

A. H. SWEET
ATTORNEY-AT-LAW
303, 304, 305 UNION BUILDING
SAN DIEGO, CALIFORNIA

San Diego, Cal. July 9th, 1912

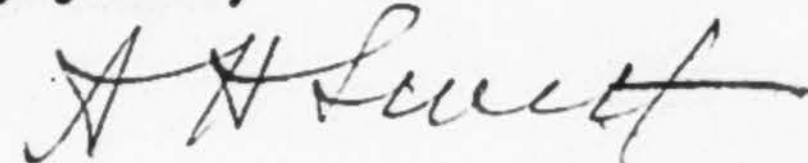
Mr. Ed Fletcher,

San Diego, Cal.

Dear sir:-

I herewith hand you a copy of a letter from Messrs. Wright and Winnek with reference to the proposed contract between the Escondido Mutual Water Company and Mr. Henshaw, which letter I have just now received. If you will advise me of the conclusions that may be reached by yourself and Mr. Henshaw in regard to the proposed modifications of the contract, I will take the matter up at once with Mr. Wright.

Truly yours,



AHS-S

A. H. SWEET
ATTORNEY-AT-LAW
303, 304, 305 UNION BUILDING
SAN DIEGO, CALIFORNIA

July 8, 1912

A. H. Sweet, Esq.,

City.

Dear Sir:-

On Friday evening of last week the directors of the Escondido Mutual Water Company were in my office, and approved the contract executed by Mr. Henshaw with one exception. It seems that some of the stockholders object to the provision permitting the party of the second part or his assigns to serve water consumers by running water through the Escondido conduit. I thought the rights of the Mutual Water Company's stockholders were fully protected by the clause that the party of the second part should not have the right to use said ditch to the detriment or injury of the Mutual Water Company or its stockholders or in any case where such use would interfere with the rights of the Mutual Water Company or its stockholders. If this provision could be eliminated the contract would be executed on the part of the Mutual Water Company without further delay. The directors did not seem to understand the exact purpose of the provision, although I recall that Mr. Post said something about using the ditch to furnish water to users in the lower San Luis Rey Valley.

Will you kindly ascertain if it will be satisfactory to drop this provision from the contract? Wright & Winnek

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A. H. SWEET
ATTORNEY-AT-LAW
303, 304, 305 UNION BUILDING
SAN DIEGO, CALIFORNIA

San Diego, Cal. July 10th, 1912.

Mr. Ed Fletcher,

San Diego, Cal.

Dear Sir:-

I am in receipt of a copy of a letter from Mr. William G. Henshaw to you asking for my opinion concerning certain matters relating to the proposed sale and distribution of water by him in the San Luis Rey Valley and vicinity and in reply to the same would say:

Riparian owners on the San Luis Rey River below the point at which Mr. Henshaw might establish his plant, would have the right to prevent the diversion of the waters of that stream to non-riparian lands if they moved promptly, that is before any considerable sum of money is expended on the plant. And as Mr. Henshaw suggests, if he sells water to the city of Oceanside or generally to individual consumers, the rates charged would undoubtedly be subject to review by the Railroad Commission. I understand that Mr. Henshaw might desire to sell land with water supplied for use thereon, subject to certain prices per thousand gallons or per inch, agreed upon between him and the purchaser of the lands, and that he desires to know whether the Railroad Commission could interfere with the rates thus agreed upon. At the hearing before the

Ed Fletcher--2

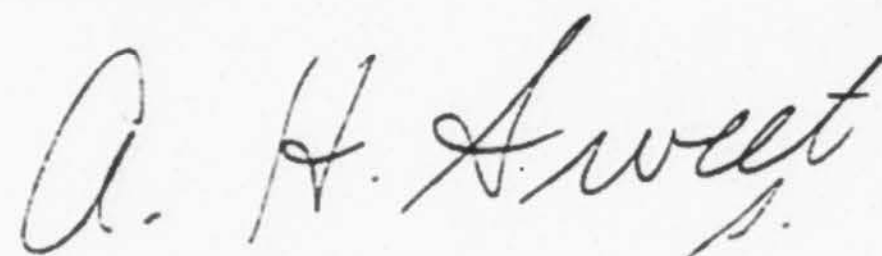
Railroad Commission yesterday of the application of yourself and Mr. James A. Murray to have the rates of the Cuyamaca Water Company fixed, I understood Mr. Eshelman, who was conducting the hearing, to say that questions of this kind presented a difficult problem and one which the Commission had not determined and he expressed a desire to have the counsel appearing for the several parties be prepared to argue this question, or at least suggested that it would be well for them to prepare themselves for the consideration of it. While from the suggestions of Mr. Eshelman, I understood that the Railroad Commission might consider the question an open one, yet I am disposed to believe that under the existing law, the commission would have the right to regulate the charges for water furnished purchasers of the land in case your plan was carried out, for, as I understand it you contemplate furnishing water not only to lands which you may sell, but also to other consumers and that the water which you develop will be appropriated for sale and disposition.

The Railroad Commission Act passed by the legislature last winter defines a water corporation to include every corporation or person owning, controlling or managing any water system for compensation within the state; and also

Ed Fletcher--3

defines a public utility to include a water corporation and declares every public utility to be subject to the jurisdiction and control and regulation of the commission and to the provisions of the Act. The act also authorizes the Commission to determine just and reasonable rates to be charged by all public utilities for any service or product. So I can not advise you that the Commission could not regulate the rates which would be charged for use of water upon lands which might be sold by yourself or Mr. Henshaw.

Truly yours,



AHS-S

A. H. SWEET
ATTORNEY-AT-LAW
303, 304, 305 UNION BUILDING
SAN DIEGO, CALIFORNIA

San Diego, Cal. Aug. 8th, 1912.

Mr. Ed. Fletcher,

San Diego, Cal.

Dear Sir:-

Replying to yours of the 7th, inst., in the matter of the Linda Vista Irrigation District would say, I don't think there is anything further for Mr. Peters to do other than to possibly make some corrections of the errors in some of the certificates of sale which he issued. It would, therefore, seem that his compensation ought to be reduced to a mere nominal sum. In fact, I think that Mr. Peters has been pretty well paid for his services, and he probably will be willing to continue to act as collector without making any charge inasmuch as he will have nothing further to do.

There is really nothing for the Directors to do, and I see no reason why they should meet every month, although they have a legal right to do so.

I think Mr. Fleming's salary is \$50.00 per month. He has nothing to do at present so far as I know, although the directors may want to consult him occasionally. Perhaps if no proceedings are to be taken for the dissolution of the District until after the Legislature amends the law next winter, Mr. Fleming would be willing to act as attorney for a nominal sum until these proceedings are initiated. It might be well for you to talk with him and the Directors about these

matters if it is decided to hold the dissolution proceedings in abeyance until the law is amended.

I will go with you to meet these gentlemen any time you may wish me to do so, and cooperate with you in carrying out such plan as may be decided upon.

Truly yours,

A. H. Sweet

A. H. SWEET
ATTORNEY-AT-LAW
303, 304, 305 UNION BUILDING
SAN DIEGO, CALIFORNIA

FILE
H. W. Co
Legal

San Diego, Cal. Mar. 24th, 1913

Mr. William G. Henshaw,

c/o Ed Fletcher,

San Diego, Cal.

Dear Sir:-

I have made further examination of the matter concerning which I wrote you on the 15th inst., namely whether your right to appropriate and use the waters of the San Luis Rey River to the extent stated in the notice of appropriation would be paramount to the rights of the purchaser from the State of California of school land in Section 36, Township 10 South, Range One West S. E. M., and whether a person filing a homestead claim upon certain lands riparian to the San Luis Rey River and within the Cleveland Forest Reserve and below the point of diversion of the water by you, would acquire rights to the water superior to those which you obtain by your appropriation.

This examination has confirmed my views as expressed in this letter, but as to the correctness of which I had some doubt at the time I wrote it. I would therefore beg leave to say that, in my opinion, your rights as an appropriator, if perfected by the performance of the requisite work, would be superior to those of a purchaser of the school land above referred to and would also be paramount to the rights of a homestead claimant initiated since your notice was given, and that neither such purchaser or claimant would have the right to interfere with your appropriation of the waters, but that they would acquire their respective tracts

W. G. Henshaw ---2

of land above mentioned, subject to your right to divert and use the water for the purposes for which you will have appropriated it.

Truly yours,

by A. H. Sweet

AHS-S

A. H. SWEET
ATTORNEY-AT-LAW
303, 304, 305 UNION BUILDING
SAN DIEGO, CALIFORNIA

San Diego, Cal. May 21st, 1913

Col. Ed. Fletcher,

920 Eighth Street,

San Diego, Calif.

