

II. Fraud on the Court

As part of indexing the Archives defendant looked for any writings of any sort that would refute his belief that a great and terrible fraud on the court had been perpetrated by plaintiff's counsel on January 13, 1930. He found none. Instead, he found much more corroboration that fraud on the court is exactly what occurred.

There are probably some basic assumptions which any reader of this material would have. They may be:

Judges read what they sign

Judges know the law

An order following a hearing means both sides were heard

Special Masters are competent

Special Masters are properly supervised

Lawyers do not lie, especially in court

Defendant asks that the court suspend application of this list for a few minutes. Defendant has carefully culled from his index a time line of the fraud and attached it here as Declaration #2, which supplements defendant's declaration attached to his 02/17/2009 filing. This timeline shows that, when faced with scrapping years of work, instead Mr. Morton and Mr. Coffey, with the possible awareness of Mr. McCutchen and Mr. Hankins, crafted this great Potempkin Village with false fronts and fat and happy peasants, with everything typeset and neat, and only nominal but easily dismissable dissent, and then stuck 3 pieces of paper under the nose of a Judge who was only marginally familiar with both the case and the requirements of Section 8 of the Reclamation Act of 1902: the first paper provided water for the Catholic Church, the second fixed errors for the Sutliff family in a way similar to previous stipulations submitted to that judge, and the third paper, untitled, turned out to adopt the whole shebang. Defendant has been unable to find a signed copy of the Decree and at this point does not believe there ever was one. Everything in the Angle

Archives says that Morton and Coffey suckered Judge Kerrigan into stripping upstream riparians

1 **without due compensation, contrary to Federal and State Constitutional requirements, and**
2 **NOTHING in the Angle Archives, not even that single untitled filing prepared in advance of the**
3 **hearing, says otherwise. Defendant asks this court to examine his Declaration #2 attached, and then**
4 **to order further investigation as defendant sets forth in his prayer below.**

1 MICHAEL J. BARKLEY, CA SBN 122433
161 N. Sheridan Ave. #1
2 Manteca, CA 95336
209/823-4817 mjbarkl@inreach.com

3 Defendant, in propria persona
4
5
6
7

8 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
9 SACRAMENTO DIVISION

10	_____)	Civil No. S-80-583-LKK [In Equity No. 30]
11	THE UNITED STATES OF AMERICA,)	
	Plaintiff,)	DEFENDANT MICHAEL J. BARKLEY’S
12	v.)	DECLARATION #2, FRAUD ON THE
	H. C. ANGLE, et al.,)	COURT TIMELINE IN SUPPORT OF MOTION
13	Defendants.)	TO RECONSIDER ORDER,
	_____)	Federal Rule of Civil Procedure 60(d)(3)
14		
15		DATE: April 20, 2009, Vacated
		TIME: 10:00 a.m.
16		COURT: Courtroom 4, 15 th Floor

17 **My name is Michael J. Barkley. I am a defendant in this proceeding and I researched,**
18 **compiled and wrote this Declaration.**

19 **Following is a Fraud on the Court subset of the timeline in my comprehensive, chronological**
20 **Angle case index:**

21 **- 06/29/1922 Order, appointing Geo. A. MCCUTCHEN as master pro hac vice to hold hearings in**
22 **Willows, and return proofs and findings of fact and conclusions of law, Angle Archives box 3 file 10**
23 **of 39**

24 **- 09/29/1922 Order by Special Master Appointing Emmet Healy stenographic Reporter, signed**
25 **06/26/1922 box 3 file 12 of 39**

26 **- 09/29/1922 Order signed by Special Master Setting Date for Trial 10/12.1922, list of solicitors**
27 **attached. box 4 file 13 of 39**

1 - 10/12/1922 Hearings begin in Willows, Transcripts vol 1, box 1 file 1T; throughout the hearings,
2 Exhibits were poorly marked, and many of them are missing - the bulk of the Exhibits are in
3 Archives box 4 file 30 - 39

4 - 10/20/1922 Oath of Office of Special Master notarized by the clerk & filed 8 days after he started
5 hearings, 118 days after he started issuing orders, and 6 days after plaintiffs presented the
6 groundwork of their case box 4 file 13 of 39

7 - 11/13/1922 I might have missed it but I didn't notice where E.T. Eriksen, who presented the bulk
8 of the government's case over this 3-1/2 years, was ever sworn

9 - 01/01/1923 Claude F. Purkitt took office of Superior Court Judge, Glenn County Superior Court,
10 presumably this First Monday in January. 01/1930 Willows Journal articles (California State
11 Museum History Room Microfilm, 9th & N Streets, Sacramento) say he defeated Judge Bell for it in
12 1922. Judge Purkitt (formerly, State Senator) and Frank Freeman represented the bulk of
13 defendants in those early years.

14 - 01/05/1923 first mention of George E. MCCUTCHEN in Westlaw, defending a red-light
15 abatement case - what were his qualifications to handle the job of Special Master? In the Orr Ditch
16 cases in Reno, the Special Master was a retired judge who left hundreds of pages of notes. There
17 are no notes from Mr. MCCUTCHEN anywhere in the record; of course, he didn't need any
18 because he prepared only a report, if that.

