

# NEW WATER CODE ANALYZED BY STATE ENGINEER LEWIS

(By State Engineer John H. Lewis in Portland Journal.)

A water code for Oregon, which is believed to be the best law among all the states of the union, becomes effective on March 24, 1909. Complete state control is provided. No water right can hereafter be acquired without compliance with this law. It abolishes the old requirement of posting a notice on the bank of the stream. Hereafter, the priority of all rights will be determined by the date of the receipt of an application in the office of the state engineer. If the application is defective, it will be returned for correction without loss of priority.

The leading feature of this bill is the limitation of franchises for the use of water power development to a period of 40 years from the date of application, and the requirement that reasonable fees be paid to the state in all cases by those benefited. The schedule of fees has been designed to ultimately pay the entire cost of administration thus relieving the general tax payer, who derives only an indirect benefit, through the added prosperity resulting from increased development.

The payment to the state of an annual license fee of 25 cents to \$2 per horse power hereafter appropriated was provided by the Eaton bill, which takes effect on May 22. This fee is to be collected by the board of control and adjusted from time to time, based upon the percentage of water power appropriated which is put to beneficial use.

### Creates Board of Control.

In brief, the new water code creates a board of control, composed of the state engineer and the division superintendent of each of the two water divisions into which the state has been divided, and upon this board rests the responsibility of determining and recording all water rights heretofore initiated, the granting of new rights in accordance with law, and the protection of all water rights through a comprehensive administration system.

Before any protection can be granted to vested rights under the new law, such rights must first be determined and recorded. Where numerous ditches tap a stream, and especially if the stream is long and the summer flow limited, state protection is necessary.

The cost and time consumed in determining rights under the old law was very great. The water users along Silver creek in Lake county, joined in a friendly suit to determine their rights, so that a water master could be employed to distribute the meager supply, thus preventing annually recurring disputes. Fourteen lawyers were employed on only one side of the case. Recently, the case was decided by the supreme court, after nine years in courts. During this time, one of the contestants died, one became insane, and a number, tiring of the conflict, sold to others.

If the experience of Wyoming is any guide, the most complicated case can probably be decided, under the new law, within a year.

### Cost is Not High.

The cost is set out in the law and is designed to be less than the cost of an abstract to the land. For irrigation rights, the cost will be 15 cents per acre for each acre for which a water right is claimed up to 100 acres, five cents from 100 to 1000, inclusive, and one cent for each acre in excess of 1000 acres. For power, the cost will be 25 cents for each theoretical horsepower claimed, up to and including 100, 15 cents for 100 to 1000, inclusive, five cents from 1000 to 2000, inclusive, and two cents per horsepower above 2000, the minimum fee in either case to be \$2.50. For any other claim to water the fee is \$5.

The procedure is simple. A list of questions is sent to each claimant or owner on the stream. He is required, under forfeiture of his rights, to answer the questions, together with a survey of streams and land areas and measurements of the water supply by the state engineer, furnish all necessary information for an adjudication of rights. The maps and all statements, signed under oath before the superintendent, are submitted upon a given day for examination by all interested parties, if anyone thinks his neighbor is making an erroneous or extravagant claim, his testimony can be contested. By this procedure, all errors can be corrected and, if necessary, further testimony taken.

### Final After Six Months.

As soon as possible, an order is entered by the board, determining the rights. This order is put into execution at once and later filed with the circuit court for confirmation. If no appeals are taken, the order is confirmed. If the case is not resolved within six months, the decree becomes final.

Upon such final determination, water right certificates are issued in accordance with the decree. These certificates are then recorded in the county records and bear the same relation to the water title as the patent from the United States does to the land title. The right of each user from the stream, or from a large ditch, will ultimately be thus determined. The law makes the grant to the use of water for irrigation appurtenant to the land irrigated. The title therefore passes with the land, thus making it necessary to follow only the land titles thereafter in abstracts.

No right to the use of water from the streams of the state can hereafter be acquired for any purpose without compliance with law. For intelligent use and development of our water resources some central office must be provided, where a reliable

record of all water rights can be found. The diversion of water without the necessary permit is made a misdemeanor.

### How to Acquire Rights.

Application for permit to appropriate is the protection of the vested rights, when determined, and to encourage the development and use of our unappropriated waters. This encouragement is provided in the definite procedure for acquisition of new rights. The fees are of no consequence to the one who contemplates putting the water to beneficial use. In fact the certainty of right, which is essential as a basis for intelligent investment as a basis for intelligent should be made to the state engineer at Salem. If the application is defective it will be returned for correction without losing its priority.

