BOTH SIDES OF CONTROVERSY OVER PATENTING OF CENTRAL OREGON IRRIGATION LANDS GIVEN

The president of the Central Oregon Irrigation Company, F. S. Stanley, has made reply to a recent editorial in The Bulletin regarding the patenting of irrigated lands in the C. O. I. Co. segregation. As this seems to be a controversy between the irrigation company and the state engineer, this paper submits herewith each side of the matter, the letters of Mr. Stanley and John H. Lewis, the state engineer, following:

To the Editor of The Bulletin:

An editorial in the Bend Bulletin of November 26th, 1913, entitled "Water First, Sales Second," seems to represent the popular misconception of the Carey Act and of the rights and duties of the Desert Land Board and of the Irrigation Companies.

After referring to the refusal of the State Engineer to certify certain lands for patent, the Bulletin says, "The Central Oregon Irrigation Company desired permission to sell these acres, or to get a patent to them; the State Engineer refused to make such permission possible, contending that the land should not be offered for sale until there was positive assurance both of a sufficiency of water to care for it, and that this water was ready to be placed on the lands."

Such is not the situation.

The Carey Act provides: "When an ample supply of water is actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs to reclaim a particular tract or tracts of such lands then patents shall issue for the same to such State without regard to settlement or cultivation."

The present State Engineer, who was formerly in the U. S. Reclamation Service in 1905, fixed the amount of water necesary to reclaim the Deschutes lands at 1.8 feet, per irrigable acre, to be furnished during the irrigation season. In the contract between the State and the Irrigation Company (made in June 1907) the same State Engineer prepared and approved the specifications for construction of the irrigating system, giving the capacities of the various canals, ditches and flumes, which he then estimated would be ample to supply 1.8 acre feet to the land. Section 10 of that contract provides that blue prints of the maps, profiles, data and details of proposed construction, in districts of moderate area, shall be submitted to the State Engineer for his approval.

Section 11 provides that when the main canals and principal laterals of each district shall have been constructed in accordance with approved plans the Company shall forward a progress map to the State Land Board showing the location and extent of such construction with a list showing area of irrigable and non-irrigable lands on each 40 in the district, "upon approval of such map and list of lands by the State Land Board the lands in such district shall there upon be open for sale at a price not to exceed the sum fixed as the lien for each 40 acre tract, and the party of the first part shall make no contract for entry or sale of any land or water rights with any settler until the date of opening of lands for sale by the second party (State Land Board) as above provided."

It will therefore be seen that the Irrigation Company cannot make contracts with settlers under its contract with the State until the lands are reclaimed, and this same State Engineer is in practice the man who decides for the Board whether the lands are reclaimed so that they may be opened for entry by settlers. Having thus certified to the settler that the lands are reclaimed how can the State Engineer logically refuse to make the certificate necessary to give title to those settlers?

Patent for the land is not issued to the Irrigation Company nor to the settler, under the law it is issued to the State; and the State makes application for it; publishes the lists and makes the showing which is required for that purpose.

When the Irrigation Company has constructed its system according to the specifications made by the State Engineer, and has delivered the water to the land of the settler it has performed its contract and it has no concern, either under the law or under its contracts with the State or settler, whether patent is ever issued. But as a matter of right and justice the Irrigation Company has and will endeavor to assist the State in getting its patent and the settler in getting his deed.

The lands for which the State Engineer was asked to certify for patent are lands adjacent to Bend, near Redmond and the Powell Butte lands and are nearly all under contract with settlers, or on which settlers have paid in full years ago and lands in which the Company has no interest. Many settlers have been on the lands over seven years and are still waiting for their deeds, having paid the Company its lien in full and their lands have been in cultivation for some years with plenty of water to irrigate said lands.

The State Engineer is doubtful of his own judgment, he dreads personal responsibilities worse than a cat dreads water. For a long time he refused to certify to the reclamation of the land when the first patents were applied for. To a question by Gov. Chamberlain he said, "Yes; I have seen the canals and ditches and the water flowing in them, but how do I know it will be there next year?" Gov. Chamberlain assured him that if men proceeded on that theory all business would stop and he hesitatingly made the certificate.

The application recently made to the State Engineer was not for the benefit of the Irrigation Company but for the benefit of the settler and of the State, and instead of certifying to an amount of land as reclaimed for which there was ample water he refused to certify to any until the amount of seepage had been settled. This is a question that will take years to determine. The seepage in a canal may be and probably is about the same whether the canal is carrying quarter capacity or full capacity. Some leaks in canals will develop which are discovered and caulked; the longer water flows in a canal, as a rule, the less loss from seepage, owing to hardening of the banks, the filling of crevices in rock by silt, etc.

Now why should the State be kept out of its patents and the settler be deprived of his title for years while a timid and vacillating official waits for averages, experiments, observations and data which is not necessary to determine the fact as to eighty per cent. of the land. If the State and ettler are to wait, then in the name of justice and fair play, put the responsibility not upon the Irrigation Company, but upon the State Engineer where it belongs. He is the man who fixed the amount of water which would reclaim the land; he is the man who prescribed the size of the ditches; he is the man who approved the construction and opened the land for entry. Now, if he has made mistakes, if he has acted on misinformation, or no information, let him say so and bear the consequences. He has no right to charge or impute fraud against the Irrigation Company. And both settler and the public are entitled to know where the responsibility lies.

