

C O P Y

207
[EARLE, W.C.]

September 16, 1920.

Mr. S. J. Higgins,
City Attorney,
San Diego, California.

Dear Sir:

Complying with your request of even date to furnish you with information concerning the cost of water delivered to the City of San Diego from its impounding system, and also the cost of distributing said water, I beg to submit the following.

The expenses for the year 1919 as shown upon the books of the Board of Water Commissioners and the City Auditor of the City of San Diego, are herewith given:

The cost ledger of the Board of Water Commissioners shows the following expenditures:

	<u>Amount</u>
General expense	\$ 12,979.43
Surface source of supply	4,647.02
Aqueducts, Intakes and Supply Mains	13,685.49
Buildings, Fixtures & Grounds	2,720.42
Purification expense	12,922.88
Miscellaneous Equipment expense	2,671.45
Work Order Expense	17,763.42
	<u>\$ 67,388.11</u>

During the year 1919 the City Auditor paid the sums of \$300,427.80 for bond interest, and \$195,825.00 for bond redemptions; a total of \$496,252.80, said interest and redemption being for bond issuance the proceeds of which were expended solely on the City's impounding system.

During the year 1919 there were delivered to the City of San Diego from its impounding system 1,653,479,329 gallons of water through the Bonita pipe line to the city mains at Thirtieth and Broadway; and 1,111,557,880 gallons through the Chollas main to the University Heights Reservoir, or a total delivery from the City's impounding system of 2,765,037,209 gallons.

The total expense as given above shows that the water from the City's impounding system delivered to the city was 20.38 cents per thousand gallons. During the same period of time the books of the Operating Department show that there was an expenditure for water distribution of \$176,613.35 and that 3,317,866,144 gallons

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were distributed. The excess of distribution over transmission from the city's impounding system was purchased from the Cuyamaca Water Company and pumped from Mission Valley.

Both distribution expense and amounts show that the cost of distribution within the City of San Diego was 5.32 cents per thousand gallons, making a total cost to the city of water delivered to the consumer's tap of \$25.70 cents per thousand gallons.

The above unit cost of water delivered and distributed may be considered as minimum costs for the reason that no overhead expense is included nor is there any sum included for depreciation. The inclusion of these two items would most certainly have to be had if the water system was privately operated. If not, such private company could not long exist and the rates, of course, would have to be high enough to pay the expenses above shown, together with overhead and depreciation. If overhead and depreciation were added to the above unit costs, the total cost of water delivered to the city would probably be in the neighborhood of from 25 cents to 25 cents, and the cost of water delivered to the consumer would be in the neighborhood of from 28 cents to 30 cents.

Very truly yours,

W. C. EARLE

Consulting Engineer.

WCE:W

COPY

September 15, 1920.

Mr. S. J. Higgins,
City Attorney,
San Diego, California.

Dear Sir:

Complying with your request of even date to furnish you with information concerning the cost of water delivered to the City of San Diego from its impounding system, and also the cost of distributing said water, I beg to submit the following.

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 Total,	 \$ 67,388.11

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Copy for King
J. Matthews

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very truly yours,

W. C. EARLE

Consulting Engineer.

WCE:W

Office of the City Attorney
City Hall
San Diego, California.

March 3, 1922.

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To The Honorable, The Mayor and Common Council
of the City of San Diego, California.

Gentlemen:

Document No. 140204, being a communication from the Pacific Tank and Pipe Company, submitting to the Common Council a claim for extras with respect to the construction of the Del Mar-La Jolla pipe line, has been referred to this office for an opinion as to the legality of such claim.

It is recited in the communication that the claimant has finished its contract on the Del Mar-La Jolla pipe line, ~~XXXXXXXXXXXX~~ in accordance with the plans and specifications contained in the contract, but that after the installation it was found that about two miles of this line through the La Jolla flats was not operating satisfactorily, and that the same was replaced with new pipe one-half inch heavier, together with heavier wire specifications, and cast iron collars instead of wood collars. The company thereupon demands from the City a sum of money equivalent to the difference in cost between the cast iron collars and the wood collars, and between heavier pipe and the pipe specified in the contract.