19 - 07/20/1923 John P. Ryan began testimony for James Mills Orchard Co. et al., without counsel
20 present, counsel ill; considerable testimony about wells and downstream underflows, Transcripts
21 volume 16 pp. 2900 off and on to 3092, 6 days in July and September; Warren Gregory of
22 Chickering and Gregory, San Francisco, showed up for James Mills Orchards et al 09/11/1923
23 tr p. 3091 and shut down testimony; box 2 second unmarked file, and on October 2, 1923 Mr.
24 Freeman asked to amend the answers James Mills Orchards (and apparently all 7 downstream
25 underflow users) apparently on the belief that no further diversions would be undertaken by the
26 government, transcript vol 20 p. 3535, box 2 file 14T; was Mr. Freeman's comment wishful
27 thinking? see 09/30/1925 James Mills Orchard & Esperanza Land (prepared and signed by

1 Chickering and Gregory) underflow protests with SWRCB predecessor for application 2212 for
2 Stony Gorge mentioned below;
3 - 09/03/1923 Judge Van Fleet Died; no record appears in the archives of any communication of any
4 sort between the Special Master and any District Court Judge, other than his report on 11/07/1929.

5 Who supervised him?

6 - 01/28/1924 Judge KERRIGAN appointment to the District Court confirmed
7 - 02/25/1924 Amended Answer of Defendants James Mills Orchards Corporation and Esperanza
8 Land Corporation to the Amended Complaint Herein box 5 file 26 of 39 , one page, some sort of
9 understanding that later unraveled? other downstream underflow Users disclaimed below except
10 for Andrew Kaiser? Were they all lulled by Mr. MORTON's assurances that these were the only
11 diversions intended as Mr. Freeman mentioned at tr p. 3535?; see protest before SWRCB
12 predecessor of Reclamation application #2212 for Stony Gorge 09/30/1925, by then Freeman was
13 dead and Chickering and Gregory represented them but this amended answer was not withdrawn
14 for some reason, possibly because the Angle case was considered closed 08/28/1924

15 - 04/13/1924 Lawyer Frank Freeman died, represented the Lower Stony Creek Underflow
16 Defendants plus more defendants than any other lawyer , Willows Journal, California State
17 Library History Collection microfilm, 04/14/1924

18 - Four of Frank Freeman's remaining 5 downstream underflow defendants disclaimed (all except
19 Andrew Kaiser)

20 - 06/05/1924 Disclaimer of Defendant Jos. M. Billiou box 5 file 26 of 39

21 - 06/03/1924 Disclaimer of Defendant Annie Hoever box 4 file 27 of 39

22 - 06/05/1924 Disclaimer of Defendant R.T. Jones box 5 file 26 of 39

23 - 06/10/1924 Disclaimer of Sacramento Valley Sugar Company box 4 file 27 of 39

24 - 08/28/1924 Transcript vol. 24 p. 4412, hand corrected to 4467, box 2 file 18T,

25 "MR. MORTON: ...may have to ask for a very brief session as to certain matters
26 that are pending on stipulation, and as to one or two other details.

27 "THE MASTER: ...subject to an application to reopen the matter on those
28 grounds, as I understand you, the plaintiff's case may be considered closed
at this time."

1 - 09/11/1924 Letter MORTON to Clerk. . . John F. Truesdell, Special Assistant to the Attorney
2 General is relieving Oliver P. MORTON on Angle as of 09/01/1924 box 5 file 25 of 39
3 - 10/29/1924 Stipulation, Chas. M. Hall & Gertrude G. Hall in relation to the Stony Creek
4 Irrigation Company agreements and deed, /s/ JOHN S. PARTRIDGE, JUDGE box 6 Large Brown
5 Envelope #2

6
7 Here is where the Angle Plaintiffs ran into problems:

8 - 02/13/1925 Fresno Superior Court Judge J.E. Woolley issued his 79 page *Amelia Herminghaus, et*
9 *al., v. Southern California Edison Company*, Opinion, case #35130; 03/06/1925 Judge J.E. Woolley
10 issued his *Herminghaus* Judgment; 04/13/1925 Judge J.E. Woolley denied new *Herminghaus* trial;

11 I have purchased photocopies of 4 of these *Herminghaus* documents, that is, the Opinion and
12 Judgment plus the two briefs later in 1925, from the California State Archives, 1020 "O" Street -
13 4th Floor, Sacramento, CA 95814, 916/653-2385; for the *Herminghaus* case, California Supreme
14 Court Case #S.F. No. 11630 In Bank.-- December 24, 1926, State Archives file number 25814;
15 Fresno Superior Court was unable to furnish any of these dates so the Archives were the best
16 source; if asked, I can furnish a photocopy of these, or place them upon my web site as corrected
17 OCR transcriptions with my Declaration as to authenticity. Portions of the Judgment were
18 excluded from the pages actually delivered to me by the Archives so I would need to return
19 and re-purchase the missing pages. I did not purchase the Findings dated 03/06/1925, or the denial
20 of new trial

