

# JESSE W. CARTER AND CALIFORNIA WATER LAW:

*Guns, Dynamite, and Farmers, 1918-1939*

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As a practicing attorney before he was appointed to the California Supreme Court in 1939, Jesse W. Carter was known for his impassioned and forceful representation of farming and ranching clients involved in water conflicts with large corporations — particularly hydroelectric power companies. Later, as a state supreme court justice until his death in 1959, Carter gained further attention (as well as the nickname, “The Great Dissenter”) for his vigorous opposing judicial opinions.<sup>1</sup> However spirited his courtroom arguments or dissents may have been,

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they were consistent with Carter's point of view, in many of the water law cases he handled before he joined the high court, that common farmers, ranchers, and other landowners frequently were at the mercy of large business entities and their high-powered law firms.

Carter's upbringing in rural northern California undoubtedly help shape this outlook. Born on a small farm in Trinity County in 1888, Carter worked as a young man on his family's holdings as well as in nearby mines, and he readily identified with individual landowners and laborers. Moreover, after moving to San Francisco in 1905 to further his education, he easily empathized with that city's working classes. Employed by San Francisco's street railroad system while he studied to become a lawyer, Carter supported the anti-big corporation and anti-political machine attitudes prevalent in early-twentieth-century northern California.<sup>2</sup>

These characteristics were underscored in a highly-publicized 1958 water case in which Carter was neither attorney nor jurist, but rather the protagonist in the legal proceedings — a conflict that in some ways echoed the water cases he had handled several decades earlier. Bitterly fought, over the alleged lack of safety of a small dam and pond on Carter's ranch in Marin County, California, and heavily covered by the state's newspapers, the controversy stemmed from a severe winter rainstorm, which had caused his dam to spill over. The result had been flooding and

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<sup>1</sup> California Supreme Court Justice Jesse W. Carter: An Interview Conducted by Corrine L. Gilb," typescript manuscript, 1959, Bancroft Library, UC Berkeley, 65-66 [hereinafter: Carter Interview]; published edition, *California Legal History* 4 (2009), 181-337 [hereinafter: this vol.]. For Carter's views on why he found himself in the California Supreme Court's minority so often, see *ibid.*, 211-212 [this vol., 289]. On Carter's reputation as a dissenter, see also "Judge Carter Is Dead at 71," *Washington Post*, March 16, 1959.

<sup>2</sup> Daniel S. Carlton, "In Memoriam — Jesse Carter: 'He Died as He Lived — Fighting,'" *Hastings Law Journal* 10 (May 1959), 353-359; Corinne L. Gilb, "Justice Jesse W. Carter: An American Individualist," *Pacific Historical Review* 29 (May 1960), 145-148; J. Edward Johnson, *History of the Supreme Court Justices of California, 1900-1950* (San Francisco: Bancroft-Whitney Co., 1966), vol. 2, 161-162. For an excellent political study of San Francisco around 1900, see Walton Bean, *Boss Reuf's San Francisco: The Story of the Union Labor Party, Big Business, and the Graft Prosecution* (Berkeley: University of California Press, 1967).

mudflow damages to neighboring properties. Carter's refusal to permit authorities to pump water out of the pond and the ensuing legal proceedings led to a constant stream of press reports due to the novelty of a conflict involving a sitting state supreme court justice, especially when the angry confrontation dragged on for months. Although the struggle was essentially over jurisdictional issues relating to governmental oversight of dams, the altercation became even more newsworthy when Carter threatened to shoot local officials if they ventured onto his ranch to lower the pond's water level. In addition, the press eagerly reported that Carter suggested he might seek intervention by California's National Guard or even federal troops to protect his property. It was only when Carter voluntarily repaired the dam that the controversy was resolved.<sup>3</sup>

Although the dispute over Jesse Carter's dam was certainly remarkable in its own right because of his position on the California Supreme Court, the fracas highlighted Carter's steadfast resolve throughout his life that government regulators and corporate powers had to be controlled to preserve personal liberties.<sup>4</sup> In relation to his dam in 1958, Carter saw the situation as one of local officials who abused their authority regarding an individual landowner. Yet many years earlier, when Carter had been in private law practice, it had been uncontrolled business corporations that had been the villains, especially in water conflicts

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<sup>3</sup> For examples of the many California press reports see: "State Justice Vows to Shoot Trespassers," *Los Angeles Times*, March 26, 1958; "Judge's Threat to Shoot Halts Action on Dam," *ibid.*, March 27, 1958; "Supreme Court Jurist Battles County Order," *Redlands Daily Facts*, March 26, 1958; "Judge Ready to Shoot to Guard Land," *San Mateo Times*, March 26, 1958; "Judge's Dam to Be Inspected," *ibid.*, March 27, 1958; "Irate Judge Will Continue Dam Battle," *ibid.*, Aug. 13, 1958; "Judge Carter: Has Gun, Won't Budge," *Independent* (Pasadena), March 28, 1958; "Showdown at Ranch: Jurist Beat in 'Water Draw,'" *Daily Review* (Hayward), March 28, 1958; "Judge Seeks Troops to Guard Ranch Dam," *Independent Star-News* (Pasadena), March 30, 1958; "Judge Sues in Dam Issue," *Press-Telegram* (Long Beach), May 8, 1958; "Row over Dam: Judge Defies County Edict," *Oakland Tribune*, March 25, 1958; "Judge Hurls New Threats in Pond War," *ibid.*, March 28, 1958; "Embattled Jurist Threatens Plea to Ike in Dam War," *ibid.*, March 30, 1958; "Judge's Blistering Word Fight Bared," *ibid.*, April 22, 1958; "Grand Jury Clears Marin Officials in Row Over Dam," *ibid.*, Aug. 13, 1958; "Marin Feud with Justice Carter Ends," *ibid.*, Oct. 25, 1958.

<sup>4</sup> For more detail about Carter's perspective on this point, see Carter Interview, 21-28 [this vol., 202-206].

where Carter represented small ranchers and farmers. There were, in fact, many of these cases. Carter estimated that before he joined the California Supreme Court in 1939, about three-quarters of his legal work had related to water litigation, and a large number of these actions involved individuals' struggles with huge companies, particularly hydroelectric power corporations.<sup>5</sup>

The most famous of these cases was the long and contentious battle over water rights that Jesse Carter and his client, Shasta County rancher Louis P. Joerger, waged in the 1920s and 1930s against Pacific Gas and Electric Company (PG&E) and its subsidiary, Mt. Shasta Power Corporation. Fought for nearly two decades, Carter took Joerger's litigation to the California Supreme Court multiple times before the conflict finally ended shortly before Carter moved to the high court as a justice.<sup>6</sup>

In some respects, Louis Joerger's case typified the legal water struggles that many of Carter's clients fought against big businesses. But Joerger's quarrel with PG&E was especially noteworthy because of its length and repeated visits to the California Supreme Court — litigation and subsequent appeals that occurred at a time when the state's water laws were becoming more responsive to large-scale water uses and the needs of a growing state population. Joerger's long fight, however, was more extraordinary for several reasons. First, much like the later crisis over Jesse Carter's Marin County dam, the Joerger clash involved guns, dams, and an individual property owner with strongly-held convictions who confronted a large and powerful authority. Yet the Joerger water dispute was even more dramatic than the confrontation over Carter's dam because Joerger's struggle escalated into allegations of conspiracy between PG&E and Joerger's mortgage holder, possible threats to the safety of a superior court judge, and even a bombing and attempted murder.

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Much like Jesse Carter, who had been born in a rustic California setting in 1888, Louis P. Joerger was born two years later in the tiny rural town

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<sup>5</sup> Carter Interview, 70 [this vol., 228].

<sup>6</sup> *Louis P. Joerger v. Pacific Gas & Electric Company, et al.*, 207 Cal. 8 (1929); *Louis P. Joerger v. Mt. Shasta Power Corporation, et al.*, 214 Cal. 630 (1932); *Louis P. Joerger v. Mt. Shasta Power Corporation, et al.*, 9 Cal. 2d 267 (1937).

of Clarksville (El Dorado County), on May 2, 1890. At age twenty-four, Joerger married Elizabeth (almost always known as “Beth”) Milliken of Placerville, and the couple moved to Shasta County in far northern California. Three years later, in 1917, Joerger used his life savings to purchase some ranch lands at the junction of the Pit River and one of its tributaries, Hat Creek.<sup>7</sup> A seemingly ideal site nestled between the banks of both streams, the lands Joerger acquired (and added to over the next few years) were of high quality and well-suited to farming and ranching operations. In fact, shortly before Joerger bought his property, the California Conservation Commission had reported to Governor Hiram Johnson, as part of a major state-wide water resources study, that the land near the confluence of Hat Creek and the Pit River was among the best and most irrigable acreage in the region.<sup>8</sup> Joerger’s ranch was indeed at a near-perfect location with respect to agriculture and water. Lying between the two streams, his property benefited from the annual spring floods that enhanced the fertile soil and saturated his landholdings, thus producing bountiful crops and lush forage for his livestock. In addition, Joerger’s land also was supplied with water by two existing irrigation canals, which continued to provide flows to Joerger’s property even after the spring inundations had subsided.<sup>9</sup>

Joerger began having legal problems related to Hat Creek’s water within a few years of buying his ranch. The trouble centered on the operations of Mt. Shasta Power Corporation, a hydroelectric energy company that in 1904 had been awarded a franchise to provide electricity to

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<sup>7</sup> “Surprised Their Friends,” *Mountain Democrat* (Placerville), Dec. 5, 1914; Draft registration card for Louis P. Joerger, Jan. 5, 1917, *World War I Selective Service System Draft Registration Cards, 1917-1918, Shasta County, California*, microfilm roll 1544332, M1509, U.S. National Archives, Washington, D.C.; Deed, Jasper S. Tucker and Elizabeth Tucker to Louis P. Joerger, March 20, 1917, book 127, p. 173, Records of the Shasta County Assessor-Recorder, Redding, California; Deed, Jasper S. Tucker and Elizabeth Tucker to Louis P. Joerger, Oct. 18, 1924, book 1, p. 418, *ibid.*

<sup>8</sup> Report of the Conservation Commission of the State of California, January 1, 1913, Transmitted to the Governor and Legislature, January 1, 1913 (Sacramento: Superintendent of State Printing, 1912), 101, 109. See also Frank Adams, et al., *Reports on the Irrigation Resources of California* (Sacramento: Superintendent of State Printing, 1912), 25.

