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OUR WATER RIGHTS

BY F. G. HAVENS

In our issue of last week we published certain correspondence with the Commissioner of the General Land Office at Washington concerning the situation regarding the water rights of the people of this Valley. In his letter to us he pointed out the sections of the civil code of this state, under which water rights must be acquired in order for them to be sufficient to entitle the claimant to patent on lands entered under the Desert Land Act.

As the basis of all laws in the State is the Constitution, we deem it proper, at this point to quote that document regarding water rights:

ARTICLE XIV.

WATER AND WATER RIGHTS.

SECTION 1. The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental or distribution, is hereby declared to be a public use and subject to the regulation and control of the State, in the manner to be prescribed by law; provided, that the rates or compensation to be collected by any person, company or corporation in this State for the use of water supplied to any city and county, or city or town, or the inhabitants thereof, shall be fixed annually by the Board of Supervisors or City and County or City or Town Council or other governing body of such city and county or city or town by ordinance or otherwise, in the manner that other ordinances or legislative acts or resolutions are passed by such body and shall continue in force for one year and no longer. Such ordinances or resolutions shall be passed in the month of February of each year and take effect on the first day of July thereafter. Any board or body failing to pass the necessary ordinances or resolutions fixing water rates, where necessary, within such time, shall be subject to peremptory process to compel action. At the suit of any party interested, and shall be liable to such further processes and penalties as the legislature may prescribe. Any person, company or corporation collecting water rates in any city and county or city or town in this State otherwise than as so established, shall forfeit the franchises and waterworks of such person, company or corporation to the city and county or city or town where the same are collected for the public use.

SEC. 2. The right to collect rates or compensation for the use of waters supplied to any county, city and county or town or the inhabitants thereof is a franchise and cannot be exercised except by authority of and in the manner prescribed by law.

From this it will be seen that the use of water for irrigation and domestic purposes in this State is declared to be a public use, and the business of supplying water to the inhabitants of this State is a public franchise and cannot be exercised except in compliance with law.

So much for the constitutional provisions. They are certainly broad enough to supply a base on which to erect a structure of law that will be unmistakable. We now come to the law as pointed out to us by the Commissioner of the General Land Office in his letter of May 1st. Section 324 of the Civil Code of this State reads as follows:

Sec. 324. Shares Personal Property. Transfer of Stock. Irrigation Stock.

Whenever the capital stock of any corporation is divided into shares and certificates therefor are issued, such shares of stock except as hereinafter provided are personal property and may be transferred by endorsement by signature of the proprietor, his agent, attorney or legal representative and the delivery of the certificate, but such transfer is not valid except as to the parties thereto until the same is so entered upon the books of the corporation as to show the names of the parties by whom and to whom transferred, the number of the certificate, the number

or designation of the shares and the date of the transfer.

Provided however that any corporation organized for or engaged in the business of selling, distributing, supplying or delivering water for irrigation purposes or for domestic use may in its by-laws provide that the water shall only be so sold, distributed, supplied or delivered to owners of its capital stock and that such stock shall be appurtenant to certain lands when the same are described in the certificate therefor. And when such certificate shall be so issued and a certified copy of such by-law recorded in the office of the County Recorder in the county where such lands are situated, the shares of stock so located on any land shall only be transferred with said lands and shall pass as an appurtenance thereto.

Sec. 324 Civil Code as amended in 1895. (James H. Deering edition 1903.)

This section refers to the stock of corporation organized under the laws of this State and after providing in a general way for the division of the capital stock of all corporations for profit into shares and the issuance of certificates therefor and setting forth the manner in which these stock certificates shall be transferred it makes an important exception in the case of water companies. This proviso, however, is not mandatory upon the corporations engaged in the business of selling, distributing, supplying or delivering water for irrigation purposes or for domestic use. Corporations engaged in that line of business who do not comply with the provisions of Section 324 and limit their business to their stockholders only are common carriers under the laws of this State and must file with the Board of Supervisors annually a statement of their property and business and the Board of Supervisors must set the price at which they must deliver water to users.

A water user who is once supplied by such a corporation cannot thereafter be denied water by it provided the corporation has the water to supply and the user tenders the legal price. Nor can the water company enterpose regulations or rules to shut off such party for the Supreme Court of this State has ruled in the case of Crow vs. the San Joaquin and Kings River Canal and Irrigation Co. that it is the duty of the water company to supply the user with water whether he complies with its regulations or not. This proviso regarding the stock of water companies however gives such companies the right to limit their operations to their stockholders only and to sell, deliver, furnish or distribute water only upon lands which are described in the certificates of stock and to which the stock is made appurtenant. The meaning of the word "appurtenant" is given by all the dictionaries of our language as "belonging to by right." The proviso further states that when the water company operating in accordance with its provisions shall adopt by laws in conformity thereto and shall file a certified copy of such by-laws with the county recorder of the county in which the land is located the shares of stock of said company located on any land shall only be transferred with said land and shall pass as an appurtenance thereto." From the above it will be seen that the constitution and laws of this State contemplate the protection of the user of water in its continued use, free from onerous exactions and that the above quoted Section 324 of the Civil Code provides for the kinds of corporations which may engage in the business of selling, distributing, supplying or delivering water

for irrigation purposes or domestic use.

The next question to consider in its relation to the water rights of the people of this valley, is that of the kind of corporation by which they are supplied with water, in order to determine whether their water rights are based on beneficial use of water delivered to them by a common carrier corporation, or whether they are acquired by the ownership of irrigation stock in a mutual water company, organized in accordance with the proviso contained in Section 324 of the Civil Code of this State, above quoted.