21 - [from 01/07/1985 folder #4, Doc. #75 Declaration of Water Master re Water Rights and
22 Associated Problems within Stony Creek Watershed p. 2: "Hearings were held in Sacramento in
23 1925 and Oliver P. MORTON was retained to represent Orland Unit Water Users' Association in
24 this adjudication suit." the record of this is MISSING from the archives

25
26 Angle plaintiffs tried to push the case along:

27 - 10/13/1925 Notice of Motion box 5 file 24 of 39

1 - 10/13/1925 Motion for Order and Affidavit in Support of Motion for Order, box 5 24 of 39 , to 13
2 attorneys & 6 pro per, Plaintiff, to require Special Master George E. MCCUTCHEN to appear and
3 show cause why he should not return...Report of Special Master hereto annexed.....; attached Draft
4 Findings of Fact with 5 blueprint sheets of "Schedule of Water Rights in Stony Creek Watershed",
5 "prepared by affiant"; p. 6 of affidavit out of order, at end /s/ Harold BAXTER, Special Assistant
6 to the Attorney General, Phoenix, OCTOBER 10, 1925 box 5 file 20 of 39 ; disposition of this
7 motion is MISSING. Is there some recording in a journal somewhere with the Northern District?
8 Northern District Clerks not yet helpful. Is this the hearing the water master spoke of?

9
10 - 10/19/1925 Harold BAXTER and James F. Lawton signed & 10/22/1925 filed 76 page California
11 Supreme Court brief as amicus curiae in support of Appellants in *Herminghaus*

12
13 - 11/17/1925 Opinion & Order, SWRCB predecessor approved Reclamation Application #2212,
14 Decision D-83 allowing 50,200 a-f diversion and storage in Stony Gorge; Richard J. COFFEY for
15 Reclamation; protestors included James Mills Orchard Co., Esperanza Land, BROWNELL
16 Brothers, and Glenn-Colusa Irrigation District (GCID), each wanting to make sure their rights
17 were protected. As it turned out GCID's were, BROWNELL's definitely were not, James Mills &
18 Esperanza Land have been allowed to use underflow by Angle water master and the Angle Court so
19 it's hard to say if their rights were protected or not. D-83 is at
20 <http://www.waterrights.ca.gov/hearings/Decisions/WRD83.pdf>

21
22 - 11/19/1925 Richard J. COFFEY signed & 11/30/1925 COFFEY filed 129 page *Herminghaus* brief
23 with California Supreme Court, an encyclopaedic survey of riparian rights in the U.S. with a plea
24 to the Court to set aside California's riparian law and adopt the "reasonable and beneficial"
25 limitations of other western states, joined by Irrigation District Association of California and
26 35 individual irrigation districts including signed by Hankins and Hankins for GCID

1 - 12/30/1925 COFFEY withdrew his name from *Herminghaus* brief with California Supreme
2 Court, brief position conflicted with Mr. Baxter's Federal Power brief - pretty obvious DOJ and
3 Reclamation not communicating very well

4
5 - 01/26/1926 *Herminghaus* case argued before California Supreme Court

6
7 Angle plaintiffs bring out their back-up plan:

8 - 02/25/1926 Order (presumably signed by Mr. MCCUTCHEN) vacating the submission and
9 reopening the case, served on the solicitors of all parties by mail that day, with a copy of the (Mr.
10 Sheridan's) application therefor; contents of application unknown, with notice of hearing
11 03/23/1926, MISSING from Archives transcript pp. 4703,4,5, Volume 26, Box 6.

12 - 03/25/1926 hearings resume; these hearings were much more comprehensive than provided for at
13 the 1924 "submission"; they read into the record property descriptions for all disclaimer and *pro*
14 *confesso* defendants; were they trying to do an end-run on *Herminghaus* in case it was upheld, at
15 least to support a claim before an alert judge as to the rights taken from defaulters?

16
17 - 04/02/26 Stipulation (Olive Scearce Parsons, W.E. Scearce and Mary J. Scearce as to the meaning
18 of the Stony Creek Irrigation Company agreement & deed, etc. /s/ Frank N. [sic] KERRIGAN,
19 Judge" ; these two stips are Judge Kerrigan's first link with the case in the archives, box 6 Large
20 Brown Envelope #3

21 - 040226 Stipulation (Glenn-Colusa Irrigation District)(keeping the agreement but modifying some
22 of its terms, It is so ordered: /s/ Frank N. [sic] KERRIGAN, Judge" box 4 file 13 of 39

23
24 - 04/19/1926 Second mention of George E. MCCUTCHEN in Westlaw, bankruptcy case? Faulty
25 record on appeal?

26
27 - 07/29/1926 *Herminghaus* case re-argued before California Supreme Court

1 - 12/24/1926 *HERMINGHAUS* decided by California Supreme Court, public furor leading to
2 11/06/1928 Constitutional Amendment; basically riparian rights cannot be taken, they must be
3 purchased under eminent domain. Angle case comes to a dead stop.