<sup>9</sup> *Joerger v. PG&E*, 207 Cal. at 14-18 (1929). See also two Deeds, *supra* note 7.

Redding — then a small Shasta County town of barely three thousand people.<sup>10</sup> At the time, electricity was a new and rapidly growing energy source, and as domestic and industrial uses for electricity proliferated, so too did firms eager to supply the demand. Many electric companies had emerged throughout northern California in the late nineteenth and early twentieth centuries, and generating energy from the state's mountain streams had brought some of these firms — including Mt. Shasta Power Corporation — into the Pit River region. To gain access to one potential hydroelectric dam site on Hat Creek, Mt. Shasta Power had negotiated a business arrangement with Red River Lumber Company, a Minnesota timber firm that had logging operations in California. The agreement called for Mt. Shasta Power to lease some of Red River Lumber's lands along Hat Creek for a hydroelectric generation facility, and in exchange, Mt. Shasta Power would provide energy to the timber company. Shortly after this deal had been put together — and at about the same time that Joerger was buying his ranch lands — Mt. Shasta Power Corporation became a subsidiary of PG&E, as part of a major consolidation of energy firms throughout northern California. PG&E was then aggressively increasing its power generation facilities, and the acquisition of Mt. Shasta Power fit into that program well.<sup>11</sup> (For simplicity, the remainder of this

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<sup>10</sup> "More Power for Shasta," *San Francisco Call*, July 13, 1904; "Shasta Power Company Wants New Franchise," *ibid.*, July 14, 1904. On Redding's population, see *Census Reports, Volume I. Twelfth Census of the United States Taken in the Year 1900*, William R. Merriam, Director. *Population, Part I* (Washington, D.C.: United States Census Office, 1901), p. 79.

<sup>11</sup> On the history of these mergers, see the file: Pacific Gas and Electric Company Articles of Incorporation, Oct. 9, 1905, Records of the California Secretary of State, California State Archives, Sacramento, California; "Gets Water Rights in Shasta County," *San Francisco Call*, May 14, 1909; "Power Company Buys Water Rights," *ibid.*, May 14, 1909; "Work Underway on 7 Mile Tunnel," *ibid.*, May 17, 1910; "The Call's Page of Commercial News," *ibid.*, Nov. 13, 1911; "Shasta Power Plants," *Oakland Tribune*, Dec. 19, 1909; "Rates Advance When Corporations Combine," *ibid.*, Feb. 3, 1912; "Completion of Great Power Project Celebrated Today," *Woodland Daily Democrat*, Sept. 30, 1922; "P.G. & E. To Start Work on Pit 4 Dam," *Gridley Herald*, Oct. 28, 1925. For a detailed history of PG&E, see Charles M. Coleman, *P.G. and E. of California: The Centennial Story of Pacific Gas and Electric Company, 1852-1952* (New York: McGraw-Hill Book Company, 1952). See also Red River Lumber

article generally refers to the two power companies under their parent corporate name of PG&E, except in formal titles or direct quotations.)

It was this hydroelectric power expansion program that created the Hat Creek water conflict and led to Louis Joerger's decision to turn to Jesse Carter for legal advice in 1918 — about a year after Joerger had purchased his ranch. To Joerger, Carter was the logical selection for a water lawyer. Both men were about the same age (Carter was then thirty and Joerger twenty-eight), and they came from similar rural California backgrounds. Also probably enhancing Carter's appeal to Joerger was the fact that although Carter had passed the state bar exam only a few years earlier, by the time Joerger sought his aid, Carter had established a prominent law practice in Redding, and he was handling a large number of water cases in Shasta, Siskiyou, Tehama, and Trinity counties as well as a few in Lassen and Modoc counties. In addition, Carter was elected district attorney of Shasta County the same year that Joerger hired him, a position that Carter held until 1926, while he continued to manage his legal practice.<sup>12</sup>

Louis Joerger's decision to hire Jesse Carter was timely. In August 1920, PG&E installed a pipeline from a diversion dam on Hat Creek above Joerger's ranch to carry flows downstream past Joerger's property to where the company was building a major hydroelectric facility, Hat Creek Power Plant No. 2. PG&E's diversion took a considerable portion of Hat Creek's water supply — so much so that a flume that later replaced the pipeline was sixteen feet wide and nine feet deep.<sup>13</sup> Reacting angrily to PG&E's actions, Joerger — whom Carter later characterized as being “rather temperamental” — immediately asked Carter if he should retaliate and “shut the [company's] water off.”<sup>14</sup> Carter persuaded Joerger not to cause a potentially violent confrontation, yet a legal fight appeared

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Company's Minnesota Articles of Incorporation, Nov. 17, 1884, copy in Records of the California Secretary of State, California State Archives, Sacramento, California.

<sup>12</sup> Johnson, *History of the Supreme Court Justices of California*, vol. 2, 162; Carter Interview, 42-44 [this vol., 213-214].

<sup>13</sup> “‘Democrat’ Scribe Views Stupendous Power Project Costing Hundred Millions,” *Woodland Daily Democrat*, July 3, 1922.

<sup>14</sup> Carter's opinion of Joerger can be found in Carter Interview, 85 [this vol., 236]. See also Joerger to Carter, Aug. 4, 1920, file: *Louis P. Joerger v. Pacific Gas &*

inevitable. When no results came from Carter's subsequent written demand that PG&E cease interfering with Joerger's water supplies, Carter filed a lawsuit on Joerger's behalf in Shasta County Superior Court.<sup>15</sup>

The suit's complaint (later amended as greater information became available) cited Joerger's riparian rights to the waters of Hat Creek as one of the mainstays to the legal argument. Riparianism was (and is) a well-established doctrine in California water law and throughout much of the United States (although it is not recognized in many of the more arid western states). Holding that a landowner adjacent to a watercourse may utilize the flows so long as his or her actions do not adversely impact similar privileges further downstream, riparian rights are a usufruct of a parcel next to a stream.<sup>16</sup> These circumstances precisely fit Joerger's

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*Electric Company, et al.*, box 30, Jesse W. Carter Papers, Bancroft Library, UC Berkeley [hereinafter: *Joerger v. PG&E*, box 30, Carter Papers].

<sup>15</sup> Carter to PG&E, Aug. 6, 1920, file: *Joerger v. PG&E*, box 30, Carter Papers; "Complaint," Aug. 27, 1921, *ibid.*

<sup>16</sup> An excellent synopsis of the history of riparian rights in California can be found in M. Catherine Miller, "Riparian Rights and the Control of Water in California, 1879-1928: The Relationship between an Agricultural Enterprise and Legal Change," *Agricultural History* 59 (Jan. 1985): 1-24. For the history and present status of all aspects of water rights throughout the West, see: Wells A. Hutchins, *Water Rights Laws in the Nineteen Western States* (Washington, D.C.: U.S. Department of Agriculture, 1972-1977; rev. ed., Clark, N.J.: Lawbook Exchange, 2004). For particular emphasis on current California water law, see Arthur L. Littleworth and Eric L. Garner, *California Water* (Point Arena, Calif.: Solano Press, 1995). For legal treatises describing riparian rights and the state of water law in California and the West before and at about the time of Joerger's lawsuit, see Joseph K. Angell, *A Treatise on the Law of Watercourses* (7th ed., Boston: Little Brown, 1877); Albert E. Chandler, *Elements of Western Water Law* (San Francisco: Technical Publishing Co., 1913; rev. ed., San Francisco: Technical Publishing Co., 1918); Henry P. Farnham, *Law of Waters and Water Rights*, 3 vols. (Rochester: Lawyers Cooperative Publishing Co., 1904); Clesson S. Kinney, *A Treatise on the Law of Irrigation including the Law of Water Rights*, 4 vols. (Washington, D.C.: W.H. Lowdermilk and Co., 1893; rev. ed., San Francisco: Bender-Moss Co., 1912); Joseph R. Long, *A Treatise on the Law of Irrigation Covering the States and Territories* (St. Paul: Keefe-Davidson Law Book Co., 1901; rev. ed., Denver: W.H. Courtright Publishing Co., 1916); John Norton Pomeroy *A Treatise on the Law of Riparian Rights as the Same is Formulated and Applied in the Pacific States, Including the Doctrine of Appropriation* (St. Paul: West Publishing Co., 1887; rev. ed., 1893); Samuel C. Wiel, *Water Rights in the Western States* (San Francisco: Bancroft-Whitney Co., 1905; 3rd ed., 2 vols., San Francisco: Bancroft-Whitney Co., 1911).

ranch. Thus, Carter wrote in the complaint that Hat Creek naturally overflowed Joerger's property on a regular basis and that these inundations had "so wet and irrigated a portion of said lands that without further irrigation said lands would produce and would have produced large and valuable crops of grass and cereals, and would maintain and have maintained abundant pasturage and feed for stock . . ." Clearly, according to Joerger's complaint, PG&E's diversions were having a major adverse impact on his riparian rights under California law.<sup>17</sup>

In addition to riparian water rights claims, Joerger's lawsuit further alleged that PG&E's actions had caused his property to be covered with mud and debris because of the mismanagement of the company's diversion facilities. As a result of all of these contentions, the suit asked the court to confirm Joerger's rights to Hat Creek's waters and for \$50,000 in damages (today, over \$630,000 based on the consumer price index). With the complaint having been filed, Judge Walter E. Herzinger of Shasta County Superior Court promptly granted a temporary injunction ordering PG&E not to interfere with Joerger's water supplies until a trial could determine a just outcome.<sup>18</sup>

PG&E's attorneys had little to gain by resolving the conflict quickly, particularly because other water users in northern California had filed comparable suits against PG&E. Because of these cases' similarities, the company's attorneys needed as much time as possible to shape consistent court defenses, and therefore they repeatedly sought (and received) postponements for the beginning of the trial. Jesse Carter concurred in many of these delays, perhaps partly because he simultaneously was handling

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<sup>17</sup> "Amended and Supplemental Complaint," Sept. 27, 1923, file: *Louis P. Joerger v. Pacific Gas and Electric Company, et al.*, Clerk's Transcript on Appeal, Records of the California Supreme Court, California State Archives, Sacramento, California.

