PROVISIONS OF PROPOSED NEW IRRIGATION CODE

A Measure of Greatest Moment, in Which the Interest of the Whole State Centers.

Following is the proposed irrigation code which the legislature will be asked to pass into law at the coming session, the work of the commission appointed by Governor McBride. The unimportant sections, those having no direct bearing on the science as applied, are summarized, while the principal part of the report is printed in full:

An Act Relating to the Waters of the State, and Providing for the Development and Regulation of Irrigation, and for Co-operation With the United States Government in Relation Thereto.

Section 1. All waters within the limits of the state from all sources of water supply belong to the public and are subject to appropriation for beneficial use, (except as to vested rights thereto) in the manner provided in this act and otherwise.

Sec. 2. Beneficial use shall be the basis, the measure, and the limit of the right to the use of water, and all waters appropriated for irigation purposes shall be appurtenant to specified lands, so long as the water can be beneficially used thereon. Priority in time shall give the better right. In all cases of claims to the use of water initiated prior to the passage of this act, the right shall relate back to the initiation of the claim, provided the claimant has strictly complied with existing law and shall hereafter comply with the provisions of this act in respect to diligent prosecution of the works. All claims to the use of water initiated after the passage of this act shall relate back to the date of receipt of an application therefor in the office of the state engineer, subject to compliance with the provisions of this act and the rules and regulations established thereunder.

Sec. 3. All water used in this state for irrigation purposes shall remain appurtenant to the land upon which it is used; provided, that the right to the use of water upon any tract of land may, on the approval of an application of the owner of said land to the state engineer, be severed from said land, and simultaneously transferred, and become appurtenant to other land, without losing priority of right thereto established ,if such change can be made without detriment to existing rights. Before the approval of such application the applicant must give notice thereof by publication once a week in a newspaper of general circulation in the stream system in which the tracts of land are located, in the form required by the state engineer. Upon the receipt of the proofs of publication the state engineer shall render his decision thereon in writing, and if he shall approve the same he may transfer the permit or license, as the case may be, accordingly. Before such transfer of right and as a condition thereof, the applicant shall, in writing, abandon the right to the use of the water upon the land to which it was previously appurtenant.

Sec. 4. Any appropriator of water may use the same for any beneficial purpose other than the purpose for which it was appropriated, or may change the place of diversion or storage in like manner and under like conditions as are prescribed in section 3.

Sec. 5. Water may be turned into any natural or artificial water course or into and through any reservoir by any party entitled to the use thereof, and may be reclaimed below and diverted therefrom by such party, subject to existing rights. Such turning, conveyance, reclaiming and diversion shall be subject to approval of plans, granting of permit, and supervision by the state engineer, with due allowance for losses, to be determined by that officer.

Sec. 6. The standard of measurement of the flow of water shall be the cubic foot per second of time; and the standard of measurement of the volume of water shall be the acre foot, being the amount of water upon an acre covered one foot deep, equivalent to 43,560 cubic feet. The miner's inch shall be regarded as one-fiftieth of a cubic foot per second in all cases, except where some other equivalent of the cubic foot per second has been specially state by contract, or has been otherwise established.

Sec. 7. In the issuance of permits and licenses to appropriate water for irrigation, or in the adjudication of rights to the use of water for such purposes, the maximum amount allowed shall not be in excess of the rate of one cubic foot of water per second for each 70 acres, or the equivalent thereof, delivered on the land, for a specified time in each year, unless it shall be established by conclusive proof that a greater amount of water is necessary.

Sec. 8.—Action by Riparian Owner.—No action shall lie by a riparian owner to prevent, or because of, the diversion of water for beneficial use to which his lands are riparian, except to the extent that such waters are, at the time of such diversion, either by sub-irrigation or otherwise, being beneficially used by him, provided, that this section shall not apply to existing riparian rights until the expiration of three years from the date this act takes effect.

Sec. 9.—Domestic Use of Water.—Nothing in this act shall be so construed as to authorize the deprivation (except by eminent domain proceedings) from the owner of land riparian to any river, stream or lake or other source of water supply of water sufficient for domestic and stock purposes on such riparian land.

Sec. 10.—Limited Contracts.—Any contract hereafter entered into for the carriage and delivery to specified lands of a less amount of water for irrigation than that which will raise the maximum amount of the ordinary agricultural crops thereon, shall not be enforcible against the user of water thereunder unless it bear upon the face thereof, on its first page, in bold type, the words, "Contract for Partial Supply of Water."