Dear Sir:-

I am in receipt of a letter from Mr. W. S. Post saying that you desire an opinion from me stating the exact number of men that must be put to work or employed on the construction of the water system now in process of being built, in order to hold the water rights of Mr. Henshaw on the San Luis Rey and Santa Ysabel Rivers in this county. It does not seem to me possible to give you such a statement and if I did attempt to state the exact number of men that should be employed on the system, I do not believe you would be justified in relying upon it.

Section 1416 of the Civil Code provides that "Within sixty days after the notice is posted, claimant must commence the excavation or construction of the works in which he intends to divert the water, or the survey, road or trail building necessarily incident thereto, and must prosecute the work diligently and ~~un~~ interruptedly to completion, unless temporarily interrupted by snows or rain" There is another provision of the Civil Code contained in section 1422 to the effect that if the point of diversion or any part of the route of intended conveyance of the water claimed is in a National Park or forest reservation, the

Ed Fletcher--2

claimant under certain circumstances, has sixty days after the grant of a thority to use or occupy the park or reservation - within which to commence the construction of his works.

As you are aware, a part of the intended route for the intended conveyance of the water is in a forest reservation and proceedings were begun and prosecuted to a conclusion to obtain a permit to go through the reservation and such permit granted, so that the work of constructing the system must be carried on in compliance with the provision of Section 1416 namely: must be prosecuted diligently. Mr. Post advises me that the cost of the system under process of construction will be approximately \$2,000,000.00. As I have heretofore written you, Judge McKinley and I had a conference on this matter with Mr. Post and after hearing his explanation we agreed that at least several thousand dollars per month ought to be expended in the construction of this system. As I take it, you regard this expression of opinion by Judge McKinley and myself as not sufficiently definite and you desire to be further advised concerning what is meant by the statute requiring the work to be prosecuted diligently to completion.

Diligence is a relative term and what would amount to diligence in the case of the construction of a small system for the furnishing of water to irrigate a ranch or supply a mine, might fall far short of diligence when applied to a large system like the one under consideration.

A definition of diligence that is often quoted by courts and in text books is one given by the Supreme Court of Nevada in an

Ed Fletcher--3

opinion by Chief Justice Lewis. Diligence is defined ^{by him} "As steady application to business of any kind, constant effort to accomplish any undertaking * * * It is the doing of an act or series of acts with all possible expedition, with no delay except such as may be incident to the work itself."

Discussing this same question Mr. Kinney in his recent work on Irrigation and Water Rights, has said:

"As has been said, the law does not require any unusual or extraordinary efforts, but it does require that which is usual, ordinary and reasonable. The diligence required in the prosecution of the construction of all works necessary for the diversion and application of water in an attempted appropriation of the same is that constancy or steadfastness of purpose or labor which is usual with men engaged in like enterprises, and who desire a speedy accomplishment of their designs. There must be such assiduity in the prosecution of the works as will manifest to the world a bona fide intention to complete it within a reasonable time. As to what constitutes diligence is a question of fact and must be determined from all the circumstances surrounding each particular case.

I have given you these quotations so that you may better understand the situation from a legal stand-point and that what will be a sufficient compliance with the law must depend, in any case, upon its own peculiar facts and circumstances and that the only safe course to pursue is to do that which under existing conditions, reasonable men would say amounted to a diligent prosecution of the work, taking into consideration its magnitude and character.

My own conclusion is that the only safe course to pursue is to expend on an average of at least \$5000.00 a month in the construction of this system. At that rate it will take some thirty-three years or a generation to complete it and I could not say

Ed Fletcher--4

that it would not be necessary to do much more than this at some stages of the construction. The expenditure can, in my judgment, include not only the manual labor that must be done in constructing the physical system, but any legitimate and proper over-head charges, such as engineering superintendence and I should say, reasonable office rent.

It may seem to you and Mr. Henshaw that the amount that I have suggested which should be spent monthly is large, but the system is a large one and involves the expenditure of much money and I can not but believe that \$500.00 is a minimum. There is another thing that I believe we should keep in mind and that is the tendency of recent legislation and the disposition of the state authorities to hold the appropriator of water to a much more rigid compliance with the requirements of the law than was done in days gone by. I am not advised definitely as to what legislation was passed at the last session of the legislature. I am endeavoring to procure copies of the bills which were passed affecting the question we are considering, and as soon as I do so will advise you further. I may add, however, that these new laws whatever they may be will not go into effect until the 11th of August next.

I hope that this letter will give to you and Mr. Henshaw the information that you desire and feel that you need. I would be very glad to confer with you both personally and if necessary will endeavor to go to San Francisco to meet Mr. Henshaw.

Truly yours,

AHS-S

510
C. W. CO.

September 4, 1913.

FILE

Mr. A. H. Sweet,
San Diego, Cal.
Dear Mr. Sweet:

By instruction of Mr. Fletcher, I am to notify you of the certainty of injunction proceedings, over a pumping plant now being installed in the San Diego River at the Kehner Place; and that it is desirable to prepare a program to meet it.

The pumping plant will be located about 10 miles above Lakeside, at the junction with Chocolate Canyon. I have told Mr. Fletcher that (in my opinion) that a judge will allow pumping to proceed upon the Cuyamaca Water Co. furnishing a bond to secure damages. I imagine certain evidence should be gathered even for the preliminary proceedings.

We have the following general data:

(a) Lee's testimony and report to R.R. Commission, showing division of River into pockets or local basins; that the underflow is very slow, and that pumping say for 3 months at such a point as Chocolate Canyon will not affect anybody this year and no one at all if floods pass over and resaturate the lower gravels next winter.

(b) Various "Water plane" measurements made in cooperation with U. S. Geological Survey in El Cajon and Mission Valley, since 1912.

(c) Railroad Commission's order to commence pumping, indicating a public necessity.

(d) Ownership of the Kehner place riparian for 1 mile.

Will you please notify Mr. Fletcher what preparation should be made.

Very sincerely yours,

WSP-WK

CC to Ed F.

XXXXXXXXXXXX

924 8th St.

C. W. OO,
FILE

Sept. 22, 1913.

Mr. A. H. Sweet,
San Diego, Cal.

Dear Sir:

I have asked Mr. Keenan to bring over these papers regarding the water application on Boulder Creek. I am to leave Wednesday the 24th to appear before the Water Commission and reply to Mr. Wright's protest. I should be obliged if you would guide me as to the position I should take.

It appears that a small water power canal with a fall of about fifteen feet actually does exist on this mining property, so situated as to utilize the entire flow of Boulder Creek in the winter and the water turned out from Cuyamaca in the Summer about 10 horse power.

Very truly yours,

WSP-WK

Form 2

THE WESTERN UNION TELEGRAPH COMPANY

25,000 OFFICES IN AMERICA. INCORPORATED CABLE SERVICE TO ALL THE WORLD

THEO. N. VAIL, PRESIDENT BELVIDERE BROOKS, GENERAL MANAGER

RECEIVER'S No.	TIME FILED	CHECK
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SEND the following message subject to the terms }
on back hereof, which are hereby agreed to }

San Diego, Cal. Sept. 23, 1913. ¹⁹¹ 3

To State Water Commission

702 Mill Building, San Francisco, Cal.

Applicants Murray and Fletcher and protestants Boulder Creek Mining and Milling Company hereby request continuance of hearing set for Thursday to some date between October Sixteenth and thirtieth next. Neither party can conveniently be present Thursday. Continuance to be without prejudice to any rights of either party. Please wire action on application for continuance.

Charge Cuyamaca Water Co. Acct. A. H. Sweet
Attorney for Applicants

Wright and Winnek
Attorneys for Protestants

FILE

Boulder Cr. Water Com.

Oct. 8, 1913.

Mr. A. H. Sweet, Att'y.,
307 Union Bldg.,
City.

Dear Sir:

In the matter of the Boulder Creek application of the Cuyamaca Water Company to the State Water Commission, I am sending you a copy of the law which was sent me by the State Water Commission.

This situation is this:

The right to use the water has been applied for to the State Water Commission. The application for easement has been made to the United States Agricultural Department Forest Service, on April 30th, 1913. The Forest Service required only a prima facie proof of water right or intention to secure water right, and therefore a copy of the application to the Water Commission has also been furnished to the Forest Service.

Later, the Boulder Creek Mining & Milling Company filed a protest against this application, a copy of which is sent you. The position of the Mining Company, as I understand it, is this:

That they are the owners of a group of mining claims through which the water runs. That if we divert above their claims, we are taking from them a right to use power whenever they get ready to use it. In other words, they claim the ownership of the power right, because they have claim to a portion of the land for mining purposes.

Our original intake or survey was found to be on on one of these mining claims, and I therefore changed the location of diversion to a triangular piece of Government land within the Forest reserve, as the final point of diversion. A canal line was surveyed from this point to a power house site three miles below, also on Government land. The canal survey passes through a mining claim for about a mile and a quarter, but this, I do not consider significant, except that I have always understood that condemnation of such a right of way is difficult.

