



BENJAMIN FRANKLIN MARSHALL CALAVERAS COUNTY'S FIRST ELECTED SHERIFF, PART 1 OF 2

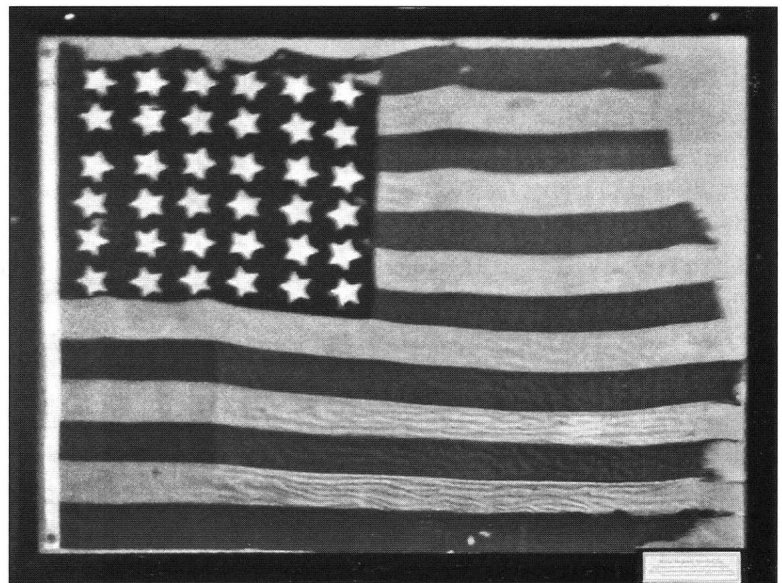
by Bonnie Miller

Benjamin Franklin Marshall, Calaveras County's first elected sheriff was one of our most fascinating and possibly controversial historic figures. His public service and personal documents tell the story of a fearless pioneer lawman. The same records also describe a tale of conflict, confusion and controversies. Balancing family lore with first-hand accounts and public records, we will try to set the record straight.

The mystery behind the man started with his birth. Over the years he claimed a variety of hometowns and ages for himself. Little is definitively known about Marshall prior to his military service. There we know he served in the US Cavalry, listing Kentucky as his home state. In subsequent census records Marshall listed himself as born in Ireland.

His family often repeated that he was born in 1798 in Louisville, Kentucky. That would make him fifty years old when he arrived in Calaveras County in 1848. That is not unreasonable, as the only known early picture of him indeed shows a mature man. However the California state census

of 1852 that listed Marshall as a sheriff conflicts with that story. He noted that he was 32 years old and had most recently lived in Kentucky although a native of Ireland. Likely he thought of himself as Irish, with his father being the native of Ireland. This would place him as born in 1820. Many other sources



This tattered 36-star flag belonged to the Marshall family and today resides in the Calaveras County Museum. Photo by Bonnie Miller, January 2014.

confirm that later birth date, although noting that he was born in Tennessee and not Kentucky. Tennessee and Kentucky were fully formed states by this time. Many residents considered themselves as natives of the general area and not specific to the state.

Las Calaveras and Marshall family descendents have attempted to confirm his family's genealogy. Detailed research by descendant Barry Schwoerer has confirmed many points. He has graciously contributed many of the facts and dates that we acknowledge herein.

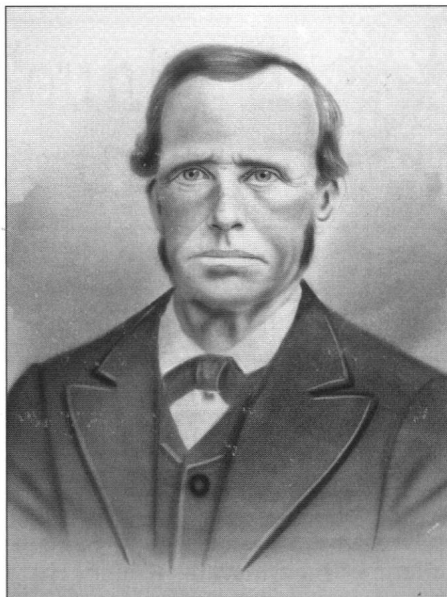
We do know that Benjamin Marshall enlisted with the US Cavalry and served during the Mexican American War. Perhaps he was escaping an uncomfortable family situation, perhaps he was a grown man on an adventure, or maybe he had just felt a patriotic call to duty. This is where we begin the story of his life.