Sec. 11.—Common Carriers. — Every person, association or corporation storing or carrying water under permit or license from the state for use, or used, upon lands owned by other than the carrier, shall be a common carrier. Every common carrier of water shall, on or before the 15th day of November of each year, make a report in writing to the state engineer showing the progress made in construction of works and application of water, a list of contracts entered into with land owners for the use of water upon lands, with prices and terms thereof, and their earnings and expenditures. The state engineer shall have the right upon demand to inspect the books and records of every common carrier of water. Any failure to make such report or any denial of such inspection shall be a misdemeanor. Said report shall also contain such additional data and information as may be prescribed by the rules of the state engineer.

Sec. 12.—Abandonment.—When the party entitled to the use of water fails to beneficially use water upon any part of his land for which a right of use has vested, for the purpose for which it was licensed or adjudicated, for a period of three years, he shall be deemed to have abandoned the right to the use of such unused water, and the same shall revert to the public and shall be regarded as unappropriated public water. Such reversion shall not occur in cases of non-user due to unavoidable physical conditions.

Sec. 13.—Eminent Domain.—The United States, the state, or any person, corporation or association may exercise the right of eminent domain to acquire for a public use any lands or rights of way for the storage or conveyance of waters, or any right now or hereafter existing to the use of water, and to extinguish any riparian rights. Lands, waters, rights to the use of water, or rights of way, for the storage or conveyance of water already in a public use, may be taken under the power of eminent domain for another or a like public use, whenever it be proven to the satisfaction of the court in the particular case that the public interest will be promoted by the change or substitution; provided, however, that whenever the right to the use of water for irrigation or sub-irrigation is condemned for the purpose of irrigation, by any private person, corporation or association, the user of water may, in the discretion of the court, retain his priority, and be given, at his option, as part or all of his compensation, the right to use, from the new system of the quantity of water required by him for beneficial use, at no increased cost for maintenance. The right of condemnation as above qualified shall include the right to enlarge existing structures and use the same in common with the former owner. Rights of way shall in all cases be so located as to do the least damage to public or private property, consistent with proper and economical engineering construction. Such rights may be acquired in the manner provided by law for the taking of private property for public use.

Sec. 14.—Number of Ditches.—No tract or parcel of improved land shall, without the written consent of the owner thereof, be subjected to the burden of more than one irrigation ditch constructed for the purpose of conveying water through said land to lands adjoining or beyond the same, when the same object can be feasibly and practicably attained by the joint use of one ditch.

Sec. 15.—State Engineer. Appointment, Duties, Powers, Qualification and Salary.—There shall be a state engineer who shall be technically qualified and experienced as a hydraulic engineer, to be appointed by the governor, and such appointment confirmed by the senate. He shall hold office for the term of six years from and after his appointment, or until his successor shall have been appointed and shall have qualified. He shall be subject to removal by the governor in his discretion. Upon such removal the governor shall file in the office of the secretary of state a statement of his reasons therefor. He shall have general supervision of the waters of the state and of the measurements and appropriation thereof. He shall receive a salary of $3600 per annum, and actual and necessary travelling expenses while away from his office in discharge of his official duties. He shall not engage in private practice.

Sec. 16.—Assistant State Engineer and Expenses of State Engineer's Office.—The state engineer shall have power to appoint an assistant state engineer at a salary not to exceed $2400 per annum and actual and necessary travelling expenses while away from the office in the discharge of official duties. The state engineer may employ other and additional assistants and purchase materials and supplies for the proper conduct and maintenance of his office and department, in pursuance of appropriations as made from time to time for such purposes. The salaries and expenses of the office of state engineer shall be paid at the same time and in the same manner as those of other officers of the state. The office of the state engineer shall be located at the seat of government.

Section 17 relates to the bond and oath of the engineer and his assistant.

Section 18 relates to the auditing of claims for services or expenses incurred by the state engineer's office.

Section 19 provides for a detailed report once in two years by the state engineer.

Sec. 20.—Fees of State Engineer.—The state engineer shall receive the following fees, to be collected in advance, and to be paid by him into the general fund of the state treasury on the 1st day of each month:

For filing and examining an application for permit to appropriate water, map and field notes of the same and issuing permit, $5.

For recording assignment of permit or license other than water right instrument, $1 for the first 100 words or fraction thereof, and 15 cents for each additional 100 words.

For filing any other paper, $1.

For issuing certificates of construction or license to appropriate water, $1.

For making copy of any document issued from or recorded or filed in his office, 15 cents for each 100 words.

For blue print copy of any map or drawing, 10 cents per square foot or any fraction thereof. For other copies, the actual cost thereof.

For certifying to such copies, $1.

For examining and approving in connection with water right applications plans and specifications for any dam, not exceeding 10 feet in extreme height from the foundation, $10; for a dam higher than 10 feet and not exceeding 30 feet, $20; for a dam higher than 30 feet and not exceeding 50 feet, $50; or for a canal or other water conduit of an estimated capacity exceeding 50 and not more than 100 cubic feet per second, $20; for an estimated capacity exceeding 100 cubic feet per second, $30. If the inspection of such dam site or canal or conduit location be deemed advisable by the state engineer in advance of approval of plans and granting of permit, an additional fee of $10 per day and actual necessary expenses shall be charged for such inspection. The state engineer may require a deposit in advance to cover such charges.

