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Cover Page Footnote

Robert Marks is emeritus faculty at Whittier College and is writing an environmental history of the Eastern Sierra.

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Mr. Clover Goes to Washington: Land, Water, and Fraud in the Mono Basin, 1910-1945*

For two days in February 1931, Mr. James B. Clover was the key witness at a Senate hearing on a House bill that would reinforce the right of eminent domain used by the City of Los Angeles to condemn and claim land and water rights in the Mono Basin by preventing public land from becoming private land. In a prepared statement on Thursday, February 5, Mr. Clover explained his purpose: "I desire to protest against the enactment into law of H. R. 11960 on behalf of about 200 settlers, entrymen, and applicants for about 40,000 acres of land in Mono Basin, Mono County, Calif., who will be affected adversely if said bill becomes law."[1] The next day, Clover put it more pointedly: "I object to the city of Los Angeles taking any water from Mono Basin at all. The people object and the county objects."[2]

There is much of interest in this Senate hearing and the historical record it left. Most readers will know that the law Clover was protesting was in fact passed and signed into law, and that the City of Los Angeles did build the water infrastructure in the Mono Basin to take nearly all the fresh water that had been going into Mono Lake and divert it into the L.A. aqueduct, and to deliver it 300 miles south to Los Angeles. We also know about the massive environmental damage this inflicted on the Mono Basin, and the subsequent mobilization effort by a group of committed environmental activists that ultimately got the California State Water Resources Control Board in 1994 to issue an order restricting the amount of water the City of Los Angeles could take from the Mono Basin so that the lake level would rise back to the level it was in 1963.

Those stories have already been told, and are an important chapter in California history.[3] But the transcript of the Senate hearing, and Mr. Clover's role in it, pull back the curtain on the mostly unknown history of struggles among people in the Mono Basin over land and water that predated the infamous actions of the City of Los Angeles. In this article I will explore the testimony and evidence presented in the Senate hearing, especially the substantial historical context going back to the 1910s that Clover and others provide. Using additional documentary evidence from that earlier time, I will explore Clover's actions and interests in the Mono Basin, and show him to be not the defender of the Mono Basin and its people against the City of L.A., as he presented himself, but actually the perpetrator of a land and water fraud scheme. That scheme not only victimized large numbers of people by duping them to invest in his water development company, but if his scheme had been realized, Mono Lake would have been as surely drained by local hands as it was by Los Angeles.

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* This article develops themes first presented under a similar title at the Mono Basin Historical Society GOST Tour, August 28, 2021.

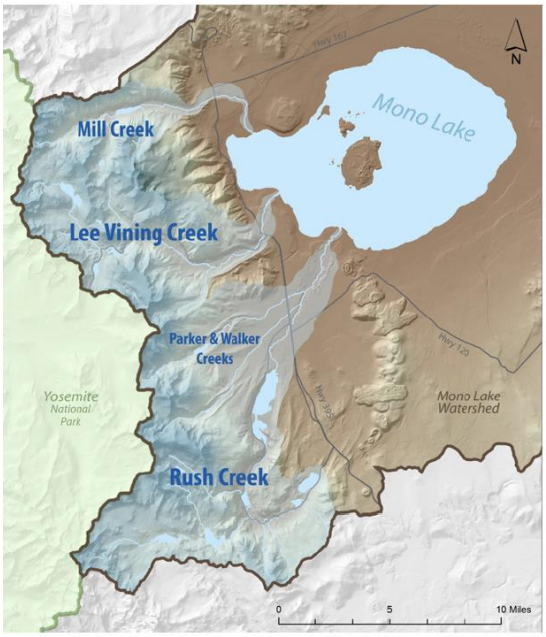
[1] United States Senate, Committee on Public Lands and Surveys, *Protection of the Watershed Supplying Water to the City of Los Angeles and other Cities and Towns in California* (Washington D.C., U. S. Government Printing Office, 1931), 54. Hereafter cited as Hearing. The Senate Committee hearing was for the purpose of considering the House bill for recommendation with or without amendments to the Senate for action.

[2] Ibid., 114.

[3] John Hart, *Storm over Mono: The Mono Lake Battle and the California Water Future* (Berkeley and Los Angeles: University of California Press, 1996); William L. Kahrl, *Water and Power* (Berkeley and Los Angeles: University of California Press, 1982).

Map 1 Location of Mono Lake

Map 2 The Mono Basin



Map 2 Source: Mono Lake Committee, "Mono Lake's Five Main Tributary Streams," https://www.monolake.org/whatwedo/restoration/streams/. Used with permission.

The Hearing—Day 1, Thursday, February 5

Mr. James B. Clover was the primary witness for the U. S. Senate Committee on Public Lands and Surveys hearing. On the first day, he made his case against the House bill, both in a prepared statement and in response to senators' questions. His main argument was that withdrawing from settlement some 160,000 acres in the Mono Basin as a measure to protect the water supply of the City of Los Angeles would jeopardize his company's irrigation project and the rights of 200 settlers already there: "the land in Mono Basin…should be improved and developed for the benefit of the county,"[4] not far-away L.A. He explained that the irrigation and reclamation project began in 1912 when the Rush Creek Mutual Ditch Company was set up to supply water from Rush Creek to settlers who sought to get title to Mono Basin land under the terms of the Desert Land Act. In 1918, he became the major shareholder in the Ditch Company, and undertook to extend the irrigation ditches to a total of 30 miles of main and lateral ditches. In his view, the House act would destroy his irrigation project and the hopes and dreams of hard-working Americans in the Mono Basin.

When asked how that could be, given that the legislation would protect established rights, Clover explained that while his company had dug enough ditch to service 40,000 acres claimed by settlers, an additional 20,000 acres was necessary to make the non-profit mutual ditch company solvent. The legislation would remove the ability of settlers to claim land on that additional 20,000 acres. The committee then took some time to explore how much water the City of Los

[4] Hearing, 27.

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Angeles proposed to take from the Mono Basin, how much water came into Mono Lake from the snow melt, and whether the land around the lake was sufficiently fertile to support agriculture.

Then the senators began asking Mr. Clover about the source of water for his irrigation project, and whether reservoirs would be necessary. Clover said reservoirs would be necessary, and that in 1923 his company had applied for permits from the Department of the Interior to build those reservoirs. Under additional questioning, Clover admitted that the applications had been denied, but that he had appealed those decisions. At the time of the hearing, those appeals were still in process. Clover also acknowledged that the reason those applications had been denied was that some California state lawsuits had yet to be finally adjudicated, and that "has placed the company in an embarrassing condition, because you cannot adjudicate a water right until after the water has been applied to beneficial use. We went ahead and constructed our canal on public domain, without the application being approved."[5]

Mr. Clover's explanations got the attention of Senator Walsh (Montana): "Let me interrupt: I have a quite different conception of this problem today from what I had when we had it under consideration before…Now, according to Mr. Clover, there is water to irrigate 40,000 acres of land, and, in addition to that, there are open and unappropriated public lands to the amount of 20,000 acres more for which there is water to irrigation. It is proposed now that the city [sic] of Los Angeles shall or has instituted condemnation proceedings to condemn and take these lands, which presents an entirely different question to us." After considerably more discussion of a range of issues, Senator Walsh returned to his new formulation: "Really the question addresses itself to this committee: [whether] the desirable thing to do [is to] preserve this water for the irrigation of 30,000 acres, or let it go to the city [sic] of Los Angeles." To which a representative of the City replied: "Yes, I believe that is so." And then he made an argument based on LA's population growth and agricultural productivity that the water would be better used there than in the Mono Basin.[6]

As the afternoon's hearing was coming to a close, one of the senators began to ask Clover about a topic that would be key to some very difficult questioning he was to face the next day: what rights he and the other entrymen[7] he claimed to represent actually had: "You understand the scope of the proceeding to be this, that in respect to any rights owned by you or by either or both of [your] companies, such rights would be determined and the value of fixed by the court."[8]

The Hearing—Day 2, Friday, February 6

Where on the first day of the hearing Mr. Clover had been allowed to present his opposition to H.R. 11969 mostly unchallenged, on Day 2 he was subject to such harsh questioning that at one

[5] Ibid., 34.
[6] Ibid., 39, 47.
[7] An "entryman" was someone who had filed a claim to a plot federal land under the Homestead or Desert Land Acts. That person had to do some actual work on that land—for homesteaders it was mostly clearing land for farming and building farm houses and other buildings; for Desert Land Act it was bringing water to the land that was being claimed—before an inspector from a nearby General Land Office (GLO) would visit the property and issue a report that the work had been done. Then the entryman could file additional paperwork with the GLO attesting that they had "perfected" their claim and met the condition for the GLO to transfer ownership of that plot of land to the settler via what was called a "land patent."
[8] Ibid., 53.

point he said: "One of the witnesses made statements here today that very seriously reflected upon my truth and integrity and I would like to make a denial of those statements and make a statement of the facts as they are."[9] Clover claimed to have a large irrigation project that would bring water to some 40,000 acres of Desert Land Act claimants, and that that was the source of the damage that would be done if Los Angeles took all the water from the Mono Basin. But what he kept eliding in his responses to senators' questions, and which they had not yet grasped, was that neither he nor his companies had any rights to water from Rush Creek or any of the other streams bringing water to Mono Lake. To keep his irrigation company and its project going, he had to keep telling investors—and at the hearing, senators—that he had rights to Rush Creek water which settlers would get, and with the water they would be able to get title to the land they claimed. But they never would get the water or the land, and Clover knew that.