<sup>18</sup> "Amended and Supplemental Complaint," Sept. 27, 1923, file: *supra* note 17. See also Joerger to Carter, Aug. 4, 1920, file: *Joerger v. PG&E*, box 30, Carter Papers; Carter to PG&E, Aug. 6, 1920, *ibid.*; "Complaint," Aug. 27, 1921, *ibid.* The consumer price index purchasing power of Joerger's damages claim was determined by converting dollars in 1923 (the date of Joerger's amended complaint) to 2008 values (the latest year available) at the internet web page: Samuel H. Williamson, "Six Ways to Compute the Relative Value of a U.S. Dollar Amount, 1774 to present," <http://www.measuringworth.com/uscompare/>. All subsequent references to current dollar values were similarly calculated at the same web page.

a significant number of these other lawsuits — many of which, like Joerger's case, involved riparian water rights.<sup>19</sup> Thus, Joerger's court case against PG&E did not begin for several years. In the meantime, despite the temporary injunction, PG&E continued to interfere with Joerger's water supply, especially after the company completed work on Hat Creek Power Plant No. 2 below Joerger's ranch in the fall of 1921.<sup>20</sup>

Eventually, on Monday, September 22, 1924, the trial in *Louis P. Joerger v. Pacific Gas & Electric Company, et al.* commenced in Shasta County Superior Court before Judge Herzinger and a jury. Four months, five thousand transcript pages, two hundred exhibits, and many witnesses later, the case went to the jurors in late January 1925. Given the fact that the jury consisted of local Shasta County residents, it is not surprising that its members quickly recommended a verdict in Joerger's favor,

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<sup>19</sup> For some of Carter's other water cases involving PG&E or its subsidiary, Mt. Shasta Power Corporation, see, for example, *Mt. Shasta Power Corporation v. Malcolm Dennis, et al.*, 66 Cal.App. 186 (1924); *Fall River Valley Irrigation District v. Mt. Shasta Power Corporation*, 202 Cal. 56 (1927); *Mt. Shasta Power Corporation v. Roderick McArthur, et al.*, 109 Cal.App. 171 (1930); *Mt. Shasta Power Corporation v. Roderick McArthur, et al.*, 111 Cal.App. 640 (1931); *William J. Albaugh v. Mt. Shasta Power Corporation*, 117 Cal.App. 612 (1931); *Merton Crum, et al., v. Mt. Shasta Power Corporation*, 117 Cal.App. 586 (1931); *F.M. Callison, et al., v. Mt. Shasta Power Corporation*, 123 Cal.App. 247 (1932); *Anna McArthur v. Mt. Shasta Power Corporation*, 215 Cal. 569 (1932); *Luther McArthur v. Mt. Shasta Power Corporation*, 215 Cal. 570 (1932); *Mt. Shasta Power Corporation v. The Superior Court of Shasta County, et al.*, 215 Cal. 559 (1932); *Mt. Shasta Power Corporation v. The Superior Court of Shasta County, et al.*, 215 Cal. 771 (1932); *Mt. Shasta Power Corporation v. The Superior Court of Shasta County, et al.*, 215 Cal. 772 (1932); *Roderick McArthur v. Mt. Shasta Power Corporation*, 215 Cal. 571 (1932); *Merton Crum, et al., v. Mt. Shasta Power Corporation*, 124 Cal.App. 90 (1932); *William J. Albaugh v. Mt. Shasta Power Corporation*, 124 Cal.App. 779 (1932); *Merton Crum, et al., v. Mt. Shasta Power Corporation, and William J. Albaugh v. Mt. Shasta Power Corporation*, 220 Cal. 295 (1934); *Anna McArthur v. Mt. Shasta Power Corporation*, 3 Cal. 2d 704 (1935); *Roderick McArthur v. Mt. Shasta Power Corporation*, 3 Cal. 2d 765 (1935); *Luther McArthur v. Mt. Shasta Power Corporation*, 3 Cal. 2d 766 (1935). Most of these cases have extensive files in the Carter Papers. Also, Carter discusses some of these cases in his oral history. See Carter Interview, 68-98 [this vol., 227-243].

<sup>20</sup> Formal dedication of these facilities did not take place until a year later. See Coleman, *P.G. and E. of California*, p. 287. See also "Completion of Great Power Project Celebrated Today," *Woodland Daily Democrat*, Sept. 30, 1922; "Power Project Is Completed," *Gridley Herald*, Sept. 30, 1922.

including a damages award of \$40,000 — today, almost a half million dollars. (Carter later opined in his oral history interview that this verdict had been fair and “not excessive” because most of the jurors wanted to give Joerger \$75,000 — more than the suit had asked for.)<sup>21</sup> Judge Herzinger then confirmed the jury’s determination, explaining in his “Findings of Fact and Conclusions of Law” that Joerger had been substantially harmed by PG&E’s diversions. In an important point, however (and one that became a basis for PG&E’s appeal), Herzinger further ruled that PG&E also could claim Hat Creek riparian rights due to the company’s land-lease arrangement (through Mt. Shasta Power Corporation) with Red River Lumber Company. With the timber firm owning the land adjacent to the stream where PG&E’s diversion facilities lay, the power company benefited from the riparian rights held by Red River Lumber. Nevertheless, to protect Joerger’s downstream status, Herzinger required PG&E to install gauges, ostensibly to maintain adequate flows to Joerger’s acreage.<sup>22</sup>

Neither side was completely pleased with Judge Herzinger’s ruling, although Joerger clearly had the greater victory. Jesse Carter and Louis Joerger applauded the recognition of Joerger’s riparian rights and the monetary damages award, but they disliked the acknowledgment of PG&E’s riparian rights, particularly because Joerger’s predecessors had used the stream’s flows long before PG&E began diverting water. For its part, PG&E lauded Judge Herzinger’s recognition of the firm’s riparian rights, but the company disputed the economic damages. As a result, both Joerger and PG&E immediately appealed to the California Supreme Court.<sup>23</sup>

Aside from legal issues, from a financial perspective, the twin appeals had one very important repercussion for Joerger — at least for the time being, PG&E’s obligation to pay the lower court’s award was stayed pending the higher court ruling. The delay in receiving the money was a

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<sup>21</sup> See generally the case file for: *Louis P. Joerger v. Pacific Gas and Electric, et al.*, Clerk’s Transcript on Appeal, Records of the California Supreme Court. See also the file for the same case in boxes 29-30, Carter Papers. On Carter’s recollection of the Joerger case’s verdict, see Carter Interview, 89 [this vol. 238].

<sup>22</sup> “Judgment,” Jan. 29, 1925, file: see *supra* note 21.

<sup>23</sup> “Notice of Appeal,” March 31, 1925, *Joerger v. PG&E*, box 30, Carter Papers.

major problem to Joerger because of the lawsuit's costs (including expert witness fees), which still had to be paid while Joerger continued to operate his ranch. These were circumstances that affected many of Jesse Carter's other clients involved in similar lawsuits, because California water litigation was (and frequently still is) extremely expensive. Not every individual landowner could afford such costly court fights, although Carter considered himself an advocate of the small farmer, rancher, and landholder. As Carter explained in his oral history, "Naturally, I was on the farmers' side of all this water litigation," yet he also readily conceded that many of his clients had considerable financial resources — or else they banded together in groups to do legal battle.<sup>24</sup>

On paper at least, Louis Joerger was no exception. Compared to many Shasta County ranchers, Joerger was relatively well-to-do by the time his case was appealed. Although he had used his life savings in 1917 to purchase just a few hundred acres at the junction of Hat Creek and the Pit River, within a short period of time, Joerger had increased his landholdings substantially, and by the late 1920s, Joerger's ranch had grown to over 1,500 acres — three times the average Shasta County agricultural landholding. Indeed, Louis and Beth Joerger were doing so well financially that Jesse Carter estimated the value of the Joergers' land, livestock, and ranch improvements (four houses, seven barns, a dairy structure, a tool shed, and an equipment building) to be worth over \$200,000 (today, more than \$2.5 million). Moreover, according to U.S. Census records, the Joergers had a farmhand living at their Shasta County property, and perhaps as an even greater indication of their economic success, the Joergers also owned a home in the San Francisco Bay area's upscale community of Piedmont (where Beth lived during the school year with their three children). At their Piedmont home, the Joergers employed a live-in

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<sup>24</sup> On groups of farmers who banded together to fight PG&E with Jesse Carter as legal counsel, see, for example, "Power Company and the Farmers Fail to Agree," *Courier-Free Press* (Redding), June 20, 1927; "Fall River and Pacific Gas Are Near Compromise on Their Squabble over Water Rights," *ibid.*, June 27, 1927; "Water Case Expected to Close This Week," *ibid.*, Sept. 27, 1927; *Fall River Valley Irrigation District v. Mt. Shasta Power Corporation*, 202 Cal. 56 (1927). See also "Carter Interview," 70-75, with quotation at 70 [this vol., 228-230].

maid and enjoyed a panoramic view of San Francisco Bay and the Golden Gate.<sup>25</sup>

Yet despite their apparent financial well-being, like many farmers and ranchers even today, the Joergers were land-rich but dollar-poor. As Louis Joerger's appeal moved sluggishly forward between January 1925 (when Judge Herzinger had issued his ruling in Shasta County Superior Court) and 1929 (when the California Supreme Court decided Joerger's appeal), Joerger repeatedly had to borrow money, using his ranch, livestock, crops, and farm equipment as security. Such loan arrangements may have been common among other ranchers, who needed cash to tide themselves over from one crop season to the next, but the extent, frequency, and amounts of Joerger's borrowing and refinancing were especially noteworthy and routinely ran into tens of thousands of dollars. In fact, the Joergers' monetary circumstances were so strained that within just a few months of the 1925 lower court decision the Joergers transferred an undivided half interest in their Shasta County ranch and its water rights for \$10 to Louis Joerger's brother, Elmer, and his wife, Theo, both of whom continued to live on their own ranch in Woodland, California. The reason for adding Elmer and Theo to the Shasta County property's title apparently was to help refinance Louis Joerger's mortgage of \$47,300 (today, nearly \$600,000) — a modified debt that was recorded in Shasta County's official files the same day that Elmer and Theo were made co-owners. In addition to this major restructuring of the Shasta County ranch obligation, Louis and Beth Joerger repeatedly utilized