For inspecting construction work, $10 per day.

Rating ditches or inspecting plans and specifications of works for the diversion, storage and carriage of water, at the request of private parties, not in connection with an application for right to appropriate water, actual cost and expenses, and the state engineer shall attach his approval to such plans and specifications if found satisfactory.

For such other work as may be required of his office the actual cost and expense thereof.

Section 21 relates to the records in the office of the engineer.

Section 22 authorizes the state engineer to make rules and regulations to carry into effect the duties devolving upon his office.

Sec. 23 makes the attorney general and the prosecuting attorneys the legal advisers of the state engineer.

Sec. 24.—Water Divisions.—The state shall be divided into water divisions as follows:

Division No. 1, that portion west of the Cascades.

Division No. 2, that portion draining into the Columbia river and its tributaries from the right bank, between Sentinel Bluffs above Priest Rapids and the Cascade Locks.

Division No. 3, draining into the Columbia from the left bank below Sentinel Bluffs.

Division No. 4, lying above Sentinel Bluffs and draining into the Columbia.

Sec. 25.—Water Commissioners.—A water commissioner shall be appointed by the governor for each water division, as herein established, to serve six years. He will be subject to removal by the governor in the same manner as the state engineer. The water commissioners first appointed under the act to serve as follows: No. 1, 2 years; No. 2, six years; No. 3, four years; No. 4, six years.

Sec. 26.—Duties of Water Commissioners.—Each water commissioner shall have the supervision of the apportionment of water in his division, according to the permits and licenses issued by the state engineer and the adjudication of the courts. He shall so apportion, regulate and control the waters of his district as to prevent waste. Each commissioner shall have the custody of the records relating to his division, which shall be public records and shall be transmitted to his successor in office. Each water commissioner shall take an oath and give a bond.

Sec. 27.—Board of Water Commissioners.—The water commissioners of all the divisions, together with the state engineer, who shall be chairman thereof, shall constitute the board of water commissioners. The board shall adopt general rules to govern its proceedings and the apportionment of water in the various divisions. The state engineer shall have a vote on all matters coming before the board, except appeals authorized by law, from his acts as state engineer. The board shall meet on the first Monday in March of each year at the office of the state engineer. The state engineer shall have power to call meetings of such board at other times and places, upon five days' notice, and shall do so on the request of three members. A majority of the board shall constitute a quorum for the transaction of business.

Sec. 28 provides that water commissioners shall be paid $8 per day out of the state treasury for time actually engaged, and shall also be paid necessary travelling expenses.

Sec. 29.—Water Districts.—The state engineer shall, as it may be necessary for the economical and satisfactory apportionment of the water, divide each water division into water districts, to be designated by names. The districts may be changed from time to time as may be in his opinion necessary.

Sec. 30.—Water Masters.—The water commissioner of each division shall appoint, subject to the approval of the state engineer, a water master for each district in his division, who may be removed by the commissioner or by the state engineer. The water master shall have immediate charge of the apportionment of the waters in his district under the general supervision of the water commissioner, to the several ditches, branches, laterals, and individual headgates, shutting and fastening, or causing to be shut and fastened, headgates when it is necessary so to do. He shall also have power to enforce in a similar manner the orders of the water commissioner in rotating the supply of water.

Sec. 31 provides that water masters are to receive $3 per day.

The water masters and their assistants shall be paid by the counties where they are employed.

Sec. 32 provides for appeals from the water master, or water commissioners to the state engineer.

Sec. 33 provides that water masters shall report as often as may be deemed necessary to the water commissioner concerning matters over which they have control.

Sec. 34 provides that the state engineer shall make certain hydrographic maps, and also that he shall co-operate with the federal government in his surveys and investigations.

Sec. 35 provides for certain investigations into the stream systems for the securing of information by the engineer.

After securing this data the state engineer shall, at such time as he may determine, file a copy of his maps and statements in the office of the clerk of the superior court of the county in which the stream system is situated, and this filing shall be deemed the commencement of a proceeding in said court to adjudicate and determine all claims to the right to the use of the water in said stream system, and the amount of water, the right to the use of which remains unappropriated, in which proceeding the state of Washington shall be the plaintiff, and all claimants of water rights in the stream shall be defendants. The attorney general or his assistant shall represent the state. The state engineer shall also cause a copy of said map and statement to be filed in the office of the auditor of each county in which the stream system extends. Any water right claimant not named in said statement may become a defendant upon application of himself or any party at any time prior to the filing of the findings and conclusions of the board of investigation.