The first part of the hearing featured Mr. Paul Bailey, assistant engineer of surveys for the City of Los Angeles, who explained the whats, whys, and hows of the City's move to take water from the Mono Basin. Mr. Bailey also discussed and answered questions about who had water rights in the Mono Basin, because Los Angeles had passed a bond for $38,000,000 for the overall L. A. water project and had allocated $7,000,000 for the purchase of land and water rights in the Mono Basin.

Senator Bratton (New Mexico): "You estimate $7,000,000 will be required to purchase these lands with water rights in the Mono Basin. Does that include lands filed upon by [Desert Land Act] entrymen?"

Mr. Bailey: "If they have a water right they could prove, we feel we should purchase it."[10]

And there's the nub of the question as far as Mr. Clover and his irrigation project were concerned. He did not have water rights, and neither did the 197 entrymen he claimed to represent; they had purchased shares in the Rush Creek Mutual Ditch Company that would deliver them a certain amount of water which they could then use as proof of their claim being perfected. But that company did not have rights to any water in the Mono Basin.

Mr. Bailey: "We cannot condemn land having no water rights."[11] In other words, all the people Clover claimed to be representing who had filed on desert land but had no water from the Ditch Company would get nothing from the City of Los Angeles. No water, no deal.

Following Mr. Bailey, the Deputy City Attorney for Los Angeles, Kenneth K. Scott, made a statement and added some important information on water rights in the Mono Basin. In response to a question from Congressman Evans (whose 4th district in California included the Mono Basin and who had been invited to the hearing) about whether there had been any litigation in the State of California about the waters of Rush Creek, Mr. Scott replied "Yes, sir; there have been. The waters of Rush Creek have been settled for more than 10 years by judicial decree in the superior court of Mono County…It is known as the Hancock decree, the opinion of Judge Hancock, covering every piece and parcel of land and the entire water rights of Rush Creek were settled

[9] Ibid., 110.
[10] Ibid., 74.
[11] Ibid., 79.

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and adjudicated on November 13, 1916….That decree became final and is now in full force and effect."[12] Mr. Scott then entered the Hancock decree into the record of the hearing.

Congressman Evans then asked Mr. Scott, given this decree, if any more water could be taken to irrigate additional unentered lands, as Mr. Clover had claimed. "It is not possible. In fact, the Rush Creek Mutual Ditch Co. and the Sierra Land & Water Co. [Clover's companies] are now enjoined and have been for years to divert any water out of Rush Creek in and through the Rush Creek Mutual Ditch Co., and they do not come and reach the stream. There is intervening property between their ditch and the stream…These are the same lands and the same water [testified to yesterday by Mr. Clover]."

Mr. Scott then asked to read a 1928 letter written by the general counsel of Cain Irrigation Company, Clover's nemesis, into the record. The letter from counsel Henry Coil discussed "the history of Mr. Clover's activities, and especially relative to this Rush Creek." [13] Coil recited his understanding of the history of conflict over Rush Creek water rights, citing judicial cases and administrative actions that kept Clover and his companies from having any rights to Rush Creek water. In fact, they were issued a permanent injunction from going anywhere near Rush Creek. Mr. Clover may claim to have rights to water from Rush Creek, Mr. Coil wrote, but the evidence he presented showed Clover had no control over the waters of the Mono Basin. Following some discussion among the senators, Mr. Scott was asked to obtain certified copies of the injunctions, which he did, and which were entered into the hearing record.[14]

Senator Hiram Johnson of California, who had been sitting in on and participating in the committee hearing, asked Mr. Clover: "I understand you challenge the correctness of [Mr. Scott's] statement." "Mr. Clover: 'Absolutely, yes. I'm sorry he stated it as his knowledge that there was such an injunction.'" [15]

This is the point in the hearing where things start to go very badly for Mr. Clover.

> Senator Walsh: "Upon what ground…are [the Clover] companies enjoined from constructing their ditch?"
>
> Mr. Scott: "They are not enjoined from constructing their ditch…they are enjoined from diverting any of the waters of Rush Creek into the ditch."
> Senator Bratton: "Why was he enjoined from diverting water from Rush Creek?"
>
> Mr. Scott: "Because he held no water rights in Rush Creek, and no authority to take water out of Rush Creek [except the riparian rights he had on 320 acres at the mouth of Rush Creek]."[16]

The committee then took a considerable amount of time to debate the question as posed by Senator Walsh of "whether we shall help the city of Los Angeles, leave the whole region a desert

[12] Ibid., 81.
[13] Ibid., 87.
[14] Ibid., 129-131.
[15] Ibid., 88-89.
[16] Ibid., 91.

with no water for the irrigation of the land, or whether we shall consider the growth of Los Angeles and let them take the water down there," as well as the extent of opposition in Mono County to the House bill.[17]

The committee then returned to Mr. Clover. He said his truth and integrity had been questioned, and he wanted to set the record straight. Mostly he reiterated his version of the history of Rush Creek water rights, making his claim that his company has rights to the water, a claim he argued was still under consideration in the courts and the Department of Interior. He also added a newspaper account of the formation of the Mono Basin Landowners Protective Association and its opposition to the City of Los Angeles.

Senator Johnson and Congressman Evans, both of California, then began asking Clover a series of questions. Johnson wanted to read the injunctions, which Clover claimed did not extend to him or two his companies. That turned out to be technically true, but the injunctions named three men in the employ of the Rush Creek Mutual Ditch Company as well as "all your attorneys, counselors, solicitors, agents servants, employees, and all others acting in aid or assistance of you."[18] Faced with the injunction, Mr. Clover repeated: "There is no injunction. It does not say is was issued against diverting water." Senator Bratton: "The certified copy will speak for itself," and it did. The injunction references a legal action being taken to protect Cain's water rights (this was the case decided by the Hancock decree), and additionally says: "Each and every one of you do absolutely desist and refrain from excavating, trenching, digging, or in any manner interfering with the possession and right of plaintiffs to the said lands until further order of this court."[19]

Then comes perhaps the most damning part of the hearing for Mr. Clover. Congressman Evans introduced a sworn affidavit dated January 30, 1931 from a George Doane Keller, an Omaha attorney, making several charges against Clover. Clover denied knowing him, but did admit to knowing a Mrs. Sue Keller, who was the estranged wife of Mr. Keller, and admitted that he sees her in Los Angeles. Mr. Keller claimed that in 1927 he "was induced and persuaded to make an investment on contracts for water rights in the Rush Creek Mutual Ditch Co. by a Mr. J. B. Clover." Keller said that Clover claimed that the irrigation project "was being developed with the purpose in view of selling out to the city [of Los Angeles] and that it is his [Clover's] opinion that [the Rush Creek Mutual Ditch Company] project was never promoted or developed as a bona fide water development project." Mr. Keller then quotes a letter Clover wrote to Mrs. Keller stating "I have been daily expecting some definite developments in connection with the purchase of the city of our water rights. Negotiations have been going on…There is no question in my mind but that we will close the deal…"[20]

Under further questioning by Senator Johnson, Clover admitted to selling Mrs. Keller a contract for Rush Creek Mutual Ditch Company stock and associated water rights, but that he never thought about selling those rights to the City; "[I]f the stockholders wanted to sell I would not oppose the sale." Here Clover elides another important fact: he owned the majority of stock in the Rush Creek Mutual Ditch Co.

[17] Ibid., 95-110.
[18] Ibid., 130.
[19] Ibid.
[20] Ibid., 118.

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Then Senator Johnson asks a series of questions about whether Clover knows or is in partnership with a Williamson S. Summers. Clover said he's known him for 30 years but was not in business with him or had an office in the same building with him. It turns out that Williamson S. Summers was indicted the next year for land fraud schemes,[21] and my guess is that Senator Johnson or his aids knew that Summers was then under investigation for land fraud and was giving Mr. Clover a warning shot.

Johnson dropped that line of questioning and went into the details of Clover's sale of stock to Mrs. Keller. Other senators also asked questions about how much money Clover was making from the sale of stock in the mutual ditch company. "You have been selling water rights, or your company has," Senator Walsh stated. "Yes," replied Clover. "What amount of water do they claim to be entitled to?" Senator Walsh asked. Clover continued to insist that there was water available from Rush Creek over and above the amount adjudicated by the Hancock decree, and that on account of that decree "there was no doubt as to the large quantity of water flowing to waste." So, he kept selling stock in the company. "The stock is the water rights." The buyer of the stock "has no title to the land at all," Senator Johnson concluded. Clover explained: "They get their title to the land from the Government—the land office. They file on land." But he again elided the fact that a stockholder who thought they had a water right could indeed file a claim for land under the Desert Land Act, but it could not be "perfected" and the land transferred to them because they could not get water to the land to improve or reclaim it.