The Mining Company have, however, a small power plant utilizing about twelve feet of fall, and utilizing to a greater or lesser extent, the flow of Boulder Creek and of the Cuyamaca Lake waters turned down in the summer. I have no proof of the continuous use of this water wheel, or of the continuous working or non-working of the mining property, but there has been some color of utilization, and in my opinion, the Water Commission will consider this a right vested before the law of 1912, and will recognize it.

You will understand that the place of diversion is not most desirable from an engineering standpoint, but that the Mining Company occupy with their claims, a desirable reservoir site, which however, they will not sell at a reasonable figure. On the other hand, the reservoir site is not essential now to this proposition, because it happens that we have found another site at the lower end of the proposed power line. Therefore, as it stands now, Murray and Fletcher would be satisfied to modify their intake so as to be placed immediately below the present Boulder Creek Mining Company's installation. This means, however, that this diversion is on the Mining claim, and the legal aspect you will have to decide on.

My idea is to say to the State Water Commission, that in making the original application, the Mining Company's small plant was simply overlooked in the application as filed. That this application was prepared by myself, and while I had twice past the site of the mill, that the plant was so small I had not seen it, and it was through no intention to avoid the issue that the application failed to draw attention to this existing work.

On the filing of the application, I asked John C. Palmer, our Assistant Engineer, to examine this plant and prepare an affidavit, which is enclosed among the papers.

Our position should be, it seems to me, that the mere ownership of mining claims does not carry the power rights or the right to store without the proper procedure as required by law: That Murray and Fletcher have begun this proper procedure, and that the only modification in their application necessary, is that they change their intake to a point below the mining company's plant, or in lieu of this, maintain the present or the original diversion point, and compensate the mining company by furnishing them 20 H.P. for their plant at the rates per H.P. which it would have cost them to operate their own plant.

FILE
draft part.

C W Co. Conyrs

Oct. 8, 1913.

The site of the Mining plant is isolated, and there are very few witnesses who would know anything about it. Don Fornie, Post Office, Lakeside, formerly owned these mines, and built roads, etc., and knows a good deal of the early history, and I have asked him to come in and see you. It might be worth while to take him as a witness to San Francisco. The Assistant Engineer Palmer who made the survey, is available also. Aside from this, I have no suggestion regarding the evidence.

In the mining law, I believe a distinction is made regarding assessment work, - that if the claims are all filed as a group, work upon one claim is sufficient to hold the others, but if the claims are filed separately, work must be done upon the individual claims. It will pay, therefore, to look up the records in the County Recorder's office, of this mining claim, particularly with reference to securing right of way and to avoid a hold-up.

Sincerely yours,

P-B
Copies to
Bartl
Fletcher
Post
Company

Second Assistant Commissioner,
United States Interior, Dept.,
Washington, D. C.

Sir:

In reply to your telegram of September 23d, we will await the receipt of the stipulation which you informed us will be returned for formal execution.

To avoid confusion, we beg to explain that the applicants, Murray and Fletcher, are the sole owners of the property formerly known as the San Diego Flume Company, and in connection with which they made application No. 013,283 but they are doing business under the name of the Cuyamaca Water Company. This information is given to avoid any further delay in case the Department has prepared the stipulation for formal execution in the corporate form.

~~Yours very truly,~~

P-B

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FILE

Oct. 8, 1913.

Mr. Ed Fletcher, Mgr.,
Cuyamaca Water Co.,
City.

Dear Sir:

I return herewith the Department's telegram regarding Conejos reservoir. I judge that nothing need be done until the return of the stipulation for your formal approval. However, the use of the business name, Cuyamaca Water Company, has evidently mixed them up, and I prepared a letter for your signature explaining the ownership and form in which the stipulation should be made.

Very sincerely,

P-B

gk

Oct. 16, 1913.

Mr. A. H. Sweet,
San Diego, Cal.

Dear Sir:

Enclosed find copy of agreement between Henshaw and myself. In making up this agreement you can refer to it as an undivided one-twelfth interest in that property deeded to Jas. A. Murray by the San Diego Flume Company on June 1st, 1910 as per Book of Deeds No. 43, Page 309 in the Recorder's office of San Diego County, California.

This will be a contract of sale. In addition please include also Henshaw's owning an undivided one-twelfth interest in all improvements made on the property since that date; all rights of way, water rights, all lands purchased for dam sites or reservoir sites, all surveys and improvements made since that date by the Cuyamaca Water Co., or Jas. A. Murray and Ed Fletcher on behalf of the Cuyamaca Water Co. In other words, Henshaw gets an undivided one-twelfth interest in everything acquired since June 1, 1912 pertaining to the improvements and development of the system.

In the agreement I would make no mention of the clauses referred to marked "X" in lead pencil.

In addition to the \$50,000, he puts up one-twelfth of all moneys after August 20th, for maintenance, improvements etc. It will be a contract of purchase and deed to be given when the payments are all made; the property to

Mr A. H. Sweet

be free and clear of all encumbrances excepting
taxes for the year 1913-14 and thereafter.

Very truly yours,

FK

Oct. 24, 1913.

Mr. A. H. Sweet, Att'y.,
Union Bldg.,
City.

Dear Sir:

I enclose a letter from Mr. Fletcher regarding the propriety of asking the Board of Supervisors for the right of way upon the County roads in the Ex-Missions Rancho.

My own opinion is that we have to conform to the County's rules regarding pipe lines, and there is not much to this except in so far as Mr. Murray may be obstinate.

At any rate, I want to get a right of way for this pipe line, and should like to have your instructions as to how to proceed.

Yours very truly,

P-B

Nov 5th, 1913.

Oct. 24, 1913.

Mr. A. H. Sweet, Att'y.,
Union Bldg.,
San Diego, Calif.

Dear Sir:

I cannot find the Protest of the Boulder Creek Mining Company in my files. You will have to ask Mr. Wright for it.

Yesterday I called on Mr. W. A. Russ, as a witness in the case. His story is as follows:

Joe Alford held the Little Giant claim and mill site, and leased it to Forney, John Samsel, and Fanning. These leased to W. A. Russ, George Armstrong and Don Forney in 1904. Even at this date the Boulder Creek Mining Company was also in the field owning claims other than the Little Giant. The Russ lease consisted of a royalty on the output to Alford, and was to run several years from 1904.

In 1906 or the Fall of 1907, Russ and the estate of Armstrong and Fanning abandoned the Alford lease, and sold to Moyer the mill and machinery consisting of a Lane mill and gas engine, (see a mortgage recorded probably in 1907 from Moyer to W. A. Russ and Mrs. Geo. Armstrong). Russ has not observed operations since 1907, and can say nothing except heresy.

Fanning owns a livery stable at the corner of Sixth & 'A' Streets.

The most important information that Russ had to give was that the water wheel was not installed until 1911 and possibly not until 1912. If this can be proved, their installation, it seems to me, will fall under the Water Commission Law of 1911 and re-inacted in 1912, and there may be an opportunity to prove neglect of the principal proceedings. I shall not be able to see Joe Alford till Friday or Saturday.

Very sincerely yours,

P-B

Mr. A. H. Sweet,

San Diego, Cal.

Dear Sir:

As you know, Mr Keller and I signed a certain contract with Wm. G. Henshaw to acquire riparian rights in the San Luis Rey Valley. In addition, the Pacific Light & Power Co. thru Mr Culver, when selling the Warners Ranch to Mr Henshaw, agreed to give Henshaw all the riparian rights they owned or had acquired as far as the building of the Warners dam was concerned.

The Fletcher-Salmons Investment Co. acquired all these rights six or seven years ago which Culver deeded to Henshaw. Thru an error the Fletcher-Salmons Investment Co. failed to deed one right known as the Hubbert right to Culver, altho the Pacific Light & Power Co. paid for the rights. In other words, the Fletcher-Salmons Investment Co. were simply holding these rights of the Hubbert Ranch in trust. After Culver had deeded to Henshaw, this was discovered. On the instructions of the South Coast Land Co., who was the agent of Culver, the Fletcher-Salmons Investment Co. deeded the Hubbert rights back to Culver, after Culver had already deeded to Henshaw. I then sent a letter and agreement to Mr Keller and he sent it to Mr Culver asking Culver to sign the regular agreement for the diversion of the Warners water as far as the Hubbert rights were concerned. Mr Keller personally agreed to see that this was done and wrote me several letters that it

Mr Sweet

-2-

was satisfactory, etc.

The Fletcher-Salmons Investment Co. in January last deeded these rights to Culver. In February Culver went to work and deeded to the South Coast Land Co. the Hubbert rights and they in turn deeded these same rights to C. A. Canfield without making the necessary reservation for Henshaw, and it looks like we were going to have a fight in order to get the Hubbert rights as far as the building of the Warners dam is concerned.

