

Mr. Fletcher

C O P Y .

October 3, 1929.

Mr. Harrison G. Sloane,
Attorney at Law,
J. D. Spreckels Bldg.,
San Diego, California.

Dear Harry:-

I have your letter of the 1st in regard to the Flinn, Fletcher and Blossom matter. I do not know whether it would be possible to get Mr. Blossom to sign an agreement that he would not use the water obtained from his well in the Los Coches Creek on lands owned by him outside of what Mr. Fletcher claims to be the Los Coches watershed. However, I think it would be advisable for you to prepare, under Mr. Fletcher's instructions, a draft of the agreement that would be satisfactory to Fletcher in order that we may go over it and see if it can be signed by Mr. Blossom.

Of course, Mr. Blossom's position has been just about this: That he believes his home place to be within the Los Coches watershed, but he has consented that pending some effort to settle the differences between Flinn, Fletcher and himself, he will not use any of the water pumped from the Los Coches well on the land embraced within his home place. He does not admit, and I did not intend to admit in anything I have previously written you that the lands known as Blossom Valley lands were not part of the Los Coches watershed, or that such lands were within a separate watershed. This question, however, could be kept under consideration in our efforts to reach an agreement.

It seems to me that the most satisfactory way to handle the situation would be the way suggested by Colonel Fletcher sometime ago of forming a mutual water

Harrison G. Sloane - #2

company, but I understand that Mr. Flinn says that he does not want to go into such a company although I thought he agreed to that proposition at the time we conferred about the matter in your office. As suggested by you at that conference, the mutual water company operating the Blossom well would do away with all disputes, including the one relating to Blossom's right to use the water on Blossom Valley Lands.

In the meantime, Mr. Blossom asks me to say that he stands ready and in a position to deliver to Mr. Flinn one day's pumping of water each week, the day of delivery to begin at noon Saturday when Mr. Flinn is at home, and continue until Sunday noon.

Yours very truly,

STEARNS, LUCE & FORWARD,

By Albert J. Lee

AJL.ES

Abstract

STEARNS, LUCE & FORWARD
ATTORNEYS AND COUNSELORS AT LAW
Suite 1220 San Diego Trust & Savings Building
BROADWAY AT SIXTH SAN DIEGO, CALIFORNIA.

January 14, 1930.

Col. Ed Fletcher,
1020 Ninth St.,
San Diego, Calif.

Dear Colonel:

I thank you for your letter of the 13th inst., relating to the Federal question involved in the Paramount Rights Case and the knowledge that Mr. Crouch had of the necessity for presenting that question.

I did not need your letter to convince me that Mr. Crouch knew of the importance of this question and of having plead it as one of your defenses in your answer, and that he had thereafter neglected to mention the matter in his briefs.

However, the matter is now squarely before the Court and Mr. Cosgrove in his recent brief conceded that the question was before the Court and gave his consent to the Supreme Court considering the question and passing upon it, which would seem to assure us of the right to carry the case to the Supreme Court of the United States if necessary.

Again thanking you for your letter,

Yours very truly,

ALBERT J. LEE

I am

AJL:ES

August Eighteenth
1 9 3 0

Mr. Albert J. Lee
San Diego Trust & Savings Bank Building
San Diego, California.

My dear Mr. Lee:

Mr. Crouch told Attorney General Webb before me that under the laws of Mexico and Spain there was an estoppel even against the Pope yet no estoppel has been recognized by the Supreme Court of the State. Mr. Crouch also said there was no such thing as a paramount right in Spain or Mexico, that it was a hair-brained idea of the courts of this state, a bad law, and should be entirely wiped off the statutes of this state. It is ridiculous to have the San Diego and Los Angeles Rivers under one law and the other rivers of the state under another law.

I thought the above might possibly be of interest and for your information.

Yours very truly,

Ed Fletcher

EF:EK

STEARNS, LUCE & FORWARD
Suite 1220 San Diego Trust & Savings Bldg.
San Diego, California

September 23, 1930.

Honorable U. S. Webb,
Attorney General of the State
of California,
San Francisco, California.