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<sup>25</sup> Interestingly, the Joergers were counted twice in the 1930 census, once at their Shasta County ranch, and again at their Piedmont home. For Piedmont, see entries for Louis P. and Beth M. Joerger, p. 5A, Enumeration District 334, Piedmont, Alameda County, California, Fifteenth Census of the United States, 1930, Records of the Bureau of the Census, Record Group 29, U.S. National Archives, Washington, D.C. (microfilm roll T626-110). For Shasta County, see entries for Louis P. and Beth M. Joerger, p. 3B, Enumeration District 21, Township 7, Shasta County, California, *ibid.* (microfilm roll T626-220). For details on Shasta County's farmlands in 1930, see *Fifteenth Census of the United States: 1930. Agriculture, Vol. 1, Farm Acreage and Farm Values by Townships or Other Minor Civil Divisions*, available at: <http://www2.census.gov/prod2/decennial/documents/>. See also [Jesse W. Carter], Statement of Property and Liabilities of Louis P. Joerger, undated but circa 1928, file: *Joerger v. PG&E*, box 30, Carter Papers.

chattel mortgages with livestock and ranch equipment as collateral to secure short-term loans. Their finances were so stressed, in fact, that at about the same time they were adding Elmer and Theo to the ranch's title, Louis Joerger was unable to pay the invoice submitted by one of his principal lower court expert witnesses. In addition, another consultant was forced to sue Joerger for payment — separate litigation that dragged on for several years.<sup>26</sup>

PG&E, of course, did not face these monetary problems. As Louis Joerger struggled to stay financially afloat in the mid-1920s, PG&E had continued to absorb multiple smaller firms and to build new power generation facilities. The company also had expansion plans that involved spending \$100 million (over \$1.2 billion today) to develop just the Pit River region alone. Moreover, in early 1927, company officials predicted “a splendid year,” and several months after that, the firm reported that its outstanding common stock had gained in value during one three-week period alone nearly \$15 million (now almost \$186 million). In addition, PG&E had become nearly the sole provider of gas and electric energy throughout much of northern California and was one of the largest public utilities in the United States.<sup>27</sup>

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<sup>26</sup> For the location of Elmer and Theo Joerger's residence, see their entries, p. 5B, Enumeration District 57-24, Woodland Township, Yolo County, California, Fifteenth Census of the United States, 1930, Records of the Bureau of the Census, Record Group 29, U.S. National Archives, Washington, D.C. (microfilm roll T626-225). For examples of Louis and Beth Joergers' recorded debt arrangements, see: Deed, Louis and Elizabeth Joerger to Elmer and Theo Joerger, May 27, 1925, book 5, p. 61, Records of the Shasta County Assessor-Recorder; Deed, Louis and Elizabeth Joerger, to Elmer and Theo Joerger, May 27, 1925, book 5, p. 171, *ibid.*; Deed of trust, May 27, 1925, book 4, p. 66, *ibid.*; Chattel mortgage, April 2, 1926, book 3, p. 373, *ibid.*; Chattel mortgage, June 24, 1926, book 3, p. 472, *ibid.*; Chattel mortgage, April 25, 1927, book 21, p. 342, *ibid.*; Chattel mortgage, April 25, 1928, book 38, p. 76, *ibid.* For details on Louis Joerger's problems in paying his litigation consultants, see Jesse Carter to George S. Nickerson, Feb. 20, 1925, file: *Joerger v. PG&E*, box 30, Carter Papers; Jennie R. Nickerson to Jessie Carter, undated but circa late February or early March 1925, *ibid.*; “Wiegel-Joerger Unable to Agree,” *Courier-Free Press* (Redding), April 1, 1927; “Wiegel-Joerger Case Underway,” *ibid.*, March 29, 1929; “Wiegel-Joerger Case Ended in Compromise,” *ibid.*, Dec. 7, 1931.

<sup>27</sup> Coleman, *P.G. and E. of California*, 91-298; “Oaklanders View P.G.E. Power Units,” *Oakland Tribune*, Sept. 6, 1925; “Pacific Gas Profits Up in January,” *Los Angeles*

It was under these mismatched circumstances that in mid-1927 PG&E's attorneys (a consortium of several law firms from the San Francisco and Redding areas) filed their opening briefs in Joerger's case with the California Supreme Court. They did so at a time when the Progressive-era ideology of scientifically managing natural resources had gained a strong foothold in the state. With regard to water development, California officials were in the early stages of creating the State Water Plan (which Jesse Carter strongly supported), a massive program to capture stream flows in regions of the state with excess water and redistribute those supplies to areas of need.<sup>28</sup> Just as the State Water Plan was aimed at making water resources more useful to large numbers of California's residents, changes in the state's laws also were directed at making water rights "reasonable," and hence, responsive to the needs of more people. This had been a goal, for example, of the California Conservation Commission, the same agency that had assessed the site of Joerger's ranch lands in 1912 to be well-suited in relation to water. The commission's objectives had led to the 1913 Water Commission Act, a statute that required all new appropriative water rights filings (claims based on beneficial use, the date of diversion, and not necessarily linked to real property ownership) to be listed with California officials to create a centralized registry (pre-existing appropriative claims and riparian rights did not have to be similarly filed).<sup>29</sup>

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*Times*, April 6, 1927; "Paper Profits Multiply," *ibid.*, Sept. 27, 1927. See also: <http://www.fundinguniverse.com/company-histories/PGamp;E-Corporation-Company-History.html>.

<sup>28</sup> The State Water Plan, later called the Central Valley Project and constructed by the U.S. Government in the 1930s and 1940s, should not be confused with the State Water Project, which was built by the State of California beginning in the late 1950s and early 1960s. For scholarly synopses of the histories of the Central Valley Project and the State Water Project, see Donald J. Pisani, *From the Family Farm to Agribusiness: The Irrigation Crusade in California and the West, 1850-1931* (Berkeley: University of California Press, 1984), 381-439; and Norris Hundley, Jr., *The Great Thirst: Californians and Water, A History* (rev. ed., Berkeley: University of California Press, 2001), 234-302. For Carter's support for the State Water Plan (Central Valley Project), see Carter Interview, 165 [this vol., 279].

<sup>29</sup> For the California Conservation Commission's mandate to recommend changes to California water law, see *Report of the Conservation Commission of the State of California*, 3-4. For the requirement that new appropriative water claims be

PG&E's appellate briefs endorsed the Progressive concept of rational and scientific uses of water, and while the company's lawyers did not dispute Joerger's riparian status, they emphasized that the lower court's "water allowance" to Joerger was, in their view, "excessive" and "not supported by the evidence." Instead, PG&E's attorneys contended that testimony and exhibits in the lower court trial had shown Joerger's irrigation habits to be "wasteful." In addition, PG&E's lawyers declared that the amount of water Joerger required was "far in excess" of what he could use beneficially. Moreover, just as the power firm's attorneys deemed Joerger's water practices to be extravagant, they also contended that the court-ordered financial damages award "in the sum of \$40,000 is excessive and is not supported by the evidence."<sup>30</sup>

While PG&E's attorneys stressed recent trends in water law in their California Supreme Court briefs, so too (albeit with a different emphasis) did Jesse Carter and his colleague, Annette Abbott Adams, one of the most prominent women attorneys in early twentieth-century California.<sup>31</sup> Although by the mid-1920s California law was moving toward more sensible interpretations of water rights — particularly in relation

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filed with California authorities, see *An Act to Regulate the Use of Water Which Is Subject to Control by the State of California . . .*, chap. 586, Cal. Stats. (1913). See also Miller, "Riparian Rights and the Control of Water in California," 10-11. For discussions of Progressivism and its relationship to California water law reforms, see Pisani, *From the Family Farm to Agribusiness*, 335-380; Pisani, "Reclamation and Social Engineering in the Progressive Era," *Agricultural History* 57 (1983): 46-63; Pisani, "State vs. Nation: Federal Reclamation and Water Rights in the Progressive Era," *Pacific Historical Review* 51 (1982), 265-282; Hundley, *The Great Thirst*, 113-115. Carter offered the opinion in 1955 that the Water Commission Act had created a bureaucracy that frequently overextended its authority in relation to individual water users. See Carter Interview, 228-229 [this vol., 299].

<sup>30</sup> "Opening Brief for Appellant, Mt. Shasta Power Corporation," Aug. 15, 1927, p. 543, file: *Louis P. Joerger v. Pacific Gas and Electric Company, et al.*, Clerk's Transcript on Appeal, Records of the California Supreme Court.

<sup>31</sup> Adams was one of the first two women to receive a law degree from the University of California (in 1912). She subsequently became a U.S. attorney (1918-1920), an assistant U.S. attorney general (1920-1921), and a California appellate court justice (1942-1952). For more details on her background, see [http://www.courtinfo.ca.gov/courts/courtsopapeal/3rdDistrict/justices\\_former/adams.htm](http://www.courtinfo.ca.gov/courts/courtsopapeal/3rdDistrict/justices_former/adams.htm). See also various biographical accounts of Adams, which are reproduced at the Stanford University Women's Legal History Biography Project's web page: <http://www.law.stanford.edu/>

to large-scale water resource management — purely by coincidence as Carter and Adams had been drafting their pleadings, riparian rights had received a major reinforcement by a California Supreme Court ruling. Issued only months before the appellate briefs in Joerger’s case went to the high court’s justices, *Herminghaus v. Southern California Edison Company*<sup>32</sup> became one of the most important water-related decisions ever handed down by the California Supreme Court (even though it was later reversed by California’s voters with a state constitutional amendment). The case, which was originally filed in Fresno County Superior Court in August 1924, involved a plaintiff (Amelia Herminghaus) who owned a large amount of land bordering the San Joaquin River in Fresno and Madera counties. Much like Joerger and Hat Creek, Herminghaus relied upon the San Joaquin River’s annual flooding to enrich riparian lands and cause grass growth for livestock forage. According to Herminghaus, however, Southern California Edison Company, which had upstream hydroelectric power works, was planning to expand its system (facilities then valued at \$177 million and estimated be worth \$400 million when completed — nearly \$5 billion today). These power company objectives, if carried out, would substantially interfere with the regular inundations of Herminghaus’s lands. Herminghaus sued to stop the power company’s diversions and won in Fresno County Superior Court on the basis of riparian water rights. When Southern California Edison appealed to the California Supreme Court, the justices held that under state law as it then existed — and notwithstanding other Progressive-era changes to water law — riparian landowners had a right to the full and undisturbed flow of adjacent watercourses.<sup>33</sup>

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library/womenslegalhistory. For Carter’s recollections of Adams, see Carter Interview, 89, 142, 172-174 [this vol., 228, 266-267, 284-285].

