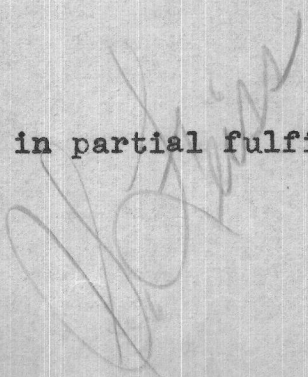


E. G. Mason

January 10, 1936

HERRICK TIMBER CONTRACT

Presented in partial fulfillment of F. 505

A large, stylized handwritten signature in dark ink is written over the bottom text. The signature is cursive and appears to be 'E. G. Mason'.

HERRICK TIMBER CONTRACT

call number

634.951

Un.32



## PREFACE

*Not verified &*

To Edward W. Barnes, bartender in a Bonneville beer parlor, for his one-man performance during the last decade in manipulating corporate, county, state, yes, and even national units, thereby causing a multi-million dollar public timber contract to be let, then modified and extended, and finally, by setting the stage for its ultimate cancellation, induced unfounded charges of fraud and collusion to be laid at the feet of the highest officials in the United States Forest Service, and the policies of that astute body "who could do no wrong" to be publicly criticized and questioned - to him this report is affectionately dedicated. "My eyes have been opened."

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## INTRODUCTION

To the Forester - the strict interpretation of the rules and regulations set forth in the 'Ranger's Bible' could cause the downfall of most private operators upon whom applied. One of the first decisions you will have to make then, is, shall I be governed by just what the 'law' tells me to do, and that only, or will there be times when I will approach the application of policy technique from the angle that work CAN BE DONE without the necessity of specific legal right thereto.

For, not alone shall your decision be based on extracting the best possible returns for your master, but it also must consider the interests of the community if for no other reason than to safeguard your reputation and yes, even your job. It is hoped that in the presentation of this report the reader will perceive, among other things, how embarrassing situations can arise --- out of a clear sky and at most anytime.

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## HERRICK TIMBER CONTRACT

Ed W. Barnes, our center of attraction, struck the town of Burns, Oregon, in the latter part of 1921. He went in there to promote a timber sale for an undisclosed principal (probably the Hines Lbr. Co.), but before he could do much towards consummating the deal, his backers decided not to go through with the thing (1). As would be expected, Barnes had not overlooked the opportunity to option considerable patented timber located in bottleneck positions contributory to large bodies of Malheur National Forest timber, as well as "sewing up" the only two available mill sites and necessary right-of-way lands (2).

Well, Ed was left holding the sack - in a jackpot. He had these key areas on his hands and realized that quick action was necessary to realize on his investments before the options would expire. The only thing to do was promote the sale of the Federal timber, since the amount of private stumpage was so small, relatively speaking, as to prohibit any operator from even thinking of building the necessary 90 miles of railroad to get to it. The main line of the Union Pacific terminated at Crane, 30 miles short of Burns, and from there on up the Harney Valley was another 60 miles to timber (3).

(1) p. 680

(2) p. 102, 187, 681

(3) p. 54

Now, too, the natives of the area, isolated as they were, wanted to get out of their 'wilderness' setting (4). Their principal source of income had been stock-raising, which became somewhat of an 'old hat' livelihood following the post war drop in cattle prices. Something new had to be done. So the people formed an irrigation district, authorized a \$2,000,000 bond issue, and set the stage to reclaim something like 83,000 acres of land for productive crop raising. Now, unlike cattle, you can't drive farm crops to market. In short, a railroad was needed. And yet, seasonal harvests won't build railroads - especially 90 miles of it. But, wait, in timber lay the answer. Here was an unworked commodity in great abundance; and so located that its transport line would traverse the entire farming area - and better yet, not only would its sale bring them the desired railroad, but a PAYROLL besides - not to mention a twenty-five per cent 'cut' on the sale returns !!

So, you see, Barnes the speculator hit town at the proper time. For, by parading as the benefactor and representative of the community interests he could camouflage the real motivating force - the lining of his own pocket book. Reader, if you still doubt the personal contemplations of Mr. Barnes, let me interpose by stating that he had two cruisers on Mary's Peak this year, anticipating no doubt, the Forest Service' optioning the timber and land there for the proposed recreation unit. (5). Ed gets around, he does.

(4) p. 680

(5) Jno. Horton, USFS, Portland



To go on, the Burns people had had no success with spasmodic and minority attempts to get the USFS timber up for sale (6). With Barnes, though, came big time methods. Said he "Get up a petition saying that I represent you, sign as many names to it as you can and I will take it back to Washington and get action." No sooner said than done. A committee of prominent business men in the town got together, agreed to finance Barnes (7), and drew up a flowery and heartrending petition extolling the need of unlocking a veritable storehouse of treasure through sale of the timber (viz: "We submit, most respectfully, that the Government of the United States ought not to assume the rôle of an absentee landlord. It ought to have due regard for the welfare of the communities dependent for their development upon those resources which it has taken permanently into its hands ----- .") (8).