So far as the records of the City Clerk's office disclose, this Company is not in privity of contract with the municipality, but that the contract referred to in the claim was a contract executed by and between the pipe company and Messrs. Ed. Fletcher and William G. Henshaw. The City's contract is with the latter people. In the contract in which the city agreed to lease this pipe line it was specified that the pipe would be of a particular thickness, and that it would withstand the maximum gravi-

ty pressures for which it was intended. The pipe was also to be laid under the supervision of the City Engineer, and in accordance with the general plans and specifications furnished by the City. These specifications provide for a pipe of certain thickness which would safely withstand the maximum gravity pressure of a head of between 50 and 400 feet.

I am informed by the Operating Department that the pipe of the thickness specified by the City was actually installed, but that upon completion and test as called for by the specifications it did not withstand the pressure of 400 feet. The Manager of Operation thereupon ordered the pipe to be taken out, and a new pipe installed in accordance with the plans and specifications. This was done.

In the contract between the pipe company and Messrs. Henshaw and Fletcher, it is provided that the pipe company would install pipe of the thickness specified by the city, and which after being banded together would withstand the maximum gravity pressure for which it was intended, and in the bid of the company prior to the entering into of the contract, the company agreed in writing as follows:

"We guarantee the pipe against defective material or workmanship, and when installed will withstand the maximum gravity pressures for which it was intended, and will replace at our expense any portion of the pipe which proves defective as to material or workmanship performed; this guarantee to cover a period of one year from date of completion of pipe line."

The foregoing facts lead me to the conclusion that the claim of the Pacific Tank and Pipe Company should be denied, for the reason that the installation of the pipe in question was not made in accordance with their contract, and that they simply put in the pipe of additional thickness, together with the iron couplings for the purpose of carrying out and performing the obligations which they had formally bound themselves to

perform. The object of the city in making specifications was to insure the construction and installation of a pipe which would do the work of conveying the water under a gravity head of 400 feet to the city proper. The pipe company agreed to do this. Upon inspection and test the pipe which was installed originally did not do the work for which it was intended. Upon demand of the City Engineering forces portions of the pipe line were taken out and heavier pipe substituted. In doing so the company simply performed the terms of the contract. This being true, there is no liability to reimburse the pipe company for the extra expense to which it was put by failure of the original pipe to meet the test to which the contract provided it must be subjected. It is respectfully recommended, therefore, that the claim be denied.

Respectfully submitted,
S. J. Higgins,
City Attorney.

August 1, 1923.

Mr. Shelley J. Higgins,
City Attorney,
City of San Diego,
California.

My dear Mr. Higgins:

The report has come to me that you have rendered an opinion, or made an informal statement to the city council, that in case the city buys the Cuyamaca System legally the old so-called water right contracts entered into in early days between the Cuyamaca Water Company and its consumers could be revived and hold good.

I cannot believe that you made this statement for you, as an attorney, are well aware that the Supreme Court of the State of California has settled that question. The contracts have been entirely knocked out by both the Railroad Commission and the Supreme Court and the only water right contracts that the Cuyamaca Water Company can be forced to recognize today is the beneficial use of water by its customers at the present time.

I am sure you do not intend to do us an injustice and I feel very sure you have been mis-quoted, but in fairness man to man and as a citizen of San Diego I would like to know what your position is on this subject.

Yours very truly,

EF:KLM

cc = Bacon Gordon
Stewart
Held
Buschli
Hilborn
Witzel
Rhodes
Sweet

S. J. HIGGINS, CITY ATTORNEY
ARTHUR F. H. WRIGHT, DEPUTY
M. R. THORP, DEPUTY
STANLEY T. HOWE, DEPUTY
J. W. WILLIAMS, CONSULTING ENGINEER

OFFICE OF
CITY ATTORNEY
CITY HALL
SAN DIEGO, CALIFORNIA

August 2, 1923.