Last January I wanted to get Salmons, who was President of the Company, to deed to Mr Henshaw the riparian rights that Henshaw was entitled to but Mr Salmons took the attitude that as we were working for the Pacific Light & Power Co. at that time and were holding these water rights in trust for them, it was up to us to follow instructions and deed to Mr Culver, otherwise we would be liable for damages, and as stated before I had Mr Keller's absolute assurances that Henshaw would be protected and in addition Keller was under contract with Henshaw to help get these rights; therefore I deeded the property to Culver.

Now the question is this: how can Mr Henshaw protect himself? Did not Mr Culver have these rights altho they stood in the name of the Fletcher-Salmons Investment Co.'s name and if so, has Mr Henshaw any recourse to sue the Pacific Light & Power Co. and Culver? What recourse if any has he against Mr Keller, who as his agent, violated his trust? Keller handled the matter as agent for Culver, as agent for the South Coast Land Company and also as agent for Henshaw. In addition to that my understanding is, (altho I

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~~The Power Company put up the money.~~
Mr Sweet

~~Please attend to this promptly and give me a~~

~~decision as to what is the best way to proceed.~~
cannot prove it) is that Mr Keller has a one-fourth interest in the profits of Mr Canfield's, therefore he ~~was agent for Canfield as well and will have an interest in the profits according to my understanding in the Canfield ownership of the Hubbert water rights. Therefore, if this is true and I believe that it can be shown to be true in court then Mr Keller was acting as agent for all parties in interest.~~

I have a number of letters from Mr Keller saying that Mr Henshaw was entitled to these Hubbert riparian rights as far as the building of the Warners Ranch dam was concerned and that he was doing everything that he could to protect Mr Henshaw's interest.

The question is what is the best way to proceed to acquire the Hubbert water rights for Mr Henshaw and at the earliest possible date. Mr Salmons and I paid \$100 for these water rights seven years ago and the Pacific Light & Power Company put up the money.

Please attend to this promptly and give me a decision as to what is the best way to proceed.

A copy of this letter has been sent to Judge McKinley and Mr G. Henshaw.

Very truly yours,

IK

San Diego, Cal. Nov. 17th, 1913.

Mr. Ed Fletcher,

San Diego, Calif.

Dear Sir:-

I want to remind you that the election will be held in the Linda Vista Irrigation District on Saturday next (November 22nd) to vote upon the question of dissolving the district. The members of the election boards have been appointed by the Board of Directors of the District and I herewith hand you copy of the notice of election containing the names of these officers. I would suggest that you make arrangements with them to be present and act under their appointment. It will be necessary for each election board on the morning of the election to appoint two clerks from the electors of their respective precincts. I would suggest that you endeavor to have at least two electors besides the members of the Board present at each polling place on Saturday morning before eight o'clock so these two persons can be appointed to act as clerks. There should also be at each polling place before the polls open, still another elector to administer the oath to the election officers, that is to the members of the election board and the clerks. The form of oath will be printed and delivered

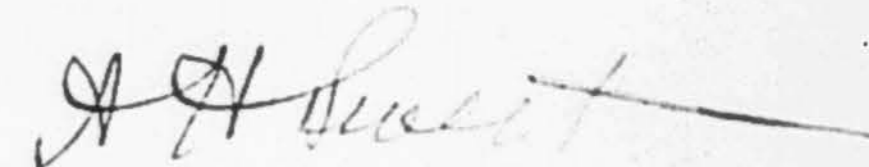
Ed Fletcher--2

to you later with the other election supplies. If such member of the Board of Election is not present when the polls open, any elector can be designated to take his place. The polls must be open at eight o'clock in the morning and remain open until four o'clock in the afternoon when they must be closed.

I am informed that the election officers in precinct number two, to-wit: Mesta Holm, and Emil Holm and possibly M. O'Laughlin, are in the employ of the Atchison, Topeka & Santa Fe Railway Company and they may not want to serve unless permission is given to do so by some representative of the railroad company and would suggest that you get in touch with the company so as to obtain such permission.

Truly yours,

AHS-S



Allen

Notice of Election

To the Electors of the Linda Vista Irrigation District, County of San Diego, State of California:

Public notice is hereby given that a special election was on the 20th day of October, A. D. 1913, called and ordered to be held by the board of Directors of Linda Vista Irrigation District, for the purpose of submitting to the electors of said district the question whether or not said district shall be dissolved, on Saturday, the 22nd day of November, A. D. 1913, and that the polls at said election will be opened at eight o'clock a. m. of said election day and be kept open until four o'clock p. m. of said day, when said polls will be closed; that the following places in the election precincts of said Linda Vista Irrigation District were, by the said Board, by its order and resolution calling said election, designated as the polling places for said election, and the following named persons appointed as officers to conduct said election to-wit:

PRECINCT NO. 1

Polling Place—Store of John W. Vasey, Miramar.

Election Officers: Inspector—John W. Vasey. Judges—Mrs. Elizabeth Vasey and Mrs. Phoebe Barnes.

PRECINCT NO. 2

Polling Place—Section House of the Atchison, Topeka & Santa Fe Railway Company at Linda Vista Station.

Election Officers: Inspector—Emil Holm. Judges—Mesta Holm and M. O'Laughlin.

PRECINCT NO. 3

Polling Place—The Palm House of W. H. Pearson in Morena.

Election Officers: Inspector—W. I. Mossholder. Judges—Minnie Mossholder and W. H. Pearson.

PRECINCT NO. 4

Polling Place—Residence of H. W. Vasey in Murphy Canyon.

Election Officers: Inspector: H. W. Vasey. Judges—H. McKechnie and Emma A. McKechnie.

PRECINCT NO. 5

Polling Place—Residence of W. D. Bryson, Miramar.

Election Officers: Inspector—L. Amy Bryson. Judges—Matilda Froehlich and Kate E. Hyde.

It is proposed to dissolve said district and the dissolution of the same is proposed, and said election was called and will be held for the purpose of submitting to the electors of said Linda Vista Irrigation District, at the time and places above specified, the question whether or not said Linda Vista Irrigation District shall be dissolved; and said question will be submitted to said electors at said election; that at said election the ballot favoring the dissolution of said district shall contain the words "Dissolution of the district—yes"; and the ballot opposed to said dissolution shall contain the words "Dissolution of the district—no," or words equivalent thereto.

Notice is further hereby given that said election will be held on the said 22nd day of November, 1913, as aforesaid, and the polls will be opened as aforesaid at eight o'clock a. m. of said day and shall be kept open until four o'clock p. m. of said day when said polls shall be closed, and the polling places for said election shall be at the places hereinbefore stated and designated as such polling places.

Said election shall be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of the law governing the election of officers in Irrigation Districts.

By order of the Board of Directors of Linda Vista Irrigation District.
Dated October 20, 1913.

W. D. BRYSON,
President of Board of Directors of
Linda Vista Irrigation District.
R. H. GUNNIS,
Secretary of Board of Directors of
Linda Vista Irrigation District.

Boulder Creek No. 1

State Water Commission of
California.

December 26th, 1913

Mr. A. H. Sweet,

San Diego, Calif.

Dear Sir:-

The commission will hold a meeting on the 8th of January 1914; at this meeting it is desired that the matter of the application of Murray and Fletcher be acted upon.

This notice is sent you in order that you may have your brief before the commission if you desire to file one. Also that you may indicate what conclusion you and the attorney for the protestant, have reached as to the suggested compromise of the rights of the respective parties, as suggested at the hearing on October 27th, 1913.

very truly yours,

Horace Willard Jones

Attorney for Commission

84

Jan. 19, 1914.

San Diego, Cal.
Jan. 13th, 1914.

Mr. A.H. Sweet,
Union Bldg.
San Diego, Cal.
Dear Sir:

I have been talking with Mr. Fletcher about Boulder
Creek, asking what Mr. Murray's position is. Murray wants it but d
does not want to pay two much.

Fletcher thinks the next thing is to start the proceeding
before the Land Office and the Forestry Department to jar the
Mining Co loose from such land as they are holding as mining
claims for the sole purpose of using for water power.

The enclosed letters from W.L. Huber ~~are~~ bear on the
point. Huber was formerly the District Engineer for the
Forest Service and is quite familiar with these proceedings.
It may not be a bad idea to bring him in to this if terms can
be arranged. He can then make an appearance before the
Forest office in San Francisco.

The idea will be to keep the mining people constantly
on the defensive, and more willing to settle.

Very sincerely yours,

[Post >>]
CSK

Mr Post:

In relation to this letter from Huber, what
do you infer from it? That we cannot make another
move until the Forest Service apply for a patent?
I am not in position to furnish strong evidence that the
mines have not been in operation; this is easily
secured from Mr Jones, one of the stockholders;
they are just simply doing nothing. What do you
recommend as the next move?