Dear General Webb:

A petition is now pending in the United States Supreme Court for the granting of a Writ of Certiorari to be directed to the Supreme Court of the State of California in the case of La Mesa, Lemon Grove & Spring Valley Irrigation District vs. The City of San Diego, U. S. Supreme Court October Term, No. 305. The decision of the State Supreme Court which we seek to have reviewed by the United States Supreme Court is reported in 79 C.D. 205. The opinion of the State Supreme Court was rendered after the granting of a rehearing pursuant to a petition therefore, copy of which I am herewith sending you, and from which you will observe, pages 40 to 53, inclusive, there was set out in full certain agreements entered into between the United States government and the San Diego Flume Company, by virtue of the terms of which the Flume Company was permitted to construct a diverting dam upon the public lands occupied by the El Capitan Grande Indians, and to take and divert the waters of the river at that point on payment to the government for the use of the Indians of a certain sum of money and the undertaking upon the part of the San Diego Flume Company to supply the Indians with water.

The Supreme Court of the State rendered its final opinion after rehearing and considered the argument that certain rights had been acquired under such contracts, but declared that whatever rights were obtained from the Federal government were rights acquired in subordination to the paramount right of the City of San Diego to the use of the waters.

I am also sending you a copy of the petition now pending in the United States Supreme Court for the writ, and a copy of the brief in support thereof.

The Department of the Interior, feeling that the decision of the State Supreme Court announced a policy hostile to the rights of the Federal government and that the government had the right to the use of the waters of the river for the several Indian reservations now located within

-2-

the watershed, has requested the United States Attorney General's office to take such steps as in the opinion of that office might be expedient and proper to protect the rights of the government.

We have recently been informed that the United States Attorney General has taken the position that the litigation apparently involves only the relative rights of the City of San Diego on one hand and the Irrigation District on the other, and the Federal government not having been made a party to the action is not bound by the decision and that the government can at any time in the future when necessity arises, take such steps as may be necessary to protect the government and the Indians against the claims of the City. For that reason the Attorney General's office has stated that it will not file any suggestion in the United States Supreme Court in aid of our petition.

It is now suggested that if the United States Attorney General's office was advised of the fact that the litigation is of great importance to the people of the State of California, that there are other cities located upon other rivers within the state having similar rights to those awarded to the City of San Diego, and that until the matter is finally determined by the Supreme Court of the United States, great uncertainty will continue to exist in this state as to the relative rights of riparian and other users of water upon non-navigable rivers located above municipal corporations, through whose territory such rivers run, and that a great many thousand people are affected directly and a great many more affected indirectly by reason of their ownership of bonds issued by Irrigation Districts and Development companies, and that so far as the State of California is concerned there is no objection to the government of the United States aiding in the securing of an order granting the Writ of Certiorari, and that it would really be advisable to have a great many more suits filed and litigation continued through both State and Federal Courts, the United States Attorney General's office might be influenced to file with the United States Supreme Court the necessary suggestion.

A letter along the following lines might very properly be written by you and result in the Attorney General of the United States taking some affirmative action, and we therefore suggest the following merely as our own personal idea of the tenor and scope of the kind of a letter you might properly write.

PROPOSED LETTER

Honorable Wm. DeWitt Mitchell,
Attorney General of the United States,
Washington, D. C.

Sir:-

I respectfully call your attention to a petition for a Writ of Certiorari now pending in the United States Supreme Court, October Term No. 305, La Mesa, Lemon Grove, & Spring Valley Irrigation District, Petitioner, vs. City of San Diego, Respondent. This petition seeks a review in the United States Supreme Court of an opinion and decision rendered by our State Supreme Court on March 21, 1930, in which the State Supreme Court declared that the City of San Diego, as successor of the Mexican Pueblo of San Diego, was the owner of a prior and preferential right to the use of all the waters of the San Diego River, including its tributaries from their source to the mouth of the river, solely by virtue of the fact that the river flows through the corporate limits of said city.

Two incorporated cities, several incorporated towns and nearly 20,000 acres of irrigable land now obtain water from the San Diego River which is being supplied to them by the above named petitioner, the Irrigation District, which District is a political subdivision of the State of California, organized for the purpose of supplying water under the California Irrigation District Act.

The San Diego River and its tributaries rise in the public lands, and for a considerable distance flow through such public lands and the Capitan Grande Indian Reservation, and while it is true that the United States was not a party to the proceeding in our State Court, and for that reason it not bound by the decision, nevertheless it appears to me that the United States will be indirectly affected by the judgment and may be required at some near future date to take steps of its own to determine the relative rights of the City and the United States, and for that reason it could properly aid in having the matter determined by the Supreme Court of the United States on its merits at this time.