"Have any of them received any water?" Johnson asked. "I think I stated here yesterday," Clover replied, "that the canal was not completed and we cannot deliver water until the canal is completed."[22] "There is no water in sight at the present time," Johnson prodded. "There is water in Rush Creek; yes." "But not in this ditch you built?" "No." "The ditch is exhibited as an inducement for the sale of water rights?" "I do not think so; not by me it is not," Clover claimed. Congressman Evans continued: "For 11 or 12 years you have been selling to the public these water rights…And promising these people they will get water in the ditch?" Clover: "I am stating the fact. I make no promises that are not true. I might add this, that our stockholders are none of them kicking or objecting. They are back of us," Clover says. But he does not add that a significant number asked or sued for a return of the money they paid for the stock. Senator Johnson enters into the record copies of two pro forma contracts that Clover used to sell water rights.[23]

At that point the committee adjourned. The Hearing had raised the question of whether Mr. J. B. Clover was running a land-and-water fraud scheme. Evidence from a surprising source supports that conclusion. And that source is none other than J. B. Clover's own papers, donated after his death in 1956 to the Huntington Library.[24] The following sections of this article are taken from sources found in the Clover Papers and buttressed by other sources. These sources combined

[21] Photograph, "Attorney and land-grant fraud suspect Williamson S. Summers and two other men," 1932 (?). UCLA Library Special Collections, Charles E. Young Research Library, *Los Angeles Times* Photographic Archives, online https://dl.library.ucla.edu/islandora/object/edu.ucla.library.specialCollections.latimes%3A5743, accessed May 1, 2021 9:30 a.m.

[22] Hearing, 120-122.

[23] Ibid., 120-26.

[24] James B. Clover and Katherine M. Clover Papers, Huntington Library Manuscript Collections.

corroborate much of the evidence introduced in the Hearing, challenge the fullness of Mr. Clover's testimony, and add many new details to the story of land, water, and fraud in the Mono Basin.

The Rush Creek Mutual Ditch Company[25]

In his senate testimony, Mr. Clover identified the Rush Creek Mutual Ditch Company as central to his irrigation plans. Clover himself did not begin the Company; that was the result of the vision and work of Wallis D. McPherson. McPherson had studied engineering at Stanford in the 1890s, began work on the western slope of the Sierras with Guggenheim Mining Interests in 1896, and came to the gold and silver boomtown of Bodie just north of the Mono Basin around 1902 before moving to the Basin sometime around 1909.[26]

Whether he had already formulated a plan for monetizing the water of Rush Creek, within a year of his arrival he began to take a series of actions that led that way. On August 26, 1910 he claimed 500 miners inches of Rush Creek water "for the purpose of irrigating" his land;[27] a year later he transferred the location of his water claim "to the headgate of the ditch known as the Brown & Key Ditch having purchased the right in said ditch."[28] The right he claimed came in the form of a contract McPherson had with Brown and Key that he would work to extend and enlarge the Brown & Key Ditch within three years.[29] Then McPherson made two additional appropriations that expanded his vision for the use of Rush Creek water. On September 15, 1912 he appropriated existing Grant Lake "as a reservoir site to be used to impound and hold all of the flood waters of Rush Creek…intended to irrigate all lands north and east of Mono Lake and north and east of this notice below the 7000 ft. contour…this dam will not exceed 120 feet…the capacity of this reservoir is about 100,000 acre feet."[30]

That year and that appropriation was a major turning point for McPherson and his plans for irrigating nearly all the Mono Basin from the waters of Rush Creek. In 1912 he formed the Rush Creek Mutual Ditch Company and within a short while afterwards he formed two additional companies. The Mono Valley Improvement Company would be responsible for digging the planned ditch network, and Sierra Land and Water Company would be a public utility corporation that could appropriate the water "for public sale rental distribution [sic] and for public use."[31]

McPherson had a plan to monetize the water diverted from Rush Creek and conveyed to lands that could be claimed under the Desert Land Act. To obtain a land patent under this act, an entryman was required to bring water to the land to irrigate and reclaim the otherwise worthless

[25] For more detail, see Robert B. Marks, "Before Mulholland: Land, Water, and Power in the Mono Basin, 1850-1923," *California History*, forthcoming.
[26] Barry McPherson, "Broken Dreams: W. D. McPherson from Rush Creek to Pahoa Island," Keynote address at the Mono Basin Historical Society GOST Dinner, August 27, 2021.
[27] Mono County Recorder, *Preemption Claims*, Book D, 55.
[28] Ibid., 88-89.
[29] A. M. Hawks, "Rush Creek Mutual Ditch Co.," in the James B. Clover and Katherine T. Clover Papers, The Huntington Library Archives, Box 7.
[30] *Preemption Claims*, Book D, 102.
[31] Ibid., 148-49. The notice of water appropriation was made by the Sierra Land and Water Company, and signed by Wallis D. McPherson.

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desert land. McPherson's plan was to sell stock in the Rush Creek Mutual Ditch Company to these entrymen in return for which they received "the right to use one inch of water, measured under a four inch pressure" per acre. The Mutual Ditch Company "shall be purely mutual…and supply water only to its shareholders." The first eighteen subscribers—who also formed the core of the Mutual Ditch Company—pledged to pay $1000 for what they thought were the water rights that would lead them get the Desert Land Act patents.[32] With a plan to irrigate 60,000 acres of desert land that others would file on, McPherson aimed to get rich.

To purchasers of shares in the Rush Creek Mutual Ditch Co., McPherson assured stock holders that "he is owner of an appropriation of water upon Rush Creek…to the extent of one hundred thousand (100,000) miners inches thereof" and "that by virtue of said appropriation he is entitled to the use of the water of said Creek in the irrigation and reclamation of the lands hereinafter referred" and "also certain rights of way, surveys and ditches, obtains, made, and constructed in the pursuance of the appropriation of said water [i.e. the Brown & Key Ditch; Map 3]."[33]

[32] "Original Syndicate Agreement of December 19, 1912," Clover Papers, Box 7.
[33] Ibid.

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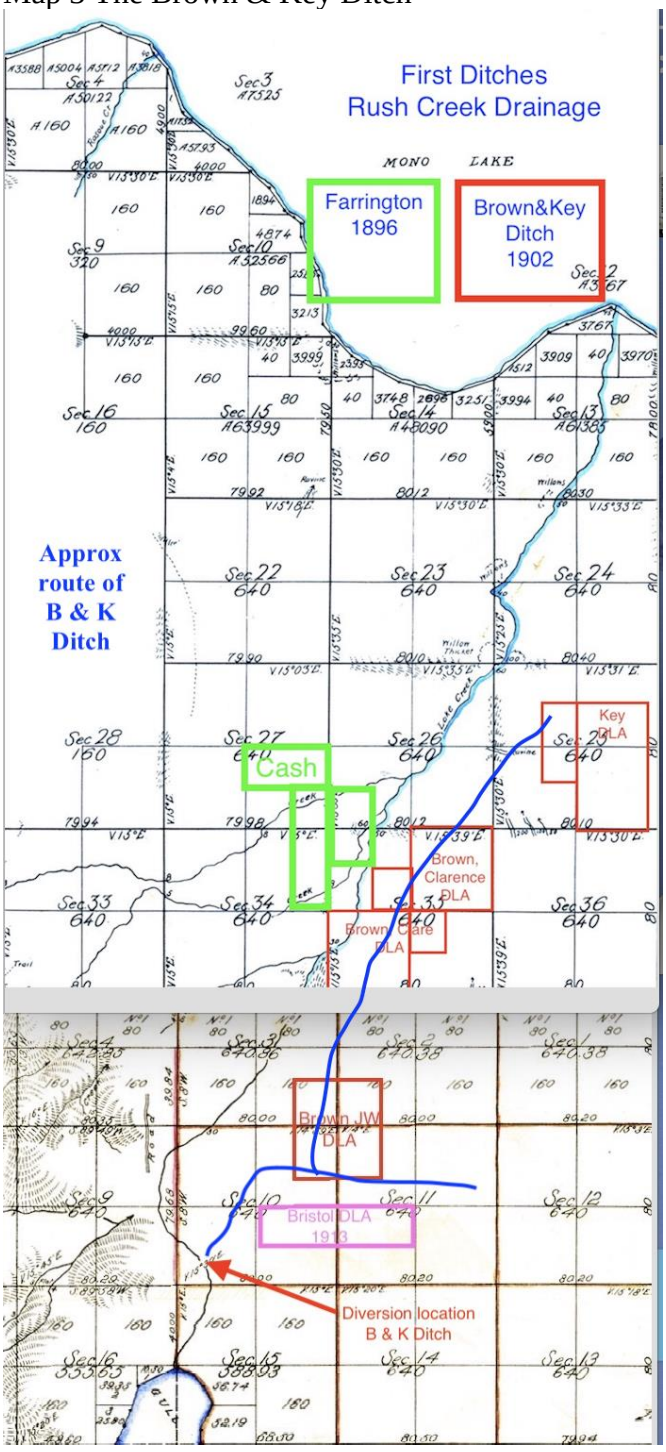
Map 3 The Brown & Key Ditch



The main canal diverting water from Rush Creek would be 30 feet wide and 15 feet deep, with a grade of four feet to the mile.[34] His plan was to extend an irrigation canal around Mono Lake following the 7000 foot contour, and to drop lateral ditches down to desert land holders. Where the technology for digging ditches from Rush Creek initially relied on horse- or mule-drawn

[34] Hawks, 17.