Ed Fletcher

JK

JK

A. H. SWEET
ATTORNEY-AT-LAW
303, 304, 305 UNION BUILDING
SAN DIEGO, CALIFORNIA

San Diego, Cal. Jan. 20th, 1914

Mr. W. S. Post,
San Diego, Cal.

Dear Sir:-

I have received notice from the Water Commission that the parties to the controversies over the Boulder Creek mining claims involved in the application of Messrs. Murray & Fletcher must file their briefs within thirty days from the receipt of the notice which came to hand yesterday. I would like to hear from you at once as to what suggestions you or Mr. Fletcher has to make.

I note what is said in Mr. Huber's letter about the filing of a supplemental affidavit or showing. I would like to have you consider the matter and suggest in writing, what you think could be set up in such an affidavit as to the rights of the protestants as well as the highly beneficial use to which the applicants intend putting the water and further what you think about the whole matter.

Truly yours,

A. H. Sweet

ANS-D

SV

San Francisco Cal. Feb. 2, 1914.

A. H. Sweet

Union Bldg. San Diego, Cal.

Water commissions attorney Jones absent AM ADVISED
BY ACTING SECRETARY THAT ONLY FORMAL APPLICATION FOR FURTHER
EXTENSION TIME CAN BE OFFICIALLY CONSIDERED OFFICIALS COM-
MISSION REALIZING DELAY INCIDENT LAND OFFICE PROCEDURE
NOT DISPOSED TO FAVOR EXTENSION RECOMMEND YOU DO NOT ASK
EXTENSION BUT FILE BRIEF BY FEBRUARY TWENTIETH YOUR TIME
LIMIT TRUSTING TO WIN MATTER BEFORE COMMISSION THEN ATTACK
CLAIMS BEFORE LAND OFFICE LETTER.

HUBER.

SV

A. H. SWEET
ATTORNEY-AT-LAW
303, 304, 305 UNION BUILDING
SAN DIEGO, CALIFORNIA

San Diego, Cal. May 2nd, 1914.

Mr. W. S. Post,

American National Bank Bldg.

San Diego, Calif.

Dear Sir:-

I herewith return you the paper you sent me on the 30th ult. and would suggest that you have it recorded although it is probably of no effect as to many of the people who signed it, but as you say, the Alford's still own the property and their release of riparian rights may be of some value to the Cuyamaca Water Company.

Truly yours,

AHS-S

A. H. Sweet

E. F.

Do you want to hand this to
Makin for record?

Post

no mail.

Put this in record

A. H. SWEET
ATTORNEY-AT-LAW
303, 304, 305 UNION BUILDING
SAN DIEGO, CALIFORNIA

Sweet

San Diego, Cal. May 15th, 1914.

Mr. Lou B. Mathews,

San Diego, Cal.

Dear Mr. Mathews:-

I herewith hand you three copies of resolution passed by the Board of Directors of Cuyamaca Water Company at a special meeting held on the 9th day of May. Please sign each of these resolutions at the place for your signature on the last page and mail one to Mr. Murray, wherever he may be at this time, you undoubtedly have his address, one to Mr. Sweet and one to Mr. Fletcher, making a memorandum of the date of mailing as you will have to make an affidavit to be filed with the papers and minutes of this corporation, stating that you have so mailed such resolution to all the stockholders, and Mr. Sweet informs me that the three above named are the only stockholders. Do this today without fail.

Truly yours,

Ruth A. Spears

A. H. SWEET
ATTORNEY-AT-LAW
303, 304, 305 UNION BUILDING
SAN DIEGO, CALIFORNIA

San Diego, Cal. June 8th, 1914.

Mr. Ed Fletcher,

San Diego, Calif.

Dear Sir:-

I herewith enclose you certified copy of certificate of creation of bonded indebtedness of Cuyamaca Water Company. Kindly acknowledge receipt of same.

Truly yours,

A. H. Sweet

SAN DIEGO, CALIFORNIA, JULY 31, 1914.

Mr. A. H. Sweet,
Union Bldg.,
San Diego, California.

Dear Sir:

Enclosed find copy of agreement between the Escondido Mutual Water Company and Henshaw; also agreement under date of April 1, 1914 between the Escondido Irrigation District and the U. S. Indian Service.

Please remember that an agreement was entered into between the United States Government and Henshaw, relative to the diversion of Warner's Ranch Water. This was made a year or two ago. Henshaw got their consent to divert that San Luis Rey water.

It is true that Henshaw agreed to furnish what water the Indians needed in his contract with the Escondido Mutual Water Company. That amount was 75 inches at the time the contract was made between Henshaw and the Escondido Mutual Water Company. Since then the Indian Service has demanded 300 minor's inches. The Escondido Mutual Water Company has agreed to give it to them whenever they want it, with the understanding that the Escondido Mutual Water Co. gets it the rest of the time. So the Escondido Mutual Water Company, instead of getting its 100,000 inches are going to demand that we turn out of Warners the six cu. ft. or 300 inches in addition with the Escondido people will get when the Indians don't want it, and vice versa. The Indian Service might just as well have said let it be 1000 inches, and in that way robbed us of all our water and taken all of the San Luis Rey.

My contention is that this engineer in Los Angeles has no authority to make any such a contract, and it cannot be enforced. I should like your opinion in the matter.

Kindly return contracts after you have finished with them.

Yours truly,

I-8

33

Oct. 24, 1914.

Mr. A. H. Sweet,
Union Bldg.,

San Diego, California.

Dear Sir:

Please get busy immediately and increase the capitalization of the Cuyamaca Water Company from \$600,000 to \$2,000,000, and have the papers ready for the first of next week.

Yours very truly,

CUYAMACA WATER COMPANY,

Manager.

F-8

Office copy - [Sweet] [from 1914 papers]

In his interview published in Monday morning's Union, Judge Boone, enumerating his objections to the purchase of the Cuyamaca Water System by the City of San Diego, says:- "Another serious drawback to the purchase of the system is the fact that the city would be ^{obliged} ~~obligated~~ to live up to the present contracts held by the Company to supply water to consumers outside the city limits **** Despite what may be said to the contrary these contracts will have to be lived up to. They can not be set aside by any dictum of the Railroad Commission. They would be upheld by any Supreme Court." This is merely Judge Boone's opinion. I think it may be safely said that this opinion is not shared by many attorneys who have had occasion to examine the questions involved, particularly the right of a water company engaged in the sale and distribution of water which has been appropriated to a public use, to tie itself up by contracts for the sale of such water.

It has been repeatedly held by the Courts that a public utility corporation can not enter into enforceable contracts which would limit its powers to discharge its duty to the public. The contracts referred to by Judge Boone are of this class. After full argument by counsel, the Railroad Commission ~~in~~ unanimously held in an elaborate and able opinion that the particular contracts which Judge Boone declares are valid, and obligatory upon the owners of the water system, did not prevent the Commission from fixing rates in excess of those provided to be paid by these agreements, thus determining that the agreements which Judge Boone conceives to be an insuperable obstacle in the way of the city requiring this water system, have little or no effect. It may be safely asserted that the right to take from the Cuyamaca water system, water which has been appropriated and dedicated to a public use, does not depend upon contract, and that the holders of these so called agreements acquired nothing by virtue of them, but that their right to the water is dependent not upon the contracts, but upon the actual furnishing delivery of the water to them.

My excuse for referring to Judge Boone's interview is that by reason of it I think the public is liable to obtain an erroneous impression of the right of the owners of the Cuyamaca water system to sell it. It may be very appropriately suggested that in view of the fact that Judge Boone and myself are counsel on opposite sides in litigation involving some of these so called contracts, we should be content to try our cases in Court. I suppose that it may be that in appealing from the judicial tribuna;s to the public, he is simply putting in practice the Rooseveltian idea of reversing judicial decisions - an idea, which on account of its origin, undoubtedly has great weight with Judge Boone.

(signed) P. H. Sweet

SAN DIEGO, CALIFORNIA, Feb. 4, 1915.

Mr. A. H. Sweet,
Union Bldg.,
San Diego, Calif.

My dear Mr. Sweet:

I return you herewith Mr. Boone's letter. Mr. Murray says that the conditions are not satisfactory, and it is up to Mr. Boone to either take his money or appeal.

Yours very truly,

F-S

Cuyamaca

34

March 24, 1915.

Mr. A. H. Sweet,

San Diego, Calif.

Dear Sir:

The La Mesa Development Co's. books are open for inspection. It seems to me we are vitally interested in finding out what the La Mesa Development Co. paid for those water rights. Please follow this matter up with Mr. Mathews at once, and have the matter investigated.

Yours very truly,

CUYAMACA WATER COMPANY,

Manager.