Barnes and his petition went back to Washington. His first contact was with the Oregon delegation in Congress and Secretary of Agriculture Wallace. An arranged conference with Colonel Greeley, Chief Forester, followed on the next day (9). With such a 'smear' of names backing up the petition, plus personal representation, Greeley was of course receptive to the idea, and agreed to put some 'cruisers' in the Malheur to make the appraisal. Barnes then hurried back to Burns and cornered some more property about the town. Listen to the following quotes - it's

(6) p. 33

(7) p. 680 - "They did, to the extent of \$10,000 !"

(8) p. 33

(9) p. 34

between Barnes and Herrick, the ultimate successful bidder:

Herrick: "Who owns the land around here ?"

Barnes: "I do."

Herrick: "What do you own all this land for ?"

Barnes: "I don't - I just have it optioned."

Herrick: "What the hell haven't you under option in this country ?"

Barnes: "I was just fixing it for you."

Herrick: " Well, Barnes, I guess you knew what you were doing and lets get some dinner." (10)

To get back: Following the appraisal, Colonel Greeley let it be known that the timber would be officially up for sale at a minimum of \$3 per M for Western Yellow Pine. Now this was too blamed high for Barnes. It didn't fit in with his ideas at all. He had previously sized up the timber and figured an upset price of \$1.50 a M would be a good figure. He could interest operators at this price and thus tie-up a consideration therefor in the form of having his own timber bought at around \$2. Then, too, what with all the railroad to build, \$3 would scare away all investors (11). AND, those options would soon be up ! So, Barnes, working through the Oregon congressmen in Washington, got Secretary Wallace to wire the then-traveling Colonel Greeley to meet him in Portland. OK. Barnes gathered in a goodly charge of Burns citizens and up-town boys from the Portland Chamber of Commerce to help him (12) insist that the \$3 a M was too high. Following the confer-

(10) p. 83

(11) p. 135

(12) p. 35



ence, Greeley said, "I'll put the timber up at \$2.75 a M , and if no bids are received you (Barnes) bring me the best offer you can get and I will readvertise it for 30 days." (13)

It followed that the Forest Service did its part (viz: "This project is an unusual opportunity for establishing a new permanent unit of pine-lumber production, to meet the demand caused by the rapid exhaustion of the pine timber in the Lake States and the South ----- .") and put the timber up for sale at \$2.75 a M for the six months period. (14) No takers. Perceiving this would be the case, Barnes got in the saddle and contacted Dr. Brooks (of Brooks-Scanlon Lbr. Co.) in Chicago. He got Brooks to send in a bid of \$2, and taking a copy of the bid, Barnes followed on into Washington. True to his word, Greeley now offered the timber at \$2 a M for the 30 day period (15). In making the deal with Dr. Brooks, Barnes began turning on the heat in his own direction. In consideration for the assurance to Brooks that he could get Greeley to put up the timber at \$2, and that he, Brooks, would be the only bidder, Ed W. got some kind of a 'side' contract that the good Doctor would buy over his options at the same rate of \$2 (16).

At the end of the 30 day period, the bids were opened at the USFS Portland office. There were two bids - the one of Brooks for \$2.05 and one of Herrick for \$2.80. The unconcealed surprise of one person present - Barnes - was apparent: "Who the Hell's Herrick ..... !" (17). Hadn't he promised Brooks the bid at \$2 ? This indeed was a monkey wrench in the works. So Barnes attempted to buy out Herrick's banker-representative, Mr. Flood, right

there in the office. Barnes: "Young man, I'll give you \$25,000 if you'll take your bid and get out of here ... .." (18). Here was Barnes in the predicament that he had no guarantee whatever with Herrick that he could sell him his options at a nice predetermined profit - as was the case to be with Brooks (19). Herrick, of course, got the contract, and paid Barnes but \$1.49 for his timber, which figure was included in the \$55,000 paid altogether for right-of-way, mill site as well. After getting this sum, Barnes turned right around and instituted a half dozen suits or so against Herrick, stating that he was "induced to sell timber for \$1.49 a M which in fact was worth \$2.50, and that defendant was injuring plaintiff by not beginning construction on mill site, etc., etc." (20). In other words, Herrick wouldn't be a good soldier and buy up all of Barnes' options, preferring to let those run out which were not immediately necessary (in Herrick's opinion) to have.

