

October 3, 1971

OPEN LETTER TO JUDGE W.M. MURRAY

You presided at hearings in the U.S. District Court at San Diego, Calif. in the lawsuit, BEN YELLEN et al. v. WALTER J. RICKEL, Secretary of the U.S. Dept. of Interior about March 23, 1971.

This legal action is a "class lawsuit" to compel the Secretary of the Interior to enforce the provision of the U.S. Reclamation Law which states that only bona fide residents can receive water from a Federal irrigation project to do farming. It is hoped by this legal action to prevent big corporations like the UNITED FRUIT CO., POREX CORP., THE IRVINE CO., TENNECO, INC., DOW CHEMICAL CO., KAISER ALUMINUM & CHEMICAL CO., THE SOUTHERN PACIFIC LAND CO., ETC. from farming here.

UNKNOWINGLY, SINCE YOU ARE FAR AWAY IN BUTTE, MONTANA, YOU ARE DOING AN INJUSTICE TO THE COMPLAINANTS IN THIS ACTION. I AM SURE THAT YOU DO NOT INTEND TO DO THIS INJUSTICE AND THAT IS THE REASON FOR THIS OPEN LETTER TO YOU. THIS OPEN LETTER WILL AT THE SAME TIME BE CIRCULATED TO OTHER JUDGES SO THAT THIS UNINTENDED INJUSTICE IS NOT DONE IN THIS LAWSUIT AND ANY FUTURE LAWSUITS.

It is now 6 months since you presided at the hearings, BUT YOU HAVE NOT GIVEN YOUR DECISION. You will notice that there are 123 other complainants besides myself. These are little people who have no money to pay for legal expenses. As long as my health continues to permit me to work and if death (I am 64 years of age) does not occur, I am the one who pays the legal expenses.

Let us suppose that you render a decision in favor of the Secretary of Interior. If I am dead, there will be no appeal since the money for it will not be forthcoming. Then let us suppose that you give a decision in favor of the complainants. The Dept. of Interior does the bidding of the big corporations, and it will appeal. But if I am dead again there will be no money forthcoming to oppose this appeal.

So you can see that my death if it comes before you render a decision means that all your hard work to render a fair verdict will end up only one way-that the defendant (really the big corporations) will win out no matter what your decision is.

Then there is another serious problem. It was found impossible to get any water and land lawyers who were not on retainer with the interests who oppose the enforcement of the residency provision and the 160 acres limitation provision of the U.S. Reclamation Law of 1902.

So I have Professor Paul Taylor of the University of California at Berkeley, Calif. who advises me as to the laws regarding water and land free of charge. He is over 70 years old. Professor Taylor has written in the past 30 years many articles in law journals all over the United States on irrigation problems. In the famous lawsuit ARIZONA v. CALIFORNIA, The U.S. Supreme Court in giving its decision in regards the division of the water of the Colorado River between these 2 states, quotes Professor Taylor as an authority.

It would have been impossible for me to finance this lawsuit without the knowledge of Professor Taylor which has decreased legal expense.

tremendously and made it possible to proceed with the legal action. As a matter of fact, it is highly doubtful that Mr. Arthur Brunwasser, the attorney handling this lawsuit, would have accepted it if it were not for Professor Taylor's high eminence in this field of law.

But Professor Taylor is over 70 years and if your decision is not quickly given, the possible death of Professor Taylor will again cripple the efforts to push this lawsuit to the U.S. Supreme Court.

Judge Murray, you are a Senior Federal Judge. So that means that you must be 65 years of age at least. Well, death is no respecter of Judges as it is no respecter of physicians or Professors. If death comes to you before you give a decision, this legal action will have to be turned over to another Federal Judge and with all that means, a delay of 2 years seems reasonable. Well, during this time, death will be creeping up on Professor Taylor and myself even if we do not precede you in leaving this earth.

May I say that I realize the lawsuit is a complex problem. So I want you to read OPEN LETTER TO JUDGE TURRENTINE which takes up the delay in UNITED STATES v. IMPERIAL IRRIGATION DISTRICT where the provision of the U.S. Reclamation Law regarding the 160 acres limitation is considered. Within 2 weeks after I pointed out this delay to Judge Turrentine, he scheduled the lawsuit for hearings in December 1970 which was exactly 4 years after it was filed.

Ten days after he presided at the hearings, Judge Turrentine, gave a verbal decision in favor of the Imperial Irrigation District. Now the residency provision and the 160 acres limitation provision are really a twin in the U.S. Reclamation Law. Unfortunately, it was later discovered that Judge Howard Turrentine is (or was) a land speculator in the Borrego Springs area which is adjoining this area. If the plan to bring Columbia River water for use in the Colorado River comes to fruition, the Borrego Springs area will be able to get the water from the Colorado River to increase its farming acreage.

So Judge Turrentine had a "conflict of interest" when he presided at the hearings for his land would be benefitted by the water from the Colorado River if augmented by Columbia River water. So Judge Turrentine's ability to make a decision in 10 days is suspect. The Ralph Nader task force report on POWER AND LAND IN CALIFORNIA takes up Judge Turrentine's land speculations on page 29 of volume VII of the report.

It is interesting to note that U.S. Attorney General John Mitchell was sent a letter urging appeal of Judge Turrentine's decision especially in view of his "conflict of interest". Immediately after Judge Turrentine's decision, Congressman Victor Veysey, a big farmer himself, announced in the newspapers that he was going to use his influence to prevent an appeal. Other politicians made similar statements.

Since it was seen that the very big corporations were now using political influence to prevent "due process of the law", I put out Newsletters to get help. The National Farmers Union, The National Grange, the Sierra Club, the Consumers Federation of America, the AFL-CIO, etc. sent letters urging appeal of Judge Turrentine's decision. Solicitor General Erwin Griswold of the Dept. of Justice, on the last day it was possible to make an appeal, announced that no appeal would be made.

But fortunately, a similar situation had arisen in the former El Paso Gas Transmission case where the Federal Government refused to appeal an adverse decision. William Bennett went to the U.S. Supreme Court and made an appeal and the U.S. Supreme Court set a precedent by allowing the appeal. Mr. Bennett won the appeal. I with the help of Mr. Brunwasser, my lawyer, have followed in the footsteps of Mr. Bennett and appealed the UNITED STATES v. IMPERIAL IRRIGATION DISTRICT decision.

All this is told you so that you know the struggle of the little people to get "due process of the law". But all this depends on my good health so that the legal expenses be paid. My health is deteriorating. Please give your decision as soon as possible so that the fight of the little people can continue.