Marshall's Military Service

One of the most exciting mementos of Marshall's is his flag. Today it is proudly on display upstairs in the County Museum in the old courthouse.

The Marshall family lore claims that the flag was from Marshall's service as a Kentucky Cavalry soldier in the war against Mexico. The flag is clearly old and tattered. The legend is that the damage was from battle and the holes caused by flying bullets. Marshall's grandson recalls the flag being flown ceremoniously at their family home for all annual events. The problem with the legend is that the flag has thirty-six stars. The thirty-six star flag did not come into existence until 1864, almost twenty years after Marshall arrived in California, long after the Mexican American War. Marshall did however serve in politics in Nevada during his later years. When Nevada gained statehood the thirty-six star came into effect. The flag on display was likely from his Nevada service and became a family memento, but did not see any military service.

Marshall served in the 1st Kentucky Cavalry with Captain Heady during the Mexican War. Marshall claimed to have served under three generals: Scott, Taylor and Perry. After his military service he found



Benjamin Franklin Marshall, circa 1850.
Charcoal sketch, courtesy of the Marshall family.

himself in Southern California. Years later Marshall was given a medal from the war or veterans office recognizing his military involvement. The bronze medal acknowledged his service in the battle of Vera Cruz. It noted that Marshall did in fact serve under the three prominent generals. Today that medal remains in the family's possession.

One family account notes that Marshall first came to California, serving with John Frémont and Kit Carson, "charting a trail to California." This service has never been validated. This error likely originated from a note found in Marshall's personal belongings.

Marshall maintained meticulous notes in a small diary where he detailed his activities that brought him to California. His diary never mentioned, nor did the Frémont expeditions note any involvement.

Marshall was discharged from New Orleans on 7 June 1847. According to his diary he chose to travel west, arriving in southern California the following year. Family lore claims that he stopped at a ranch to rest and water his horse. There he met a lovely lady, recently widowed, who owned the ranch. A romantic courtship ensued.

Nicolasa Loreto Carriaga was born in Puebla Los Angeles. Based on her confirmation records, her birth date is believed to have been in November of the year 1819. She had grown children and owned substantial properties by the time she was widowed and met Marshall, but she did not own a ranch. Rather, she owned property in the city. At that time Spanish law allowed widowed women to inherit their husband's property. Early documents use this shortened spelling for her name, but the family later adopted the spelling as Nickolosia or Nicalausa Carriaga. Likely she didn't care how it was spelled as apparently she may have been illiterate. When required to sign documents, she neatly marked an **X**.

Like many Mexican War veterans finding themselves in California at the onset of the discovery of gold, Marshall joined the migration to the foothills. By 1849 he had arrived in Murphys and the following year Nicolasa had joined him there. Perhaps he had

felt an affinity for a community established by Irish descendants. Apparently Nicolasa left her children from her previous marriage behind. Nicolasa was then about 30 years old and Marshall was either 32 or 52.

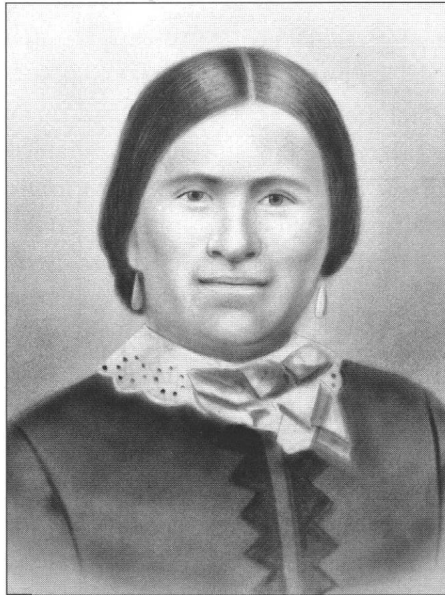
There is no record that they were married at the time and their union appears to have been common law. Subsequent documents, produced decades later, claimed Ben and Nicolasa legalized their union in January of 1853. Regardless of their marital status, Nicolasa often referred to herself as Nicolasa Carriaga, whereas everyone else, including many legal documents, referred to her as “that Spanish woman,” or just “Marshall’s woman.”

The family believes that Marshall initially attempted mining but found the work unpleasant. His Kentucky upbringing had exposed him to ranching, and his military service in the cavalry continued to refine his skills with livestock. Farming or ranching seemed to be more appropriate for him and indeed he eventually did pursue ranching. Or, perhaps his military service sparked his interest in the law, for when the chance arose Marshall became a lawman.