<sup>32</sup> 200 Cal. 81 (1926).

<sup>33</sup> *Amelia Herminghaus, et al., v. Southern California Edison Company*, 200 Cal. 81 (1926). For a news report on the filing of the *Herminghaus* case in Fresno County Superior Court, see “Suit Involves Vast Holdings,” *Los Angeles Times*, Aug. 28, 1924. For the 1926 value of Southern California Edison’s San Joaquin River power facilities, see Joseph C. Sharp, “Storage of Water in California by Riparians and Appropriators,” *California Law Review* 14 (1925-1926), 199. For the estimated value of the completed works, see “Trial is Due in Big Creek Water Suit,” *Los Angeles Times*, Jan.

With the *Herminghaus* decision a fortuitous windfall (but one that was instantly controversial in light of state water management goals and Progressive thought),<sup>34</sup> Jesse Carter and Annette Abbott Adams argued in their California Supreme Court briefs that the circumstances in *Herminghaus* matched Joerger's situation exactly. (It also probably did not hurt that Adams had just represented Herminghaus before the California Supreme Court.) Stressing the key point underlying Joerger's victory in the lower court — his riparian rights — Carter and Adams asked the California Supreme Court to declare that PG&E had no right at all to Hat Creek's water if the company's uses interfered with Joerger's ability to enjoy his riparian claims to their fullest. In addition, the two attorneys wrote that *Herminghaus* meant that Joerger's irrigation techniques did not need to be compromised, even if his water uses were excessive by some standards.<sup>35</sup>

In April 1929, the California Supreme Court unanimously agreed with Carter and Adams (with one justice not participating). Although California's voters had overturned the *Herminghaus* ruling barely four months earlier by amending the state's constitution to require all water uses to be "reasonable,"<sup>36</sup> the justices declared in Joerger's 1929 decision

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5, 1925; "Limits Use of Water," *ibid.*, Feb. 14, 1925; "Edison Company Loses Fight for Vital Water," *ibid.*, Dec. 25, 1926.

<sup>34</sup> For a sampling of news reports on the controversial *Herminghaus* decision, see "Water Meeting May Be Called," *Los Angeles Times*, Jan. 2, 1927; "Power Ruling Review Asked," *ibid.*, Jan. 14, 1927; "State's Water Plans in Shape," *ibid.*, Jan. 23, 1927; "Riparian Water Law Proposed," *ibid.*, Feb. 3, 1927; "Changes in Water Law Completed," *ibid.*, Feb. 9, 1927; "Revolutionizing State Water Laws Proposed," *ibid.*, Feb. 10, 1927; "Federal Suit May Reopen State Water Struggle," *ibid.*, Feb. 28, 1928; "Water Plans to be Stressed," *ibid.*, Aug. 8, 1928 "Action Taken to End Water Ruling Effect," *Mountain Democrat* (Placerville), Feb. 4, 1927; "Bill to Curb Water Right Given to [Governor] Young," *Oakland Tribune*, Feb. 8, 1927; "Water Problem Most Important Says Gov. Young," *Oxnard Daily Courier*, Feb. 21, 1927; "[California Attorney General U.S.] Webb Proposes Changes in Riparian Law," *Gridley Herald*, March 2, 1927. For a contemporaneous analysis of the legal impact of the *Herminghaus* decision, see Sharp, "Storage of Water in California by Riparians and Appropriators."

<sup>35</sup> "Opening Brief of Appellant, Louis P. Joerger," Sept. 10, 1927, Supreme Court file: see *supra* note 21; "Reply brief of Respondent, Louis P. Joerger," [April 1928], *Louis P. Joerger v. Pacific Gas & Electric Company, et al.*, contained in bound collection of pleadings, Bancroft Library, UC Berkeley.

<sup>36</sup> On the constitutional amendment approved by California's voters in 1928, see article X, section 2, of the California Constitution. For detailed analyses of the

that standards for water use needed to be decided on a case-by-case basis. Noting the voluminous and detailed record in the trial court's proceedings, the California Supreme Court rejected PG&E's argument that Joerger's water use was excessive, and the justices overwhelmingly confirmed Joerger's riparian rights to Hat Creek. In addition, the California Supreme Court upheld Joerger's \$40,000 damages award.<sup>37</sup>

Joerger's California Supreme Court triumph over PG&E was widely celebrated in regions of the state with connections to Joerger. For example, the *Oakland Tribune*, which served Joerger's San Francisco Bay area hometown of Piedmont, carried the news on its front page.<sup>38</sup> Further north, Shasta County's *Courier-Free Press* (published in Redding) ran the banner headline, "Joerger's Victory is Boon to Farmer."<sup>39</sup> The *Press's* subtitle added, "Decision in Joerger Case Means Trial Court Can Award Farmer Any Water He Can Beneficially Use" — a point that was especially relevant to some of Jesse Carter's other water litigants, who claimed similar riparian rights.<sup>40</sup> Yet, as if the *Press's* headlines were

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1928 amendment before it was approved by voters, see Samuel C. Wiel, "The Pending Water Amendment to the California Constitution, and Possible Legislation," *California Law Review* 16 (March and May 1928), 169-207 and 257-280; Edward S. Treadwell, "Modernizing the Water Law," *California Law Review* 17 (Nov. 1928), 1-18. For a current analysis of the legal meaning of article X, section 2, see Littleworth and Garner, *California Water*, 89-95. For other scholarly discussions of the *Herminghaus* case and the 1928 constitutional amendment, see Hundley, Jr., *The Great Thirst*, 245-246; Pisani, *From the Family Farm to Agribusiness*, 412-415.

<sup>37</sup> *Joerger v. PG&E*, 207 Cal. 8 (1929).

<sup>38</sup> "Power Firm Loses Suit for \$40,000," *Oakland Tribune*, April 10, 1929.

<sup>39</sup> "Joerger's Victory is Boon to Farmer," *Courier-Free Press* (Redding), May 10, 1929.

<sup>40</sup> Many of these Carter riparian water rights cases — like Joerger's suit — eventually were appealed. See: *Mt. Shasta Power Corporation v. Roderick McArthur, et al.*, 109 Cal.App. 171 (1930); *Mt. Shasta Power Corporation v. Roderick McArthur, et al.*, 111 Cal.App. 640 (1931); *William J. Albaugh v. Mt. Shasta Power Corporation*, 117 Cal.App. 612 (1931); *Merton Crum, et al., v. Mt. Shasta Power Corporation*, 117 Cal. App. 586 (1931); *F.M. Callison, et al., v. Mt. Shasta Power Corporation*, 123 Cal.App. 247 (1932); *Anna McArthur v. Mt. Shasta Power Corporation*, 215 Cal. 569 (1932); *Luther McArthur v. Mt. Shasta Power Corporation*, 215 Cal. 570 (1932); *Mt. Shasta Power Corporation v. The Superior Court of Shasta County, et al.*, 215 Cal. 559 (1932); *Mt. Shasta Power Corporation v. The Superior Court of Shasta County, et al.*, 215 Cal. 771 (1932); *Mt. Shasta Power Corporation v. The Superior Court of Shasta County, et*

not clear enough, Carter elaborated in an interview, stressing that the California Supreme Court had declared that “a farmer is not required to change his method of irrigation in order to leave more water in the stream for the use of a power company.”<sup>41</sup>

The California Supreme Court’s ruling may have been well-received by Joerger’s supporters, but perhaps of greater satisfaction to Joerger was the fact that shortly after the decision had been issued, PG&E sent Joerger a check for \$57,322 (about \$720,000 in today’s purchasing power). The payment comprised the original \$40,000 lower court award plus interest since the lower court’s 1925 decision. (Joerger immediately sent \$30,000 to his creditors.)<sup>42</sup>

Although PG&E had paid the damages award, the power company still remained dissatisfied with the litigation’s outcome, especially because Joerger retained riparian rights to Hat Creek. Not only did this situation interfere with the firm’s plans for continued hydroelectric energy production at Hat Creek Power Plant No. 2, but the company already had spent significant sums constructing that facility as part of its larger Pit River development objectives — money the company’s officials did not want to lose because of just one rancher.<sup>43</sup> In addition, the California

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*al.*, 215 Cal. 772 (1932); *Roderick McArthur v. Mt. Shasta Power Corporation*, 215 Cal. 571 (1932); *Merton Crum, et al., v. Mt. Shasta Power Corporation*, 124 Cal.App. 90 (1932); *William J. Albaugh v. Mt. Shasta Power Corporation*, 124 Cal.App. 779 (1932); *A.J. Barr, et al., v. Henry B. Ream*, 216 Cal. 248 (1932); *Myrtle M. Morgan, et al., v. Leatha J. Walker, et al.*, 217 Cal. 607 (1933); *Merton Crum, et al., v. Mt. Shasta Power Corporation, and William J. Albaugh v. Mt. Shasta Power Corporation*, 220 Cal. 295 (1934); *Anna McArthur v. Mt. Shasta Power Corporation*, 3 Cal. 2d 704 (1935); *Roderick McArthur v. Mt. Shasta Power Corporation*, 3 Cal. 2d 765 (1935); *Luther McArthur v. Mt. Shasta Power Corporation*, 3 Cal. 2d 766 (1935).

<sup>41</sup> “Joerger’s Victory is Boon to Farmer,” *Courier-Free Press* (Redding), May 10, 1929.

<sup>42</sup> “Joerger Wins and Will Get \$57,000,” *Courier-Free Press* (Redding), April 10, 1929; “Redding Man Wins Big Damage Suit,” *San Mateo Times*, June 8, 1929. On Joerger’s payment to his creditors, see Jesse W. Carter, “Memorandum of Facts in Joerger Conspiracy,” undated, contained in file: *Bank of America v. Joerger*, box 29, Carter Papers.

<sup>43</sup> One newspaper reported in 1925 that PG&E anticipated spending \$100 million (\$1.2 billion in today’s purchasing power) just on its Pit River section, including Hat Creek’s power plants. See “P.G. & E. To Start Work on Pit 4 Dam,” *Gridley Her-*

Supreme Court's decision in Joerger's case seriously threatened PG&E's power programs in other areas where individuals held riparian water rights — as did additional court proceedings against the company based on similar claims.<sup>44</sup> For these reasons, the power firm's officials did not let the matter die. Instead, they began an aggressive campaign to defeat Joerger at all costs.

