

December 7th-1911

Messrs Denis & Loewenthal  
Wilcox-Block  
City

Gentlemen

Will you kindly permit me to hear from you relative to the Riparian Rights which we desire to acquire from your clients, Mr & Mrs Winston. You will understand that the rights we wish to acquire are only such as might be affected by the building of a reservoir on the Warner's Ranch, all other rights vested in the property to remain in the name of the present owners.

As I informed you in our conversation on this subject, my candid opinion is that their lands will not be affected by the granting of the limited right we wish to acquire, that, on the contrary, the building of the dam at Warner's will prove a positive benefit, not only to the lands owned by Mr & Mrs Winston, but by others in the valley, as it will limit the flood rushes which in former years have done considerable damage to agricultural lands in that valley.

I wish to again call your attention to the fact that the best part of the watershed of the San Luis Rey Valley and that contributing the greatest amount of water, will not be affected by the building of a dam at Warner's. When you and your clients have reached a decision, I will be very glad to have an opportunity of discussing the matter further with you. Awaiting your reply.  
Yours very truly

MAX LOEWENTHAL      GEORGE J. DENIS  
LAW OFFICES  
DENIS & LOEWENTHAL  
WILCOX BUILDING  
ENTRANCE ROOM 414  
LOS ANGELES, CAL.

*ans Jan 5 11*

Los Angeles, Cal., December 23, 1911.

Mr. H. W. Keller,  
221 Kerckhoff Building,  
Los Angeles, Cal.

My dear Mr. Keller:

Your favor of 7th inst. was duly received. There was some little delay in having it brought to my attention as it was on the envelope noted as referred to Mr. Denis. I had not discussed the matter with Mr. Denis, and he, not knowing that the matter was in the office at all, was about to so write you when he happened to mention it to me, and I then took charge of it. From what Mr. Denis said I understood that you had gone East, and that fact, with press of other matters, has prevented my replying earlier.

However, before the receipt of your letter, and after your talk with me here at the office, I had discussed the situation both with Mr. Winston and Mrs. Winston, and after the receipt of your letter with Mr. Winston -- Mrs. Winston having gone out of town, and being now out of the State.

From all of the conferences I find that neither Mr. Winston nor Mrs. Winston can take the view that you expressed to me, and that you outline in your letter. For instance you state that the best part of the water-shed of the San Luis Rey Valley and that contributing the greatest amount of water will not be affected by building a dam at Warners. The water shed below the dam is about 3/5 of the whole area, but is not of a high elevation like the other 2/5, and as observed by Mr. Winston during the storm of a week ago, the rain

clouds pass over the lower water shed and lodge against and discharge in the high mountains of the upper water shed.

Indeed, the risk, whatever it may be, of shortage in water is one that the owner of land in Southern California does not want to face, if it can be avoided -- at all. My people think further that the mere fact that any rights to water, which would otherwise belong to the land, are diminished, will diminish its market value, and will continue to affect such market value more and more as the country develops and more water above is used. And the fact, furthermore, that you have retained the water right to the upper land that you are selling would indicate, if anything, either the use thereof on those lands, or perhaps elsewhere, under a separate arrangement whereby those waters above would be used as much as you can legally use them.

I appreciate that this view of the situation, after what you had said to me on the subject, will not be satisfactory to you. However, my people understand that you probably have certain rights under condemnation proceedings, but they feel too that in that event the law, whether through judge or jury, will fix what they are entitled to, and they cannot then be deemed to be asking something more than they ought to have, or seem to stand in the way of an improvement that may benefit the whole country down there. The general condemnation will take into consideration the matter of values probably and the effect thereon of diminishing water rights, and if the effect is, by taking the water, practically the land is taken, then the compensation will be made accordingly -- to the extent to which the taking of the water so takes the land. In other words, Mr. and Mrs. Winston do not look favorably upon any proposition by which the

water to which their land is entitled shall be diverted from them in whole, or in part, and would prefer that there should be no diversion at all.

In discussing with them your statement that you had heretofore wanted them to fix the value of the right of the proposed diversion -- and after indicating to them that probably a condemnation proceeding would follow, and that indeed there could be no other way if the parties could not agree -- they have finally fixed the amount and authorized me to so inform you, to-wit, the sum of \$10,000.00, with the further proviso on the lines of the agreement, which you have heretofore submitted -- that if by the building of the reservoir and the consequent diversion of the waters their land should be injured to a sum in excess of that \$10,000.00 that then such excess will be paid by your company. This letter as to bond for excess was more particularly Mrs. Winston's idea because she did not want to take any chances in the loss of any rights to the water. I myself doubted its practicability -- and so stated to her.