The Call to Law

Early in 1850, six months before California became a state a provisional legislature was held. The provisional government appointed men to fill the public positions anticipated to be needed in the new state and its twenty-seven original counties. Calaveras County’s first sheriff was John Hanlon appointed by the provisional governor.

Covering the lawless territories of the county proved difficult for the new sheriff and the small mining camps soon needed additional law enforcement. The minor positions of Constable and Justice of the Peace were created to assist the sheriff. Murphys Mining Camp held a special election to fill the new position. With his prestigious military record Marshall ran for and easily won the election for Constable of Murphys in May of 1850. Calaveras County Clerk Lewis Collier commissioned and certified Marshall



Nicolasa Carriaga Marshall, circa 1850.
Charcoal sketch, courtesy of the Marshall family.

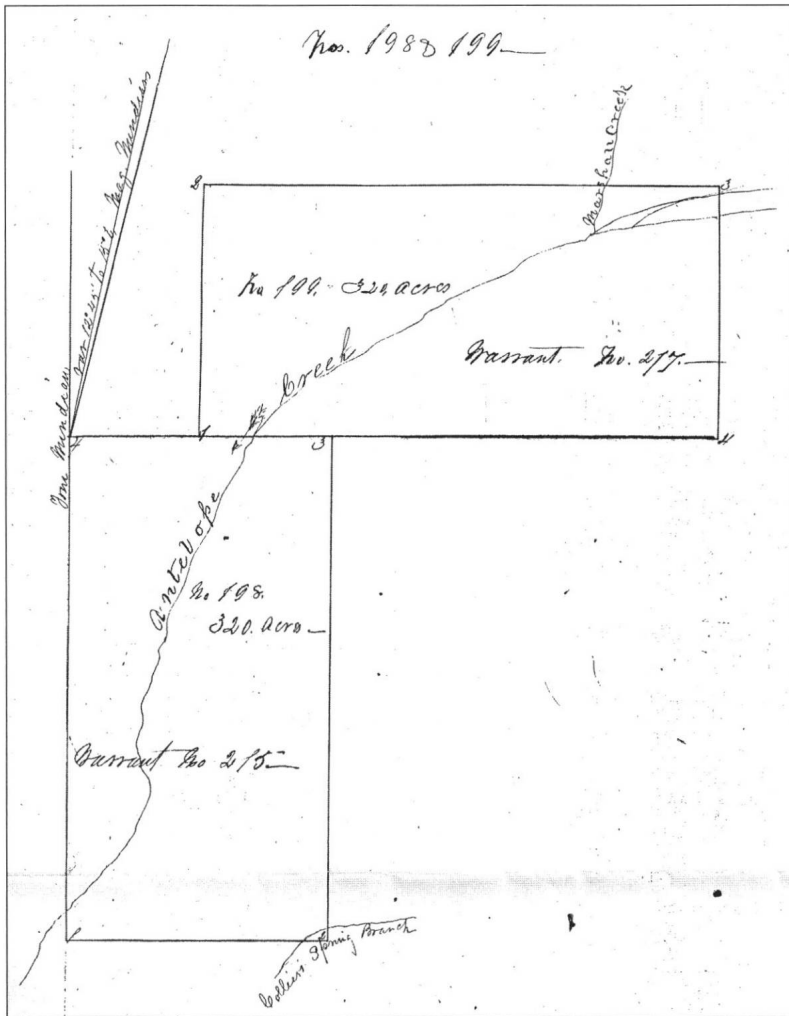
as the Murphys Diggings Justice of the Peace and Constable on 10 June 1850. Collier himself would later become a nefarious character in the history of Calaveras County.

Perhaps Hanlon was not really interested in performing his duties as sheriff or perhaps he was overwhelmed by the magnitude of his new position as he only served a short time. He appointed Marshall Deputy Sheriff then disappeared. Within just a few months he had gone missing and was presumed to have abandoned his duties. The position had to be filled. When Sheriff Hanlon failed to respond to summonses from the judge to

return to duty, Marshall was appointed to fulfill the vacancy. He completed the first sheriff’s term and decided to run in the subsequent election to remain in the post. In 1852 he won the position by popular vote becoming Calaveras County’s first elected sheriff. Later allegations claim that Marshall just assumed the duties after the election and another candidate W H Nelson had actually been certified as the winner. The legality of Marshall’s election as sheriff was contested for several years. Regardless, Marshall took control of the job, and took the job seriously. He quickly earned a reputation for controlling crime with an iron fist. He doggedly pursued miscreants, and rode a sure-footed mule named Nancy instead of a horse as she was much steadier on the uneven mountain trailways.