4
5 - 03/03/1927 third mention of George E. MCCUTCHEN in Westlaw, defending a pimping charge

6
7 - 09/01/1927 *FALL RIVER* decided by California Supreme Court, in case *Herminghaus* wasn't
8 clear, *Fall River* is: if you take riparian rights, you must pay for them.

9
10 - 10/06/1927 *Herminghaus* before U.S. Supreme Court, cert. dismissed as improvidently granted

11
12 - 12/29/1927 Letter Oliver P. MORTON asking Clerk about two 1922 orders, appears to be
13 working on the Angle brief while the dust settles after *Herminghaus & Fall River* box 4 file 13 of 39

14
15 **Herminghaus Dust settled, time for a trial balloon?**

16 - 04/19/1928 DECREE BOOK (Plaintiff's Opening Brief, Findings of Fact and Conclusions of Law,
17 and Decree), all prepared by plaintiff (Brief, p. 5 for instance), filed with George E.

18 MCCUTCHEN, Special Master (noted on outside back cover of 1928 Draft Decree book) Brief,
19 findings and decree based on argument and erroneous prediction that California riparian law is
20 wrong and will eventually not stand, brief dismissive of *Herminghaus & Fall River*, the 70 page
21 brief including a 20 page rant on California Riparian rights box 2, front

22 Brief was signed by: B.M. Parmenter, Assistant Attorney General, G.A. Iverson & Oliver P.
23 MORTON, Special Assistants to the Attorney General, Solicitors for Plaintiff; Of Counsel: Richard
24 J. COFFEY, District Counsel, U. S. Bureau of Reclamation.

25 At p. 19 of the brief is the first of 3 references (pp. 19-21, 35-36, 47-48) to a case: "In *United*
26 *States of America v. Truckee River General Electric Company et al.*, the Government initiated an
27 adjudication of the relative rights to the waters of the Truckee River in the Federal Court for

1 the Nevada District. Service of original process was had upon some six hundred defendants, if the
2 writer of this brief, who was identified with the proceeding on the Government's side, remembers
3 correctly,..." The case with that name was actually from the same District as Angle, settled
4 to Consent Decree setting the Floriston [flow] Rates in 1915 (and currently assigned to Judge
5 KARLTON). The case with the fact pattern of the 3 references in Angle was actually *United States*
6 *v. Orr Water Ditch, et al.* with which both Mr. COFFEY and Mr. MORTON were associated in some
7 manner.

8 On 03/18/2009 I skimmed through much of the pre-1930 portions of the *Orr Water Ditch* files in
9 Reno continuing an effort to understand who wrote the Angle brief. Truckee River General
10 Electric was a defendant in that case as well. With the few hours I had available, I did not find the
11 procedural stipulation in *Orr Water Ditch* mentioned at p. 20 of the Angle brief, but did find one
12 like it dated 06/01/1925. Mr. MORTON did witness examination or cross examination for plaintiff
13 on 10/15/1919 and may have on other dates but it appears he was not allowed to after that first time
14 (8500 pages of transcripts, without indexed or other counsel identification except when they speak
15 without asking a question), and his name was typed as "District Counsel, Reclamation Service" on
16 most Replies to Answers. Did he forget the name of the case over the next 8 years?

17 Mr. COFFEY's name appears at least once in the Orr Ditch files in a 09/04/1925 letter as
18 having been in conference with George Springmeyer, United States Attorney for District of Nevada,
19 regarding objections to the Special Master's findings. The Angle brief reads like a sequel to his
20 *Herminghaus* brief

21 Special Master MCCUTCHEN's 11/07/1929 report Section III recites how the case lagged after
22 Mr. MORTON left in 1924 (09/11/1924 letter), and Section V how it got going again after he was
23 reassigned back to the case in May 1929 but that's 13 months after the date Mr. MCCUTCHEN
24 wrote "filed" on the Decree Book (including brief). Mr. MORTON was around 03/25/1926 as
25 an amicus in that hearing, and 12/29/1927 following up on court orders.

26 VOL XIX 1928, May, 1928 , NEW RECLAMATION ERA (Reclamation house magazine) p.
27 79, "Reclamation Organization Activities and Project Visitors":

1 **"Associate Engineer E.T. Eriksen and Supt. R.C.E. Weber, Orland project, spent**
2 **several days at San Francisco in conference with District Counsel COFFEY and**
3 **Oliver P. MORTON, special assistant to the Attorney General, in connection with the**
4 **preparation of the Government's opening brief in the Stony Creek water right**
5 **adjudication suit."**

6 **http://www.archive.org/stream/newreclamationer19unitrich/newreclamationer19unitrich_djvu.txt**
7 **(the web URL is a crude OCR scan of the text; to see the actual, but hard to read text delete the last**
8 **piece of the URL, making it**