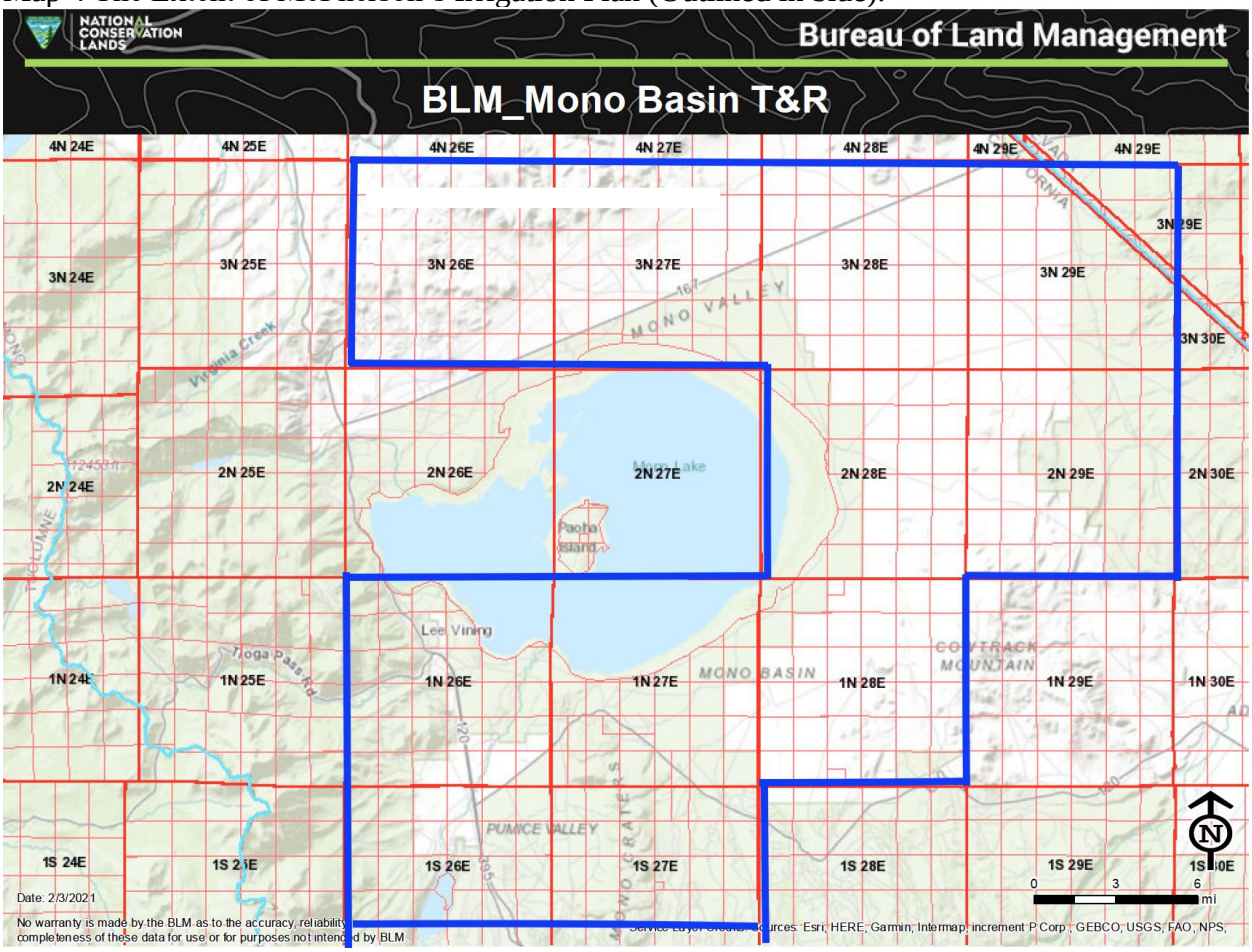
https://scholarship.claremont.edu/eshj/vol3/iss1/1
DOI: 10.5642/esjh.202201.03

plows and scrapers, McPherson's new companies purchased large and powerful machines—a traction engine of some kind, plus a Caterpillar and later a gas-engine shovel that now sits outside of the Mono Basin History Museum.

Figure 1. The Thew Gasoline-Powered Shovel

The vision and the promise of McPherson's plan was audacious in its scope and intended outcome. He envisioned irrigating first 30,000 acres to the south of Mono Lake, and then to extend the canal to irrigate an additional 30,000 acres to the east and north of Mono Lake (see Map 4) encompassing 360 square miles. His companies would construct the main and lateral ditches running water to all of these desert lands, and hundreds if not thousands of settlers and their families would transform Mono Basin into an agricultural oasis producing huge amounts of produce, fruit, and livestock for sale throughout the Eastern Sierra and into Nevada.

Map 4 The Extent of McPherson's Irrigation Plan (Outlined in blue).



Had McPherson succeeded, this project would have diverted as much as 165,000 acre feet of the 215,000 acre feet of water flowing into Mono Lake from Rush Creek.[35] That diversion would have had a huge impact on Mono Lake, ultimately drying it up, much like the City of Los Angeles was doing to Owens Lake some 150 miles to the south. Fresh water was what was valuable, and to allow it to flow into saline Mono Lake where it could never be recovered or used again was "wasteful." Of course, these views of Mono Lake as a waste predated later ecological perspectives that saw immense ecological value in preserving and protecting Mono Lake. And in any case, McPherson was prevented from implementing his plan by the opposition and action of one man and his corporate staff, J. S. Cain.

J. S. Cain. Searching for wealth if not fame, in 1878 Cain came to the gold and silver boomtown of Bodie, a few miles north of Mono Lake, as a 25-year-old from Canada. He soon began a lumbering business hauling timber and cordwood from the Mono Basin to Bodie. At first the wood was transported overland by horse or mule teams, and then in 1880 Cain was involved in an operation that brought timber down Mill Creek in a flume to Mono Lake where a steamboat called *Rocket* hauled the wood and timber about 10 miles by water and off loaded on the north shore of Mono Lake for a shorter overland haul up to Bodie. Cain took on another partner and

[35] This calculation was provided to the Senate Hearing in 1931 by J.B. Clover.

https://scholarship.claremont.edu/eshj/vol3/iss1/1
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took a lease on a small part of a Bodie gold mining operation, which then struck the Fortuna motherload, making Cain a very lucky and a very rich man.[36]

As the major stockholder in the Bodie Standard Mine (later the Standard Consolidated Mine), Cain quickly acquired the interest and experience in building hydroelectric generating plants. Cain's Standard Consolidated Mine ran its rock crushing equipment by steam power generated by burning wood. As the wood became more expensive because of rising costs of production, Cain followed up on an idea that mine superintendent Thomas Leggett pitched to him in 1892—to generate electricity 13 miles away at Green Creek from a hydroelectric power plant, transmitting high voltage AC electricity to a power substation in Bodie with transformers to step down the wattage and send 440 volts to the Standard Consolidated Mine which had installed all new electrical equipment. The construction was swiftly completed in the same year Leggett had proposed it. The system worked, the operating expenses of Cain's Standard Consolidated Mine decreased, along with any need for wood to produce steam.[37] The 13-mile electrical line and the hydropower generator to send electricity to Bodie not only worked, but apparently prompted Cain to search for other places to install hydroelectric plants. After considering Walker Lake to the east in Nevada, he turned his attention to the Mono Basin where in 1902 and 1903 he claimed the rights to the waters of five High Sierra lakes feeding Mill, Lee Vining, and Rush Creeks (see Map 2).

To protect his planned hydroelectric power development on the streams running into Mono Lake, Cain created a new company, Cain Irrigation Co., and started buying up nearly all the land through which those streams ran, most importantly Rush Creek, giving him riparian rights to that water. "Between 1910 and 1916 the Cain Irrigation Company proceeded actively in the acquisition by purchase of the land in the Mono Basin controlling the waters of Rush, Parker, and Leevining [sic] Creeks, thus securing title to over 10,000 acres of land which, by reason of appropriation and riparian rights, dominate the waters of all three streams."[38] Among the riparian water rights Cain purchased was that on land that the Brown & Key Ditch had been located. When that ditch digging and water diverting began in 1902, it was on vacant government land. But shortly after that, Joseph Farrington entered that land, got a Government Land Office "receiver's final receipt" to the land on March 22, 1906, and on October 29, 1914 Farrington received a U.S. Patent for his land. He promptly sold his land to J. S. Cain, but not before joining Cain in a lawsuit against all those along Rush Creek who were diverting water but did not own land that the creek bordered or ran through. And that especially meant W. D. McPherson and the Rush Creek Mutual Ditch Company who were working away at enlarging and extending the Brown & Key Ditch from its point of diversion on Rush Creek, on and through land now owned by Joseph Farrington and shortly thereafter J. S. Cain.

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[36] For an anecdotal and not very detailed account of his life by his daughter-in-law, see Ella M. Cain, *The Story of Bodie* (San Francisco, CA: Fearon Publishers, 1956): 75-88.

[37] "Electrification of the Standard Mine," in *Stories of Bodie* https://www.bodie.com/stories/electrification-of-the-standard-mill/, accessed December 8, 2021 8:44 a.m.

[38] "Proposal of the Cain Irrigation Company, the Southern Sierras Power Company, the Nevada-California Power Company for the Sale of Certain Properties to the City of Los Angeles," November 23, 1923, p. 12. Walter L. Huber Papers and Photographs, University of California-Riverside Special Collections and University Archives, accessible online through the Online Archive of California <oac.cdlib.org> https://oac.cdlib.org/findaid/ark:/13030/c84m9bvq/?query=Huber Box 7, Item 214. Used with permission.

The Hancock Decree of May 10, 1916. In fact, the legal action that Cain was preparing to bring regarding his water rights on Rush Creek was the third legal action he took in the Mono Basin to assert his water rights. The first was filed on November 30, 1914 and became known as the Mill Creek case. In that case, Cain's hydroelectric company sued other landowners along Mill Creek and got a decision finding that Cain's riparian claims were superior to the others. The second case was filed on December 1, 1914 and concerned landowners along Lee Vining Creek. Cain won that one too. The third and most important case concerned Rush Creek water rights.