When Marshall first entered law enforcement he had one of his most famous situations. While he was the Constable in Murphys he had many occasion to break up fights at the local saloons and gambling houses. One place in particular was the blue tent where Joaquin Murrieta and his girlfriend dealt Monte. Marshall often intervened when unruly miners harassed the young Mexican couple.

“*Let it be honestly admitted,*” said Marshall in some 1853 notes, “*that the rough miners were guilty of gross wrongs to Joaquin Murrieta and his wife...*” Murrieta befriended Marshall and they maintained a mutual respect. Marshall’s papers of 1853 described Murrieta as having “*...the splendid daring courage*



This 1853 survey indicates School Land Warrants 215 and 217 that comprised the Antelope Ranch. Calaveras County Archives.

of this remarkable youth, as I knew him well, appeal strongly to me and, bandit as he was, I am bound to say, I have a great respect for his memory..."

When the head of Murrieta was on public display in 1853 as proof of the capture of the bandit, Marshall went to see it. He claimed that it was not the man he remembered but another unlucky Mexican.

History often cites the Murrieta affair as an example of a calm lawman, dedicated to keeping the peace. Numerous conflicting reports claim just the opposite, instead painting him not as the benevolent lawman but as a man with a violent temper. The truth probably lies somewhere in between. It is likely that Marshall felt compassion for the Mexican miner, reminding himself that his own wife was Spanish.

Legends claim that Joaquin Murrieta, grateful for being treated decently by Marshall, gave him a copy of the only known photograph he ever had taken.

Years later this photograph was heavily questioned.

Another example of Marshall's benevolence was an incident with his mule. She had been stolen from his ranch in Milton and he sorely missed her. One evening a delivery wagon pulled into Murphys being pulled by his mule. When he questioned the merchant the man explained that he had honestly purchased the animal. Marshall struck a deal. If Nancy walked of her own free will down the street to her regular paddock, the man would agree that the mule belonged to Marshall. When released, she then calmly walked home in search of her dinner. Thereafter Marshall kept her locked in her paddock with a keyed padlock. Today the key to that padlock is on display in the Murphys Old Timers' Museum.

Public Service

Marshall ran for reelection in 1855 but was defeated by Charles Clarke. In the mean time he had taken an appointment as an Indian Agent. Since he had been in the state since before the discovery of gold, he was familiar with the plight of the Indians. In a letter to the Superintendent of Indian Affairs dated 31 December 1854

Marshall explained that he had found the Indians to be wanting. He recommended that they be moved to another location. When the Indians learned of this plan he promptly gave them beef to assuage their fears. "I deemed it my duty to issue Beef to the infirm old men, women and children..." he explained. His superiors did not see it that way, and Marshall was admonished for his efforts. In a detailed report of his affairs, he described the current situation among the Indians of El Dorado, Amador, Calaveras and Tuolumne Counties. He again suggested that he gain their confidence by providing them with beef and then relocate them to Nevada. "I am decidedly of the opinion that the Indians ...should be removed to a reservation...", he said, but his opinion had a humanitarian attitude. He said he would feed them all if he could afford to do so, but that the government ought to. "We have taken their country, have deprived them of their means of sustenance, and the Government

must take care of them or they will all die..." For the most part Marshall's concerns were ignored, however the incident led to another of his controversial affairs.

Marshall supplied beef to the Indians. Either he had attempted to exploit an opportunity when it arose, or he was fulfilling duties he felt his position as an Indian Agent warranted. Marshall never got paid for this service, and he harbored anger about the matter for years. Repeatedly over the next few years he billed the state for the beef he had supplied, only to be denied compensation.

Marshall began to show political aspirations beyond Calaveras County. In 1856 the county's Democratic Delegation unanimously nominated him as their candidate for Delegate to the National Convention. His service there was brief. He then decided to run for the State Assembly, partly in pursuit of his beef compensation. He won the election and served as a California Assemblyman from 1858 until 1860. "Grandpa was a staunch Democrat," recalled his grandson Manny in 1980, "and very controversial, I'm told." Marshall ran for reelection after his one term but was defeated "by a Republican," a defeat that irritated him for the rest of his life. The "Republican" would later return and play a major role in Marshall's life.