9 **<http://www.archive.org/stream/newreclamationer19unitrich> , and then use the arrows on the right**
10 **side of that page to get to May, and then find p. 79 within May. From reading a number of these**
11 **"Visitors" page in the ERA, it's obvious that they are not specific to the date of the magazine issue.**
12 **)**

13 **And then in Mr. MORTON's 07/06/1929 letter Mr. MORTON seems to take sole personal**
14 **credit for the Decree's language, top of p. 2 of that letter, at least that provision of it.**

15 **- 08/20/1928 Fourth mention of George E. MCCUTCHEN in Westlaw, sale of sheep, venue problem**

16 **- 11/06/1928 California voters adopt changes to Constitution making riparian rights subject to**
17 **"reasonable and beneficial" limits**

18 **- 11/23/1928 Fifth mention of George E. MCCUTCHEN in Westlaw, first of a blizzard of fraud**
19 **cases against Sacramento Suburban Fruit Lands Co. which was peddling somewhat worthless land**
20 **to immigrants in Minnesota, etc., describing it as deep bottom land well suited to fruit orchards;**
21 **Westlaw shows 61 cases for Mr. MCCUTCHEN of which 41 were Fruit Lands; of the 61, in only**
22 **one did he appear alone.**

23 **- UNDATED Brief of Defendant J.E. Ayer, gives new meaning to the word "brief", box 4 file 37 of**
24 **39 , transcribed at <http://www.mjbarkl.com/ayer.htm>**

1 - January, 1929 , NEW RECLAMATION ERA (Reclamation house magazine), Volume XX p. 14,
2 **R. J. COFFEY**, District Counsel article: "Riparian Rights in California", discussing California
3 riparian law since *Lux v. Haggin* including *Herminghaus* and the resulting 1928 California
4 Constitutional Amendment.

5 http://www.archive.org/stream/newreclamationer20unitrich/newreclamationer20unitrich_djvu.txt

6 - see note at May 1928 above on looking at these ERA archive web sites

7
8 **Robert M. RANKIN** (appointed to Superior Court by the governor in 1930) objects to the Decree:
9 - 01/01/1929 R.M. RANKIN, Brief and Objections to Proposed Findings and Decree by Certain
10 Defendants Represented by R.M. RANKIN, Solicitor; note that this does not appear in the archives
11 until it appears as Exhibit M, Doc #144 in Volume 6 in 1990. From this and Exhibit N from Mr.
12 **MORTON** it is obvious The Department of Justice has a historical file parallel to the Angle
13 Archives - a copy of the **BROWNELL** protest is appended to that Exhibit M for unknown reason.
14 Brief is transcribed at <http://www.mjbarkl.com/rankin1.htm> I was more than a month into the
15 Archives before I found this important piece.

16 Some exerpts:

17 "It is also well understood that in those early days exact measurements and
18 scientific statements of matters relative to water use were not in vogue. Therefore, the
19 various defendants who farm the lands and make use of the water involved in this
20 action, experience some difficulty in this case in making proof of their claims in the
21 manner and by use of the terms used and expected by the representatives of plaintiff.

22 "The evidence in this case is voluminous, and I find it difficult and practically
23 impossible to properly present this matter before the Master and the Court, which is
24 not surprising when we recall that the plaintiffs have taken more than four years'
25 time in which to analyze the evidence and [Page break] present the law and proposed
26 findings and decree in its opening brief served on April 5, 1928.

27 "Defendants have been limited in their time to make a reply to that brief and
28 objections. It will readily be understood that it requires much time and much labor to
analyze all the matter contained in plaintiff's opening brief affecting the rights of a
number of defendants, and that the cost of so doing, together with all the other costs
imposed on defendants in this action, render it impossible to do the matter justice in a
brief of this kind, and that, therefore, the judgment limiting defendants' property
rights should be closely scrutinized, first by the Master, and then by the Court."

Scrutinized, not ignored. But, of course, the Court never saw this Brief because **MORTON**, and
maybe **MCCUTCHEN** persuaded him to withdraw it. These days the concept of a lawyer

1 representing a class is well-defined, but in the 1920s I don't believe it was. The upstream owners
2 were an unrepresented class of defendants, from 15 lawyers to start (transcript p. 6, volume
3 1, box 1 file 1T), only one showed up at the 01/13/1930 hearing. And maybe not even one.
4 That hearing document appeared to have been prepared in advance and as to whether Mr.
5 McGowan actually showed up remains to be proven.

6 Mr. RANKIN continues with 12 pages of specific objections. Surprisingly he doesn't mention
7 that the treatment of riparian rights by the decree is illegal under Section 8 of the Reclamation Act
8 because of the holdings of the California Supreme Court.