Cain by then owned most of the land riparian to Rush Creek, and in June or July of 1914 filed his suit—with Joseph Farrington and his land-owning father Archibald Farrington as co-plaintiffs—in Mono County Superior Court. And then they sought an immediate injunction to force McPherson's workers to get off what was now Farrington's land, which a judge issued on July 11, 1914, and the Mono County Sheriff hand delivered the next day.[39]

The injunction was not all that Cain did to stop McPherson and his companies. Immediately following the Sheriff's serving of the injunction, according to the California Supreme Court, "Cain Irrigation Company destroyed said headgate, built obstructions across the ditch and ousted [McPherson's company, Sierra Land and Water Co.] from its possession of the works."[40] In effect, Cain seized the Brown & Key Ditch, claiming that the diversion headgate was on land he now owned, making McPherson and his workers trespassers and entitling Cain to seize and destroy their equipment. Land ownership with riparian rights to Rush Creek water trumped "appropriations" of water, no matter how little or how much, like the 100,000 inches of Rush Creek water McPherson had claimed with ownership of the land upon which the diversion and beginning of the irrigation canal were built upon.

And then Cain et al. went to court on September 20, 1915, ultimately winning a decree and findings favorable to Cain. Unfortunately, nothing remains of the testimony or evidence submitted, save for some discussion of it in other documents. What we have to go on is the court's decree, known as the Hancock Decree after the sitting judge, and his findings of fact. Basically, Cain won, and McPherson lost. Nearly all rights to Rush Creek water were adjudicated to belong to Cain's Irrigation Company and his power company, California-Nevada Land, Water, and Power Co., largely due to the riparian doctrine of water rights. Cain was entertaining the idea of putting two more powerhouses on Rush Creek including on the shore, and no doubt he was trying to protect his Rush Creek water rights to power those projects too, although they were never built. In any case, McPherson's Rush Creek Mutual Ditch Company thus was cut off from any access to Rush Creek water for its massive Desert Land Act irrigation project.[41]

[39] This is the same injunction referenced in the Senate Hearing with J. B. Clover. Hearing, 130-131.
[40] California Supreme Court decision September 27, 1933, "Sierra Land Etc. Co, v. Cain Irr. Co."
[41] Sidney T. Harding, "Report on Development of Water Resources in Mono Basin Based on Investigations Made for Division of Engineering and Irrigation State Department of Public Works," October 17, 1922. Sidney T. Harding Papers, University of California-Riverside Special Collections and University Archives, accessible online through the Online Archive of California <oac.cdlib.org> https://calisphere.org/item/ark:/86086/n2tq611s/ accessed January 10, 2021 9:58 a.m. Used with permission. The text of the Hancock Decree (Case No. 2091) came in two parts, "Judgment and Decree" and "Findings and Decision," and are included as appendixes in the Harding Report.

https://scholarship.claremont.edu/eshj/vol3/iss1/1
DOI: 10.5642/esjh.202201.03

The Fallout. McPherson did not take the defeat quietly or without action. He flooded federal and state agencies overseeing land and water issues with complaints; he vociferously claimed that Cain's rights to water were based on fraudulent claims that they would be used for irrigation when in fact they were used for hydro-electric power;[42] he argued that local farmers and would-be farmers on desert land were being squashed by the big capitalist power companies; he insisted that Cain's power company dams cut off water to water falls on Lee Vining and Rush Creeks, despoiling the beautiful views; and he demanded that Mono County empanel a grand jury to look into all of these issues. But what neither McPherson nor his successor ever did was to appeal the Hancock decree. They had six years to do so, but for reasons that are not clear, they never did, and so the Hancock Decree stood as the law governing Rush Creek water rights, and was affirmed and reaffirmed by federal and state agencies all the way to a California Supreme Court decision of 1933.[43]

By 1918, McPherson may have become demoralized at seeing his dream for an irrigated Mono Basin quashed by Cain and the courts. He also made no progress trying to get federal agencies to grant him rights to Rush Creek water on the basis that Cain had lied about the reason he wanted the water. Even though several agencies acknowledged that while Cain had claimed the water for irrigation purposes but was using it for hydroelectric power generation, they had to respect the primacy of the State of California legal system and in particular the Hancock decree. That was the immovable rock that McPherson came up against, and it may just have proved too much for McPherson and in 1918 he decided to liquidate his interest in the Rush Creek Mutual Ditch Company, the Mono Valley Improvement Company, and the Sierra Land and Water Company to one J. B. Clover.

How or when Clover got to know McPherson and of his project and its companies is not known. Perhaps Clover attended one of the sales pitches McPherson periodically floated in Los Angeles in search of investors. However, Clover learned of McPherson's desire to get out, Clover got control of the ditch and water companies, 480 acres of Ditch company land at the mouth of Rush Creek, and all the equipment and supplies that those companies had—all at fire-sale prices. He paid $30 in gold coin for the land, and he got two-thirds of the stock in the companies by agreeing to complete the work of digging the main irrigation ditch and the lateral feeders by 1921. That is how Mr. J. B. Clover came to be owner of the Rush Creek Mutual Ditch Company and to continue W. D. McPherson's methods for generating working capital by selling stock in the Mutual Ditch Company and promising purchasers that that stock brought with it water rights that they could use to "perfect" their Desert Land Act claims and become Mono Basin landowners and farmers or ranchers.

From the vast amount of documentation in the Clover papers, it is clear that Clover intended to do whatever he needed to do to get water rights on Rush Creek to fill the 30 miles of irrigation ditches he was digging around Mono Lake. McPherson had begun filing appeals to the General Land Office of the Department of the Interior and appeared to have made some headway. In early 1917, the Commissioner of the General Land Office, Clay Tollman, prepared a

[42] Even the Cain companies later admitted that "fifty-year easements for irrigation purposes were granted by the United States to the California-Nevada Company for the construction of reservoirs at Gem and Agnew Lakes on Rush Creek and on Saddlebag, Rhinedollar and Tioga Lakes on Leevining Creek." *Proposal for the Sale of Certain Properties*, p. 13.

[43] California Supreme Court decision September 27, 1933, "Sierra Land Etc. Co, v. Cain Irr. Co."

"Memorandum for the Secretary" of the Interior. McPherson, he said, "has written numerous letters to this office, the Geological Survey and the Department of Agriculture, alleging that this Department was misled by false representations" by Cain's power company "which is using the grant made to it for power purposes and not primarily for irrigation purposes." As result of these and other entreaties, Tollman ordered an investigation. Much of what McPherson alleged was "based on facts, [but] his conclusions are not always right." But most importantly, "as far as the Department of Interior is concerned, it cannot set aside permits issued by California State Commissions" to Cain companies, nor judicial decrees (i.e. the Hancock decree) issued by California courts. Under that judicial order, all the waters in the Mono Lake Basin had been decreed to Cain companies, and although those companies could not possibly use all of the water for beneficial uses, nor did they want to provide water for future settlers on the Rush Creek Mutual Ditch Company project. There was little the Department of the Interior could do. As Tollman concluded, "McPherson's company's application for Grant Lake might be approved, which would enable him to go ahead with his irrigation project, *if* he had any water rights, which at present he has not" [emphasis in original].[44]

This internal report was followed up on August 30, 1918 with a formal finding "that the protest filed by W. D. McPherson is dismissed." Cain's claims to Rush Creek water and storage in Grant Lake were affirmed, and those of the Rush Creek Mutual Ditch Company "are held for rejection."[45] By this time, Clover had completed taking over the Rush Creek Mutual Ditch Company, and on its behalf filed an appeal of this decision. That was decided on December 6, 1918 by the First Assistant Secretary of the Department of Interior, Alexander T. Vogelsang in favor of Cain companies and against the Rush Creek Mutual Ditch Company. Recognizing that "this Department is called upon to consider the rights under two conflicting easement applications [i.e. between Rush Creek Mutual Ditch Company and Cain Company claims for Rush Creek water]. The easement application of [Cain companies] being regular in form and properly supported by the ownership of water, and being first in time, gave them the first and superior right."[46]

Clover then on April 8, 1920 appealed this decision to the Secretary of the Interior,[47] and it too was denied. In 1923 Clover sued the Secretary of the Interior, starting a legal process that continued into the 1930s and became enmeshed with Clover's attempt to get the Hancock decree overturned, a process the ended with a 1933 California Supreme Court decision. [48]

[44] Clay Tollman, "Memorandum for the Secretary," February 28, 1917. Clover Papers, Box 7.

[45] "Decision: Rush Creek Mutual Ditch Company et al. applicants vs. California-Nevada Canal Water and Power Company Grantee and Cain and Metson, Applicants," August 30, 1918. Handwritten copy, Clover Papers, Box 7.

[46] Alexander T. Vogelsang, "Appeal from the General Land Office," December 6, 1918. Clover Papers, Box 7.

[47] James B. Clover, "Before the Honorable Secretary of the Interior," Affidavit April 8, 1920. Clover Papers, Box 7.