In 1858 Marshall's continued claims for compensation for beef for the Indians finally prompted a review by a judicial committee. Perhaps he was using his influence as an assemblyman to gain attention or seek some definitive action. The committee in fact recommended, and the state legislature agreed to his claim. But the governor failed to sign and authorize the payment, further fuelling Marshall's anger.

Over the subsequent years Marshall performed a variety of public services. In 1860 he served as a judge and performed "inspection services." This work was likely as a public official assisting in conducting the public elections. For this work he was paid six dollars. Two years later he performed "election services" in Murphys and this time he was paid nine dollars. His name repeatedly appeared on various rolls in official capacities, however he never held a public office in Calaveras County again. He relied

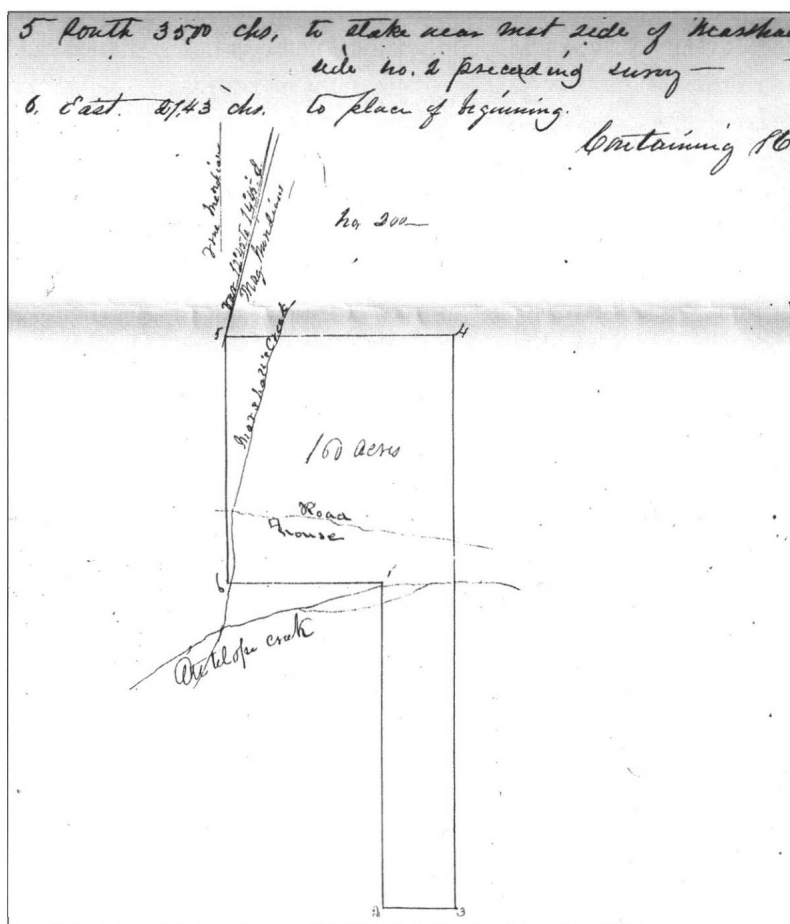
on the living he and Nicolasa made from their ranching and business interests.

Throughout his years in public service Marshall and Nicolasa operated a butchering business in Murphys. It was located between Church and Main Street, near the western end. To supply this business they established a ranch southwest of Milton.

Rancher and Developer

Marshall likely only initially dabbled in mining and quickly abandoned the career. He turned instead to the more profitable business of supplying the miners rather than being one.

Marshall's early arrival placed him in California well before the influx of gold seekers. He was familiar with how to traverse the state and access the gold fields in the foothills. An ancient Native American trade route traversed the central valley, crossed the Salt Spring Valley, and ascended the Sierra Nevada Mountains. This was likely the route Jedediah Smith took when he crossed the mountains in 1824. It



This 1853 Antelope Ranch survey map shows where the Antelope Road crossed the ranch near the roadhouse. Calaveras County Archives.

was also the first established “road” into Calaveras County. By 1850 the road was being heavily used by Argonauts travelling from the Stockton area to reach Murphys Camp, then the center of gold mining activities. Marshall wished to capitalize on that traffic so he purchased land that straddled the road.

In the earliest days of California’s statehood various lands had been set aside for public use such as courthouses and schools. These locations often proved infeasible as the population swelled and moved along with the latest strikes. Like the original county courthouse in Double Springs, a large tract of land intended for schools near Milton quickly proved infeasible for serving the true population. Marshall purchased two tracts of this land through School Land Warrants numbers 215 and 217, in 1850 (320 acres) and 1853 (120 acres) just southwest of Milton.