True, we went into the wilderness, but not therefore and necessarily are we to be made the scapegoat.

F. H. STANLEY,
President of Central Oregon Irrigation Company.

To the Editor of The Bulletin:

I desire to thank you for the courtesy in allowing me to reply to Mr. Stanley's communication at the time of its publication. While I regard very highly Mr. Stanley's opinions, I feel sure that he is trying to place the blame on the state engineer for withholding title from settlers, when it is very clear that it is the fault of the irrigation company.

This whole controversy has arisen from an appeal to the board by Messrs. Howard and Stearns from an anticipated decision by the state engineer. No list for patent has been submitted as yet by the company. When it is, the same will be examined and approved if the terms of the contract of June 17, 1907, have been complied with.

This appeal was made on three grounds. 1st. They objected to any arbitrary requirements by the state engineer that the bank should be two feet above the water surface in the canals; 2nd, they desired that the state engineer certify that lands as reclaimed to the full capacity of the enlarged Central Oregon canal, when several miles of this enlargement would not be made until next season; 3rd, they desired that the state engineer be instructed by the board to certify the lands as reclaimed without regard to the question of seepage, that is without regard to whether the canals would hold water to the extent of delivering to each settler the amount specified in his contract. To the first proposition the state engineer replied that two feet of bank on a large canal was little enough, and that for smaller canals no arbitrary rule could be adopted; 2nd, that notwithstanding sufficient notes were on hand to insure such enlargement, no certificate would be made unless the same was amended to conform to the facts; 3rd, that no certificate of reclamation would be made unless the canals were constructed of the capacity required in the contract, and silted up, or leaks in rock cemented up to such an extent as would insure the delivery of 1.8 acre feet of water during the required 90-day period, to all lands heretofore patented as well as to those included in the new list for patent.

The federal rules, which are as binding on the state as the original act, provide that "the affidavit (form 7) is required in order to show compliance with the provisions of the law, that an ample supply of water has been actually furnished in a substantial ditch or canal for each tract in the list, sufficient to thoroughly irrigate and reclaim it, and to prepare it to raise ordinary agricultural crops. A separate statement by the state engineer must be furnished giving all the facts as to the water supply, and the nature, location and completion of the irrigation works."

If this certificate could be changed to read as follows, "that the state engineer has examined the land designated in the foregoing list, and that an ample supply of water may be furnished at some time in the future if the settlers silt up the canals and cement up the leaks where porous rock is encountered," I would not hesitate one moment in signing the certificate. Or if the settlers are willing to surrender their contracts and the board designates a less amount of water as being sufficient for the reclamation of land, I will likewise certify the same as reclaimed. In the settlers' contracts "The company agrees to furnish and deliver the water in the amount as herein mentioned." I will certify the lands as reclaimed when it appears that such water can be delivered.

Lands are open for entry and sale by the board (not the state engineer) when the main canals and laterals are built, and without regard to reclamation, or the construction of farmers' laterals. These are built as the lands are sold. Section 19 defines the date of reclamation as the time when water is furnished available for such lands as shown by the certificate of the state engineer (form 7) to the Secretary of the Interior.

Mr. Stanley is clearly in error where he states that the state engineer determines whether or not lands shall open for entry and sale. The Powell Butte district was opened for entry and sale, over the protest of the state engineer's department upon the ground that the Central Oregon canal was of insufficient capacity. Mr. Howard gave the board his personal guarantee that no lands would be sold, if opened, until the canal was enlarged. I have never been able to see any reason for such hasty and peculiar action, unless it was to secure a mechanic's lien, superior to bondholders and other creditors, by virtue of the Howard contract which provided that Mr. Howard was to receive from the company $17.50 per acre on all unsold lands, $10 of which was to be paid "when and as soon as the same are approved for sale by the State Land Board," balance when lands are sold to settlers. Under such view this premature opening of 8164 acres represented a deal of $81,640.

Later the board opened the Powell Butte lands for sale under a plan whereby notes or cash equal to three-fourths of the lien price were to be deposited with the board.

Instead of the state engineer being doubtful of his own judgment, and dreads responsibility, the record appears to indicate just the opposite. Mr. Stanley states that "for a long time the state engineer refused to certify the reclamation of land when the first patents were applied for." This latter charge is admitted. At that time the company attempted, through a campaign of intimidation, to force the state engineer to certify that 77,000 acres were thoroughly reclaimed when only 16 miles of the main Central Oregon canal was constructed. Much of the land was 10 to 20 miles distant from such canal or its laterals. By certifying only 24,000 acres of such amount, the company was compelled to continue construction work. Its lien or pay for doing the work does not become "valid on and against the separate legal subdivisions of the land reclaimed" until the state engineer certifies as to the fact of reclamation. With a board it is impossible to place responsibility on any particular member. In this case the Secretary of the Interior depends on the certificate of the state engineer alone. The latter is not afraid of the responsibility, nor trying to shirk his duty. When the contract is complied with, certificate will be made and no amount of intimidation will affect his judgment in the matter.