PG&E pursued this goal in a variety of ways. First, the company's lawyers filed new appeals on aspects of the lower court ruling that appeared vulnerable to further legal challenges.<sup>45</sup> This tactic kept financial pressure on Joerger, especially when Elmer and Theo Joerger opted out as part owners of the Shasta County ranch. With Louis Joerger's brother and sister-in-law no longer available as co-signers for loans, using the ranch for funding became more difficult than it already was. Indeed, Louis and Beth Joerger now had to borrow against their Piedmont home.<sup>46</sup> In addition, Louis Joerger continued to rely on frequent chattel mortgages — including some made with his brother, who apparently was willing to advance money against livestock, crops, and farm implements even if he would not be a co-signer on the Shasta County ranch itself.

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*ald*, Oct. 28, 1925. Carter later estimated the total construction cost of the Hat Creek No. 2 power plant by itself to be \$1.5 million (today, over \$21 million). See Carter to Joerger, Oct. 28, 1931, file: *Louis P. Joerger v. Mt. Shasta Power Corporation, et al.*, box 29, Jesse W. Carter Papers, Bancroft Library, UC Berkeley [hereinafter: *Joerger v. Mt. Shasta*, box 29, Carter Papers].

<sup>44</sup> “Damages of \$32,500 Awarded by Jury,” *Courier-Free Press* (Redding), March 21, 1929; “M’Arthur Sues for \$288,000 in Damages,” *ibid.*, March 3, 1930; “\$71,630 Is Given M’Arthur by Jurors,” *ibid.*, April 2, 1930; “Shasta Court Is Upheld in Water Case,” *ibid.*, Oct. 30, 1930; “\$71,630 Judgment Won in Riparian Suit of Pit River Landowners,” *Woodland Daily Democrat*, April 3, 1930.

<sup>45</sup> See, for example, “Petition for a Writ of Supersedeas to the Superior Court for Shasta County and Hon. Walter E. Herzinger, Judge Thereof; and for a Writ of Mandate to Said Court and Judge with Stay of Proceedings below Pending Return and Decision,” [undated, but post-1929], file: *Joerger v. Mt. Shasta*, box 29, Carter Papers.

<sup>46</sup> Deed, Elmer H. and Theo S. Joerger to Louis P. and Beth M. Joerger, Jan. 10, 1930, book 29, p. 427, Records of the Shasta County Assessor-Recorder; Deed of trust, Louis P. and Beth M. Joerger, trustor, and Mason-McDuffie Company, trustee, July 23, 1930, book 49, p. 415, *ibid.*; Deed of trust, Louis P. Joerger and Beth M. Joerger, trustor, and Mason-McDuffie Company, trustee, July 23, 1930, book 2445, p. 81, Records of the Alameda County Recorder, Oakland, California.

Each of these non-real estate loans involved thousands of dollars. Louis Joerger even executed a chattel mortgage with Jesse Carter, presumably to help pay legal expenses. (Due to Joerger's financial situation, Carter had offered to handle all of Joerger's considerable legal work after the 1929 California Supreme Court decision, including multiple new lawsuits, on contingency. Joerger, however, had refused and insisted on paying for Carter's services on an hourly basis.)<sup>47</sup>

These financial circumstances were difficult enough, but according to Jesse Carter and Louis Joerger, PG&E's real objective was not just to keep economic stress on Joerger while litigation continued. At about the same time that Joerger had won in the California Supreme Court, Carter and Joerger both began to suspect that the power company actually wanted, one way or another, to drive Joerger out of Shasta County entirely — undoubtedly because Joerger's fight with PG&E had received such widespread publicity. To this end, Carter and Joerger believed that PG&E had started to plot with Joerger's lenders to dry up all of his credit sources and force him to sell his ranch — or lose it to foreclosure. Carter and Joerger became so worried about this scenario that Carter drafted a memo for his files entitled "Memorandum of Facts in Joerger Conspiracy." In this document, Carter detailed how Bank of America (and its predecessors in the Shasta County area), which held the mortgage to Joerger's ranch, had repeatedly advised Joerger to settle the controversy with PG&E by selling some — but not all — of his water rights to the power firm. Nevertheless, according to Carter, when Joerger had followed this advice and agreements had appeared likely, the bank would

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<sup>47</sup> Chattel mortgage, L.P. Joerger, mortgagor, and H.C. Watson, mortgagee, Sept. 21, 1929, book 57, p. 365, Records of the Shasta County Assessor-Recorder; Chattel mortgage, Louis P. Joerger, mortgagor, and Bank of America, mortgagee, May 9, 1930, book 48, p. 203, *ibid.*; Chattel mortgage, Louis P. Joerger, mortgagor, and Bank of America, mortgagee, Sept. 20, 1930, book 48, p. 272, *ibid.*; Chattel mortgage, Louis Joerger, mortgagor, and D.F. Knoch, mortgagee, Aug. 7, 1931, book 66, p. 370, *ibid.*; Chattel mortgage, Louis P. and Beth M. Joerger, mortgagors, and E.H. Joerger, mortgagee, Jan. 18, 1932, book 66, p. 215, *ibid.*; Louis P. and Beth M. Joerger, mortgagors, and Jesse Carter, mortgagee, Aug. 26, 1932, book 65, p. 413, *ibid.* Regarding the contingency offer and Joerger's refusal, see Carter to Louis P. Joerger, Oct. 29, 1930, file: *Joerger v. Mt. Shasta*, box 29, Carter Papers; Carter to Louis P. Joerger, March 11, 1931, *ibid.*

not approve them, declaring that the accords would not cover Joerger's indebtedness. As Carter explained, "In this manner Joerger has been the victim of a buck-passing affair in which the bank sent him to the Pacific Gas & Electric Co. and the Pacific Gas & Electric Co. [sent him] back to the bank."<sup>48</sup>

The mere possibility that Joerger's bank was colluding with PG&E was undoubtedly worrisome. Yet Carter's and Joerger's apprehensions increased further when another attorney confidentially advised Carter that PG&E actually "wanted to get rid of" Joerger.<sup>49</sup> Carter's source also had stated that the seemingly menacing phrase may only have referred to buying Joerger out entirely instead of purchasing just some of his water rights. Nevertheless, Carter probably was understating the situation when he said he had been "a 'Doubting Thomas' so far as the good motives and intentions of the Power Company agents are concerned . . . [but PG&E's officials] will have to change their garments considerably before they will be able to cover up the image of the wolf behind the lamb skin so far as I am concerned."<sup>50</sup>

Whether PG&E's strong-arm tactics were real or merely imagined, Louis Joerger refused to acquiesce. In fact, the power company's approach (or Joerger's and Carter's perception of it) made Joerger intransigent and furious. Venting some of that anger, on August 1, 1930, Joerger went to PG&E's Hat Creek diversion dam armed, according to later court filings, "with a revolver and an ax." There, he destroyed part of the diversion dam to let more water flow downstream to his ranch. When shortly thereafter, the power company rebuilt the structure, hired armed guards, and obtained a restraining order against Joerger, he defiantly

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<sup>48</sup> Jesse W. Carter, "Memorandum of Facts in Joerger Conspiracy," undated but circa 1930, file: *Bank of America v. Joerger*, box 29, Carter Papers. For other suspicions that PG&E was conspiring with Bank of America against Joerger, see Annette Abbott Adams to Carter, Jan. 29, 1931, file: *Joerger v. Mt. Shasta*, box 29, Carter Papers.

<sup>49</sup> Carter to Joerger, Jan. 16, 1930, file: *Joerger v. Mt. Shasta*, box 29, Carter Papers.

<sup>50</sup> Carter to Edward F. Treadwell, Feb. 19, 1930, file: *Joerger v. Mt. Shasta*, box 29, Carter Papers. See also Joerger to Carter, Feb. 24 1930, *ibid.*; Annette Abbott Adams to Carter, March 4, 1930, *ibid.*; Adams to Carter, March 12, 1930, *ibid.*

declared that the next time he demolished the dam, “it would not be so easy to repair because he intended to use two boxes of dynamite.”<sup>51</sup>

Then the situation went from bad to worse. On November 10, 1930, the bold headline in Redding’s *Courier-Free Press* declared, “Hat Creek No. 2 Dam Dynamited Monday.”<sup>52</sup> Although the *Press* added, “There is no clue as to who did the dynamiting,” everyone knew it was Joerger. Indeed, the next day the newspaper’s page-wide headline shouted, “Joerger Admits Blowing Up Hat Creek 2 Dam,” and the subtitles explained it all: “Says He Will Do Job Right If P.G. & E. Dares Repair It.” “‘Supreme Court Says It Is My Property,’ Says Power Firm Foe.” “‘There Was Nothing Else To Do’ Says Farmer — ‘I Can’t Go On Spending Thousands of Dollars To Get Rights That Are Mine.’”<sup>53</sup> Further south, the *Oakland Tribune* reported that Joerger’s wife, Beth, had tried to excuse his actions by explaining that the Hat Creek court wrangling had gone on for nine years. “Two months ago, my husband became disgusted with the legal rigmarole,” Beth explained. “He has gone through years of mental and physical anguish because of the [power] company’s tactics . . . . Something, in all justice, had to be done to bring the conditions to light.”<sup>54</sup>

Clearly, by now the situation was extremely dangerous and had the potential for becoming catastrophic, particularly from PG&E’s perspective. The power firm was well aware that violence over water use and control was a serious problem throughout the entire United States. During

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<sup>51</sup> “Affidavit of H.W. Bertholas,” Aug. 20, 1930, file: *Red River Lumber Company and Mt. Shasta Power Corporation v. Louis P. Joerger*, box 29, Carter Papers. See also “Complaint,” Aug. 8, 1930, *ibid.*; “Return to Order to Show Cause and Motion for Dismissal of Action,” Aug. 20, 1930, *ibid.*; “Motion to Dissolve Injunction,” Aug. 20, 1930, *ibid.*; “Says Joerger Threatened to Blow Out P.G. & E. Dam,” *Courier-Free Press* (Redding), Aug. 11, 1930; “New Order Issued in Joerger Matter,” *ibid.*, Aug. 20, 1930.