It will be noted in this connection that the above quoted section reads: "Provided, however, that any corporation organized for, or engaged in, the business of selling, distributing, supplying, or delivering water for irrigation purposes, or for domestic use, may, in their by-laws provide that the water shall only be so sold, distributed, supplied or delivered, to owners of its capital stock and that such stock SHALL be appurtenant to certain lands, when the same are described in the certificate therefor."

In order to further elucidate this matter we herewith publish the by-laws of Imperial Water Company No. 1, as certified to by the Secretary of said company on May 16th, 1906:

ARTICLE I.

CORPORATE POWERS.

The corporate powers of this corporation shall be vested in a board of five directors, who shall be stockholders, holding one or more shares of stock in their own names on the books of the corporation, and three shall constitute a quorum for the transaction of business.

ARTICLE II.

ELECTION OF DIRECTORS.

The directors shall be elected by ballot at the annual meeting of the stockholders to serve for one year, and until their successors are elected. Their term of office shall begin immediately after election.

ARTICLE III.

VACANCIES.

Vacancies in the board of directors shall be filled by the other directors in

office, and such persons shall hold office until the first meeting of the stockholders thereafter.

ARTICLE IV.

POWER OF DIRECTORS.

The directors shall have power:

1st. To call special meetings of the stockholders when they deem it necessary. And they shall call a meeting at any time upon the written request of stockholders holding one-third of all the capital stock.

2nd. To appoint and remove, at pleasure, all officers, agents and employees of the corporation, prescribe their duties, fix their compensation and require of them security for faithful service.

3d. To conduct, manage and control the affairs and business of the corporation and to make rules and regulations, not inconsistent with the laws of the State of California, or the by-laws of the corporation for the guidance of the officers and management of the affairs of the corporation.

4th. To incur indebtedness. The terms and amount of such indebtedness shall be entered on the minutes of the board, and the note or obligation given for the same, signed officially by the president and secretary, shall be binding on the corporation.

ARTICLE V.

DUTIES OF DIRECTORS

It shall be the duty of the directors:

1st. To cause to be kept a complete record of all their minutes and acts, and of the proceedings of the stockholders, and present a full statement at the regular annual meeting of the stockholders, showing in detail the assets and liabilities of the corporation and generally the condition of its affairs. A similar statement shall be presented at any other meeting of the stockholders, when thereto required by persons holding at least one-half of the capital stock of the corporation.

2d. To supervise all officers, agents and employees, and see that their duties are properly performed. To cause to be issued to the stockholders, in proportion to their several interests, certificates of stock, not to exceed in the aggregate one million dollars.

ARTICLE VI.

OFFICERS.

The officers shall be a president, vice-president, secretary and treasurer, which officer shall be elected by and hold office at the pleasure of the board

of directors. The compensation and tenure of office of all the officers of the corporation (other than directors) shall be fixed and determined by the board of directors.

ARTICLE VII.

PRESIDENT.

The board of directors shall, at their first regular meeting, elect one of their number to act as president; and if, at any time, the president shall be unable to act, the vice-president shall take his place and perform his duties; and if the vice-president, from any cause, shall be unable to act, they shall appoint some other member of the board to do so, in whom shall be vested, for the time being, all the duties and functions of his office. The president, or in his absence, the director appointed as above provided:

1st. Shall preside over all meetings of the stockholders and directors and shall have the casting vote.

2d. He shall sign, as president, all certificates of stock, and all contracts and other instruments of writing which have been first approved by the board of directors and shall draw checks upon the treasurer.

3d. He shall call the directors together whenever he deems it necessary, and shall have, subject to the advice of the directors, direction of the affairs of the corporation, and generally shall discharge such other duties as may be required of him by the by-laws of the corporation.

The president, or two of the directors, may call special meetings of the directors at any time, and notice shall be given of such called meetings by leaving a written or printed notice at the last known place of business or of residence of each director. Such service of notice shall be entered on the minutes of the corporation, and the said minutes, upon being read and approved at a subsequent meeting of the board, shall be conclusive upon the question of service.

ARTICLE VIII.

SECRETARY.

The board of directors shall elect a secretary.

1st. It shall be the duty of the secretary to keep a record of the proceedings of the board of directors and of the stockholders.

2d. He shall keep the corporate seal of the corporation and the book of blank certificates of stock, fill up and countersign all certificates issued, and make the

Continued on 8th page.

WHERE MORE THAN
\$200,000
IS BEING SPENT

The town of El Centro was started in the fall of 1905 and is now about six months old. It is located in the center of the best part of the Imperial Valley, and is destined to become the metropolis.

The following improvements now completed, or under way, make a record to be proud of:

Ice and Cold Storage Plant (Brick)	\$75,000
Hotel El Centro (Brick)	30,000
Transformer Station and Power Lines	20,000
Opera House Block (Brick)	40,000
Cement Sidewalks	10,000
Water Works System	10,000
Electric Light Plant for El Centro	5,000
S. P. R. R. Depot	6,000
Holt Block (5 brick stores)	15,000
Machine Shop and Equipment	2,500
Hotel Franklin	5,000
Hardware Store	2,000
El Centro Cantaloupe Association Packing House	2,000
Peterson Building (Brick)	1,200
Fuller's Residence	1,500
Three Cottages	3,000
El Centro Land Co's Office	800
Blinn Lumber Co. Yards	2,500
Fuller & Aten's Office	600
Grading Streets, Etc.	1,000
Total	\$232,100

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Will become the
METROPOLIS
of the
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More money has been spent in buildings and permanent improvements in El Centro in the last five months than in any town in the Imperial Valley in five years. See for yourself.

P

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For information regarding El Centro and the Imperial Valley, and its opportunities, address
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