

APPENDIX 1

HISTORY OF WATER CONTROL JURISDICTION IN OREGON

Prior to 1891, no uniform system or control body governed the appropriation or distribution of water in Oregon. The early legislators were aware, however, of the problems with appropriation of water. In 1864, a statute was passed recognizing the right of miners to obtain vested water rights in accordance with local custom. In 1868, the Oregon Legislative Assembly declared that landowners can apply to the county court to drain land, enlarge and straighten stream beds or construct embankments for flood control.

In 1891, the Legislature declared public uses of water were for irrigation, livestock and domestic purposes and provided help in procedures for appropriation. Oregon's first irrigation law was enacted in 1895. Mining and electric power production were added as beneficial uses of water in 1899.

In 1894, Congress passed the Carey Act. The law granted 1,000,000 acres of arid federal land in each of several western states at no cost if the state would undertake irrigation reclamation and sale of the acreage in tracts of not more than 160 acres. Sales of the land were to be made to individual settlers or promoters who would contract with the state for reclamation at their own expense. The Act left details of the administration of reclamation and disposal of the lands to the state. Oregon accepted the provisions of the Carey Act grant in 1901. Responsibility for carrying out the provisions of the law was given to the State Land Board in 1902. The Board had been created in 1899, an outgrowth of the former Board of Commissioners for Sale of State Lands as provided in the Oregon Admission Act of 1857. The State Land Board was composed of the Governor, the Secretary of State and the State Treasurer.

The Board was allotted very little supervisory authority in administering the reclamation act matters. Early projects were not properly examined to determine water availability. Water needs for reclaiming dry land were underestimated and the amount of land which could be reclaimed was overestimated. The State Land Board failed to assume authority for the actual sale of the reclaimed land to the settlers believing that the federal government would oversee and direct the sale procedures.

The need for water laws and for a specific office to oversee the measurements and records of the

state's water resources caused the Oregon Legislature to create the office of the State Engineer in 1905. A code of water laws had been prepared by a committee appointed by the Portland Board of Trade and presented to the 1905 Legislative Assembly. After having a large portion of the proposed laws eliminated and other parts drastically amended, the code passed and became law. The law provided for appointment by the Governor of a State Engineer to be recommended by the USGS. John H. Lewis of Portland was appointed. His knowledge of irrigation matters made him a valuable advisor to the State Land Board.

Prior to 1907, administrative work in reclamation lands was handled by the Clerk of the State Land Board, assisted by the State Engineer if engineering questions were involved. On September 23, 1907, the State Engineer was appointed Assistant Clerk of the Board to facilitate transactions of business relating to arid lands. This work was done without compensation and at the sacrifice of other work of the State Engineer's office.

In 1908, the Governor appointed a semi-official conservation commission consisting of 15 members. The commission was an outgrowth of the national conservation begun at the federal level in 1907. The responsibilities of the group were to report on the natural resources of the state and to emphasize the need for adopting a conservation policy. The formal Oregon Conservation Commission was created in 1909. The 7-member Commission was to ascertain and make known the natural resources of the state and cooperate with the National Conservation Commission so that the state's natural resources could be conserved and put to highest use.

The State Engineer and the Oregon Conservation Commission recommended to the Oregon Legislature that provisions be made for state control of water resources and that administrative water laws be passed. Also suggested was that the State Engineer be appointed by the Governor and not, as in the general law, with the recommendation of the director of U.S. Geological Survey.

In 1909, the Oregon Legislature passed the Water Appropriation Act, spelling out the laws for appropriating water. Additionally, the act split the functions of the State Engineer. Separate engineers were appointed for Highways and for Buildings and Land. The act divided the state into two divisions, east and west, and appointed water superintendents for each division. The

superintendents and the State Engineer made up the Board of Control. The State Engineer was president of the Board. The name of the Board of Control was changed to the State Water Board in 1913.

The 1909 Legislature also passed a law accepting the revised Carey Act provisions. At the request of the State Land Board, the Desert Land Board was created and put in charge of reclamation matters pertaining to the Carey Act. The Desert Land Board was given ample authority to carry out the responsibilities of the federal law. The Board was created by adding the Attorney General and the State Engineer to members of the State Land Board. The Governor was head of the Board and the State Engineer acted as Secretary. The State Land Board remained a separate entity.

In 1919, the Legislature eliminated one water superintendent from the State Water Board and provided that the activities of the Board be carried out by the remaining superintendent and the State Engineer. The Legislature abolished the State Water Board in 1923 and transferred all Board functions to the State Engineer's office. Authority was given to the Engineer to survey water resources of Oregon, making observations, findings, and supply estimates. Authority was also given to withdraw water from further appropriations.

In 1927, the State Reclamation Commission was created by merging the Desert Land Board and the Irrigation and Drainage Securities Commission. The new Commission was authorized to investigate the affairs of any irrigation or drainage district. The Commission was to make findings and recommendations on any plan for rehabilitation of such district. The Commission consisted of the Governor, the Secretary of State and the State Treasurer. The State Engineer was secretary.

The Legislature continued to enact laws for use and control of water. In the next decade or so, laws were passed for withdrawals of water for special purposes, such as municipal, recreation, aesthetics, and pollution control. Investigations of water resources in Oregon revealed the possibility of development of hydroelectric power for sale to other in-state and out-of-state areas. In 1931, the Legislature created the Hydroelectric Commission. The Commission licensed power projects and investigated water resources for conservation and development. The Commission's duties were transferred to the State Engineer in 1961.

Governor Martin in April 1935, appointed a com-

mittee with membership from all counties of the Willamette Basin to study navigation, irrigation, and flood control development in the basin. In 1939, after federal funds for flood control were secured from Congress, the Legislature created the Willamette Basin Commission. The Commission, in cooperation with the Corps of Engineers, was responsible for construction of all the present Willamette River system reservoirs.

In 1947, the State Irrigation Board was formed to create water conservation districts. The Upper Columbia River Basin Commission of Oregon, appointed in 1951, performed functions in connection with public improvement projects in the upper river basin. The main office was in Pendleton.

As time passed, responsibility for control and safeguarding of the state water resources was delegated to many agencies. In addition to the State Engineer, the Hydroelectric and other Commissions and the Legislature, there were irrigation, drainage, and flood control districts; reclamation projects; state compacts; the Sanitary Authority; and Fish and Game Commissions. All had authority over water resources of the state.

Conflicts in administering statutory mandates caused the Legislature in 1953 to review water legislation. A Legislative Interim Committee on State Water Resources was formed to look at an overall state water policy. Based on its recommendations, the 48th Legislative Assembly, in 1955, passed the Water Appropriations Act, part of which created the State Water Resources Board. The Willamette River Basin Commission, the Upper Columbia River Basin Commission, the State Irrigation Board and the State Reclamation Commission were abolished. The State Water Resources Board's most important duty was to formulate programs for the use and control of the state's waters. Using the geographical units of river basins, the Board studied each major drainage basin and issued basin programs specifying future uses of unappropriated water in Oregon. The State Engineer was to serve as the engineer for the Board, although he never actually served in that capacity. The Board hired its own engineers and maintained its own staff.

In 1975, the State Water Resources Board and the State Engineer's Office were merged to form the Water Resources Department. The department consisted of the Water Policy Review Board, the department director and the combined staff. The 1985 Legislature restructured the Water Resources Department and created the Water Resources Commission with authority over all activities of the Water Resources Department.