1162
Mr. Ed Fletcher,
Fletcher Building,
920 Eighth St.,
San Diego, Calif.

My dear Col. Fletcher:

In reply to your request of August 1st, 1923, permit me to advise you that a part of the report you have heard concerning statements made by me to the City Council is correct. I have recollection of advising them that there was considerable doubt in my mind as to whether the so-called contracts between the San Diego Flume Company and purchasers of land along the present Cuyamaca system could not be revived in case the public utility character of the system were changed by a purchase thereof by The City of San Diego.

I am aware that the Supreme Court of this state has upheld the Railroad Commission of the State in its decision that the rate provisions of these contracts were not enforceable. I have also been led to believe that this decision of the Supreme Court of the State of California has since been appealed to the Supreme Court of the United States. I am not aware that the question upon which the Council was advised has ever been before the Federal Courts. I do know that the Supreme Court of this state has squarely decided that the operation of a water system by a municipality in this state is not subject to the jurisdiction of the Railroad Commission, nor to the Public Utilities Act.

Until we have had an opportunity of investigating carefully all the phases of the question I am not now in a position to express an opinion as to just what effect the purchase by the City of the Cuyamaca system would have on these old contracts.

I have no intention of doing you or any one an injustice. My only purpose is to interpret the law, in so far as I am able, and advise the Council upon such subjects as they may be interested, and protect the legal interests of this municipality.

Yours very truly,

S. J. Higgins
City Attorney.

Faude
Sweet
Gordon
Council -
Mayor
Rhode
SJH/S

August 6, 1923.

Mr. S. J. Higgins,
City Attorney,
City of San Diego,
California.

My dear Mr. Higgins:

I appreciate your frank and friendly letter of August 2d and the information therein contained.

That you may know the opinion of our attorney, Mr. A. H. Sweet, and in order to get an expression on this subject from the State Railroad Commission, enclosed herewith find copy of letter that I have sent Mr. Gordon, the attorney for the State Railroad Commission. I have also sent a copy of your letter to Mr. Sweet. As soon as I get their replies I shall be pleased to forward a copy of same to you.

I have been definitely informed by my attorneys that the decision of the State Railroad Commission and the Supreme Court of the State of California is that the old so-called water right contracts of the Cuyamaca Company are invalid; that we are a public utility under the jurisdiction of the Railroad Commission, subject wholly to the rules and regulations of the State Railroad Commission, which recognizes no water rights excepting the beneficial use of water; and that under a recent decision of the Supreme Court of the State, if the City of San Diego should buy the Cuyamaca System, the State Railroad Commission would have no jurisdiction as to rates, either inside or outside the city limits of San Diego, and that the City of San Diego could charge for irrigation and domestic service whatever the city officials of San Diego might elect. From the advice I have received the City of San Diego under no condition should be compelled to recognize any of the old water right contracts in case of purchase of the Cuyamaca System by the city.

I believe the opinion of both Mr. Sweet and Mr. Gordon will confirm the above and hope it will satisfy you that our position is well taken.

Referring to the appeal to the Supreme Court of the United States from the decision of the Supreme Court of the state, will say the case is not yet in the Supreme Court of the United States. We believe no federal question is involved.

April 29, 1921.

and at the proper time the Supreme Court will deny the petition of the protestants asking that the case be finally determined by the United States Supreme Court.

Yours very truly,

EP:KIM

Gordon
Sweet
Bacon
Stewart
Heid
Heilbron
Wetzels
Bruschi
Rhodes

To the Honorable, The Mayor and Common Council
of The City of San Diego, California.

Gentlemen:

There has been referred to this office Document No. 135240, being the application of Henshaw and Fletcher requesting the acceptance of the sum of nine dollars (\$9.00) in payment of the rental due the city for the ten-year lease on the Del-Mar-La Jolla pipe line. It is assumed that the document has been referred to this office for an opinion as to the effect, if any, the acceptance of this money might have upon the contract now existing between the city and Messrs. Henshaw and Fletcher.

The contract provides that the rental for the Pueblo Lands in question shall consist of the sum of one dollar per year "payable in advance on the first day of each and every January, commencing with the first day of January, 1920." The acceptance of the payment of the money in a lump sum at the present time would constitute a modification of the contract to that extent. If the parties to this contract desire the contract modified in this particular, there is no legal reason why the same cannot be done.