Primarily and always, Herrick accepted the contract in good faith, and was anxious to "make a permanent monument to his offspring" out of the Malheur unit. But he had his own ideas on financing the work, although he was estimated to be worth 8 or 9 millions, most of which, tho, represented fixed investment in sawmills (21). Lumber prices had been good and still were at the time he entered into the contract (June, 1923), and he felt that he could finance the railroad, mill, etc., out of the

(18) p. 330, 449

(19) p. 111, 112

(20) p. 122, 123, 378

(21) p. 449



profits of his other mills in Idaho and Alabama. He 'thot' he could do it this way and still complete the project in time "to begin the felling of trees within two years," as specified in the contract. You understand, Herrick was of the old school and believed in the adage "Don't borrow or mortgage, but pay as you go." This probably would have worked out satisfactorily, too, except that the bottom fell out of the lumber market and profits, if any, were slow in forthcoming. This delay on the part of Herrick, caused by the breaking down of his financial program and his desire to sidestep Barnes' options, necessitated three extensions of time in the contract. Herrick asked for them, and got them, BUT herein lies our story. Follow!

"Barnes Sharpens ~~up~~ His Tools - Greeley on the Spot"

Barnes saw his chance, if he could but get the contract broken, to whip in the Brooks - Scanlon interests and thereby increase the spread between his own speculative price and the price they would give him. To you financiers, it meant an increase in his windfall gain, more derived dollars, or what have you, which was just the thing Mr. Barnes was interested in. He began by working on Colonel Greeley. The letter in part: "Col. Greeley, the work is going slowly, and the people are getting very uneasy ..... and if the Brooks-Scanlon people had been awarded the contract, the railroad would now be nearly completed and the sawmill over half-way along." (22)

There, thought Barnes, that ought to start the ball rolling. And he saw to it that similar letters kept pouring into Colonel Greeley, both directly and through the District Forester Ames of the Portland office, and Senator McNary and Representative Sinnot of Congress (23). McNary and Sinnot kept asking Greeley "What's up" ? So the Chief Forester sent his assistant, E. E. Carter, out to the coast to look over the situation. Carter picked up Ames and the two together met informally with 25 citizens of Burns (24). The result of the meeting was expressed in Carter's report to Greeley which stated in effect that Herrick was progressing slowly, that the town of Burns had authorized the sale of \$280,000 worth of sewage bonds which were practically unsalable until outside investors were assured that the mill would be built as planned, and that contract COULD BE LEGALLY CANCELLED on the ground that work had been spasmodic. He added that modifications were necessary if the contract were to be carried out - i.e., start of timber felling within two years of signing of contract. Further, Carter mentioned that 'our man' Barnes was at the meeting doing plenty of arm-waving with a check for \$200,000 as bait (25). Greeley, after a short mental inventory, made a jackpot decision. He approved the modifications, allowing an extension of time.

#### WHY ?

Were not protests, with PRESSURE written all over them, pouring in from "reliable" people ? Had not Carter stated that the contract was voidable - that Herrick was

(23) p. 458, 460, 524, 588

(24) p. 388

(25) p. 389



obviously 'on center' instead of going ahead ? Did not the reputation of the USFS have to be sustained and the faith of the people in the organization justified ? And the "rights" of the people - were they not at stake ? And yet, Herrick already had made close to a \$700,000 investment. That was something. Suppose the contract were cancelled; it would mean even more delay, and in the case of readvertisement, who could say that such an attractive price of \$2.80 a M could be attained, especially in the face of a falling lumber mart. Then, too, there was the chance that Herrick could get a restraining injunction in event of a resale, for, after all, there was nothing in the contract stating that so much railroad had to be built within a certain time. The only stipulation was that timber felling must start within two years of signing of contract; AND that time was not yet up ! (26)

SUCH WAS THE OVERBALANCE. Colonel Greeley approved, whilst he 'center-lined' the whole thing with the easement that \$50,000 damages must be collected from Herrick if new conditions set up (so much railroad, mill site development by certain date) were not met. "The dice once having been cast" Chief Greeley permitted two more modifications and extensions, collectiong the \$50,000 on the one and allowing the third via accepting satisfactory "other work" in lieu of stipulated requirements.

Now, Barnes, seeing the third modification made, got worried that Herrick would get to<sup>go</sup> through with the contract.

Herrick had decided, finally, to float a loan and was in the act of so doing. If he got it he couldn't miss. But Ed's dauber was far from hanging low, yet. That loan must be blocked if cancellation of contract were to be attained.