[48] The Supreme Court decision cited the long chronology of disputes over rights to Rush Creek water going back to 1914, including the injunction preventing Rush Creek Mutual Ditch Company from using the stream. "The injunction is still in force. In other words, for more than eighteen years or more the injunction has remained and still remains, precluding plaintiff [Sierra Land and Water Co.] from the use of the stream. It is nowhere alleged that the injunction is invalid or that efforts have been made or will be made to remove it or that the ditch company had any right of access to the stream or that, if it such right, the right still obtains. The action of plaintiff with respect to this injunction shows conclusively that due diligence on its parts is now and for years has been lacking. Indeed, its conduct with respect to the present action confirms this view. The complaint herein was files in April, 1924; summons did not issue until March, 1927, and judgement of dismissal was entered on July 1, 1931." The Supreme Court affirmed that lower court's dismissal, denied a rehearing, and concluded with a general finding: "A water right cannot exist with imposing a servitude at some fixed point upon riparian land. And undefined floating water right could not be made the subject of a binding decree of court." Sierra Land and Water Co. v. Cain Irrigation Co., Supreme Court of California, Docket No. Sac. 4768, decided Sept. 27, 1933.

https://scholarship.claremont.edu/eshj/vol3/iss1/1
DOI: 10.5642/esjh.202201.03

In the meantime, W. D. McPherson continued to agitate to have the administrative findings that granted Cain's companies the water from Rush and Lee Vining Creeks, following two additional tacks. In one, he argued that damming the upper reaches of Lee Vining and Rush Creeks to make mountain reservoirs to store water for the hydroelectric plants would destroy the scenic value of two majestic waterfalls—the Lee Vining waterfall and the Silver Lake (now Horsetail) falls. He suggested that the U.S. either buy the land the falls were on or extend the boundaries of Yosemite National Park to include them, an idea that the Park Service appeared to be in favor of. In either case, "The Falls will not be destroyed and the lands [below] can be irrigated."[49]

McPherson also managed to get the Mono County Grand Jury to investigate what he called "the fraud" perpetrated on the U.S. government as well as Mono County by allowing Cain's power company to take the water instead of using it for irrigation (and the Rush Creek Mutual Ditch Company Project). The Grand Jury did not do the investigation itself but asked the California attorney general to do it. He then forwarded the task to Mr. W. F. McClure, State Engineer for the State Department of Public Works. And McClure then secured the services of a professor of water engineering at UC-Berkeley, Sidney T. Harding, to do the investigation and report. Harding did both and sent his report to McClure on December 12, 1922.

The Harding Report. Harding's 145-page report includes 30 pages of his discussion and analysis, accompanied by over 100 pages of documents and his gloss on them.[50] He concluded that there was enough bad faith, probable fraud, and poor legal judgement to go around to all parties. He thought that Cain indeed had used the claim for the water to be used for irrigation as a ruse, and recommended that the federal authorities revoke the permits his power companies had received to use the five High Sierra lakes reservoirs; no such action was ever taken.[51] He also thought that the irrigation practices being conducted by the Cain Irrigation Company wasted water and probably were a ruse to maintain their rights to water to generate hydro-electric power. McPherson did not escape censure. After being denied access to Rush Creek water in 1914, he continued to sell stock in the Mutual Ditch Company to purchasers who were told that they could present that stock as proof that they could get water, and hence receive Desert Land Act patents.

Once the Supreme Court made its definitive finding, Clover's appeal in the Department of Interior went forward and was decided in 1936 by the United States Court of Appeals for the District of Columbia. Citing the chronology, the Court noted that in 1923 the Commissioner of the General Land Office rejected four applications that Clover had made to tap into water from Rush Creek for the Rush Creek Mutual Company land and water development scheme "on the ground that there was no evidence to establish the existence of the water right claimed, or of the possibility of plaintiff's company securing water for the carrying out of the irrigation project." Once the California Supreme Court acted, the Secretary of the Interior affirmed the commissioner's rejection of Clover's appeal "on the ground that plaintiff company had been held by the courts to have no right to the use of the waters relied upon by it, and essential to the operation of the proposed irrigation system." The Appeals court concluded that "the appellant having at present time no right to water for use in the ditch and reservoir system in question…it is within our discretion not to order the doing of a useless act." Sierra Land and Water Co. v. Ickes, Secretary of the Interior, No. 6445 United States Court of Appeals for the District of Columbia, decided April 13, 1936. https://scholar.google.com/scholar_case?case=8500314889519290709&q=%22Rush+Creek+Mutual+Ditch+Company%22&hl=en&as_sdt=2006, accessed May 2, 2021.

[49] W. D. McPherson, "How the So Called Rights Were Obtained," undated manuscript in the Clover papers, Box 6.

[50] Sidney T. Harding, "Report on Development of Water Resources in Mono Basin Based on Investigations Made for Division of Engineering and Irrigation State Department of Public Works," October 17, 1922. Sidney T. Harding Papers, University of California-Riverside Special Collections and University Archives, accessible online through the Online Archive of California <oac.cdlib.org> https://calisphere.org/item/ark:/86086/n2tq611s/ accessed January 10, 2021 9:58 a.m. Used with permission.

[51] Ibid., 31.

These comments were especially directed to J. B. Clover. Harding observed that "The status of the Rush Creek Mutual Ditch Company as a result of the decision of Federal offices and the lower court on matters relating to rights of way and water rights is such that rejection by the Land Office of its stock as a basis of proof of desert land entries is considered to be fully warranted. The possibilities of this company ever being able to work out a successful development are considered to be almost negligible as its physical feasibility is uncertain were there no legal obstacles. Any efforts on the part of either Federal or State officers tending to discourage the purchase of stock in this company for purposes of desert land entry proof are considered fully justified."[52] J. B. Clover was listed as one of several to whom the report should be sent.

Despite Harding's report, and the administrative and judicial findings that the Rush Creek Mutual Ditch Company had no right to the water of Rush Creek, and hence that all the ditches he was digging were a mirage, or an inducement to dupe additional investors, J. B. Clover kept running the Rush Creek Mutual Ditch Company as it had been set up by W. D. McPherson in 1912—selling shares in exchange for the rights to water from Rush Creek. We know by these administrative and court decisions that those rights did not exist. Did Clover know this as well? Were his appeals of the administrative and judicial decisions denying him access to Rush Creek water like the ditches he was digging—inducements to buy stock and benefit Clover? Was he running a long and fairly well camouflaged land and water fraud scheme?

The Evidence for Fraud

At the Senate hearing Clover provided a table showing the total number of people who bought shares in the Rush Creek Mutual Ditch Company, and who would have been those defrauded by Clover. In summary, a total of 197 people using the Desert Land Act filed on 38,320 acres, which they would get if they offered "proof" of water—not shares in the Ditch Company—to perfect their claim. Under McPherson, the Ditch Company sold stock to 43 people from 1912 to 1917. Clover took over the operation in 1918 and sold stock to the remaining 154 men and women. Notably, the numbers increased substantially from 8 in 1925, to 28 and 43 respectively in 1928 and 1929. In other words, as the evidence mounted that Clover had fewer and fewer administrative or legal grounds to claim that the Rush Creek Mutual Ditch Company shareholders would get water for the lands they had filed on, somehow he enticed larger numbers to put down good money for shares and promises. We know from Clover's senate testimony about Mrs. Keller that he collected $800 for 20 acres. Another contract shows a Mr. Langley paid $3200 for stock to water 80 acres, the same rate as Mrs. Keller.[53] Clover claimed to have received overall $40,000-$50,000 from shareholders, while spending $150,000 of his own money on the project. My calculations show that on the acreage covered by the stock he sold (26,860 acres) he would have collected over $1 million. Senators did not question his figures.

[52] Ibid., 28.
[53] Personal communication from Mr. R. J. Langley, October 14, 2021.

https://scholarship.claremont.edu/eshj/vol3/iss1/1
DOI: 10.5642/esjh.202201.03

Table 1. Number of Entrymen Buying Shares in the Rush Creek Mutual Ditch Company

	Acres
During the year 1912, 8 entries	2, 560
During the year 1913, 19 entries	5, 540
During the year 1914, 11 entries	2, 600
During the year 1915, 4 entries	600
During the year 1917, 1 entry	160
During the year 1919, 7 entries	1, 140
During the year 1920, 9 entries	1, 720
During the year 1921, 17 entries	3, 240
During the year 1922, 5 entries	700
During the year 1923, 7 entries	1, 360
During the year 1924, 4 entries	1, 200
During the year 1925, 8 entries	1, 860
During the year 1926, 7 entries	880
During the year 1927, 15 entries	2, 640
During the year 1928, 28 entries	4, 800
During the year 1929, 43 entries	7, 000
During the year 1930, 4 entries	320
Total, 197 entries	38, 320

Source: Hearing, 58.

Dissatisfaction from Rush Creek Mutual Ditch Company shareholders thinking they had water rights, and that the water would be delivered to their land in a timely fashion, started showing up early on in the workings of the Rush Creek Mutual Ditch Company. In 1917, a Mr. L. W. Moultrie asked to be forgiven the balance of money he owed for his stock ($3170) and he would forfeit the money he had already invested ($830). Four more people asked for that consideration in 1917-18, before Clover took over the ditch companies, and apparently their requests were approved.[54] It should be said before getting to Mr. Clover that government officials looking into the activities of the Rush Creek Mutual Ditch Company did not think that McPherson was running a scam or fraud scheme. An investigator for the General Land Office (the one overseeing Homestead and Desert Land Act issues such as in the Mono Basin) made the point of saying that "there is no doubt that McPherson and his associates have acted in good faith towards irrigating public lands to be entered under the Desert Land Act and that McPherson and associates have spent as much, if not more money solely for irrigating purposes than anyone else in Mono Lake Valley."[55]

The first evidence of possible fraud comes from a 1923 lawsuit brought by a Mr. Jackson against Clover. Soon after Clover received nearly 20,000 shares of stock in the Mutual Ditch Company for taking over the operation, he began advertising them for sale in newspapers and printed literature. Mr. Jackson was the first to respond to those ads, and in April, 1919 entered into a contract to purchase 80 shares at $60 per share, and agreed to pay the remaining $4000 over ten years, but appended the condition that the installments would not be payable until the irrigation ditches delivered water to his land. In early 1923, and without any water being delivered to his

[54] Mono Valley Improvement Company minutes, December 18, 1917. Clover Papers, Box 5 Folio 15-17.
[55] Unnamed mineral inspector in Tollman, Memorandum, February 28, 1917, Clover Papers, Box 7.