The record seems to fairly present the United States government's right to the use of the waters by reason of the fact that the petitioner in filing its petition for rehearing in the State Supreme Court, set up contracts entered into between the United States Government and the San Diego Flume Company, the predecessor in interest of the petitioner, which contracts for their validity would

depend upon the government's right to the use of the waters of the river. Our State Supreme Court considered the contention of the petitioner in this regard and overruled it, declaring that whatever rights they obtained from the United States government, such rights were subsequent in point of time and subordinate to the city's paramount right which the Court says had attached at the time this territory passed from Mexico to the United States.

In addition, however, to the question of the relative rights of the United States government and the City of San Diego, the matter is of great importance to the State of California and has brought about a condition of uncertainty as to the rights of the riparian land owners along such rivers, to say nothing of the uncertainty as to the validity of bonds issued by the Irrigation Districts and Public Utilities, and until the matter is decided by the United States Supreme Court such litigation is likely to ensue, and I understand that at least one suit has already been filed in the United States District Court involving the subject matter.

In view of this situation it is respectfully suggested that any assistance that could be rendered by your office in securing a speedy determination of the questions involved by the Federal Supreme Court, would be a service rendered to the people of the State of California, and would be, at the same time determine what rights the government of the United States had to the use of the waters of the river at the time it entered into the agreements hereinabove referred to with the San Diego Flume Company."

As hereinbefore suggested, the above and foregoing form of letter is merely our idea of the kind of a letter you might feel you were justified in writing, and we will greatly appreciate any assistance you may render us in the matter.

Very respectfully yours,

STEARNS, LUCE & FORWARD

By ALBERT J. LEE

AJL:ES
Encls.

FREDERIC W. STEARNS
EDGAR A. LUCE
CHAS. H. FORWARD
ALBERT J. LEE

FRED KUNZEL

STEARNS, LUCE & FORWARD
ATTORNEYS AND COUNSELORS AT LAW
SUITE 1220 SAN DIEGO TRUST & SAVINGS BUILDING
BROADWAY AT SIXTH
SAN DIEGO, CALIFORNIA

TELEPHONE
FRANKLIN 0201
CABLE
STELUFON

October 4, 1930.

Colonel Ed. Fletcher,
1024 Ninth St.,
San Diego, California.

Dear Col. Fletcher:-

Responding to your inquiry as to whether, and if so when, advice was given by me to the Board of Supervisors to require a survey of Spanish grants, such as the Santa Margarita, you are advised that on several occasions during the time I acted as legal advisor to the Board of Supervisors, I suggested that they require a survey of Spanish grants, and my recollection is that on at least one occasion I recommended such action by letter to the Board. I think the letter was written sometime prior to the sitting of the Board as a Board of Equalization in 1925.

My reasons for making the suggestion were based upon provisions of the Political Code. For your information in this particular I direct your attention to the following sections:

1895
X
Section 3628 in part provides that "lands shall be assessed in parcels or subdivisions not exceeding 640 acres each; and tracts of land containing more than 640 acres, which have been sectionized by the United States government shall be assessed by sections or fractions of sections."

X
Section 3629 is the section which requires property owners under oath to set forth specifically all the real property owned by or in the possession or under the control of persons, and subdivision 5 of that section reads in part as follows: "An exact description of all lands in parcels or subdivisions not exceeding 640 acres each, and sections and fractional sections of tracts of land containing more than 640 acres which have been sectionized by the United States government."

Colonel Ed. Fletcher - #2.

10/4/30.

X
Section 3634 provides that when no statement has been furnished by the owner, or where furnished and "such statement does not sufficiently describe a tract of land to enable the assessor to assess the same as required by law, and the owner or his agent, or in case they cannot be found or unknown, the person in possession thereof neglects for ten days after demand by the assessor to furnish said assessor with such description" the assessor "shall cite such owner or agent or person in possession, to appear before the Superior Court of the county wherein the land is situated." The section then provides that if the court finds that the land has not been surveyed or divided into subdivisions of 640 acres or less, the court may by an order direct the County Surveyor to make the survey. The section provides that the expense of making the survey shall be a lien upon the land and added to the taxes to be collected as other taxes.

X
Section 3658 requires the Board of Supervisors to furnish the assessor with proper books, maps, platbooks, etc., for the use of his office, and requires the maps and platbooks to be furnished by the Board to show the private lands owned and the divisions, and subdivisions thereof, if surveyed by the United States government, and then provides that if not surveyed by the United States government but "held under Spanish grant, the exterior boundaries of such grant, the divisions and subdivisions and number of acres claimed" shall be shown.