F-8

A. H. SWEET
FREDERIC W. STEARNS
CHAS. H. FORWARD

SWEET, STEARNS & FORWARD
ATTORNEYS AND COUNSELORS AT LAW
301-305 UNION BUILDING
BROADWAY AND THIRD STREET
SAN DIEGO, CALIFORNIA

TELEPHONES
PACIFIC MAIN 63
HOME 1063

May 21, 1915.

Cuyamaca Water Company,
916- Eighth Street,
San Diego, California.

Gentlemen:-

In regard to the status of the case of the Cuyamaca Water Company vs. Geo. H. Oswald, et al., now pending in the Justice's Court of San Diego Township, in which action the Company is seeking to obtain a judgment against the defendants for water furnished for the street improvements in road district No. 2 in this County, would say: That there is some doubt in our minds as to whether we can obtain sufficient evidence to prove the delivery of the water used in this work to the defendants.

It seems that part of the water was used by Jess Knight and a part by Oswald; that each week Knight and Oswald's foreman would each make a report to the Water Company of the amount of water used by them for that period, so the Company's books are made up of hear-say statements given to them by these foremen.

Mr. Crouch, the attorney for the defendants in this case, has stated to me that he would advise any time, a settlement of 50 per cent, and in our own opinion, no doubt, the defendants would be willing to pay \$100.00 to settle the matter.

Kindly let us know what your wishes are in the matter.

Very truly yours,

Sweet, Stearns and Forward

Total \$181.85
Sweet's Bill - \$25
Court Costs \$50.00
\$30 - \$31

A.H.SWEET
FREDERIC W. STEARNS
CHAS. H. FORWARD

SWEET, STEARNS & FORWARD
ATTORNEYS AND COUNSELORS AT LAW
301-305 UNION BUILDING
BROADWAY AND THIRD STREET
SAN DIEGO, CALIFORNIA

TELEPHONES
PACIFIC MAIN 63
HOME 1063

A.H.SWEET
FREDERIC W. STEARNS
CHAS. H. FORWARD

SWEET, STEARNS & FORWARD
ATTORNEYS AND COUNSELORS AT LAW
301-305 UNION BUILDING
BROADWAY AND THIRD STREET
SAN DIEGO, CALIFORNIA

TELEPHONES
PACIFIC MAIN 63
HOME 1063

San Diego, Cal. June 21st, 1915.

Cuyamaca Water Company,
San Diego, Calif.

Gentlemen:-

We herewith enclose our check for \$68.75 being balance due you in Cuyamaca Water Company Vs. Oswald, et al, after deducting our expenses and charges in this action. As instructed by you we dismissed the case, upon the defendants paying \$100.00.

Truly yours,
Sweet, Stearns & Forward

By P. H. Sweet

San Diego, Calif. June 21st, 1915.

Cuyamaca Water Company

In Account with
Sweet, Stearns & Forward.

Cuyamaca Water Company Vs. Oswald et al:

June 21st Received of Charles C. Crouch in settlement of above case \$100.00

1914				
Dec.	5	Filed complaint in above case	\$6.00	
		Clerk's certificate	.25	
	18	Serving summons	3.75	
		Cost of dismissing suit	.25	
		Services in above suit	25.00	
		Check herewith		
			<u>31.25</u>	<u>31.25</u>
			(30.25)	\$ 68.75

Do + June 1915

Legal Exp 31.25

NB: OTHER PAPERS RE THIS CASE

FILED UNDER

KNIGHT, JESS
(CUYAMACA CUSTOMER)

August 2, 1915.

Mr. A. H. Sweet,
Union Bldg.,
San Diego, Cal.

Dear Sir:-

Can you tell me if suit was brought against
M. C. Healion for the collection of back water rentals
of approximately \$380.00? If suit was never started,
will you please inform me whether the same was ever
considered and if so, what were the reasons for drop-
ping the same?

Yours very truly,

Assistant Manager.

FLECK

CUYAMACA WATER CO.
FILE No. _____
DO NOT REMOVE ANY LETTER FROM THIS FILE.

A.H.SWEET
FREDERIC W. STEARNS
CHAS. H. FORWARD

SWEET, STEARNS & FORWARD
ATTORNEYS AND COUNSELORS AT LAW
301-305 UNION BUILDING
BROADWAY AND THIRD STREET
SAN DIEGO, CALIFORNIA

TELEPHONES
PACIFIC MAIN 63
HOME 1063

-C O P Y-

San Francisco, Cal. Oct. 30, 1915.

Mr. Fred W. Stearns,
Sweet, Stearns & Forward,
San Diego, Cal.

Dear Mr. Stearns:-

I was amazed to receive yours of the 23rd and find that the terms arranged with you on last Saturday you now should insist must be changed. The vague general statement that \$5000. is necessary to bring certain influence to bear upon the Mayor and the Council, is certainly in the face of our arrangement remarkable to say the least. It was very clear to my mind, and apparently to yours also, that there would be no necessity of expending any money until you could determine whether or no the Mayor and the Council would be favorable to presenting the water question to the public as proposed. Certainly no adequate reasons were given in your letter for any change of this view. It would further appear to me that your valuable co-operation for which I am paying so liberally ought to be able to accomplish this first step without the use of any money, for we have all agreed that on its merits, the city should take over the Volcan water. If this cannot be done I think I am quite justified in feeling that the co-operation I am trying to enlist cannot be very great, for otherwise this assistance that you desire to enlist certainly should be obtainable on a contingent fee.

Without any money or influence, but merely upon the presentation of the facts, the last Council and Mayor were unanimously in favor of presenting a proposition which was not even as attractive as the present to the voters of the city.

In our conversation you frankly and properly conceded that it was now up to you to show some results, and show that something could be accomplished with the Mayor and the Council, and that there was nothing further for me to do in the matter except the confirming of our arrangements by letter until there was assurance that the Mayor and the Council would take the desired action.

If upon consideration you find that this is not satisfactory you had better drop the entire matter, and I will go ahead with my other plans. Kindly wire your decision upon receipt of this.

Yours truly,

P. S. I have been laid up with a cold for a few days, hence the delay in answering your letter above referred to.

San Diego, Cal. Aug. 3rd, 1915.

Mr. F. M. Faude,

San Diego, Calif.

Dear Sir:-

Replying to yours of the 2nd inst. regarding suit against M. C. Healion for \$380.00, would say, no suit was ever brought against Mr. Healion and we were never have been instructed to bring such suit.

truly yours,

AHS-S

P. W. Sweet

CUYAMACA WATER CO.
FILE No.
DO NOT REMOVE
ANY LETTER
FROM THIS FILE.

-- Copy --

Phones Main 557
Home 3157

H. D. HICKER
Attorney at Law.
402 Union Bldg.,
San Diego, California.

February 9, 1917.

Mr. A. H. Sweet,
Attorney for James A. Murray and Ed Fletcher,
C i t y.

Dear Sir:

Referring to the matter of compromise in the case of James A. Murray and Ed Fletcher vs. La Mesa Development Company, would say that I have conferred with Mr. M. C. Helion, and in pursuance of such conference submit the following:

Mr. Helion wished me first to state that his proposition of compromise made to you through Judge Boone under date of February 1, 1915, was made in good faith, and that he believes it to be a fair proposal. The present proposal is, therefore, practically the same, with the exception that the proposed cash payment is increased somewhat to cover loss on account of delay, costs on appeal, etc. We propose:

Mr. Helion will accept the sum already deposited by you in court on August 15, 1914, namely \$405.60, and \$350.00 in addition thereto, and carry out the following suggestions, with such modifications as may be deemed proper in order to effectuate the purpose:

1st: Mr. Helion will deed you right-of-way for pipe and

A.H.S. #2

tunnel, 15 feet wide, described as follows: Beginning at a point on the northerly boundary line of Lot Four, Section 17, T. 16 S., R. 1 W. S.B.M. whence the northeast corner of said Lot Four bears South $89^{\circ}48'45''$ East 486.78 feet; thence South $59^{\circ}04'$ West 135.98 feet; thence South $39^{\circ}14'$ West 81.79 feet; thence South $24^{\circ}25'$ West 60.35 feet; thence South $14^{\circ}07'$ West 69.93 feet; thence South $8^{\circ}07'$ West 585.14 feet; thence South $65^{\circ}17'$ West 16.32 feet; thence North $8^{\circ}07'$ East 592.24 feet; thence North $14^{\circ}07'$ East 72.07 feet; thence North $24^{\circ}25'$ East 63.65 feet; thence North $39^{\circ}14'$ East 86.21 feet; thence North $59^{\circ}04'$ East 111.1 feet; thence South $89^{\circ}49'$ East 29.04 feet to place of beginning, said right of way being 15 feet wide and containing 0.32 of an acre. This is, of course, the right of way for pipe line and tunnel set forth in your complaint.