<sup>52</sup> “Hat Creek No. 2 Dam Dynamited Monday,” *Courier-Free Press* (Redding), Nov. 10, 1930. See also “Dam Blown Up at Hat Creek,” *Oakland Tribune*, Nov. 10, 1930; “Pacific Gas Power Dam Dynamited,” *Los Angeles Times*, Nov. 11, 1930.

<sup>53</sup> “Joerger Admits Blowing Up Hat Creek 2 Dam,” *Courier-Free Press* (Redding), Nov. 11, 1930.

<sup>54</sup> “Blasted Dam Again Threatened by Oakland Man,” *Oakland Tribune*, Nov. 11, 1930. For similar news reports, see “Farmer Admits Dynamiting Dam,” *San Mateo Times*, Nov. 11, 1930; “Dam Blast Cuts Power in Hat Creek District,” *Woodland Daily Democrat*, Nov. 11, 1930.

the three decades preceding Joerger's attack on the Hat Creek diversion dam, there had been scores of news stories around the country about murders over water rights, as well as accounts of various acts of sabotage against dams and diversion structures.<sup>55</sup> The most famous of these had been the repeated bombings of southern California's Owens Valley Aqueduct, which carried water away from irate farmers in the Owens Valley to Los Angeles.<sup>56</sup> Aside from the Owens Valley violence and in addition to Joerger's assault, PG&E itself already had been involved in other confrontations, although perhaps not on as grand a scale. Charles Coleman, who published a history of PG&E in 1952 celebrating the firm's hundredth anniversary, noted that during the first two decades of the twentieth century, PG&E's "days were punctuated by rifle shots, destruction of

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<sup>55</sup> See, for example, "Best Citizens' Try to Blow Up a Dam with Dynamite," *Waterloo Daily Reporter* (Iowa), May 23, 1900; "Destroyed Dam with Dynamite," *Nebraska State Journal* (Lincoln), March 23, 1902; "Farmers Demolish Dam," *Racine Daily Journal* (Wis.), May 13, 1902; "Chaffee County Pioneer Killed . . . As Result of An Old Feud Concerning Cattle and Water Right[s]," *Colorado Springs Weekly Gazette*, Aug. 4, 1904; "Dynamite Used on Clear Lake Dam," *Sioux County Herald* (Iowa), Nov. 1, 1905; "Dam Dynamiting," *Marshall Expounder* (Michigan), April 27, 1906; "Fish Dam Dynamited," *Evening Times* (Cumberland, Md.), May 11, 1906; "Dynamite Mill Dam," *Akron Register Tribune* (Ohio), June 6, 1907; [Masked Armed Men Blow Up Dam], *Robesonian* (Lumberton, N.C.), July 29, 1907; "Dam Dynamiting Suspects Nabbed," *La Cross Tribune* (Wis.), April 3, 1908; "Threaten To Dynamite a Dam," *Evening Telegram* (Elyria, Ohio), Oct. 2, 1908; "Dam Dynamited," *Logansport Daily Reporter* (Ind.), April 3, 1909; "Costly Louisiana Dam Is Blown Up," *Daily Review* (Decatur, Ill.), April 4, 1909; "Threatens To Dynamite Big Idaho Power Dam," *Coshhocton Daily Times* (Ohio), Aug. 13, 1909; "Farmers Who Wrecked Dam Secure Freedom," *San Francisco Call*, Sept. 28, 1909; "Desperate Farmers: Had Intended to Blow Up a Dam with Dynamite," *Ogden Standard* (Utah), July 29, 1910; "Dam Dynamiter Is Arrested," *Oelwein Daily Register* (Iowa), Jan. 14, 1911; "Dam Dynamited?" *Fitchburg Daily Sentinel* (Mass.), July 13, 1915; "Dam Dynamited: Investigation Started," *Ludington Daily News* (Mich.), March 7, 1919; "Attempt Is Made to Dynamite Dam," *Anaconda Standard* (Mont.), Jan. 9, 1922; "Kills Neighbor in Water Fight," *Billings Gazette* (Mont.), June 3, 1926; "Farmer Gets Life for Killing Boy, . . . After Dispute over Water Rights [with Boy's Father]," *Cumberland Evening Times* (Md.), March 6, 1929.

<sup>56</sup> For detailed accounts of the struggle over the Owens Valley water supplies, see Abraham Hoffman, *Vision or Villainy: Origins of the Owens Valley-Los Angeles Water Controversy* (College Station: Texas A & M Press, 1981); William Kahrl, *Water and Power: The Conflict over Los Angeles' Water Supply in the Owens Valley* (Berkeley: University of California Press, 1982).

water diversion dams, cutting of wires,” and arrests. Moreover, Coleman added, at least one of these other acts of aggression had been carried out by another of Jesse Carter’s clients, Mollie Flood, who had “attempted to split . . . [a PG&E official’s] head open with an ax when he stopped her from diverting water . . . .”<sup>57</sup> (Carter later recalled that he had pleaded with his clients not to resort to such acts of violence, and he believed that had it not been for his intervention, other clients would have followed Louis Joerger’s lead and dynamited additional power facilities.)<sup>58</sup>

Understandably, therefore, PG&E’s leaders did not want to confirm publicly that Louis Joerger had indeed destroyed their Hat Creek diversion dam nor did they want to publicize his threats of more possible mayhem. Thus, while Joerger openly bragged about dynamiting the dam, power firm officials blandly asserted that “no serious trouble had been encountered with farmers in the region . . . . [We are] at a loss to explain the attempt on the [Hat Creek] structure.”<sup>59</sup> Yet PG&E’s leaders were not about to let Joerger completely off the hook. Instead of seeking to have Joerger charged with a criminal act,<sup>60</sup> the power firm filed a new lawsuit against him, this time seeking nearly \$10,000 for damages to the dam. PG&E also asked for a court order to prevent Joerger from destroying any more of the company’s property.<sup>61</sup> The idea, apparently, was to place yet more financial strain on Joerger without making him a martyr in the eyes of other California ranchers and farmers.

PG&E’s response to Joerger’s demolition of the Hat Creek diversion dam appeared measured and coldly calculated. Yet simultaneously and more ominously, the *Oakland Tribune* reported that the company’s first vice president, Paul M. Downing, had warned that PG&E would “take the

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<sup>57</sup> Coleman, *P.G. and E. of California*, p. 290. For Mollie Flood’s California Supreme Court case, see *Northern California Power Company v. Mollie Flood*, 186 Cal. 301 (1921).

<sup>58</sup> Carter Interview, 82-89 [this vol., 235-238].

<sup>59</sup> “Pacific Gas Power Dam Dynamited,” *Los Angeles Times*, Nov. 11, 1930.

<sup>60</sup> “No Criminal Complaint Filed Against Joerger,” *Courier-Free Press* (Redding), Nov. 14, 1930.

<sup>61</sup> “P.G. & E. Sues Joerger For \$9,367 Dam Damages,” *Courier-Free Press* (Redding), Nov. 19, 1930; “Company Sues Rancher for Dam Blast,” *Woodland Daily Democrat*, Nov. 19, 1930. See also “Dam Bomber Faces Suit for \$9367,” *Oakland Tribune*, Nov. 19, 1930; “P.G. & E. Sues Rancher for Blast,” *San Mateo Times*, Nov. 19, 1930; “Power Concern Sues Rancher Over Blast,” *Los Angeles Times*, Nov. 20, 1930.

situation in its own hands in a manner that Joerger would regret later.”<sup>62</sup> Downing did not explain exactly what he meant, but about three weeks later, a hidden assailant shot Joerger with a rifle while he was working at his Shasta County ranch. The impact knocked Joerger to the ground, and he only survived because a large packet of papers in his shirt pocket deflected the bullet. At first, Joerger insisted that he had no idea who was to blame for the incident. “It is unthinkable that the P.G. and E. could be in any way responsible,” he told one newspaper.<sup>63</sup> Yet Joerger’s attempted murder was undeniably a warning. So too was the decision at about the same time by Judge Walter Herzinger — who was soon due to rule on one aspect of PG&E’s suit against Joerger — to leave Redding for “a month’s rest” in San Francisco. According to Annette Abbott Adams, however, his “vacation” was really due to concerns for his own safety. Adding that she believed Judge Herzinger’s circumstances were “most precarious,” she wondered in a letter to Jesse Carter, “Is the Judge afraid of the situation?”<sup>64</sup>

Despite these foreboding circumstances, the fight between Louis Joerger and PG&E eventually returned to the calmer venue of Shasta County’s Superior Court. There, PG&E’s damages suit against Joerger for destroying the Hat Creek diversion dam went to trial. So, too, did a new lawsuit brought by Joerger against the company asserting further claims to more of Hat Creek’s waters. Shortly thereafter, in early 1931 when Joerger won his new suit and PG&E lost its case for damages,<sup>65</sup> Joerger

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<sup>62</sup> “Dynamiter of P.G.E. Dam Is Defiant,” *Oakland Tribune*, Nov. 12, 1930.

<sup>63</sup> Joerger’s quote is in “Dam Blaster Escapes Death from Ambush,” *Woodland Daily Democrat*, Dec. 11, 1930. See also “Dam Dynamiter Shot from Ambush,” *San Francisco Chronicle*, Dec. 11, 1930; “Letters Save Rich Oaklander From Bullet,” *Oakland Tribune*, Dec. 11, 1930; “Joerger Missed Death By An Inch — [Says Sheriff] Stevenson,” *Courier-Free Press* (Redding), Dec. 12, 1930.