9
10 But the BROWNELLs do:

11 - 02/05/1929 Protest by L.E. BROWNELL, R.H. BROWNELL, D.L. BROWNELL, Mrs. L.R.
12 BROWNELL (typewritten but very faint and hard to read or copy), basically, proposed
13 Findings and Decree incorrect under *Herminghaus* decision; appears professionally drafted? all 4
14 signatures identical and resemble attorney George Freeman's handwriting; box 4 file 37 of 39 ;
15 another much more legible copy, with typed signature, follows Exhibit M, Doc #144 in 1990 for
16 some reason; The BROWNELLs owned 14,000 acres on Stony Creek between Elk Creek and the
17 Government's diversion points at what were then called Miller's Buttes; they had irrigated 100 acres
18 for awhile, and had plans to irrigate 3,000 riparian acres, see generally testimony of the Brownells,
19 tr 2975-2995, vol. 16 box 2 second unmarked folder. The Army Corps of Engineers eventually
20 destroyed what was left of their ranching empire when they took it for pennies on the dollar
21 (compared to what it would have been worth irrigated) for Black Butte Reservoir; Protest
22 transcribed at <http://www.mjbarkl.com/brownell.htm>

23
24 - 06/17/1929 5 Stipulations signed by Judge KERRIGAN (June 1929?) 1) cancelling substuting
25 Edith McGahan, in that W.A. Morris filed an answer & submitted proof (This series of stipulations
26 from R.M. RANKIN 1927 & 1928); Stipulation for Substitution of W.H. Stites ; Stipulation for
27 Substitution of Charles H. Ridley ; Stipulation for Substitution of Harvey E. Provence ; Stipulation

1 for Substitution of M.G. Bedford

2
3 - 07/06/1929 Letter Oliver P. MORTON to R.M. RANKIN, re 01/01/1929 Brief - Exhibit N Doc
4 #144 1990)Volume 6 in 1990); again, like the brief to which it responds, it did not show up in the
5 Angle record until 1990 - referenced in Transcripts vol. #27 p. 8 box 6 file A1M of 12M , and in the
6 11/07/1929 Report of the Special Master p. 4 Section 6, box 5 file 24 of 39 ; MORTON letter is
7 transcribed at <http://www.mjbarkl.com/morton.htm>

8 "In talking over the matter of procedure in the premises, we came to the conclusion,
9 as I recall it, that our wisest course would be to have an understanding that your
10 brief and objections would be formally withdrawn at the September hearing. I have
11 given some further consideration to this feature, and am convinced that it is by far
12 the preferable plan.... You still join me, I know, in the conviction that a handling of
the matter by the retention of your brief in the cause, and the making and filing of a
stipulation covering and disposing of every controversial point therein, not only
would unnecessarily encumber the record, but also might have a tendency to disturb
the nicely balanced situation which we both want to preserve."

13 [emphasis added, the trap was sprung. Mr. Rankin cannot be faulted, he was representing his
14 clients, not the watershed.]

15
16 - 09/03/1929 Letter MORTON to Clerk enclosing stipulations signed by Judge KERRIGAN:
17 Thomas Fairlee for Preston Morris and John M. Morris; assent to general stip by Sutliff group box
18 5 file 26 of 39

19 - 09/05/1929 Stipulation to general stip, Sutliff group (Judge KERRIGAN, all sigs undated) box 5
20 26 of 39

21 - 09/05/1929 F Substitution of Defendant Thomas Fairlee in Place of Defendants Preston Morris
22 and John M. Morris dated 12/29/1927 (Judge KERRIGAN sig undated) box 5 26 of 39

23
24 - 09/18/1929 last hearing before Special Master, For Plaintiff: Oliver P. MORTON, Esq., Richard
25 J. COFFEY, Esq. For Defendants: R.M. RANKIN, Esq., H.W. McGowan, Esq.; in propria
26 persona: R.H. BROWNELL, transcript Vol. 27, box 6 file A1M of 12M

27 - UNDATED The Settlement of the Findings - Amendments Made in Printed Findings of Fact and

1 **Conclusions of Law and Suggested Decree, included in transcript Vol. 27**

2
3 **- 10/24, 28, & 29/1929, Wall Street Crash of 1929**

4
5 **- 11/05/1929 Acknowledgment of Service of opening brief, solicitors listed 04/20/1928 - 04/28/1928**
6 **plus Retzloff's in pro per (but no BROWNELLS) box 5 file 24 of 39**

7
8 **- 11/05/1929 3 Stipulations, all signed by Judge Frank H. Norcross from Carson City, Stipulation re**
9 **admission, notice of water appropriation C.L. Mensing (actually, Carl Green) ; Stipulation as to**
10 **introduction of missing deed, Thomas Brown to Lemon Home Water Power and Light Company**
11 **07/30/1900 ; Stipulation as to Stock Water Between Plaintiff and Defendant L. Huffmaster ; all box**
12 **5 file 24 of 39**

13
14 **- 11/07/1929 Report of Special Master *Pro Hac Vice*, listing accompanying documents & exhibits,**
15 **dismissive of BROWNELL's point without specifically mentioning what it was, not addressing the**
16 **BROWNELLS' *Herminghaus* issue:**