Marshall named his property the Antelope Ranch for the plentiful game available on the valley plains. To promote traffic by his ranch and on in to Calaveras County by this route, he named the road the Antelope Trail after his ranch. Despite its cachet, the name is not native in origin but was introduced by him. On 18 May 1853 County Surveyor Marlette surveyed and certified Marshall’s land as the Antelope Ranch. It is interesting to note that a stream depicted on the map of the Antelope Ranch was named for his neighbor Collier, the clerk who certified Marshall into public office three years earlier.

Marshall understood the importance of good roads accessing the gold fields. He also knew how difficult travel was which was why he rode a mule. And he recognized the strategic location of his ranch between the valley and the foothills. By 1854 the Antelope Trail had been roughly improved to accommodate wagon traffic yet it remained barely passable.

In 1858 or 59 Marshall petitioned the county to declare certain roads leading to and through Angels and Murphys as public highways. The county board of supervisors thus appointed Marshall and a commission to investigate these options. Not unsurprisingly the commission returned with the recommendation that the road through Marshall’s ranch leading to Angels and thence to Murphys should be declared public and improved and maintained as such. This route directly linked Marshall’s Milton ranch with his house and other business interests in Murphys.

Marshall and Nicolasa ran a busy roadhouse at the Antelope Ranch serving the eager travelers. The roadhouse was located on the north side of the Antelope Trail, across from the residence. He captured wild cattle roaming in the valley establishing a profitable cattle business at the ranch. The cattle in turn supplied their butcher business in Murphys. Their businesses were quite lucrative, as evidence by the 1858 tax record indicating a value of \$5000 for the Antelope Ranch. But there was another side to this appearance of wealth.

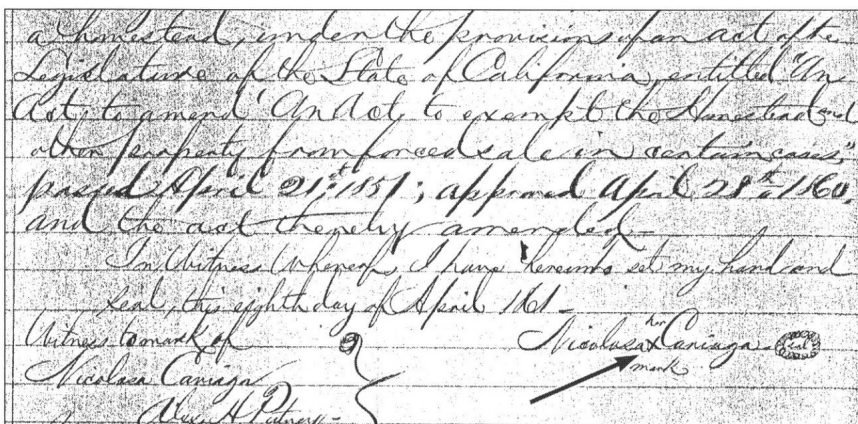
Between 1850 and 1860 Marshall spent his time between the Milton ranch, his public duties and the house in Murphys. It appears that the couple was often apart, with him running the ranch and roadhouse, and her running the butcher business in Murphys as well as raising a family.

Marshall again briefly pursued an interest in mining. In 1854 he invested in a hard rock mine in Angels Camp, appropriately called the Marshall Mine. The mine proved to be not profitable. Despite its poor performance, some sources claim that the Marshall Mine was early proof of the potential for hard rock mining. Hard rock mining was still in the future for Angels Camp and California, but sources claim that

