in operation as early as the next fall's crop. There are about 5000 farmers in the vicinity of Walla Walla who have about \$3,000,000 worth of wheat in Walla Walla banks and who are interested in this road. The line itself will cost about \$3,500,000 to build. But there are 8,000,000 bushels of wheat waiting to be carried to the Columbia river each year, and way freight business that we can look forward to.

"It is a line that is as important to Portland's prosperity as it is to ours," concluded Dr. Blalock. "The railroad builders of eastern Washington and was a prime mover in constructing the Hunt road into Walla Walla."

# ADD ONE MORE JUROR TO LIST

Only one juror was added to the list in the Antonio Petrasco murder trial at the morning session in Judge Morrow's department of the circuit court this morning. The case was taken up as soon as the Douglas embalmment case was finished at the point where it was left by Judge Gantenbein last Saturday, nine jurors having been secured by that date.

After two challenges by the state and one excuse for cause, E. A. Jenkins was accepted as the tenth juror after noon. The others sworn to try the case are M. Kronenberg, R. F. Crawford, A. J. Paine, E. B. Gardner, C. H. Clement, G. Darr, H. E. Clemens, J. W. Caldwell and E. O. Daniel.

Petrasco killed Vincenzo Desantis on the night of June 12 last, in a celebration in the Italian quarter. His attorneys will attempt to show that the act was committed in self defense when Desantis was about to carve him with a long knife. Deputy District Attorney Vreeland and John Ditchburn are conducting the prosecution, the defense being represented by Seneca Fouts and E. L. Minor.

Recent examinations of concrete subjected to the action of locomotive gases for 13 years showed that it had not been affected by them.

# No Man is Stronger Than His Stomach

A strong man is strong all over. No man can be strong who is suffering from weak stomach with its consequent indigestion, or from some other disease of the stomach and its associated organs, which impairs digestion and nutrition. For when the stomach is weak or diseased there is a loss of the nutrition contained in food, which is the source of all physical strength. When a man "doesn't feel just right," when he doesn't sleep well, has an uncomfortable feeling in the stomach after eating, is languid, nervous, irritable and despondent, he is losing the nutrition needed to make strength.

Such a man should use Dr. Pierce's Golden Medical Discovery. It cures diseases of the stomach and other organs of digestion and nutrition. It enriches the blood, invigorates the liver, strengthens the kidneys, nourishes the nerves, and so GIVES HEALTH AND STRENGTH TO THE WHOLE BODY.

You can't afford to accept a secret nostrum as a substitute for this non-alcoholic medicine of known composition, not even though the urgent dealer may thereby make a little bigger profit. Ingredients printed on wrapper.



Begins Tomorrow, 9 o'Clock Sharp LITTLE KOST WILL START ITS Begins Tomorrow, 9 o'Clock Sharp

# THE GREAT CLEARANCE SALE

## All Cloaks, Suits, Furs, Skirts, Waists, Petticoats---Less Than Half!

Every record broken. Every price precedent knocked flat. Instead of waiting till after Christmas to cut prices, we are cutting them now—way, way down to rock bottom—to give you the full benefit in your Christmas shopping. For yourself or for sensible gifts, these garments can't be excelled. Should you wait the season through, should you travel from New York to San Francisco, you would not find a match for the bargains we are now offering. Our elegance is in our goods, not in our store, fixtures or furnishings; your money pays for quality in your purchase—you won't mind the trifling inconvenience of small quarters when you see the garments and hear the prices.

- Handsome Long Coats**
- Lot 1—Misses' and children's Coats of bearcloth, kersey, broadcloth, mannish mixtures, many lined with flannel, very stylish and durable; \$15 and \$20 values, clearance sale price **\$4.75**
  - Lot 2—These include our good quality broadcloth, also nobby mixtures and plain colors in loose and semi-fitting models, full length, all colors, medium and extra sizes; values up to \$30, clearance sale price **\$11.90**
  - Lot 3—Beautiful directoire and empire effects, in fine broadcloth, chevots, stripes and worsteds, tight and semi-fitting; elegantly trimmed in silk braid or bandings and buttons, with and without lining, all colors; extra and medium sizes; values to \$40, clearance sale price **\$14.85**

- Great Fur Bargains**
- Our furs—squirrel, wolf, Jap mink, etc.—are among our most sensational bargains; they're worth more than twice the price; will make acceptable Christmas gift for wife, sister or sweetheart.
- Exquisite Muffs for **\$2.00, \$5.50**
  - Jap Mink Sets, values to \$40, for **\$23.50**
  - Beautiful Scarfs, **\$1.95, \$2.15, \$15.00**
  - Sable Fox Sets, trimmed with heads and tails, \$45 values for **\$25.00**

- Petticoats—Three Grades**
- Lot 1—Good for rainy day wear, well made and durable, of heatherbloom, neatly ruffled and shirred; regular \$2.50 values, clearance sale price **95c**
  - Lot 2—The very popular "Kloisfits"—no gathers, no fullness; guaranteed to fit any figure; in black and colors; all sizes; regular \$3.50 values, clearance sale price **\$1.75**
  - Lot 3—Heavy lustrous silk, strictly tailored, with 15-inch flounce and silk dust ruffle; black and colors; extra and medium sizes; values up to \$15, clearance sale price **\$4.35**



- Elegant Street and Dress Suits**
- For convenience to shoppers we have divided our entire line of Suits into three lots, as follows:
- Lot 1—In this assortment are our splendidly tailored street Suits with long coats and snug fitting skirts; many trimmed with bands and buttons; in fancy mixtures and plain colors; extra medium sizes; values up to \$20, clearance sale price **\$7.95**
  - Lot 2—In this lot are many of the new striped effects, also plain broadcloths, serges, etc., in directoire styles, with braid or button and band trimming; skirts gored; extra and medium sizes; values up to \$35, clearance sale price **\$13.50**
  - Lot 3—These Suits are superb models in chiffon broadcloth, imported suitings, etc.; many heavily and richly braided; and made on slender and graceful lines; long coat effects; extra and medium sizes and colors; reg. \$40 vals, clearance sale price **\$19.35**

- Tailored and Fancy Waists**
- Lot 1—Strictly tailored, stiff collars and cuffs, made of outing cloth in plain colors, stripes and checks; very serviceable and attractive; regular \$2.50 values, clearance sale price **95c**
  - Lot 2—Silk lined nets, trimmed with Val and Cluny lace, also dainty silk and linen tailored; very pretty for dressy wear; values to \$12, clearance sale price **\$2.35**
  - Lot 3—Fancy messalines, nets, chiffons, in all the delicate trims; exquisite creations of the best style artists; suitable for evening occasions, and just the thing for a handsome Christmas gift; regular values up to \$20, clearance sale price **\$6.95**

- Splendid Separate Skirts**
- Our entire stock of Skirts will be divided into three lots for this great clearance sale.
- Lot 1—Good service Skirts for rainy day wear; well made with buttons and band trimming; medium and extra sizes; clearance sale price **\$2.95**
  - Lot 2—Strictly tailored serges, Panamas, voiles and mixtures; gored effects; extra and medium sizes; excellent values at the regular price; values up to \$15, clearance sale price **\$6.85**
  - Lot 3—Very handsome Altman voiles with silk accordion drop; others side sheath effect, silk lined; also heavy broadcloths and fancy satins; all cut on the newest models; extremely high-class in every respect; you'll like them immensely; regular values to \$35, clearance sale price **\$14.85**

BETWEEN FOURTH AND FIFTH 290 MORRISON CLOAK AND SUIT HOUSE 290 MORRISON NEAR FIFTH STREET