

Sub-Experimental Station, Water Right For. Transfer of Water Right by the State.

The state has authority to transfer its water right in the Big Ditch Company's ditch for an equal right in the ditch of the Billings Land and Irrigation Company's ditch for the purpose of irrigating the land embraced in the said experimental station near Billings.

Helena, Mont., Dec. 22, 1906.

State Board of Land Commissioners,
Helena, Mont.
Gentlemen.

I am in receipt of a communication from P. B. Moss, addressed to A. N. Yoder, Secretary of State, and which was referred by your honorable body to this office with the request that we give you an official opinion as to whether or not the State Land Board has authority to act in the premises, the question being your right to exchange five shares in the "Big Ditch Company" for the same number of shares in the ditch of the "Billings Land and Irrigation Company," the same to be equal in all respects with that of the Big Ditch Company, said five shares in the Big Ditch Company's ditch being a water right acquired by the state in connection with twenty acres of land acquired by virtue of the provisions of an act of the legislature approved April 7th, 1903 (Laws 1903, p. 220) entitled "An Act establishing a sub-experimental station of the Agricultural Experimental Station, near Billings, Montana, and providing for the acquisition of title for the land for the same and the direction thereof."

It appears from the accompanying letter that the twenty acres above referred to is part of a tract of one hundred, and sixty acres, and that the remaining one hundred and forty acres have been sold to purchasers in ten acre tracts; that all of said purchasers had water rights in the Big Ditch Company's Ditch, which individual rights each of them has since exchanged for an equal right in the ditch of the Billings Land and Irrigation Company's ditch. It further appears that the laterals carrying water to this land are in very bad condition and would cost a large sum of money to put same in condition to carry water to the land.

Sec. 3471 of the Political Code provides as follows:

"It is the duty of the Board to provide for the selection, leasing, sale or other disposition of all lands heretofore or which may hereafter be granted to the State of Montana by the United States or otherwise, etc."

The water right referred to was acquired as an appurtenant to such twenty acre tract, and from the above it will be seen that the board may make such disposition of the water right as is consistent with the above law. We find nothing in the statutes which would in any way prevent the board from acting in the matter. You are, therefore, advised that it is a matter which addresses itself to the

business discretion of the board, in the determination of which the board must take into consideration the best interests of the state.

Very truly yours,

ALBERT J. GALEN,

Attorney General.