Respectfully submitted,

S.J.Higgins

SJH/S

City Attorney.

Office of
CITY ATTORNEY
San Diego, Calif.

March 25, 1925.

Mr. F. A. Rhodes,
Manager of Operation,
San Diego, California.

Dear Sir:

Before purchasing any property of the La Mesa, Lemon Grove and Spring Valley Irrigation District, or the Cuyamaca Water Company, or Ed Fletcher, or any properties under the control of any of the above named parties, it will be necessary that the City be furnished with:

A complete list of all properties under the ownership of or claimed by any of the above-named parties, together with a legal description of the same, with a citation of the book and page of the record showing the instrument conveying said rights or properties or titles to any of the above described parties.

We should also be furnished with a certificate of title showing the title to all real property and all rights in and to real property to be in the name of the party conveying to the City. The rights to use of water, other than riparian rights, which have been granted to any of these parties by the State or government should be evidenced by either a certificate of the right to use the water or an easement or grant by the Government of the United States.

We shall also insist upon having furnished to us copies of any rights issued by the Forest Department of the Secretary

All of this matter should be in the hands of the proper officers of the city before any attempt to draw a contract for the purchase of the system known as the Cuyamaca Water Company is made. The sooner this is furnished us the sooner we can present the same to the electorate for approval.

Yours very truly,

S. J. HIGGINS

City Attorney

SJH/S

April 13, 1925.

Mr. S. H. Higgins,
City Hall,
San Diego, California.

My dear Mr. Higgins:

Enclosed find copy of letter from Mr. Harritt, which explains in full regarding a water filing which we have just accidentally run across and was not included among our records.

Very truly yours,

EF:KLM

cc- Mr. Rhodes

COPY

April 7th, 1925.

Mr. Fletcher,
Office.

Dear Sir:

Should any controversy ever arise over the right to pump at El Monte, the following facts may be of value:

First: The El Cajon Valley Land Company transferred all their rights to the old San Diego Flume Company.

Second: The Consolidated Water Company filed on 5000 miner's inches of water at the site of the El Monte Pumping Plant.

The Consolidated Water Company, in turn, transferred their rights and the land as well to Healion and Packard. This was by Court decree during some reorganization of the Flume Company's affairs.

Packard transferred his interest to Boone leaving the ownership in Healion and Boone.

Healion and Boone transferred the property together with their rights to the La Mesa Development Company but did not specifically mention their riparian and water filings but transferred "all of their right, title, and

4/7/25

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interest and estate now in and to that certain real property granted."

The La Mesa Development transferred this property to James A. Murray, specifically mentioning all their water rights. One-sixth interest in this property was later transferred to Ed Fletcher, the deed calling for one-sixth interest in the land and all water rights.

Yours very truly,

CH:ME

Superintendent of Cuyamaca Water Co.

April 16, 1925.

Mr. Shelley Higgins,
City Attorney,
San Diego, California.

My dear Mr. Higgins:

Enclosed find a complete list of all water filings and all riparian rights granted us on the San Diego River, including the right from the government, however, as an extra factor of safety to the district, we will transfer to the district and the district will transfer to the city a general assignment of all riparian rights of the Cuyamaca Water Company, also Ed Fletcher and Charles F. Stern, assuming that the plan as outlined by the Railroad Commission is adopted.

Yours truly,

EF:KLM

cc- Mr. Rhodes

June 18, 1926

Hon. Shelley J. Higgins,
City Attorney
San Diego, California

RE: SAN PASQUAL LANDS.

My dear City Attorney:-

I am advised by some of the owners of lands lying in the westerly portion of the San Pasqual Valley that the city has concluded not to acquire any options on lands other than those that lie up stream and in the easterly portion of the valley.

Our negotiations have been on such friendly terms, and in such good spirit, that I feel justified in calling your attention to a situation which you may have overlooked, although I presume the City Engineer has had the same called to his attention.