2nd. Mr. Healion will deed fee simple title to triangular piece of land sought to be condemned in said action, and described as follows: Beginning at a point from whence the Southwest corner of said Lot Four, in Section 17, T. 16 S., R. 1 W., S.B.M., bears South $61^{\circ}42'$ West 459.94 feet; thence North $62^{\circ}00'$ East 133.55 feet; thence North $17^{\circ}28'$ West 169.28 feet; thence South $16^{\circ}40'$ West 234.0 feet to place of beginning.

3rd. Mr. Healion will dedicate for public road right of way over the piece of land (Roadway No. 1) sought to be condemned, and described as follows: Beginning at the Southeast corner of said Lot Four in Section 17, T. 16 S., R. 1 W., S.B.M., as shown by Licensed Survey Map No. 151, on file in the County Recorder's office of San Diego County, thence North $24^{\circ}37'$ West, 162.3 feet; thence North

A.H.S. #3

45°06' West 156.75 feet; thence North 48°36' West 100 feet; thence North 51°36' West 240.14 feet; thence North 20°26' East 42.05 feet; thence South 51°36' East 254.16 feet; thence South 48°36' East 102.27 feet; thence South 45°06' East 165.20 feet; thence South 24°37' East 78.20 feet to the easterly boundary of said Lot Four, thence along said easterly boundary of said Lot Four, South 0°58' East 99.71 feet to the place of beginning.

4th. Mr. Healion will dedicate for public road the right of way over the piece of land (Roadway No. 2) sought to be condemned, and described as follows: Beginning at a point on the southerly boundary of said Lot Four in Section 17, T. 16 S., R. 1 W., S.B.M., from whence the southwest corner of said Lot Four bears North 89°52'30" West 87.94 feet; thence North 47°40' East 183.15 feet; thence North 51°10' East 188.80 feet; thence North 16°40' East 239.65 feet; thence North 65°17' East 332.08 feet; thence South 60°36' East 14.30 feet, to the northwesterly right of way line of the Cuyamaca Water Company's flume, thence along said right of way line South 21°27' West 41.05 feet; thence South 65°17' West 292.75 feet; thence South 16°40' West 234 feet; thence South 51°10' West 200. feet; thence South 47°40' West 138.2 feet; to the southerly boundary of said Lot Four, thence along said southerly boundary North 89°52' West 59.26 feet to the place of beginning.

5th. Murray and Fletcher will dedicate the right of way for public road, to connect the two roadways above described, over the following described piece of land. A strip of land 40 feet wide, commencing at a point where the northwesterly boundary of the road-

A.H.S. #4

way secondly above described intersects with the flume right of way; thence southeasterly to a connection with the northeasterly boundary of the road first above described; thence South 42.05 feet to the fence around the reservoir; thence northwesterly along said fence to the most northerly corner of the fence around said reservoir; thence southwesterly along said fence to a connection with the west side of said flume right of way.

6th. Murray and Fletcher will dedicate right of way for a public road from the point where the northerly line of said roadway first^{above}/described intersects with the east boundary line of said Lot Four, thence southeasterly to the most southerly corner of Lot 20 of the Brier Tract; thence along the southwesterly boundary of said Lot 20 of the Brier Tract to a connection with the east boundary of said Lot Four; thence north along said boundary to the place of beginning; this right of way being an extension of the roadway first above described, and to connect with Wakrusa Avenue in the Brier Tract.

7th. Also, Murray and Fletcher will dedicate right of way for public road from the intersection of the roadway secondly above described (Roadway No. 2) southwesterly to a connection with Monroe Street in North La Mesa Tract.

8th. The dedications above described shall be accepted by the Board of Supervisors of San Diego County, and said roadways opened up to travel, graded and put in condition to be traveled.

A.H.S. #5

If this proposal is acceptable, its terms can be carried out at once; or if you have any further suggestions, Mr. Healion will be pleased to have a conference with either you or with Mr. Murray at your convenience.

Very truly yours,

(Signed) H. D. Hicker

January 13, 1916.

Mr. A. H. Sweet,
Union Bldg.,
San Diego, Calif

Dear Sir:

In making up your brief, I want to call your attention to several of what I think are important matters.

1st. For eight years they offered to sell all their holdings for \$250,000. This included the San Diego Flume system, the 1350 acres around La Mesa, the 800 acres in the Helena Damsite, and their holdings in Pine Valley. You can see that in their sworn testimony before the Railroad Commission. Now, immediately after we purchased the Flume System in 1910, Healion offered to sell us all the La Mesa Lands for \$100 an acre, including the water rights, and asked us to make an offer of \$100,000, and he would submit it to London. He now testifies that the price was \$100 an acre and in addition to that he wanted \$125,000 for water rights, which is a lie. That would make the land, as Healion testifies, about \$250 an acre.

We refused to buy, and those self-same lands were sold one and a half years later with water rights attached, by the La Mesa Development Co. to Ross and Associates -- 40 lots, 400 acres, the cream of the property -- at \$125 an acre. In other words, either he sold at 50% less than what he asked us for the same property, or he is lying on the witness stand at the present time, and there is no question but what his statement is a lie.

Now, to close the deal, they added 15 more tracts, or 150 acres, making altogether about 550 acres of land -- the cream of the entire tract -- which they sold for \$50,000, or less than \$100 an acre, with the water attached for whatever it is worth, and that is \$50 an acre more than the tract was worth.

And. Then again, I want to bring it out very clearly that we were selling water to land on which water had never been used or attached; made a new contract in 1910, before this question with the La Mesa Development Co. ever came up, to sell them supposedly domestic water at 10¢ a thousand gallons; that we never have sold any irrigation water to anybody since we bought the system; that the State Railroad Commission came along and reduced the rate of 10¢ a thousand gallons to the irrigation rate of \$70 an inch, which is 2¢ a thousand gallons, although the land on which that water was being used never had a water right contract.

On the other hand, between 100 and 200 acres of lands on which water rights had been attached have been subdivided into lots; the \$70 rate has been revoked by the State Railroad Commission; and the domestic rate of 15¢ a thousand gallons wholesale and 25¢ retail has been established, so that both ways the State Railroad Commission has entirely ignored the contract rates.

Yours very truly,

CUYAHACA WATER COMPANY,

Manager.

September 6, 1919.

Mr. F. W. Stearns,
San Diego, California.

My dear Mr. Stearns:

Under same cover I am sending you a somewhat formal letter embodying the terms of our conversations as I have understood them. I trust it will meet the approval of yourself and your associates.

You will note that it contains no reference whatsoever to my contracts with the San Diego Gas & Electric Company. It seemed both unnecessary and inexpedient to do so and I am advised by Mr. Black that it is quite in accord with your views that our agreement should be dropped without reference to the other.

As the attorney of the Gas Company, I know that you are fully advised of my contract with it and I would ask a like written expression from yourself and your associates simply to the effect that our agreement is in subordination to the terms of my agreement with the Gas Company.

You will note, also, that I make no specific commitment touching advancing the five thousand dollars to you for expenses of your work. The reason for that is this:-- It was always understood that Mr. Jones would supply the expense moneys as needed. In my last conversation with him this was still agreed but he rather insisted upon reserving the right of advancing those moneys in amounts that met with his own judgment. With this condition of affairs, you will at once see the reason why I should not commit myself to this advanced payment of \$5,000 and I have no doubt but that you will be able to effect a satisfactory arrangement with Mr. Jones for such payments as you may desire, and, of course, any such arrangement as you may make with Mr. Jones will be satisfactory to me.

If there is any delay, you might carry out the suggestion discussed by you and Mr. Black about leaving the formal papers in escrow with Mr. Fletcher until you have made a satisfactory arrangement with Mr. Jones.

Yours truly,

MEMORANDUM

January 16th
1 9 2 0

Mr. A. H. Sweet telephoned this morning that Walter Carnes, formerly Secretary for the San Diego Flume Company and San Diego Water Company, was in San Diego, stopping at the Maryland Hotel. He asked that I get in touch with him and endeavor to find out from him when the pipe line, to the city of San Diego, was put in by the Flume Company; also to find out, if possible, the size and kind of same, and the cost. Also to ascertain as to when the Flume Company commenced furnishing water to the City of San Diego, and whether it was under contract, or otherwise; if payments were made monthly, and what the cost per 1,000 Gallons was to the city.

December 1, 1920.

Mr. A. H. Sweet,
c/o Sweet, Stearns and Forward,
San Diego.

My dear Mr. Sweet:

Mr. Murray has practically decided to deed the Cuyamaca property to the corporation for the sum of \$600,000, taking \$600,000 of stock in payment.