17 **"The protest of L.E.BROWNELL, R.H.BROWNELL, I.L.BROWNELL and MRS.**
18 **L.R. BROWNELL, presented by them in propriae personae, which is attached to**
19 **and filed with this report, was ruled upon adversely [but not in open hearing, and not**
20 **with any written notice found in the archives] it being the view and opinion of your**
21 **Special Master, after examination of the matter, that the point of claim made therein**
22 **is not well taken."**

23 **I have found no indication this Report or "ruling" was ever served on the BROWNELLS or**
24 **anyone else. I have also found no indication of any face-to-face or letter contact between**
25 **MCCUTCHEN and ANY judge regarding this Report or at any other time, no questions, no**
26 **answers, no explanations, no nothing. Who was supervising MCCUTCHEN's activities? it is pretty**
27 **obvious that even at this late date a Judge had not been assigned to Mr. MCCUTCHEN's**
28 **knowledge. He entitled his report "To the Honorable Judges of the United States District Court for**
29 **the Northern District of California:" box 5 file 24 of 39**

1 - 12/31/1929 Notice of Motion for January 13, 1929 (Yes. That's what it says, WRONG YEAR)
2 10:00 a.m. at the Court room in Sacramento to adopt report of Special Master, Findings, and make
3 and enter its Decree (Notice attached to 01/03/1930 Affidavit) box 5 file 24 of 39
4 - 01/03/1930 Affidavit of Mailing, 11 attorneys, 7 pro per including BROWNELLs, attached Notice
5 of Motion to adopt everything on 01/13/1929 (yes, WRONG YEAR), date is the filing stamp, 10 days
6 notice by mail, isn't that a bit short? I have not yet explored how the mail got out to the western
7 parts of the counties. box 5 file 24 of 39 -
8

9 - 01/11/1930 Glenn County Superior Court Judge Claude F. Purkitt died of stroke; Former
10 California State Senator and head of the California Democratic Party (Judge 01/01/1923 to now),
11 funeral the largest in Glenn County history, southbound train held for 10 minutes to let the
12 procession pass; succeeded as judge by Robert M. RANKIN appointed by Governor Young on
13 02/27/1930 ; Willows Journal, microfilm, California State Library History Collection, 01/11, 14, 15,
14 27, 29, 02/04, 07, 12, 13, 26, 02/27/1930 among others
15

16 - 01/12/1930 heaviest snow storm in decades, 3" at Willows, 6" and 19 degrees F at Stonyford,
17 storm continued until 01/14, Willows Journal, 01/12/1930, microfilm as noted above - note
18 "interrupted road travel" comment from heavy storms for these rural roads in 1942 Water Master
19 Report, p. 2 , b6 Large Brown Envelope #2 - in my memory roads west of Orland remained
20 unpaved until late 1950s; rural electrification did not reach out there until 1940, Reports of Water
21 Master, Season of 1940 and 1941, last page, b6 Large Brown Envelope #2 , I do not know when
22 phone service was put in, but all this was irrelevant unless you were a defendant (like Brownell)
23 trying to get to a hearing in Sacramento which had been noticed with a short lead time and with the
24 wrong year,
25

26 - 01/13/1930 Two orders: (Morton blue cover: vacate order pro confesso against Stonyford
27 Catholic Church, declare water right in Exhibit "A" attached) box 5 file 24 of 39; and (Sutliff

1 family, vacate order pro confesso and declare right in Exhibit "A"), both signed by Judge
2 Kerrigan, box 5 file 24 of 39

3
4 And then we get to:

5 - 01/13/1930 Untitled paper, box 5 file 24 of 39, transcribed at
6 <http://www.mjbarkl.com/order30.htm>; filed the same day as it was signed with a typewritten date
7 as if it was prepared in advance, signed by Judge KERRIGAN,

8 "IT IS HEREBY ORDERED that the report of the Master *pro hac vice* as now on file
9 herein, be approved and adopted; that his Findings of Fact and Conclusions of Law,
10 as embodied in said report, be and become the Findings of Fact and Conclusions of
11 Law herein, . . . Whereupon the Court, upon consideration thereof and being advised
12 in the premises, signed said decree and directed that the clerk enter the same in
13 accord with the rules."

14 Signed decree, if there ever was one, is MISSING, not in the judge's chambers, not in the Archives,
15 not with McDonough Holland, according to Mr. Hitchings not with Somach, not anywhere. The
16 blue cover of this bears, all in the same handwriting, the inscription "Proceedings and Order, filed
17 Jan 13, 1930, Walter B. Maling, Clerk." So just exactly what was it Judge KERRIGAN did other
18 than sign these 3 papers?

19 The filing said one defense attorney was present, H.W. McGowan of Willows, for the Sutliff
20 family. Out of 15 in 1922, one showed up. Or did he?

21
22 - 02/12/1930 printed Decree received by Attorney McGowan, shared with Willows Daily Journal,
23 per Journal Microfilm at the State Library as noted above.