Sec. 36. —Board of Investigation.—A board of investigation is hereby constituted for each of the water divisions of the state, to be composed of the state engineer and water commissioner of the water division, and they may at any time during the investigation of any stream system call in as a third member of said board one of the other water commissioners to assist in the investigation of that stream system. The members of said board shall serve without compensation other than is elsewhere provided for their respective offices.

Sec. 37 provides for the service of summons and appearances.

Sec. 38 relates to the report of the board and decree thereon.

The section provides that the board shall report all the appropriations of water which have not been fully applied to the beneficial use for which they were intended, and whether due diligence has been used in applying to beneficial use the water as sought to be appropriated, and the time that is reasonably necessary to complete the application thereof to beneficial use. Such report shall be filed by the board in the office of the clerk of the court in which the proceeding is pending, and a copy thereof shall be filed in the office of the county auditor of each county in which is included part of the stream system, and at such other places as may be designated by the board. Upon the filing of said report, the clerk shall cause notice thereof to be published in a newspaper in each county for four consecutive weeks. Such notice shall state the places where copies of such report are filed, and shall require all parties to such proceeding desiring to except thereto to file such exceptions in writing, in the office of said clerk within 30 days, and all parties failing to do so shall be deemed as consenting to a decree of the court adjudicating water rights in said system in accordance with the findings of the report.

After certain other formalities the court shall enter a judgment and decree determining and establishing the several priorities of right to the use of the waters of said system and the amounts of appropriations of the several persons claiming water. No appropriator shall be entitled to more water than he can make beneficial use of. The court shall, where proper, decree an incepted, incomplete or inchoate right to the use of water which has not yet been applied to beneficial use, such right to mature upon completion of the application thereof to a beneficial use within a reasonable time.

Section 39 provides that the state shall pay the cost of making certain surveys.

Sec. 40 provides for an appropriation of $15,000 for adjudication proceedings, surveys, etc.

Sec. 41.—Application for Permit.—Any person, association or corporation hereafter desiring to acquire the right to the beneficial use of waters from any source shall, before commencing construction of works or appropriating any of the public public waters of the state, make application to the state engineer for permission to appropriate the same. The application shall give the name and address of the applicant, the source from which, the point at which, and the method by which the water is to be diverted, the quantity desired, the periods of use, information showing the financial ability of the applicant to complete the proposed works, and if the use is for irrigation, the area, location and description of the lands to which the water is to be made appurtenant. The state engineer may require other data specified. In casees where any part of the land described in the application are not owned by the applicant, or under contract to the applicant, if the permit be granted the applicant shall be a trustee for the water appropriated for said lands, and shall be required to furnish the same for use on said lands at reasonable rates to be determined as provided hereinafter, but not to exceed a maximum therefor to be stated in the application; provided, however, that no water shall be held without actual application to beneficial use upon the specified lands beyond a period of time to be specified in the permit.

Sec. 42.—Storage Permit.—A permit may be granted under the provisions of section 41 for the storage in any lake, pond, stream, river, draw, coulee, ravine or other suitable place, of water for beneficial use on specified lands. The control of all storage works shall remain in the state engineer, and the control of the gate or gates, and the regulation of the flow of each reservoir shall be in the water commissioner in whose division it is located, subject to the supervision of the state engineer. All waters impounded and not applied to beneficial use under permit or license shall be considered as public waters. Structures for the storing and impounding of water may be enlarged or remodelled by some subsequent appropriator, after application and permit, for beneficial use upon specified lands, under plans therefor approved by the engineer. All works for storage must be built according to plans approved by the engineer.

Sec. 43 relates to the filing and correction of applications.

Section 44 relates to the publication of notice when storage application is filed.

Sec. 45.——Issuance of Permit; Appeal.—Upon the receipt of the proofs of publication, the state engineer shall determine from the evidence presented by the parties interested, from such surveys of the water supply as may be available, and from the records, whether there is unappropriated water available for the benefit of the applicant. If so, he shall indorse his approval on the application and shall thereupon issue a permit accordingly and shall state in such permit the nature, extent, terms and conditions thereof and the time within which the construction shall be completed, not exceeding five years in addition thereto. If in the opinion of the state engineer, there is no unappropriated water available, he shall reject such application. He shall decline to order the publication of notice of any application which does not comply with the requirements of the law and the rules and regulations thereunder. He may also refuse to consider or approve an application or to order the publication of notice thereof, if, in his opinion, the approval thereof would be contrary to the public interest. In determining the question of public interest in connection with an application for storage, he shall take into consideration the future development of the full storage capacity of the storage site and the future development of the full practicable amount of irrigable land of that drainage area.