We have nearly \$1,200,000 invested, including the interest on our investment. It was either you or Mr. Stearns who had this question up with Mr. Murray and myself sometime ago and at that time you or Mr. Stearns advised that it would be a mistake to deed the property to a corporation for any such sum and that while, legally, it would not make much, if any difference, yet if the time came, as it will later on, for the courts or the State Railroad Commission, or the State Engineer to make a valuation on the Cuyamaca system, it would undoubtedly have some effect or influence on whoever is making the valuation.

My understanding is that while it might never legally be used against us, it is liable to crop out from time to time in increasing of the rates, etc., or whenever there is any litigation, before the Commission.

I have contended all the time that we should either let the matter stand in statu quo or else have an informal hearing before the Commission and find out at what value they would approve a transfer, taking stock in payment.

Can you write me a letter along these lines, if the above is still your opinion. Personally, unless at a valuation of \$1,200,000, I am opposed to transferring and taking stock in payment, for the simple reason that the State Engineer has already made a valuation on our System for sale purposes of \$1,451,000 to the La Mesa Irrigation District, as of November 1919 and since then we have put \$50,000 into the development of the system and I hate to make any break now such as I think Mr. Murray is intending. I really would like your opinion in the matter.

When writing me, simply say: Confirming our verbal conversation.

Yours very truly,

EE/als

December
22
1920

Mr. A. H. Sweet,
301 Union Bldg.,
San Diego, Calif.

My dear Sweet:

Your letter of December 20th at hand,
and is so sweet I cannot resist sending back
sweet for Sweet. Enclosed find check for \$350.00.

As ever,

Sweetly yours,

EF:KLM

A. H. SWEET
FREDERIC W. STEARNS
CHAS. H. FORWARD

SWEET, STEARNS & FORWARD
ATTORNEYS AND COUNSELORS AT LAW
301-305 UNION BUILDING
BROADWAY AND THIRD STREET
SAN DIEGO, CALIFORNIA

TELEPHONES
PACIFIC MAIN 62
HOME 1953

December 20, 1920

Colonel Ed Fletcher,
#920 Eighth Street,
San Diego, California.

Dear Colonel:-

This is the shortest day in the year,
made so in this establishment for several reasons,
one of which is the almost complete absence of
cash. If your company could, in that respect,
lengthen the hours of sunshine, it will be doing
God's service and bringing cheer to some of his
putative creatures.

Hoping that we may receive a check,
not upon our happiness, but upon your bank, and
wishing you all of the happiness that one of the
most enterprising and public spirited citizens of
California ever deserved,

I am,

Sincerely yours,

AHS-LE

A. H. Sweet

W. H. Sweet

A. H. SWEET
FREDERIC W. STEARNS
CHAS. H. FORWARD

SWEET, STEARNS & FORWARD
ATTORNEYS AND COUNSELORS AT LAW
301-305 UNION BUILDING
BROADWAY AND THIRD STREET
SAN DIEGO, CALIFORNIA

TELEPHONES
PACIFIC MAIN 62
HOME 1063

March 29, 1921

Colonel Ed Fletcher,
San Diego, California.

Dear Sir:-

I have examined the supplemental agreement dated February 1st, 1921 between the City of San Diego, and Wm. G. Henshaw and Ed Fletcher, modifying the agreement of January 26, 1920 relating to the furnishing of water to the city; and also the paper called "Indenture of Agreement" dated March 28, 1921, executed by Wm. G. Henshaw by his attorney in fact, Ed Fletcher, principals and M. T. Gilmore and A. P. Johnson, sureties, by which the modification agreement above mentioned is consented to, by the said principals and sureties. The modification agreement is executed by the city, by the Mayor and members of the Common Council and the three members of the Board of Water Commissioners, and both papers appear to have been properly executed. I have not seen the originals, modified by these papers, so I do not undertake to pass on the legal effect of those you submitted to me. The city auditor has also certified to the modified contract.

Very truly yours,

A. H. Sweet

AHS-E

January
Nine
1922

Mr. A. H. Sweet,
Union Bldg.,
San Diego, Calif.

My dear Mr. Sweet:

Mr. Jennings gets possession of a piece of property the 18th or 19th of January. My understanding is that the costs are \$5600 or \$5700, and he agrees if he does get possession of the property that I am, within a week from date, to pay Mr. Jennings the sum of \$1,000, and the balance within a year at 7% interest. And to also keep up any and all taxes; the idea is that Mr. Jennings is to get the full amount of his judgment and 7 percent interest.

Will you please prepare the necessary agreement in relation thereto. The understanding is that the \$1,000 is option money to be applied on the purchase price if the option is exercised, otherwise the \$1,000 is lost, and kissed goodbye.

Yours truly,

EF:KLM

August 12, 1922

Mr. A. H. Sweet,
Union Building,
San Diego.

My dear Mr. Sweet:

Enclosed find letter from Mr. French, which is explanatory. Will you write me a letter saying that this is the legal procedure, and that I am protected, in your opinion? Kindly return papers.

Yours very truly,

EF:KLM

letter from French 8/11/22

Let to 150,000 - 11.4.12

August 6, 1923.

Mr. A. H. Sweet,
Union Building,
San Diego, Calif.

My dear Sweet:

Enclosed find copy of letter I wrote Mr. Higgins under date of August 1st, also copy of letter from Mr. Higgins under date of August 2d and my answer in reply as of this date.

Will you please write me a letter stating your views of the question at issue.

1. Has the city full authority to establish rates for the sale of water inside and outside the city limits in case of purchase of the Cuyamaca System.

2. What danger, if any, is there in Mr. Higgins' contention that the old water right contracts might be enforced and the city compelled to recognize them in case the city purchased the Cuyamaca system.

3. In your opinion do you believe that the old contracts could be revived and enforced against the city of San Diego; if so why do you think so?

Yours sincerely,

EF:KLM

(Copy)

SWEET, STEARNS & FORWARD

Broadway and Third St.

San Diego, Calif.

August 18, 1923.

Colonel Ed Fletcher,
916 Eighth Street,
San Diego, Calif.

Dear Colonel Fletcher:

As I told you this morning on the telephone I would do, I am writing you about my talk with Mr. S. J. Higgins, City Attorney, concerning the old Flume Company contracts.

After getting your letter a few days ago, I went to see Mr. Higgins to learn, if possible, what his attitude concerning the supposed rights of these contract holders might be, if the City acquired the Cuyamaca Water system. Mr. Higgins stated that if the City acquired the system, its management of it would not be subject to control by the Railroad Commission, and he feared that the holders under the old Flume Company contracts might assert their rights to have water furnished them at the rates specified in those contracts.

While not disputing his proposition that the Railroad Commission could not fix rates for water to be furnished by the City through the system, if it should acquire the property, I did not concede that these contract holders could require the City to supply them with water at the rates or upon the terms set out in the agreements with the Flume Company. On the contrary, I stated that while the U. S. Supreme Court had not, so far as I knew, passed upon that question and very likely it had not been determined in any other jurisdiction, I did not believe that since that Court had held that the contract holders had waived their rights to water at the old rates, they could subsequently, even if the City acquired the system, successfully assert such rights.

I am of the opinion that having once waived their rights to stand upon their contracts and having for years paid increased rates upon different terms than those provided in their agreements, these contract holders - no matter who acquires the system - cannot successfully maintain that the old rates are again in force. Their waiver of their rights was in no sense or degree conditional, but it was and is an absolute waiver.

Colonel Ed Fletcher - 2.

It appears to me that there is still another insuperable obstacle in the way of these contract holders being restored to their original position if the City should acquire the water system. If the City buys the system, it becomes the grantee or transferee of the Cuyamaca Water Company and thereby obtains all of the rights of that Company. Now, among the rights of the Company is the right to collect rates for service of water in excess of those stipulated in the Flume Company agreements. This right the Company acquired not alone by the rulings of the Railroad Commission and the decision of the Supreme Court, but by virtue of the fact that acting on the waiver of the contract holders to enforce their old rates, and acting on their acquiescence in the changes of the amount and method of collecting rates and operation of the system, the Cuyamaca Water Company has expended more than half a million dollars in the improvement and enlargement of the system and the extension of its facilities, which expenditures have resulted in distinct benefits to the consumers and of which they have never hesitated to avail themselves.

By reason of the improvement of the system at such great expense, the Company has been able to furnish and has furnished its consumers with an adequate supply of water which neither it nor its grantor could do before this outlay of money was made. Not only have the consumers acquiesced in the enlargement and improvement of the water system, but they have repeatedly demanded that such enlargements and improvements be made, well knowing that the Company could not possibly obtain the funds to make them if it could only collect the old contract rates.

In my judgment, the contract holders are estopped from ever again maintaining any right to water upon the terms and rates mentioned in the Flume Company agreements, no matter who may own the system.

Very truly yours,

A. H. SWEET

AHS:BV

Ed Fletcher Papers

1870-1955

MSS.81

Box: 29 Folder: 1

General Correspondence - Sweet, A. H.



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