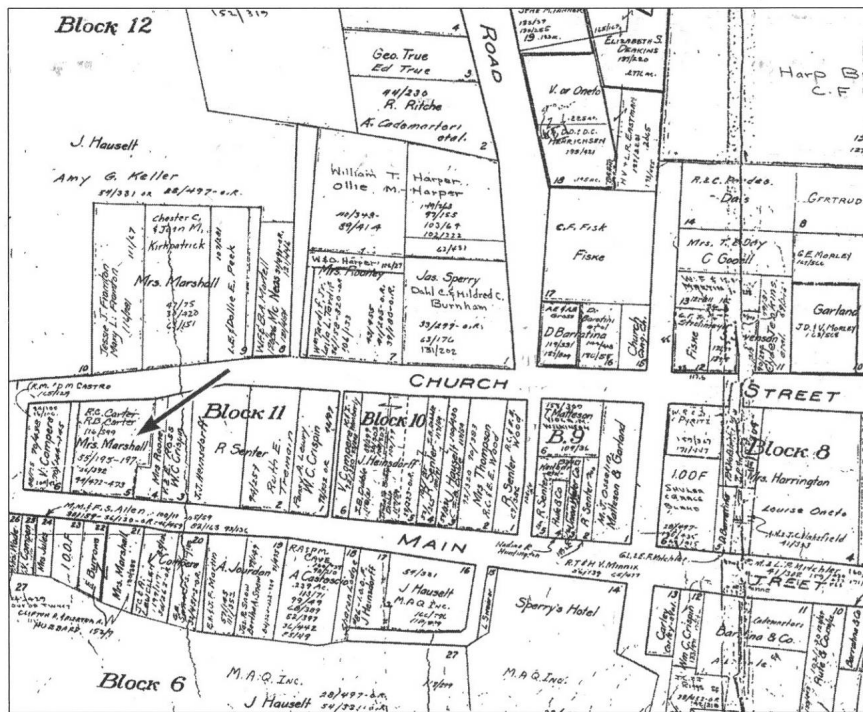
the Marshall Mine had shown that such methods could pay out.

Fortunately the ranch continued to be productive but their wealth appeared to be coming to an end. Perhaps he had given too much beef away, although no records indicate that he did so after 1855. Or perhaps he had gambled it away at the gaming tables or in the Marshall Mine investment. In just a few short years he was almost penniless.

The house and lot in Murphys were valuable, and were assessed



In 1861 Nicolasa Carriaga made a Declaration of Homestead on her Murphys house, marking the document with an X. County Archives.



Murphys Townsite map from 1876 shows Mrs Marshall's homesteaded lot between Main and Church Streets. County Archives.

in March of 1859 for a value of \$450. Yet their other Murphys properties appear to have been neglected. On 11 August 1859 most of their Murphys properties were lost due to a decree of foreclosure. Nine days later several of the properties, not including the house, were burned in a fire, listing losses of \$1000. The properties were sold the following year at public auction.

Two days after the Murphys fire, during the hot night of 22 August 1859 the Antelope Ranch roadhouse burned. It was completely destroyed. The following year Marshall began selling off portions of the ranch. By 1860, state agricultural records indicate that he had 100 of 160 possible acres under production with cattle and swine, yet he couldn't seem to pay his taxes.

On 8 April 1861 Nicolasa made a Declaration of Homestead of the Murphys house and lot. She declared herself head of the house and responsible for their children, specifically citing the provision in the homestead law that provided exemption from a forced sale of homesteaded land. After the embarrassing foreclosure of the other Murphys properties, she was attempting to retain ownership of her house. She marked the document with an **X**.

Two weeks later Marshall homesteaded the ranch in Milton in his name. He declared the Antelope Ranch for use by him and his (unnamed) family in accordance with the California Homestead Act. His homesteading the ranch merely saved a

portion of the total ranch. Five months later, on 7 September 1861 most of the Antelope Ranch was sold, ironically, at a sheriff's sale to satisfy a judgement.

The man who had run successful businesses, who had worked to tame the lawless west, couldn't take care of his own affairs. The apparently successful foundation that Marshall built was overshadowed by violence, gunfights, and domestic problems. In our next issue we will further explore Marshall's family and Nicolasa's role. We will look at the documented business dealings and unpredictable personality of Benjamin Marshall, and the controversial manner in which the remainder of his life played out.

Acknowledgement: *Las Calaveras* is grateful to Barry Schwoerer for the extensive research he has conducted of the Marshall and Carriaga families. To date he has amassed more than 250 documents substantiating his ancestors' lives in early California. He has kindly shared his data with us for use in this publication. Schwoerer is a fifth generation descendant of Ben Marshall and Nicolasa Carriaga.