Herrick had made his bid on the say-so of Girard, USFS logging engineer and appraiser of the Malhuer<sup>20</sup> unit. Previously, Girard had handled the appraisal end of several blocks of timber that Herrick had bought in Idaho, and from these dealings Herrick had gained great confidence in Jim's ability as a judge of timber and logging shows. So, altho the advertised minimum was \$2 in the reappraisal, Herrick said: "Jim, I'll meet your original appraisal of \$2.75 and go you 5¢ better" (27). Naturally enough, Girard felt that it would be a betrayal of confidence to contact any other principals and try to beat this figure. Furthermore, after Herrick knew he was to be the successful bidder, hired Girard (28) and another USFS employee, Klobucher, to work for him at a substantial increase in salary (29). Now these circumstances were not unusual. Such things had happened before. But Barnes put two and two together and decided that here was an opportunity to publicly announce that there was a connection between Herrick's ability to get extensions of time on his contract and the fact that ex-employees of the USFS were working for him. Here was the 'basis' for a resolution to be drawn up asking for cancellation of contract which would, in addition, block

(27) p. 361

(28) p. 367

(29) p. 549



Herrick's pending loan. Ed gave it out to the papers that Herrick had increased Girard's original salary of \$3840 by \$5,000 (30). Next, our man got the court of Grant County and the Grant County Stockgrowers Association to each draw up signed resolutions, send them to Washington and giving him letters of bearer to that effect (31). It wasn't hard to get a resolution from the Stockgrowers Association - its members were opposed to Colonel Greeley's grazing policy - so in their resolution they even said "give us a new Chief Forester while you're at it!" (32) These resolutions set out that "Herrick has ignored all conditions of contract - said action of Herrick being sanctioned by Forestry officials.." Again: "Laxity shown in face of violation of terms of contract have been due to connection of purchaser and former employees of USFS." (33) But Barnes could get no action on this alone, so prepared another tail-twisting resolution and sent it to his "Longview realty" sidekicks, McGowan and Hamilton. These two men, likewise, were anxious to amortize their investments on real estate options next to Burns which Herrick had failed to come to attention on (34). Barnes wired in effect: "Prepare this resolution to read something like this ....., present it in the Oregon legislature and get that body to memorialize Congress, as that's the way to get action" (35). For Barnes still had a joker up his sleeve - the ace pin. Having looked over the contract modifications, he noticed that Colonel Greeley had

(30) p. 379

(31) p. 2, 4, 26, 27

(32) p. 4, 104

(33) p. 3-4

(34) p. 585, map p. 160

(35) p. 106-7

inadvertently both used and sanctioned the words "construction of railroad suitable for use in hauling logs in trains" (36). This was Barnes' spearhead to be inserted in the resolution to the Oregon Legislature - for it always had been, right from the preliminaries of the thing, stressed that the railroad was to be a common carrier. Colonel Greeley's choice of words allowed Barnes this interpretation, and he realized that if any point, no matter how small, could be construed as prejudicing common carrier rights, group action could be incited. And along with this came major point no. 2 - the idea of expanding the inference of the other resolutions by coming right out in the open with charges that there was "strong evidence of fraud and collusion between Herrick and former employees of USFS (viz: contract delays) (37).

So Archie McGowan introduced the resolution in the Oregon legislature and Mr. Hamilton, an eloquent speaker, rammed the thing through, stressing the fact that "it is hereby charged by \*reliable citizens\* of Grant and Harney Counties that fraud and collusion are present and there is an attempt to waive the common carrier clause" (38). To doubly clinch the thing, Barnes sent a wire saying "Get up a petition signed by as many as possible to read like this 'We the undersigned, certify that we believe the Forest Service department negligent in propounding contract -----' " (39). In addition, Barnes ordered up

- (36) p. 391, 428
- (37) p. 2
- (38) p. 1, 103, 160
- (39) p. 114



a flock of telegrams (the janitor in Burns' courthouse sent one, also the sewer man, grease-monkey in the garage, and a railroad section hand, among others)(40) to be sent in so as to be in Washington right after the Oregon memorial arrived (addressed to Senator Cameron who was on the committee of public lands and surveys). Well, over 30 of these telegrams within a three day period was sufficient 'pressure' for Senator Cameron to get out and introduce the memorial in the Senate. Barnes then completed the process by following-up with a landslide of telegrams to assure the Senate adopting said memorial (41).

To wind up, Barnes was successful in getting the Senate to pass Resolution no. 332, calling for a sub-committee of the Committee on Public Lands and Surveys to investigate, and from the 900 pages resulting from the testimony presented, this report is drawn.

Now it may be that the reader would be interested in the leadership technique displayed during the hearing of this testimony. Senator Stanfield of Oregon was chairman of the hearing, but so completely did Senator Walsh of Montana dominate the proceedings that the reader is hard-pressed to even realize that Stanfield was among those present. Contrast Walsh's clear-cut excerpts on pages 107, 210, 386, 378, 403, 419 with those of "Chairman" Stanfield on pages 474, 575, 609, 752, 818, 820, and 824.

Naturally, the reader will be interested in knowing

(40) p. 109

(41) p. 12 - 16

how the thing came out. Suffice to say, Herrick lost the contract and quite a sum of money, but did recover the \$50,000 paid in as liquidated damages for failure to live up to the second series of modifications imposed. The enabling legislation for this was via bill introduced in Congress "for the benefit and aid of said Herrick.." (42).

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