Any person deeming himself aggrieved by the approval or rejection of any application may appeal from such decision of the state engineer within thirty days from the date thereof, to the Board of water commissioners, whose decision shall be final. In the absence of such appeal, the decision of the state engineer shall be final. Sec. 46. Relates to the Iniation and Prosecution of the Work.

Sec. 447. Relates to the Completion of the Work.

Sec. 48 relates to certificate of completion.

Sec. 49 relates to inspection of the work.

Sec. 50 relates to use of unsafe works.

Sec. 51 relates to extension of time for completion of contracts.

Sec. 52.—Application to Beneficial Use.—On or before the date set for the application of the water to a beneficial use, the state engineer shall cause the works to be inspected, after due notice to the owner of the permit. Upon the completion of such inspection, the state engineer shall issue a license to appropriate water to the extent and under the conditions of the actual application thereof to a beneficial use, within a stated maximum quantity, but in no manner extending the rights described in the permit. Provided that the inspection to determine the amount of water applied to a beneficial use shall be made at the same time as that of the constructed work, if requested by the owner, and if such action is deemed proper by the State Engineer.

Every irrigation license shall be for the right to apply water upon certain specified land. Where the license is issued for the use of water upon land not owned by the applicant, the license shall run to the applicant but such applicant shall be a trustee of such right for such lands, and the license shall specify the maximum quantity of water for each tract of land embraced therein held in separate ownership or for such subdivision thereof as to the Engineer may seem advisable on account of the varying duties of water.

There shall be no priorities of right between lands covered by the same permit or license, and in case of shortage of water the loss shall fall on all lands described therein ratably.

Sec. 53.—Revision of License.—Whenever it shall appear to the state engineer that a licensee has abondoned the whole or any part of the right granted by any license or when that the maximum quantity of water named in any license is greater than necessary he shall give the licensee not less than thirty days' notice that at a time and place specified he will inquire into the use or nonuse of such water, and at such time and place he shall conduct such inquiry, and if he shall find, upon the showing made, or in default of contest thereon, that such abandonment has taken place or such maximum quantity is no longer necessary he shall revoke or modify such license accordingly.

Sec. 54 relates to assignment of permit or license.

Sec. 55 relates to transfer of water records.

Sec. 56.—Withdrawal of Water for the United Stats.—Whenever the proper officers of the United States, authorized by law to construct works for the utilization of waters within the state, shall notify the state engineer that the United States intends to make examinations and surveys for the utilization of certain specified waters, the waters so described and unappropriated at the date of such notice, shall not be subject to further appropriation under the laws of this state for a period of one year from the date of such notice, and for such further period, not exceeding one year, as the state engineer may then or thereafter determine, and no adverse claim to the use of such waters, initiated subsequently to the date of such notice, shall be recognized under the laws of the state, except as to such amount of the water described in such notice as may be formally released in writing by an officer of the United States, thereunto duly authorized: Provided, that in case of failure of the proper officers of the United States to file plans of the proposed work within the period so fixed or extended, the waters specified in the notice given by the United States to the state engineer shall become public waters, subject to general appropriation.

Sec. 57.—Permit to Government.—Whenever the secretary of the interior shall determine that any government irrigation project in this state is practicable and shall cause to be let a contract for the construction of the same or any portion or section thereof, any authorized officer of the government may make application in behalf of the United states government to the state engineer for a permit to appropriate so much of the unappropriated waters of the state as may be required for the project. Upon the filing in the state engineer's office of a map, plans and specifications of the proposed works for carrying or storing water, and a description of the lands irrigable under such project, a permit shall issue to the government for the water and storage required, and upon the filing in the office of the state engineer of a certificate of the government engineer in charge of such works of the completion thereof, a license shall issue to the United States and its successors for the appropriation of the water required therefor, not in excess, however, of the quantity provided in the permit. Thereupon the title to the beds and shores of any navigable lake or stream utilized by the construction of reservoirs shall rest in the United States to the extent necessary for the maintenance, operation and control of the same. The United States shall be entitled to all the benefits of this act, but it is hereby exempted from its operation except where otherwise specially provided, or where the government may desire to avail itself thereof: Provided, however, that so soon as the management and operation of any irrigation works constructed by the United States shall pass to the owners of lands irigated thereby, the use of waters therefor by virtue of the state permit shall become and be subject to the provisions of this act, subject to such rules and regulations as may be prescribed by the secretary of the interior. So soon as the management and operation of any works constructed by the government shall pass to the owners of lands irrigated thereby, the state engineer shall obtain from the proper officers of the government, for the records of his office, all the data relating to such works and system, and lands thereunder.