The application should be accompanied by a fee of \$3 for examining the same, together with additional fees, depending upon the proposed use, as follows:

- For irrigation, graduated as follows:
  - 15 cents per acre from 0 acres to 100 acres, inclusive.
  - 5 cents per acre from 100 acres to 1000 acres, inclusive.
  - 1 cent per acre for each acre in excess of 1000 acres.
- For power, graduated as follows:
  - 25 cents per horsepower from 0 to 100, inclusive.
  - 10 cents per horsepower from 100 to 1000, inclusive.
  - 5 cents per horsepower in excess of 1000.

For any other purposes, including applications by municipalities for power purposes, \$5.

Three different forms are provided for the appropriation of water; one to be used in case of new appropriations, another to be used where the appropriation is to be made by the enlargement or extension of existing works, and a third form where the application is for a permit to construct a reservoir and impound surplus water. A separate application must be made for permit to appropriate stored waters prior to its application to beneficial use. This application is made on the first form mentioned above, and is then known as a secondary permit, and must refer to the primary permit, and to the reservoir from which the water supply is to be derived.

### State Supplies Forms.

These forms, together with instructions can be secured by addressing the state engineer, Salem, Or. They are simple, and can be filled out by any one, assisted, perhaps, by a surveyor, as a map of the proposed ditch is required as a part of each application.

Work must commence within one year from the date of application and be completed within a reasonable time as fixed in the permit, not to exceed five years.

If the water is applied to the beneficial use within the time allowed, proof is taken of such fact by the division superintendent and a certificate issued the applicant by the board of control. This certificate is of the same form as issued to early appropriators upon determination of their rights, as described above.

The new method of initiating water rights may seem cumbersome as compared with the old method, but it is worth all it costs. The right, when finally granted, is absolutely determined as to all rights hereafter initiated. It will be determined as to all the world, after a determination as above outlined. This determination is made without one or more water masters to divide the water in accordance with the dights and needs of the different laterals. Likewise irrigation from public streams can not be a success without water masters to regulate diversions.

### Removes Stumbling Block.

The use of streams to convey stored water to its place of use was impossible under the old law, and the construction of many reservoirs was thus prevented.

As rights are determined under the new law, districts are created and water masters appointed where demanded by the water users to enforce the decrees of the board or of the court. This officer is accountable to the division superintendent, and protects not only the early rights, but also all new rights and the rights of reservoir owners.

When a headgate has been lawfully closed to admit the proper quantity of water, or shut entirely, it is made a misdemeanor for the owner to disturb it. If the gate has been wrongfully opened during the night the presence of moisture in the ditch in the morning is declared to be sufficient evidence to convict the owner of unlawful use.

With such an officer available capital will not hesitate to invest in storage works. The water when released can and will be protected by the water master, no matter how many ditches intervene and the owner permitted to divert an equal amount less that lost by seepage and evaporation.

The final object of the new water law is worth far more than it will cost. The old time notice man, whose chief business under the old law was to hold up the public, is effectively discouraged by these fees.

### PORTLAND ROCK PILE GANG STRIKES FOR BETTER GRUB

Portland, March 11.—Sixty of the prisoners at Kelly Butte, the county rockpile, decided this morning that work was too hard and food too poor for them to continue paying attention to either, and they went on a strike. When the time to turn out came, there were only 12 who appeared for breakfast and work. The others,

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most of them new prisoners who have recently been transferred from the county jail to the rock pile, sent an ultimatum to Sheriff Stevens saying they would not work until the food was improved.

"They get just the same food now that they did while the county court ran the butte," said Sheriff Stevens. "It is bought in the same places, and the same quality is secured. The trouble is that most of the men have been in jail and have grown soft and lazy. I think they will start to work again tomorrow morning."

To make sure the sheriff has ordered the strikers placed on a bread and water diet until they care to go back to the rocks.

### Counties Combine.

Medford, Ore.—Southern Oregon counties, Jackson, Josephine, Douglas and Klamath, are to organize an association for their common protection when the needs may arise in the future. A movement to this end has been put on foot, the commercial clubs taking the matter up.

During the recent session of the legislature the need of such an organization was apparent. The Crater Lake road bill, the normals, the fishing in southern Oregon streams, would all have been more easily handled had organization been perfected.

Southern Oregon has long needed legislation which would be adapted to its peculiar needs. Lack of co-operation between the counties weakened their power in the state.

The Medford Commercial club will take the matter up at its next meeting, as will other like organizations of the four counties, and a co-operative protective association formed. Needless to add, such an organization will have a tremendous power.

Dishwater saved New York city thousands of dollars, because Miss Florence Murray, teacher of cooking in the Tottenville public school, and her 17 12-year-old girl pupils had the pluck to stand by and throw it on a bad fire in their classroom.

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