X
~~It was my opinion, and it is still~~
my opinion that as the Board of Supervisors have the general supervision of County officers, and are required by law to equalize assessments, and section 3634 being mandatory in its terms directing by express language that the assessor "shall" procure through the aid of the court a survey in order to give him the necessary descriptions, that the Board of Supervisors had the power and should by resolution request and direct the assessor to proceed in accordance with the provisions of the statute in the event the assessor neglected to do so.

Colonel Ed. Fletcher #3.

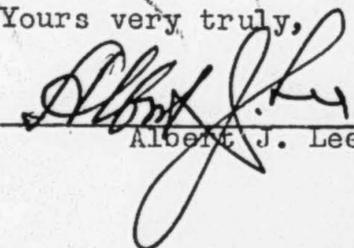
10/4/30.

~~You will of course observe at once that~~ the taking of such action would be wholly within the discretion of the Board, and that there is no such mandatory directions contained in the statute as to the Board as there are imposed upon the assessor.

It has been held by the courts of this state that an assessment made by the County Assessor where the owner has failed to submit a statement of the property owned by him, is an arbitrary assessment, and it does not require much intelligence to understand that property must be so described upon the assessment book as to be able to identify the particular parcel under consideration, and where large Spanish grants have not been surveyed, it would be impossible to locate any particular 640 acre parcel, and therefore the requirements of the law that the assessor should so describe the lands that a value may be placed upon each 640 acres of the tract, are being ignored in the assessment of large Spanish grants, and therefore any assessment made in the absence of an agreement with the owner based upon his statement of the property is purely an arbitrary assessment and probably without any validity whatever.

~~Having this gives you the information you requested. I remain~~

Yours very truly,


Albert J. Lee.

AJL:ES

5/20/30

FREDERIC W. STEARNS
EDGAR A. LUCE
CHAS. H. FORWARD
ALBERT J. LEE
FRED KUNZEL

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BROADWAY AT SIXTH
SAN DIEGO, CALIFORNIA

TELEPHONE
FRANKLIN 6261
CABLE
STELUFOR

October 29, 1930.

Colonel Ed. Fletcher,
1024 Ninth Street,
San Diego, California.

Dear Colonel Fletcher:-

You have asked me to express my opinion as to whether owners of land riparian to the San Diego River, and particularly those owners of portions of the Ex Mission lands, are precluded from ever asserting a right to the use of the waters of said river, except subordinate to the claimed paramount right of the City of San Diego.

The Supreme Court of the State of California, in the case of The City of San Diego vs. Cuyamaca Water Company, 79 C. D., 205, 287 Pac., 475, expressly declared that the City of San Diego was the owner of a prior and paramount right to all the waters of the San Diego River which could be exercised to the exclusion of riparian owners whenever the needs of the City required the entire flow of the river, and this decision by our State Supreme Court would absolutely foreclose the assertion of any right by a riparian owner in State Courts, and the only possible way to avoid the effect of that decision would be to have some owner of Ex Mission lands who is a non-resident of the State of California commence a proceeding in the United States Court. The United States Court would have jurisdiction because of diversity of citizenship, and the United States Court would not be bound by the decisions of the Supreme Court of the State of California but would have the right to determine for itself whether the riparian owners had a right superior or equal to that of the City of San Diego, and whether the City of San Diego had any such rights as accorded to it by our State Supreme Court. It is generally admitted by every lawyer who has made any study of the situation that there is no

Colonel Ed. Fletcher - #2.

foundation in law for the decision of the Supreme Court of California, except upon the doctrine of stare decisis. In fact the Supreme Court of the State of California placed its decision squarely upon the proposition that it was bound by its former decisions in the early Los Angeles cases in which that City was decreed to have a prior and paramount right to the waters of the Los Angeles River. They refused to review the Mexican and Spanish laws for the purpose of determining whether in fact a Spanish or Mexican Pueblo had a right to the exclusive use of the waters of the river.

The California Supreme Court ignored the contention of the Ex Mission land owners that by royal decree the King of Spain had made a specific grant of the waters of the San Diego River to the San Diego Mission for use upon Ex Mission lands, again saying they were foreclosed from a consideration of the question by former decisions in the Los Angeles cases.