Sec. 58.—Regulation of Rates.—The owner of works for the storage, diversion or carriage of water shall be required to furnish water to the extent of his appropriation permit or license to the lands irrigable therefrom to the maximum amount required for beneficial use thereon in the following cases, (in the absence of contracts between them,) to-wit:

1. Where the works were built in whole or in part under laws existing previous to this act, under which previous laws the owner thereof is a common carrier of water, and the owner thereof shall not have accepted the provisions of this act, in which case the carrier shall so furnish water for specified land at a reasonable rate per annum per acre, based upon the value of the works and the cost of maintenance and operation thereof, together with a fair profit to the owner.

2. Where the works were built in whole or in part under laws existing previous to this act, but the owner thereof shall have accepted the provisions of this act, or where the right to the use of water for the works shall have been acquired under the provisions of this act, and for such lands. And

3. Where there is stored, diverted or carried by any works water in excess of the needs of the lands for which the right of storage, diversion or carriage was acquired, and a permit for any of such excess shall be obtained by the owner of any other lands, in which case such excess waters shall be furnished to such permit holder to the extent of his permit, subject, however, to the priorities of the prior appropriation or permit.

In order to determine such rates, and maintenance fees, in the absence of agreement between the interested parties, the land owner may make application to the board of water commissioners for such determination. In such application any number may join, or one may apply in his own behalf or in behalf of himself and all others interested who may thereafter join in the proceedings and the carrier may bring in as party to such proceedings any other person whose lands is covered by its permit, license or previous right. Such application shall contain a description of his land, a statement of the title thereto, and of his right to the use of water theon. Twenty days' notice of the application and of the place in the water division where the land is situate, where and of the time when the board will hear the matter shall be given to the owner of the works, and at such time and place the testimony of the interested parties shall be heard and a determination of the matter made. A majority of the members of the board shall constitute a quorum, and a decision of a majority of a quorum shall be the decision of the board. Any member of the board may subpoena witnesses, and administer oaths. The decision so rendered shall be final, except that either party may appeal therefrom within thirty days after its rendition to the superior court of the county wherein the land is situate. During the pendency of such appeal, or any appeal from the decree of the superior court, the applicant may pay to the owner the amount he is required to pay by the decision appealed from, and upon such payment he shall receive from the works the amount of water awarded him. If the ultimate decision imposes the payment of a greater or lesser sum, the difference shall be made good upon demand to the party entitled to the sums. In the hearing before the board each party shall bear and pay his own costs. The costs in the courts shall abide the event and be taxed by the court in its discretion. The decision shall establish the fines and maintenance fees to be charged all owners of land similarly situated where the circumstances are substantially like those embraced in the adjudication. Upon the application of the carrier or the owner of ten per cent of the land affected at intervals of not less than two years, the annual maintenance fee as so determined may be revised by the same method of procedure as is herein provided for the first determination thereof. Nothing in this section shall be held to extend the time prescribed by any permit or license, or permit the extension of either.

Sec. 59.—Rotation of Water.—To secure the most economical and benficial use of water, and to prevent waste and damage, the water commissioner may, upon petition of two or more of the consumers of water from any natural stream, ditch or lateral, or branch of any canal, prepare and enforce a system of rotation of the water supply from such natural or artificial stream.

Sec. 60.—Measurement.—The consumer of water from a canal or lateral of any carrying company may place a suitable measuring box, of a design to be approved by the state engineer, at his intake from said canal or lateral; and in any case the water commissioner may, where he deems it necessary, order the construction of such measuring box.

Sec. 61 relates to measuring devices.

Sec. 62 relates to unlawful interference with rights in the use of water.

Sec. 63 relates to the unlawful use and waste of water.

Sec. 64 relates to bridges over ditches and canals.

Sec. 65 relates to obstructing work.

Sec. 66 relates to penalties for misdemeanors under this act.

Sec. 66½ relates to enforcing proceedings.

Sec. 67.—Right of Way Over State Land.—When notice is given to the state engineer under Section 56 of this act, the proper officers of the United States may file with the state land commissioner a list of the lands owned by the state over which the government may require a right of way for the canals or ditches of such irrigation project, and the filing of such list shall constitute a reservation by the state of such right of way over such lands, which reservation shall ripen into a grant of such right of way upon completion of such canals of ditches over any lands described in said list.

Sec. 68.—Disposition of State Lands.—No lands belonging to the state, within the areas to be irrigated from works constructed or controlled by the United States, or its duly authorized agencies, shall hereafter be sold except in conformity with the classification of farm units by the United States, and the title to such lands shall not pass from the state, until the applicant therefor shall have fully complied with the provisions of the laws of the United States and the regulations thereunder concerning the acquisition of the right to use water from such works and shall produce the evidence thereof duly issued. After the withdrawal of lands by the United States for any irrigation project no application for the purchase of state lands within the limits of such withdrawal shall be accepted, except upon the conditions prescribed in this section. Any state lands needed by the United States for irrigation works shall be sold to the United States at the lowest price authorized by law.