Bibliography

ancestry.com; calaverashistory.org; politicalgraveyard.com.
 California Agricultural Records, Calaveras County Township 9; 8/16/1860.
Calaveras Chronicle, 2/14/1852.
 Calaveras County Archives, Official Records, and Murphys Townsite Map 4/20/1876.
Calaveras Prospect, 5/20/1922; 6/3/1922; 8/27/1904.
 Marshall, B F; letters and report to Col Thos I Hanley, Superintendent of Indian Affairs, 12/27/1854, 12/31/1854; personal diary and family notes, 8/26/1853.
 Marshall, Manual J; personal papers and letters, 11/9/1989, 9/30/1980. Murphys Old timers Museum
 Noyes, Leonard Worthington; personal letter to his brother, 4/16/1856; diary from 1850-1860.
San Andreas Independent, 5/1/1858
 Schwoerer, Barry; personal notes, research and interview.
 USGS
 Wood, Coke; *Tales of Old Calaveras*; and *Land of the Skulls*, The Mother Lode Press, 1955.

Calaveras County Historical Society

30 No. Main Street P.O. Box 721 San Andreas, CA 95249

Officers and Directors

President	Bill Ratterman, San Andreas
Vice President	Gary Herd, Mountain Ranch
Secretary	Donna R Shannon, San Andreas
Treasurer	David Studley, Mountain Ranch
Director	Joe Borden, Mokelumne Hill
Director	Dennis Downum, Valley Springs
Director	Ken Markham, Mountain Ranch
Director	Roark Weber, San Andreas
Director	Dan O'Boyle, Valley Springs
<i>Las Calaveras</i> , Editor	Bonnie Miller
Office Manager	Karen Nicholson
Administrative Assistant	Danielle Ballard

Las Calaveras is published quarterly by the Calaveras County Historical Society. A subscription to *Las Calaveras* comes with membership in the Calaveras County Historical Society for \$22.00 per year. Non-members may obtain copies from the Historical Society office. The original historical material presented in *Las Calaveras* is not copyrighted and anyone is invited to use it. Mention of the source would be appreciated. Contributions of articles about Calaveras County are appreciated and may be submitted to the Historical Society for consideration.

The Calaveras County Historical Society is a non-profit corporation. It meets on the fourth Thursday of each month in various communities throughout the County. Locations and scheduled programs are announced in advance. Some meetings include a dinner program, and visitors are always welcome.

The Society operates the Calaveras County Museum which is open daily from 10:00 to 4:00 in the historic County courthouse located at 30 Main Street in San Andreas; and the historic Red Barn Museum at 891 Mountain Ranch Road, also in San Andreas, which is open Thursday to Sunday, 10:00 to 4:00.

The Society's office is located in historic San Andreas, the Calaveras County seat. Visitors are always welcome to stop by the office for assistance with research, and are encouraged to visit the museums while in the area. The office is open Monday through Friday from 8:30 to 4:00, and the telephone number is (209) 754-1058, or contact us at: CCHS@goldrush.com; Red Barn Museum (209) 754-0800.

April–June 2014

New Members

Blake Weston—Columbia
Mark Rushdoony—Murphys
Mike Cilenti—Valley Springs
Lisa T. Jayne—Reno, Nevada
Mac Teer—Portland, Oregon
Carolyn Scott—San Andreas
Susan Rudolph—Angels Camp
Eloise Ponte—Murphys
Diana Lucchesi—Angels Camp
Barbara Jo Brothers—San Antonio, Texas
—Lifetime Membership
Scott & Vickie Ratterman—San Andreas
Patrick & Patty Bunting—Mountain Ranch
Chris Villegas—Valley Springs
Ken & Laurie Matzek—Valley Springs
Terry Stone—Mokelumne Hill
Marianne Bourgeois—Pioneer
Robert & Chyrl Hillis—Angels Camp
Jerry & Faye Perata—Angels Camp

Donations

Mae Ann Jeska, Barbara Grogan and Ellen McFall
—Cash donation in memory of Duane Wight
Doug & Catherine Mewhinney—Cash donation
Duane Wight family—Collection of books from 1800s through early 1900s
Mary Matzek—school music book, ink pen nibs, teacher's bell
Marge Mobley—bottle from Hotel Treat
Ron & Diana Lewis, Joseph & Agatha Senn, Judy Summers and Gary Roche—Cash donation in memory of Louise Spence
Yvonne Tiscornia—Cash donation in memory of George Segale
Barbara Grogan—Wooden trunk from Dr. & Mrs. H. C. Turner home
Geri DeMoss—Sheet music from 1940s and 1950s, costumes, clothing
Lupe C. Arnes—china, Italian tapestry, scrapbook, clothing, miscellaneous religious artifacts, T-shirt from 2011 Cement City Reunion, photos, and postcards.
Eunice Nicholson—Brevitytype court reporting machine with tapes and rolls