In answer to Mr. Stanley's reference to a portion of some conversation with Governor Chamberlain, which is probably intended to discredit me, I wish to quote from a statement signed by Governor Chamberlain, Secretary of State Dunbar and Treasurer Moore, published on page 5 of their 1907 report as follows:

"Mr. John H. Lewis of Portland was recommended and appointed state engineer and his knowledge of irrigation matters has made him a valuable adviser of the board, and it is to be regretted that the law accepting the Carey grant did not provide for the appointment of a state engineer, as it would have saved a vast amount of controversy and trouble, and some mistakes."

It should be remembered that lands are opened for sale when the important canals are constructed of adequate size, and that lists for patent cannot be approved until it is shown that such canals will deliver the required water at or within one-half mile of each tract.

JOHN H. LEWIS,
State Engineer.

WHY NOT START "SEE CENTRAL OREGON" PLAN?

Secretary of La Pine Commercial Club Sends Letter to Development League Urging Such Action.

The following letter is self-explanatory:

La Pine, Oregon, December 7, 1913.
Mr. J. W. Brewer, Secretary,
Central Oregon Development League,
Redmond, Oregon.

My dear Mr. Brewer:

Of course you have observed in the press the activity of Western Oregon; notably the Rogue river and Umpqua river valleys, in the matter of diverting, for a time at least, some of the travel to the Panama-Pacific Exposition at San Francisco in 1915. Ashland, Medford, Grants Pass, Roseburg, Eugene, Salem and other communities on the western side of the Cascades, have, upon the initiative of Tom Richardson of the Portland Commercial Club, started what they call a "See Oregon" plan, one of the principal features of which is to be an exhibit at Ashland, the gateway to Oregon from the south, on the line of the Southern Pacific at least, which exhibit is to be "state-wide" in character, as is all other publicity connected with the scheme.

Granting to Mr. Richardson and the communities west of the Cascades full credit for conceiving such a campaign and the auspicious opening thereof which has been accorded it—west of the Cascades—is it not time that Central Oregon was awakening to its opportunity? Our commercial organizations here have had invitations to join with the towns west of the Cascades in this "See Oregon" movement. Perhaps the fact that we were not sufficiently represented at the various meetings has been the cause of the Rogue river valley securing the headquarters of the movement at Ashland. It is quite a trip from Central Oregon to Roseburg or Ashland, and by the same token it is quite a trip from Ashland to Central Oregon. Attributing to the instigators of this movement the purest motives and with a sincere belief that at the Ashland exhibit and in other publicity connected therewith it would be the intention of those in charge to give to the whole state fair and equitable treatment, is it not reasonable to suppose that the Rogue, Umpqua and Williamette valleys would secure the lion's share? Is it reasonable to think that a man flagged at Ashland receiving though he may the most glowing words of praise for Central Oregon would be likely to come to our country? Of course, we might get him on his way back from the fair, and then we might not.

The Dalles possesses attractions, which, perhaps not of such a nature as those of Ashland, are nevertheless worthy of consideration. Most of the reading public has heard of the wonderful fruit district of The Dalles and Hood River and vicinity, most of them have heard of the magnificent scenery to be encountered in the trip up the Deschutes valley, and there surely are few who have not heard of that great district called "Central Oregon." Why would not a stop-over at The Dalles as the junction point be worthy of the consideration of the people of this section of the state? We could establish at The Dalles an exhibit that would be quite as attractive as any they could make at Ashland—in fact, as we all know, the business men of The Dalles have already a fine exhibit at the station there. This idea has doubtless occurred to many persons in this district, recently, and, although I have not seen any mention of the matter in our press, I am not claiming any honors of discovery, but simply give my ideas to you with the hope that our league and its friends may get busy and see that Central Oregon gets its full share of publicity in connection with this "state-wide" movement to attract the attention of tourists during their journeys to and from San Francisco in 1915. If we are to do anything, we must start now.

E. R. HILL.

MARKET REPORT.

NORTH PORTLAND, Dec. 6.—Receipts for the week have been as follows: Cattle 1404, calves 18, hogs 4498, sheep 3173.

Cattle liquidation has been extremely light during the last six days due to the coming livestock show. Demand for prime heavy steers is very strong; prices are generally 30 to 50 cents higher than they were a week ago. Best grade steers are selling from $7.90 to $8 and medium grades at $7 to $7.50. The butcher cattle division shared in the advance of beef prices to a limited extent. Supply was limited and quality not of the best. A few cows at $6.50, heifers at $6.75, bulls at $5.50 and stags at $6.50 are a few top sales in this division.

The hog market is probably 5 to 10 cents stronger, prime stuff selling at $8 in bulk and a few choice loads at $8.05 and $8.10. Liquidation was about 25 to 30 per cent less than for the previous six days. Outlet for good hogs is broad.

Sheep house condition showed very little change. There is a good sale prevalent for fat mutton and lambs, but buyers seem to be shading bids on the poor grades. Fancy yearlings at $5 and lambs at $6.50 were extreme sales. Choice selling ewes are not offering.