Sec. 69 relates to method of appeal.

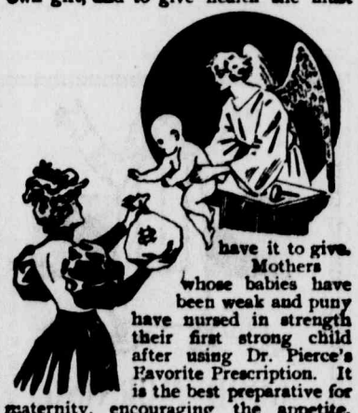
Sec. 70 provides for an appropriation of $25,000.

Section 71.—Application of Act to Existing Rights.—Appropriations of water initiated and completed by the application of the water to a beneficial use prior to the time when this act shall take effect shall not be affected by the provisions of this act, save as expressly provided otherwise, but every appropriation of water initiated prior to and valid at the time when this act shall take effect, shall be subject to the provisions of this act concerning the adjudication of rights, the regulation of rates, and the regulating or providing for the regulation of the methods of use and provisions for the regulation of the methods of use and prevention of waste. In other respects appropriations initiated but not completed by the application of the water to a beneficial use prior to the time when this act shall take effect, may be completed or perfected, except as herein otherwise expressly provided, under previously existing laws; Provided, however, that such incomplete appropriation shall be subject to the provisions concerning diligence contained in this act; and provided, further, that any person, association or corporation owning any right of appropriation of water at the time when this act shall take effect, desiring to obtain the benefits of any of the provisions of this act which would not otherwise be applicable to such existing rights, may file with the state engineer a written acceptance of the provisions of this act, and thereupon such appropriation shall be governed by all the provisions of this act. Actions pending at the time when this act shall take effect shall not in any way be affected by the provisions of this act.

BARGAIN BABIES.

If babies were for sale the most inveterate bargain-hunting woman in the world would not look for a bargain baby. She would want the best baby that could be bought, regardless of price.

Every woman naturally craves a healthy, handsome child, and her craving can be gratified if she will but remember that the child's health is her own gift, and to give health she must



have it to give. Mothers whose babies have been weak and puny have nursed in strength their first strong child after using Dr. Pierce's Favorite Prescription. It is the best preparative for maternity, encouraging the appetite, quieting the nerves and inducing refreshing sleep. It gives the mother strength to give her child, and makes the baby's advent practically painless.

"My wife had been sick nearly all her life," says Mr. E. E. Fricke, of Petersburg, Menard Co., Illinois, Box 367, "and after trying everything I could think of I made up my mind to try 'Favorite Prescription.' I got six bottles, which my wife took a tablespoonful three times a day, until the baby came. She felt better after taking the first bottle, and when baby was born he weighed nine and a half pounds. To-day he is six months old and weighs twenty-two pounds. He is as good a child as any one could wish. The doctor says he is as healthy as any baby could be, and also says the use of your 'Favorite Prescription' was the cause of such a healthy baby."

Dr. Pierce's Pleasant Pellets are the best and safest laxative for the use of delicate women.

C. H. HINMAN

Land Office Business

—DEALER IN—

LAND SCRIP, DESERT CLAIMS HOMESTEADS.

Realty Improved and Unimproved

Order to Show Cause.

In the Superior Court of the State of Washington, in and for the County of Yakima.
In Probate.

In the matter of the Estate of Minnie Cariveau, deceased.

Now, to-wit, on this 13th day of December, A. D. 1904, this cause coming on to be heard before the Court, in open Court, upon the

PETITION

of Richard Cariveau, the administrator of the above entitled estate, for an order to sell certain real estate belonging to said estate in said petition more fully described, situate in said Yakima County, State of Washington:

And it appearing to the satisfaction of the Court from the allegations contained in said petition that there is no money in the hands of the said administrator out of which to pay the claims filed against said estate, the debts, expenses, state and county taxes, and charges of administration, and that there is no personal property in his possession or belonging to said estate out of which any money can be realized for said purpose, or at all, and that it is necessary to sell said real estate to provide funds for the payment thereof; and it further appearing from said petition that it would be most beneficial for said estate and all the parties interested therein, that said real estate described as aforesaid, and the whole of it, be sold at private sale;

Now, therefore, it is hereby ordered that all persons interested in said estate be and appear in the Superior Court of the State of Washington, in and for the County of Yakima, in the Court Room at the Court House, in the City of North Yakima, on Monday, the 16th day of January, A. D. 1905, at 10 o'clock a. m., then and there to show cause why an order should not be granted to said administrator to sell said real estate situate in Yakima County, State of Washington, and described in said petition, now on file with the Clerk of this Court (reference being hereby made to said petition for a better and more complete description of the real estate asked to be sold), for the purposes above mentioned.