19

land, Jackson sued to get his $800 back on the grounds that Clover had committed fraud in selling him the shares because Clover did not have a broker's license. The trial court in Los Angeles found for Mr. Jackson. Clover appealed on the grounds that the state law requiring a broker's license was unconstitutional. On January 26, 1927 the California State Court of Appeal found for Clover, and reversed the lower court finding.[56]

Clover may have been found not to have committed fraud by selling stock without a license, but in 1923 federal officials were investigating complaints about Mr. Clover's operation of the Rush Creek Mutual Ditch Company and moving to indict him for fraud. An official of the General Land Office, Inspector A. A. Wilhelm, filed an accusation of fraud against J. B. Clover and a Mr. Thomas P. Bradley in a sworn affidavit before United States Commissioner Stephen Long, an official appointed by the District Court for the Southern District of California. Inspector Wilhelm testified that Clover and Bradley "did devise and intend to devise a scheme to defraud Emma M. Beeson, Clarence A. Webb, and other persons, and for obtaining money by means of false and fraudulent pretenses and promises, and in furtherance of said scheme the defendant James B. Clover, on or about the 27th day of January 1920, for the purpose of executing said scheme to defraud, did place and cause to be placed in the United States Post Office" a Desert Land Act application. In another count, Wilhelm accused Clover and Bradley of doing the same in June of 1923 "in violation of Section 215 of the Federal Penal Code."[57] That section of the Penal Code makes it illegal to use the U. S. mail to commit a fraud. So, the offense alleged was not the fraud itself, but the use of the U.S. mail to commit the fraud, making it the more commonly known crime of "mail fraud." [58]

In response, Commissioner Long took affidavits from Clover, Bradley, Clarence Webb, and two others. Clover did not address the specifics of Wilhelm's accusation, but rather attacked Wilhelm for making misleading charges against the Rush Creek Mutual Ditch Company, and while in the Mono Basin investigating the case twice staying "at the ranch of Cain Irrigation Company," a corporation "whose interests are antagonistic to those of the Rush Creek Mutual Ditch Company and the entrymen on government lands under said project." Clover also attacked other derogatory statements Wilhlem had made about Clover and the project.[59] Clarence Webb, an M.D., in his affidavit basically repeated the points in Clover's affidavit, suggesting at the least that Webb read and used Clover's affidavit in preparing his own.[60]

Thomas P. Bradley provided a longer affidavit that provided additional details, at least from his perspective. Bradley said he visited "Mono Valley" twice in April and May 1923 to see the Ditch Project, the lands available for entry, and to determine whether to file upon 320 acres on the Desert Land Act. He said he and Dr. Webb both decided to do so, but not having the necessary $800 down payment with them, did not file their applications at the General Land Office when they went through Independence. After returning home to Los Angeles, Agent Wilhelm met with

[56] *Jackson v. Clover*, 60 Cal.App. 641, 213 P. 507 (Cal. Ct. App. 1923); *Clover v. Jackson*, 81 Cal.App. 55, 253 P. 187 (Cal. Ct. App. 1927). Jackson's attorney Wm. H. Neblett tried to get Clover to settle out of court, but he apparently refused. Neblett to Ogden, April 12, 1923. Clover Papers.

[57] "Affidavit of Complaint," November 30, 1923. Clover Papers, Box 7.

[58] Maxwell S. Mattuck, "Federal and State prohibition Against the Issuance of False Financial Statements," *St. John's Law Review* Vol. 4 No. 1 (Dec. 1929), 60-61.

[59] "Affidavit," James B. Clover, May 3, 1924. Clover Papers, Box 7.

[60] "Affidavit," Clarence A. Webb, May 3, 1924. Clover Papers, Box 7.

https://scholarship.claremont.edu/eshj/vol3/iss1/1
DOI: 10.5642/esjh.202201.03

Bradley and Dr. Webb in the latter's office. Bradley said Wilhelm made numerous derogatory statements about Clover, including misappropriating funds, misrepresenting the climate and possibility for agriculture in the Mono Basin, and "that there was no water available for the irrigation of the land; that the Power Companies owned all the water and would not allow Clover and the entrymen on the lands to have it…that he (Wilhelm) was going to prosecute Clover for fraud and him; that he (Wilhelm) would not allow any desert land applications to be approved."[61]

Bradly said that under those conditions he was not going to file on lands under the Rush Creek Mutual Ditch Company's project. Later, Bradly said he contacted Wilhelm to see if there were any developments in the project and told Agent Wilhelm he would like to complete his entry for desert lands if the Ditch Company work was not going to be stopped. "From all the conversations [Bradley] had with Wilhelm [he] verily believes that A. A. Wilhelm is not an impartial investigator trying to protect the Government and the rights of settlers and entrymen on the public domain but that he is instead biased and prejudiced against Clover and the Rush Creek Mutual Ditch Company's project…That because of this belief [Bradley] has not completed his desert land entry nor aided the financing of said irrigation project by the purchase for water rights."[62] Two additional affidavits attest to the activities of Agent Wilhelm in dissuading them from investing in Clover's Rush Creek irrigation project.[63]

There is no documentation in Clover's papers about whether he was brought to trial, and what the outcome of that might have been. But in a March 21, 1924 letter from W. D. McPherson to an official addressed simply as "Sir," among many other topics discussed, McPherson does recount his interaction with Agent Wilhelm, and provides an account of what happened to Clover.

> The most recent attempt at persecution [of Clover] has been by Department Agent Wilhelm, who wrote a number of letters to the locators [filers] of Government land under the…Mutual Ditch system, in order to have them come to his office. I went to his office on behalf of my mother-in-law, who had received one of his letters. His conversation with me was to the effect that there wasn't water to irrigate [even] 1,000 acres of land, that the money was not being used to water on the land, etc.—all of which statements are false.
>
> His further persecution was causing the arrest of Mr. J. B. Clover…for mail fraud…Commissioner Long heard the case. The court room was packed with people that had rightfully made filings on this land for the purpose of making homes. There was no testimony against Mr. Clover and he was exonerated and the German-speaking Mr. Wilhelm, representing the United States—and I would presume the power companies—was reprimanded by Judge Long.
>
> This reprimand was to the effect that if men like Mr. Wilhelm would let Mr. Clover alone

[61] "Affidavit," Thomas P. Bradley, December 19, 1923. Clover Papers, Box 7.
[62] Ibid.
[63] "Affidavit," William D. Brooke, 1924. "Affidavit," W. T. Perry, 1924. Clover Papers, Box 7. Neither of these were signed or fully dated so it is not clear if they were files with Commissioner Long or not.

> and not compel him to spend money for litigation instead of building ditches, that the land would be irrigated.[64]

Three years later, in response to a query about Clover from a Mr. A. A. Carter, Agent Wilhelm replied:

> Clover and his aides have been selling water stock for eight or ten years, and they know they cannot deliver the water. At different times the facts have been presented to the General Land Office in Washington, but so far we have been unable to prosecute and convict them for their representations. It is not believed that the Rush Creek Mutual Ditch Company will ever deliver water. It is unfortunate if you have paid anything for water stock.[65]

Later that year Wilhelm's boss, Mr. J. H. Favorite, responded to a query from a Mr. James Rae asking for information about "one J. B. Clover" and his operations in selling shares in the Rush Creek Mutual Ditch Company. According to Favorite, "Inspector A. A. Wilhelm…has investigated the activities of J. B. Clover and attempted to have him prosecuted for using the mails to defraud in connection with this irrigation project. We are satisfied that his scheme is a fraudulent one but we have never been able to have any action taken against him by the United States court. If you are in a position to start suit against him for obtaining money by false pretenses I will instruct Inspector Wilhelm to assist your attorney in presenting the story of his operations."[66]

Rae apparently responded to Favorite with further information about his dealings with Clover, and he apparently asked why the U.S. cannot prosecute Clover in a U. S. court. "We cannot start action against this man for obtaining money under false pretenses, as that is an offense against the state laws and must be prosecuted by the District Attorney of the city or county in which the offense was committed. You of course would have a civil action against this man for defrauding you out of the money you paid him."[67]

In 1927, another party asked more questions about Clover's activities. A. C. Galloway, an L.A. lawyer, sent a number of letters to people who had filed on desert lands in the Mono Basin and "whether the same was made at the solicitation of any person. I would also be pleased to know whether any stock in Rush Creek Mutual Ditch Company was sold to you in connection with your land."[68] How many letters Galloway sent out is unknown, but there are two letters in the Clover papers responding to him. One responded that he did file on some land but he was not issued stock in any company, and asked lawyer Galloway if he had any further information on the locality.[69]

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[64] W. D. McPherson, letter addressed to "Sir," March 21, 1924. Transcript provided to me by Venita Jorgensen, McPherson's granddaughter.
[65] A. A. Wilhelm (Inspector, Department of Interior), letter to Mr. A. A. Carter. February 8, 1927. Clover Papers, Box 5.
[66] Favorite to Rae, Dec. 23, 1927. Clover Papers, Box 5.
[67] Favorite to Rae, December 30, 1927. Clover Papers, Box 5.
[68] Galloway to Johnson, March 15, 1927, Box 5.
[69] G. G. Johnson to A. J. Galloway, March 17, 1927. Clover Papers, Box 5.

https://scholarship.claremont.edu/eshj/vol3/iss1/1
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Another more interesting response came from P. L. Haworth. "I am very much concerned at learning that there is an investigation being made…I visited the property last August, accompanied by my sister, Mrs. Keller and niece, Mrs. Martin, to both of whom you have addressed communications, and being favorably impressed with the proposition, we immediately made filing and purchased water rights in the Rush Creek Mutual Ditch Co. It is our understanding that the water will be on this land possibly within the next year and that this will greatly enhance its value."[70]

It seems likely that there is only one likely source for that "understanding" by Mr. Haworth and his sister Mrs. Keller that water would soon be delivered, and that is Mr. J. B. Clover. Mrs. Keller is the same woman whose estranged husband George Doane Keller, Omaha lawyer, sent an affidavit to the Senate Committee hearing in February 1931 accusing Clover of fraud (see above p. 6).