24 - 04/05/1930 Notice and Petition with Affidavit of Service; appoint water master, fix dates for
25 installing structures, correct decree errors; Affidavit of Mailing, 11 attorneys [including Judge
26 RANKIN? why?] and 7 pro per box 5 file 21 of 39

27 - 04/15/1930 Order Re: Appointment of Water Master to Carry Out Provisions of the Decree,
28 Fixing His compensation, Providing a Fund for the Payment Therof and Apportioning the costs in
the Premises - Also Fixing a Date for the Installation of Head Gates and/or Measuring Devices and

1 **Correcting Certain Minor Errors in Decree; now this one was signed by Judge KERRIGAN box 4**
2 **file 27 of 39**

3
4 **In the front of Box 2 is a "Corrected Decree" that bears Judge KERRIGAN's signature at the end**
5 **of the following hand printing: "The within volumne [sic] has been corrected to accord with the**
6 **order of April 14th, 1930, /s/ Frank N [H looks like an N] Kerrigan, Judge"; this seems to be his**
7 **first and only signature on the decree; above that is only a printed name in the signature block**

8
9 **To summarize involvement of judges:**

10 **- 09/03/1923 Judge Van Fleet Died**

11 **- 01/28/1924 Judge KERRIGAN appointment to the District Court confirmed**

12 **- 10/29/1924 Judge PARTRIDGE signed stipulation**

13 **- 04/02/1926 Judge KERRIGAN signed 2 stipulations**

14 **- 06/17/1929 Judge KERRIGAN signed 5 Stipulations**

15 **- 09/05/1929 Judge KERRIGAN signed 2 Stipulations , which Mr. MORTON mailed to the clerk**
16 **afterwards but 2 days before he signed them (?)**

17 **- 11/05/1929 Judge Frank H. Norcross from Carson City signed 3 Stipulations**

18 **- 11/07/1929 MCCUTCHEN addressed his report "To the Honorable Judges of the United States**
19 **District Court for the Northern District of California:" which is strange if a judge were assigned to**
20 **the case?**

21 **- 01/13/1930 Ten days after notice of motion, Judge KERRIGAN signs two orders for Sutliff and**
22 **for Stonyford Catholic Church, and then signs an untitled paper which adopts the report, findings,**
23 **and decree and says he signed the decree.**

24
25 **Now why on earth would anyone in the 700 upstream square miles stripped of their water rights**
26 **get angry over all this? When I say they suckered Judge Kerrigan, I am understating it.**

1 **Note the lack of supervision of the Special Master and the process:**

2 -- **sloppy introduction & handling of exhibits**

3 -- **government expert E.T. Eriksen not sworn?**

4 -- **MCCUTCHEN oath sworn & filed weeks late**

5 -- **year wrong on hearing date for adopting Decree**

6 -- **MCCUTCHEN ruling on BROWNELL protest not furnished to BROWNELL**

7 -- **James Mills' Orchards witness examined without counsel present**

8 -- **Morton testifying and arguing as much as examining? (pick most any page of the transcript,**

9 **especially the John P. Ryan testimony in vol. 16, pp. 2905-2934, 2996-3021, 3042-3049, 3072-3092,**

10 **box 2 second unmarked folder;**

11 -- **No communication of any kind in the record between MCCUTCHEN and the Court other than**

12 **with the Clerk**

13 -- **Court performing strictly a clerical function on 01/13/1930**

14 -- **Resolution of objections not found, in the transcripts,**

15 -- **No attack on riparian rights in any complaint or amendment, such that the Decree would**

16 **follow? The decree did not match the complaint?**

17 -- **and so on.**

18
19 **Now, none of this would necessarily be of interest at this late date, but it certainly set up the**

20 **atmosphere where MORTON and COFFEY could do their mischief, which they did.**

21
22 **Who are the culprits? Obviously MORTON, COFFEY, HANKINS, and MCCUTCHEN**

23
24 **Oliver Perry MORTON filed a few more filings for a couple of years and then apparently**

25 **disappeared into private practice according to Westlaw, and then just disappeared, dying in 1948;**

26 **Richard J. COFFEY was sent to Boulder, NV to work on Hoover Dam construction issues and**

27 **disappeared from Westlaw shortly thereafter, dying in 1963 many years after disappearing; where**

1 HANKINS went I do not know yet; George E. MCCUTCHEN died a horrible death from spinal
2 tuberculosis on 08/30/1933 (Sacramento Bee 08/30/1933 and Sacramento Union 08/30/1933 and
3 08/31/1933, microfilm at Sacramento Public Library two blocks east of this court house) -
4 peculiarly, two of his associates defended the Werths on Contempt charges before Judge Kerrigan
5 in this Court on 10/13/1932, box 5 file 23 of 39; Judge KERRIGAN, who was well liked and well
6 respected from all accounts I have read, died February 9, 1935 at 67, 2 weeks after a heart attack
7 (Sacramento Bee, 02/11/1935).

8 I declare under penalty of perjury under the laws of the United States of America that the
9 allegations and factual contentions and recitations in this declaration are true and correct, except
10 for those submitted on information and belief and as for those I believe them to be true and correct.

11 Executed on April 13, 2009,

12 /s/ Michael J. Barkley

13
14 Michael J. Barkley, Defendant, in propria persona
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