And it is further ordered that a copy of this order be published for four successive weeks in the Yakima Herald, a weekly newspaper published in the City of North Yakima, Washington, and of general circulation in said county and state, before said time appointed for hearing upon said petition.

Dated this 13th day of December, A. D. 1904.

50-5t FRANK H. RUDKIN, Judge.

Notice of Special School Election on Issue of Bonds.

Notice is hereby given that a special election will be held at the Central School building in School District No. 7, Yakima County, Washington, on the 7th day of January, A. D. 1905, between the hours of 1 o'clock p. m. and 8 o'clock p. m. of said day, for the purpose of determining whether or not the Directors of said District shall issue and sell the bonds of said School District in the sum of Twenty-Five Thousand Dollars, thereby borrowing money in said amount for the following purposes: To erect on the North Natches Avenue lots, owned by said School District, in the City of North Yakima, an eight-room school building of stone or brick or brick and stone, and completely finish and equip the same; also to select and purchase on or about the Leaming Addition and the Capitol Hill Addition to the City of North Yakima, suitable school house sites, and to have placed thereon for present use school buildings for the primary grades; all of said buildings to be completed and ready for use by the opening of schools of said District in September, A. D. 1905. Said bonds, if issued, to bear a rate of interest not to exceed six per cent per annum, payable annually; said bonds to be payable and redeemable in twenty years from date thereof—provided, that said School District reserves the right to pay or redeem said bonds or any of them at any time after ten years from date thereof.

The said election will be by ballot. Those in favor of issuing the said bonds will vote, "Bonds, yes;" those opposed, "Bonds, no."

The polls will be open from 1 o'clock p. m. to 8 o'clock p. m. on said 7th day of January, A. D. 1905.

By order of the Board of Directors of School District No. 7.

R. K. NICHOLS,
52-2t Clerk School District No. 7.

Notice of Stockholders' Meeting, New Schanno Ditch Company.

Notice is hereby given that the regular annual meeting of the Stockholders of the New Schanno Ditch Company will be held at the City Hall in the City of North Yakima, Washington, on Saturday, the 7th day of January, 1905, at the hour of 2 o'clock p. m., for the purpose of electing officers for the ensuing year and transacting such other business as may come before said meeting.

Dated December 27th, 1904.

52-2t JOHN J. RUDKIN, Secretary.

Notice to Creditors.

Public notice is hereby given that the undersigned has this day been appointed and commissioned by the Superior Court of the State of Washington, in and for the county of Yakima, administrator of the estate of Berendiena Assink, deceased, and all persons having claims against the said estate are hereby notified to present the same, accompanied by the proper vouchers, to the undersigned administrator, at the office of Lee C. Delle, in the Weed building, in the city of North Yakima, Yakima county, state of Washington, being the place for the transaction of the business of said estate, within one year from the first publication of this notice, to-wit: within one year from the 7th day of December, A. D. 1904, or the same will be forever barred. And all persons owing said estate are requested to make immediate payment to the undersigned and avoid costs.

Dated this 5th day of December A. D. 1904.

HERMAN ASSINK,
Administrator of the estate of Berendiena Assink, deceased.

LEE C. DELLE,
49-5t Attorney for the Estate.

Notice to Creditors.

In the Superior Court of the State of Washington, for Yakima County.

In Probate.

In the matter of the estate of Sarah B. Woolman, deceased.

Notice is hereby given that the undersigned administrator, with will annexed, of the estate of Sarah B. Woolman, deceased, to the creditors and to any and all persons having claims against said decedent, or against her estate, to present said claims, with the necessary vouchers, within one year after the date of the first publication of this notice, to said administrator, with will annexed, at his office, No. 209 Globe block, Seattle, King county, Washington, that being the place of the transaction of the business of said estate.

And you are hereby further notified that all claims not presented within one year from the date of the first publication of this notice will be forever barred.

C. L. PARKER,
Administrator, with will annexed, of the estate of Sarah B. Woolman deceased.
Date of first publication, Dec. 7, 1904. 49-5t

Notice for Publication.

Department of the Interior,
Land Office at North Yakima, Wash.,
December 5, 1904.

Notice is hereby given that the following named settler has filed notice of his intention to make final proof in support of his claim, as the father and heirs at law of Herman Schut, deceased, and that said proof will be made before the Register and Receiver U. S. Land office at North Yakima, Washington, on January 24, 1905, viz: Said Herman Schut, deceased, made Hd. Entry No. 2474, Nov. 3, 1899, for the SE¼ Sec. 23, Tp. 12, N., R. 22 E. W. M.

He names the following witnesses to prove his continuous residence upon and cultivation of said land, viz: Abraham Verstrate, John Oosting, Henry Wainberg, William Schut, all of North Yakima, Wash.

50-6t HENRY V. HINMAN, Register.