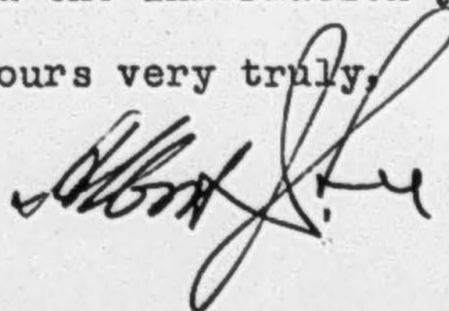
The Federal Court would have the right to decide this question for itself, and I believe that in a suit prosecuted in a court free to decide the case upon its merits the old Spanish grant to the waters of the river for use upon Ex Mission lands would be given consideration, and upheld as a controlling factor in the case. Title to the Ex Mission lands was confirmed by the United States Land Commission and patented in the same manner as the lands of the Pueblo of San Diego were confirmed and patented, and each of these confirmed grants should be given the same force and effect as the other.

I am strongly of the opinion that a suit brought by a non-resident owner of Ex Mission lands could successfully raise in the United States Court the questions which the Supreme Court of California refused to decide, and I assure you that unless such an action is commenced in the Federal Courts, riparian owners along the San Diego River will find themselves entirely at the mercy of the City of San Diego in the matter of the use of the waters of that river.

I am Hoping this gives you the information you desire,

Yours very truly,

AJL:ES



FREDERIC W. STEARNS
EDGAR A. LUCE
CHAS. H. FORWARD
ALBERT J. LEE

FRED KUNZEL

STEARNS, LUCE & FORWARD
ATTORNEYS AND COUNSELORS AT LAW
SUITE 1220 SAN DIEGO TRUST & SAVINGS BUILDING
BROADWAY AT SIXTH
SAN DIEGO, CALIFORNIA

TELEPHONE
FRANKLIN 6261
CABLE
STELUFOR

November 24, 1930.

Colonel Ed Fletcher,
1020 Ninth Street,
San Diego, California.

Dear Colonel:

Answering your letter of the 22nd the case I referred to was that of Los Angeles against Pomeroy, 124 Cal., page 620, and for your convenience I copy from the decision certain instructions which were given by the Trial Court and which were upheld by the Supreme Court.

"V. The defendants, therefore, have no right to use or divert the water of the river as to diminish the same so that it will not furnish the amount needed for the supply of the city aforesaid, and, in determining the value of the land to be taken, this fact must be considered, and the value of the land for which defendants are entitled to compensation is its value subject to the above stated right of the city.

"VI. After the wants of the city are supplied, however, the defendants have the right to use the water of the river on their lands for any and every purpose which does not interfere with the equal rights or injure the lands of other riparian proprietors along the river above and below this land. These rights include a reasonable use of water of the river on the land for irrigation, domestic purposes, watering stock or other lawful purpose; also to obtain power by means of the fall of the stream on the land, returning the water to the stream before it leaves the land; also the benefit of having the water flow in its accustomed manner through the land. The right to use the water to irrigate the land through which it runs is subject to the condition that other riparian owners along the stream have the same right, and, if the water is not sufficient for all, neither has a right to use more than his reasonable share. All these rights are incident to the land because

Colonel Ed Fletcher -----#2

November 24, 1930.

the river borders on the land; and they are not mere appurtenances, but are part and parcel of the land itself.

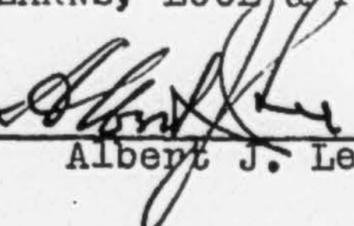
"XI. Whatever additional market value the land may have had by reason of these rights and advantages, so far as they do not interfere with or impair the rights of the city aforesaid, this value the defendants are entitled to as a part of the value of the land, before it can be taken; and this value you must include in your estimate of the value of the land sought to be condemned."

The Supreme Court of the United States in its opinion written in denying a petition for review in that court refers to these findings and says that the defendants were given the value of their lands including the value of the water, subject to the paramount rights of the city.

Hoping this gives you the information you desire, I am

Very truly yours,

STEARNS, LUCE & FORWARD

By 
Albert J. Lee

AJL:DL

March 29, 1932.

Mr. Albert J. Lee,
San Diego Trust & Savings Bldg.,
San Diego, California.

My dear Mr. Lee:

Enclosed find consent to the dismissal of the
city suit, signed by Stern, Mrs. Fletcher and myself,
as requested this morning over the phone. Please acknowledge
receipt of same on the carbon copy of this letter.

Yours very truly,

Reed. Albert Lee
March 29-32

KLM

Received the signed consent as mentioned above, March 29, 1932.

Ed Fletcher Papers

1870-1955

MSS.81

Box: 16 Folder: 7

General Correspondence - Lee, Albert J.



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