<sup>64</sup> Adams to Carter, Jan. 13, 1931, file: *Joerger v. Mt. Shasta*, box 29, Carter Papers. On the judge’s situation, see also Carter to Roderick McArthur, Dec. 15, 1930, *ibid.*

<sup>65</sup> “Court Decision May Shut Down Hat Creek 2 — Joerger Beats Power Company,” *Courier-Free Press* (Redding), Jan. 30, 1931; “Court Upholds Blasting Dam,” *Woodland Daily Democrat*, Jan. 30, 1931; “Power Firm Loses Fight to Keep Hat Creek Dam,” *ibid.*, Feb. 5, 1931; “Hat Creek Power House Shut Down,” *ibid.*, Feb. 12, 1931; “Rancher Beats P.G. & E.” *Hayward Daily Review*, Jan. 30, 1931; “Dam Bomber Wins P.G. & E. Water Fight,” *Oakland Tribune*, Jan. 30, 1931; “Diverting of Water Enjoined

was elated. But then PG&E — of course — appealed.<sup>66</sup> This turned Joerger's sentiments to rage, and no longer caring about court actions or legal arguments (even after he prevailed in early 1932 over PG&E's new appeal and the power company pursued additional legal approaches to keep its Hat Creek diversions flowing),<sup>67</sup> Joerger defiantly vowed he would not be defeated. Perhaps intending a play on words, Joerger swore to Jesse Carter that "a fight to the last, last ditch is my idea."<sup>68</sup> Joerger was so adamant that he would not yield to PG&E that when Bank of America sued him for repayment of a chattel mortgage and simultaneously began foreclosure proceedings due to nonpayment of his Shasta County ranch's mortgage, Joerger still would not sell the property or any of its water rights to the power company to pay his debts. Instead, Joerger responded by filing for bankruptcy in federal court to protect his Shasta County ranch from being seized. Now completely convinced that there really was a conspiracy against him by his banking creditors and PG&E, Joerger had Jesse Carter institute a new lawsuit against those corporations, alleging that they had schemed to force him off his ranch and seeking damages of nearly \$300,000 (almost \$5 million today).<sup>69</sup>

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by Court," *Los Angeles Times*, Feb. 6, 1931; Carter to Joerger, Feb. 6, 1931, file: *Joerger v. Mt. Shasta*, box 29, Carter Papers; Adams to Carter, Sept. 30, 1931, *ibid.*

<sup>66</sup> "Joerger Elated at Court Decision," *Courier-Free Press* (Redding), Jan. 31, 1931; "Power Company May Go To [California] Supreme Court," *ibid.*, Feb. 13, 1931; "Power Company Files Notice of Appeals," *ibid.*, Feb. 14, 1931; "P.G.E. Appeals in Hat Creek Dam Battle," *Oakland Tribune*, Feb. 6, 1931; "Appeals Filed in Dam Bombing Case," *ibid.*, March 30, 1931; "Joerger Fight with P.G.E. to Be Reviewed," *Woodland Daily Democrat*, Feb. 25, 1931.

<sup>67</sup> *Louis P. Joerger v. Mt. Shasta Power Corporation, et al.*, 214 Cal. 630 (1932); "Joerger Again Wins in Court," *Woodland Daily Democrat*, Jan. 26, 1932; "Power House Again Active," *ibid.*, Jan. 29, 1932; "Dam Dynamiter Wins New Court Victory," *Oakland Tribune*, Jan. 26, 1932; "Joerger Right to Hearing Attacked," *Courier-Free Press* (Redding), Feb. 19, 1932.

<sup>68</sup> Joerger to Carter, March 4, 1932, file: *Joerger v. Mt. Shasta*, box 29, Carter Papers.

<sup>69</sup> Notice of breach and election to sell by Bank of America, Jan. 27, 1932, book 63, p. 472, Records of the Shasta County Assessor-Recorder; "Bank Sues for Joerger Land," *Courier-Free Press* (Redding), Feb. 13, 1933; "Joerger Sued on Notes Said to Be Past Due," *ibid.*, Aug. 12, 1933; "Joerger Asks \$289,553 In Damage Action," *ibid.*, Aug. 17, 1933; "District Court Here Halts Action Against Joerger," *ibid.*, Sept. 22, 1934; "Joerger in Court Suit Asking Big Damages," *Woodland Daily Democrat*, July

Then, much like the events that had escalated to the point where he almost had been killed, Joerger embarked on an even more zealous crusade resulting in more self-inflicted disasters. First, he sold his livestock to fund the conspiracy litigation against Bank of America and PG&E. Then, perhaps seeing a better way to fight against what he believed were abuses of corporate power, Joerger ran for Congress, campaigning (with few funds) as a New Deal Democrat and citing his long battles against big businesses. In quick succession, however, Joerger lost the conspiracy lawsuit, lost the election, and — after temporarily blocking the foreclosure proceedings on his ranch with his bankruptcy filing — ultimately lost that property to Bank of America.<sup>70</sup> And as if these events were not bad enough, Joerger also forfeited his Piedmont home when he was unable to make mortgage payments on that property.<sup>71</sup> Incredibly, even when it no longer actually mattered because he did not own the Shasta County ranch anymore, Joerger continued to fight over that property all the way to a final decision before the California Supreme Court in July 1937. He lost that battle, too.<sup>72</sup>

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Two decades later, much had changed. Mt. Shasta Power Corporation had ceased to exist and had become an integral part of PG&E, which, in turn, had continued to expand its hydroelectric power facilities in the Pit River basin (including on Hat Creek) and throughout all

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17, 1933; “Joerger in Court Suit Asking Big Damages,” *Oakland Tribune*, July 17, 1933; “Answer and Cross Complaint,” July 14, 1933, file: *Bank of America v. Louis P. Joerger*, box 30, Carter Papers.

<sup>70</sup> “Pledged to Back President Roosevelt in His Work to Restore American Democracy; Louis, P. Joerger, Democratic Candidate for Congressman, 2nd Congressional District” [newspaper advertisement], *Mountain Democrat* (El Dorado County), Aug. 17, 1934; “Incumbent Group Wins,” *Los Angeles Times*, Aug. 30, 1934; “Joerger Files Cross-complaint Against Bank,” *Courier-Free Press* (Redding), Feb. 7, 1935; “Joerger Wins Court Action,” *ibid.*, July 29, 1935; “Bank-Joerger Case To Be Argued,” *ibid.*, Dec. 6, 1935; “Joerger Ranch Sold Second Time Under Foreclosure,” *ibid.*, Dec. 28, 1935; “Bank Victor in Ranch Suit,” *Woodland Daily Democrat*, Feb. 19, 1936.

<sup>71</sup> Notice of Default, Mason-McDuffie Company, July 15, 1932, book 2866, p. 9, Records of the Alameda County Recorder; Trustee’s deed, Mason-McDuffie Company to Homes Loan Corporation, Nov. 28, 1932, book 2875, p. 360, *ibid.*

<sup>72</sup> *Louis P. Joerger v. Mt. Shasta Power Corporation, et al.*, 9 Cal. 2d 267 (1937).

of northern California.<sup>73</sup> The company — like other large water-using firms around the United States — no longer faced the scale of violent opposition that had existed in the first three decades of the twentieth century. Moreover, reforms in state water law, such as the 1928 California constitutional amendment that had reversed the *Herminghaus* decision and additional legal changes, eventually permitted California's officials to move forward with a state-wide water program. These alterations in the state's water laws also eased the way for other large-scale water developments, both public and private.

Louis Joerger, having lost both his Shasta County ranch and Piedmont home to foreclosure, first moved with Beth to Sacramento during the late 1930s. According to voter registration rolls, they lived within that city itself only a few blocks from the California State Capital building, although Louis continued to call himself a farmer and rancher (Beth identified herself as a housewife). Then for a year or two in the early 1940s, Louis Joerger took a job as a hotel manager in Butte County, California. By 1942, the Joergers were living in Sonoma County, where Louis worked on a cattle ranch. Although Louis registered for the draft during World War II, the historical record is uncertain as to whether he actually served in that conflict (he would have been in his early fifties when Pearl Harbor was attacked). After the war years, the Joergers continued to live in Sonoma County, where Louis died in 1955. Beth outlived her husband by nearly four decades. During that time, she became a playwright, poet, and song-writer (especially for school children) until her 1991 death, also in Sonoma County.<sup>74</sup>

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<sup>73</sup> Mt. Shasta Power Corporation, Certificate of Winding Up and Dissolution, July 28, 1936, file: Mt. Shasta Power Corporation Articles of Incorporation, Records of the California Secretary of State, California State Archives, Sacramento, California. See also generally Coleman, *P.G. and E. of California*.

<sup>74</sup> Voter registration entries for Louis P. and Beth M. Joerger, Sacramento County, 1936, *Great Register of California Voters, 1900-1944*, microfilm (Sacramento: California State Library, 1986); Voter registration entries for Louis P. and Beth M. Joerger, Sacramento County, 1938, *ibid.*; Voter registration entries for Louis P. and Beth M. Joerger, Butte County, 1940, *ibid.*; Listing for Louis P. and Beth M. Joerger, *Sacramento City Directory*, 1936, p. 306; Draft registration for Joerger *supra* note 7; Death listing for Louis P. Joerger, March 20, 1955, *California Death Index, 1940-1997* (Sacramento: California Department of Health Services, Nd.); Death listing for

For his part, in the 1930s Jesse Carter became the legal representative for the municipalities of Redding and Mount Shasta, California. In this capacity, he handled even more water cases as well as other types of legal issues (while also continuing to defend many of his other riparian water rights clients). At the same time, he strongly backed efforts to see the State Water Plan carried out.<sup>75</sup> On January 17, 1939, Carter won a special election to fill the California State Senate seat of John B. McColl, who had died in an auto accident. Only six months later, Governor Culbert Olson named Carter to the California Supreme Court.<sup>76</sup> There, Justice Jesse W. Carter brought to the high court the same qualities that distinguished Carter's representation of Louis Joerger in the 1920s and 1930s, when he defended the rights of the individual farmer's private property, and that reappeared later in Carter's fight for his own Marin County ranch. As described in Justice Grodin's introduction to Carter's oral history, these constituted "a strong-willed commitment to a constellation of values."<sup>77</sup> ★

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Elizabeth Milliken Joerger, Aug. 1, 1991, *ibid.* On Beth Joerger's writing and musical career, see, for example, *Something Wonderful: Clairee! 1913: A Musical Comedy, Set in Petaluma, California* (Petaluma, California: Np., Nd.); "Santa Is On His Way" (song), *Grade Teacher* 78 (1960), 29.

<sup>75</sup> On Carter's views and efforts regarding the State Water Plan (Central Valley Project), see *ibid.*, 152-153, 159, 164-166 [this vol., 272, 276, 278-280].

<sup>76</sup> "Jesse Carter Is Candidate," *Courier-Free Press* (Redding), Dec. 30, 1938; "Carter Winner of Senatorial Election," *ibid.*, Jan. 18, 1939; Johnson, *History of the Supreme Court Justices of California*, vol. 2, p. 162; Carter Interview, 161 [this vol., 277]; Carlton, "In Memoriam — Jesse Carter," 353-359.

<sup>77</sup> This vol., 185.