With best wishes of the season to you personally, I remain,

Sincerely yours,

*Max Loewenthal*  
of DENIS & LOEWENTHAL.

L/G

January Fifth-1912

*Open*  
*Winston*  
*Rip Rts*

Messrs Denis & Loewenthal

City

Gentlemen

Attention of Mr Loewenthal :

I am in receipt of your favor of the 23rd ult relative to the acquisition of the Riparian Rights to certain lands owned by your clients Mr & Mrs John Winston. - I have already detailed to you in conversation, the various steps that were taken by me at the requests of Mr Winston in this matter; when first approached, Mr Winston assured me that if no damages were inflicted, he did not wish to make any charge; an agreement was accordingly drawn along these lines, providing for the payment to Mr Winston of any damages he might sustain within a given period of time, by the construction of the proposed dam on the Warner's Ranch,- such recovery to be made however by an action at law. Upon the advise of Mr Winston's attorney, Mr Winston then asked me to prepare a bond and if any damages were inflicted, the matter to be adjudicated by an arbitrator; Mr Winston expressed himself as satisfied with the form of bond that had been prepared and assured me a number of times that the only delay in signing the agreement was due to the illness of his wife. This brings us to your connection with the case.

I am somewhat surprised, in view of what has gone before, that Mr Winston, through you, should now make a demand of Ten Thousand Dollars, which is altogether out of proportion to the value of of that which we are seeking to acquire. My statement statement that the best

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portion of the watershed lies below the Warner dam, is correct; the highest mountains are found in that portion of the watershed discharging below the dam. The storm that Mr Winston seems to have noticed, undoubtedly did not discharge until after it had struck these high mountains you allude to, and are part of the watershed which will supply his land and the lands of others, after the dam is built.

I am writing you on the subject simply to correct your mistaken ideas relative to the portion of the watershed tributary to Mr Winston's land and which will remain so after the dam is built.

I further wish to advise you that the steps which had been taken, and the agreements which had been drawn, were drawn along the lines suggested by Mr Winston himself. I regret very much that you should have advised your client to demand of us the exorbitant sum of Ten Thousand Dollars for the limited water right we desire; insomuch as we have acquired water rights along the river its entire length of forty or fifty miles, we are well versed in the value of these rights and I can assure you that we are not prepared to pay the sum of Ten Thousand Dollars for a limited frontage such as Mr Winston owns on the river.

I shall report the affair to my principals in San Francisco and let them take whatever steps are necessary in the premises.

Yours very truly

E

L.A. Jan 6 '12

Mr. H. M. Keller  
City

Dear Sir:-

Your letter of 5<sup>th</sup> inst

just rec'd. It being Sat afternoon (office closed) I came without stenographer but reply in my hand, perhaps not very legibly, at once because of the tone of your letter and particularly of two statements therein that ought not to go unanswered a moment.

First you say that you are surprised that Mr. Winston through me should now make a demand of \$10,000 which is altogether out of proportion, etc. Mr. Winston neither through me, nor otherwise, has made, or now makes such or any demand. He prefers and so does Mrs. Winston that there should

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be no diversion of all - and so we clearly wrote you. They gave you a figure because you wanted one, and I think - I haven't any <sup>copy of</sup> letter before me - we so stated - saying also therein that if there must be a diversion the Winstons preferred to have the value of their rights fixed by condemnation proceedings, so that no such claim as you are now making could be made - namely that they wanted more than they were justly entitled to.

Second:- You say that you regret very much that I should have advised my client to demand of you the exact amount of \$10,000 etc. I gave no such advice - nor any advice whatsoever as to the sum to be fixed by the Winstons.

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I would say though - as the figure being  
 exact - that the views of the Winstons  
 concerning the value of their water rights  
 that you want to acquire and that they  
 don't want to sell, is necessarily more persuasive  
 upon me than your views of that value.  
 Furthermore your conversation with me  
 as to values could not and did not  
 convince <sup>me</sup> of facts and dates of which I  
 had no knowledge as to their relation to  
 the entire problem. Your talk however  
 did convince me that whatever loss  
 or water-shortage might result - would  
 fall - or the risk thereof would fall -  
 on the Winstons alone; and that against such  
 loss or risk a bond alone would be a  
 very inefficient and inefficient protection

Respectfully Yours  
 Max Loewenthal  
 of Denis & Loewenthal

**Ed Fletcher Papers**

**1870-1955**

**MSS.81**

**Box: 16 Folder: 22**

**General Correspondence - Loewenthal, Max**



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