A final but unsigned account of Clover's activities dated February 23, 1947 is also in Clover's papers, and adds some otherwise not documented details:

> J. B. Clover's activities in the Mono Basin area of Mono County from about 1918 to the middle [nineteen] thirties, resulted in his locating a number of families on the desert lands around…Mono Lake, upon the representation that the Ditch Company he was promoting would deliver waters of Rush Creek to their lands at an early date, for irrigation, provided they bought stock in the ditch company.
>
> Usually their purchases of Ditch Company stock together with the expense of moving to the land, plus cost of a cabin, exhausted their money supply, but…the Ditch Company carried on a little construction now and then [and Clover's] clients were promised a job with the ditch company. Said job would seldom become available until late in the fall…and then close down for the winter; Mr. Clover would leave for Southern Sunny California…By the time the snow arrived in Mono Basin, and through the winter, the County of Mono had to feed and take care of Mr. Clover's clients….
>
> [Because the Ditch Company had no rights to water] it was self evident that no purchaser of Ditch Company stock would be able to keep up the deferred payments [on the stock] and after one winter season of living at the expense of Mono county the clients were more than willing to give Mr. Clover a relinquishment on the land for release from further payments on Ditch Company stock purchases….
>
> After several years of having the Mono County treasury depleted by the expenses necessary to feed and care for Mr. Clover's clients, the Board of Supervisors appointed Mr. Robert Curry, a citizen, property owner, to act as a committee of one to inform Mr. Clover's prospects of his past operations and the actual status of what they were being sold…[This] action…greatly retarded his activities along these lines, but up to as late as 1945…he is still infected with the germ of promoting somebody in someway under the

[70] Haworth for Galloway, March 17, 1927. Clover Papers, Box 5.

> theory of selling irrigation water, from some kind of mythical water rights he purports to own.[71]

So, what do we make about the allegations of fraud against Mr. J. B. Clover? We know that the Rush Creek Mutual Ditch Company lost a court case in 1916 and was cut out of rights to water from Rush Creek for its rather ambitious plan to irrigate 30-60,000 acres of desert land in the Mono Basin. We know that W. D. McPherson, who had the idea and created the companies to realize his vision, tried to get around the Hancock Decree, but failed and in 1918 sold his interest in the companies to J. B. Clover. Clover continued to sell stock in the Rush Creek Mutual Ditch Company until 1930 when all the desert lands in Mono Basin were closed to entry by Executive (i.e. presidential) Order, all the while trying to find ways to get water into the irrigation network he was building. That effort mostly came to an end in 1924 when his applications for easements to construct reservoirs on June, Gull, and Silver lakes with canals taking the water into his ditches were denied. Nonetheless, he appealed that decision, and the findings of the Hancock Decree; both of those actions kept the door open until they were definitively resolved in 1933 and 1936 by court findings that ended any hope that the Rush Creek Mutual Ditch Company would ever be able to get water from Rush Creek into its irrigation ditches.

One question about the fraud is whether Mr. J. B. Clover had the intent to defraud, or if he truly believed that he was always on the cusp of an administrative or judicial victory that would open the gates of Rush Creek to his irrigation network.

And then there is the interesting observation that needs to be made about most of the documentation available to accuse J. B. Clover of fraud: these were all in his own collected papers. How did he get his hands on these documents, including the letters from A. A. Wilhelm and J. H. Favorite, officials in the General Land Office of the Department of Interior, accusing him of fraud? Did others—supporters or believers in the promise—send him copies? And why did he keep them? And why did his daughter, after his death in 1956, include all this documentation in the papers she donated to the Huntington Library? I regret not having answers to those questions, but they do make for interesting consideration and I hope for interesting reading.

We do know that despite being accused of mail fraud by officials of the federal government, and that some formal kind of judicial action was brought against him in 1923, he was never convicted of any crime. And of those who bought shares in the Rush Creek Mutual Ditch Company, only one accused him of fraud, and that was for selling stock without a license. Although found guilty by a lower court, upon appeal Clover won his argument that the California law under which he had been convicted was unconstitutional.

By way of conclusion, I want to discuss one final document in Clover's papers, a 17-page letter dated April 29, 1946 that Clover sent to Mr. J. H. Favorite, Regional Field Examiner of the Bureau of Land Management, the successor to the General Land Office. That is the same Mr. Favorite who had accused Clover of fraud nearly 20 years earlier but said the federal government could not prosecute him.

[71] Anon., stamp dated Feb 23, 1947. Clover Papers, Box 1 Folio 3.

https://scholarship.claremont.edu/eshj/vol3/iss1/1
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Apparently, a man by the name of Mr. W. L. Dunn of Hollywood had written to Favorite asking questions about Clover, and Mr. Favorite, by then an official in the Bureau of Land Management, replied to Dunn in a letter dated August 13, 1946. Clover (by chance?) met Favorite at an October 15, 1946 meeting of the Western Mining Council and asked him about the Dunn letter. According to Clover, Favorite did not directly admit to having sent a letter to Dunn, but asked Clover nonetheless what it was in that letter that Clover objected to.

Not having Dunn's letter or Favorite's reply, we do not know what Favorite told Dunn about Clover. But Clover did respond to what he objected to in Favorite's letter to Dunn. He does quote from Favorite's letter, which he somehow obtained a copy of, and to Favorite's statement that his office had investigated Clover and the irrigation company for nearly 40 years. Clover does not say what, if anything, Favorite said about the reason for those investigations. But Clover does say that Favorite had his facts wrong, and that he, Clover, would set him straight on those.

Clover then launches into a long history of the Rush Creek Mutual Ditch Company and his involvement with it. He disputed Favorite's statement to Dunn that "the water rights to the streams from which it was proposed to secure water had already been adjudicated…and that there was no water available to carry out the plans of the Irrigation company." Clover went into exceptional detail critiquing the 1916 Hancock Decree and concludes that neither that decree nor the California Supreme court decision found that there was no water available from Rush Creek for the irrigation project. He also cited figures for the flow of Rush Creek and asserted that those prove that there was plenty of excess water above and beyond that fixed in the Hancock Decree that his company could divert for irrigation: "it is not ***well*** established at all that the City of Los Angeles has acquired title from the original owners of the water rights…and your oft repeated allegations that the City of Los Angeles owns all…the waters in said streams has not and cannot change the title to one drop of water…The Rush Creek Mutual Ditch Company has never sold, transferred or alienated any of its water rights…and affirms its ownership and the right to use the water adjudicated to it" [emphasis in original].[72]

Of course, Clover's interpretation is completely at odds with what had happened in the Mono Basin from 1931 on with the City of Los Angeles not only getting the rights to the waters of the Mono Basin but then in 1941 diverting all that water south to Los Angeles through an 11-mile tunnel under the Mono Craters and into the Los Angeles aqueduct. And Clover never brought suit to assert any Rush Creek water claims against the City of Los Angeles.

The narrative in this article points to two cases of land-and-water fraud in the Mono Basin. In addition to the accusations against Clover, W. D. McPherson also accused J. S. Cain and his power companies of fraud against the government and people of the United States. What Cain did—and there is evidence that he did—was to claim water rights on Rush Creek for the purposes of irrigation and reclamation of semi-arid land when his real purpose was to use the flow of the water to generate electricity. Cain did form the Cain Irrigation Company in anticipation of the favorable ruling in the 1916 Hancock Decree, and he did build and maintain irrigation ditches to irrigate the land on his ranch. He did so, though, to protect his use of the water to generate electricity. Federal officials fielded McPherson's allegations of fraud, but never acted on them. So, Cain and his companies monopolized not just land ownership in the Mono

[72] Clover to Favorite, April 29, 1947. Clover Papers, Box 7.

Basin, but water rights as well, and he could do with them as he pleased. Certainly, he never sold any water to the Rush Creek Mutual Ditch Company, so J. B. Clover had to keep his scam running so he could continue to sell shares in the Ditch company knowing he would never have any Rush Creek water to distribute to shareholders. Water in the Mono Basin had become a commodity, and J. S. Cain was not content to simply let it run over his lands to prove he was irrigating it. He could not capitalize on that use of the water, but the City of Los Angeles was interested in getting more water from the Eastern Sierra, the Mono Basin included. That was what led Cain in 1923 to offer to sell all his companies' land and water rights in the Mono Basin to the City of Los Angeles for $5.5 million. The City walked away from his offer but returned in a few years to wrap up control of Mono Basin water rights and in 1941 to begin diverting nearly all the fresh water that had been flowing into Mono Lake south to Los Angeles.

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