In view of the character and situation of the lands lying in the San Pasqual Valley and in the westerly portion thereof, I am advised that the owners are accustomed to irrigate to a considerable extent from pump water. Their lands are, if I understand the situation correctly over-lying lands; that is to say they over-lie water that percolated from the stream, and whether riparian or not the owners would undoubtedly sustain damage by the building of Sutherland and the diversion of the storm waters from the water shed of the river. It would seem to me that the case of Miller v. Bay City Water Co., 157 Cal. 256, is an authority which, assuming my facts are correct would warrant the owners of these lands in expecting compensation from the city, or at least that some arrangement be made with them before the building of Sutherland Dam.

The irrigation of lands from percolating water has become a very important factor in the horticultural and agricultural growth of this state. Over eight hundred thousand acres of land are now irrigated in California from under lying waters which percolate largely from streams. I do not mean to say that in the San Pasqual Valley the water percolates necessarily at right angles from the stream, but the geological formation of the valley is such that I am advised that water diffuses from the bed of the stream shortly after it reaches the valley, is not confined to any particular channel, but spreads out under the floor of the valley so that the over lying owners have an abundant supply by pumping, both for irrigation and domestic use. If this is true, the mere building of the dam at Sutherland or Pamo would render unsaleable at any fair price the lands that are so dependent upon percolating water for their supply.

I recently represented to Mr. Edward Hyatt, Jr., Chief of the Division of Water Rights, that in my opinion it would not be necessary to hear the City's application for the appropriation and diversion of water. If the claims of the lower owners are disregarded, it will of course be necessary to have a hearing on the city's application, as these lower owners protested the right of the city to impound and divert water from the water shed claiming it would substantially affect their pumping rights.

I sincerely trust you will give this matter careful consideration, and if the city changes its views in any respect relative to the acquisition of the water rights other than those of the upper portion of the valley, kindly advise me. I would also like to know if you come to a contrary opinion. I think the lower owners will not only be disappointed at the city's conclusion, but that they will feel aggrieved.

Yours very truly,

WRIGHT & MCKEE

By Leroy A. Wright

LAW/h
CC to
Mr. F. A. Rhodes
City Manager

CITY OF SAN DIEGO

San Diego, California.
June 29, 1926.

Office of
City Attorney

S. J. Higgins, City Attorney.
(etc)

Messrs. Wright & McKee,
Southern Title Building,
San Diego, California.

Gentlemen: Attention of Senator Leroy A. Wright.

This will acknowledge receipt of your letter of June 18th, 1926, concerning the purchase by the City of the riparian rights in the San Pasqual Valley.

In dealing with this question in a general way the agents of The City of San Diego have been advised by this office to secure options from all riparian owners who might be in a position to enjoin the construction of a dam at Sutherland. No consideration has been given by the office to pumping lands, or lands under which there is percolating water from the San Dieguito River. I am very grateful to you for calling our attention to this phase of the situation. I am satisfied that the law of this state is as you set forth in your letter. In other words, the owner of land under which there is percolating water which comes naturally from the San Dieguito River could insist upon being compensated or protected in the event that the City so constructed a dam as to interfere with this natural flow of percolating water. I am of the opinion that the City of San Diego cannot legally jeopardize the property of any San Pasqual rancher by the construction of a dam which would result in the diminution of water which flows naturally into an underground reservoir underlying his property.

If, therefore, the situation is as you advise, that there are owners of land lying in the San Pasqual Valley who are accustomed to irrigate from pumped water which is taken from an underground supply that percolates from the San Dieguito River, and that the construction of a dam at Sutherland would interfere with such percolating waters, then and in that event the City of San Diego should deal with such owners so that they would not sustain damage by the building of such dam.

I am accordingly sending a copy of this letter to Mr. Rhodes and am suggesting to him that he advise his representatives who are negotiating with the San Pasqual ranchers to arrange for compensation for owners of the character described by you in your letter.

I would suggest that we arrange a conference in the near future between Mr. Rhodes, yourself and a representative of this office, at which time the matter may be fully discussed, and some plan arranged whereby these rights may be cared for.

Again thanking you for your courtesy, in this matter, I am

Yours very truly,
S. J. HIGGINS

CITY ATTORNEY

Ed Fletcher Papers

1870-1955

MSS.81

Box: 12 Folder: 6

General Correspondence - Higgins, Shelley J.



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