

May 21st, 1920

Mr. Curtis Hillyer,
Scripps Building,
San Diego, California.

My dear Mr. Hillyer:

Enclosed find map showing the different proposed water sheds of San Diego County.

The dam that we propose to build is Fletcher Lake Dam, with 91 square miles of water shed, and also a diverting dam at South Fork, with 44 square miles of water shed, but the dam we build at South Fork will never control anything like all the waters that come down, as there is no possibility of building a storage reservoir on that stream. So, in addition to the 248 square miles of water shed that will furnish both surface and underground waters to Mr. Scripp's farm, there would also be a large surplus supply in the winter from the South Fork 44 square miles.

This map is absolutely accurate; made by our Chief Engineer, Mr. King.

You can imagine how little damage Fletcher Dam can possibly do to the Scripp's Ranch when, you compare it with the different water sheds.

I enclose, also, a printed agreement between, Henshaw, Fletcher and Murray and - - - - - which we are going to ask all the other smaller riparian owners to sign. Mr. King will deliver the map, letter and printed agreement to you.

Hoping that you can make an early and favorable report on this matter, and that you can get to Los Angeles and meet the Water Commission, and Mr. Thum, I am

Yours very truly,

EF/bm
encl 2

May Seventh,
1931

Mr. Curtis Hillyer,
Scripps Building,
San Diego, California.

Friend Hillyer:

Mr. White told me that he had seen a letter from Mr. Scripps regarding the injustice of the Paramount Right decision.

I don't think we have had the right attorneys who fully appreciate the situation and not one of them has ever brought up this point, which I think has a bearing.

In 1808 the Spanish Government granted a Spanish patent to the Spaniards covering the Rancho Valle de San Jose now commonly known as Warner's Ranch. In that patent, however, was the following reservation. Reserving however, to the Indians, their children and children's children forever, the Warner's Hot Springs and 640 hectares of land adjoining said springs. The Mexican war came. We conquered California, peace was declared, we agreed to respect private ownership of property where the title showed the proceedings to be regular, a commission was appointed by Congress to settle these questions of title and the private owners at that time were granted a U. S. patent. However, when it came to the issuance of the U. S. Government patent to Warner's Ranch, through an oversight or otherwise, a patent was granted to the Warner's Ranch without that Spanish reservation, giving to the Indians the Springs and 640 hectares of land in perpetuity.

The time came when Harvey ordered the Indians off, having a clear title through a U. S. Government patent, and he went into court, produced his patent, the case was carried to the U. S. Supreme Court and on one ground alone, that you cannot get behind a U. S. patent, the Indians lost.

Just so, the Pueblo of San Diego and the Indians, if they had presented to the Commission appointed by Congress, their ownership of these lands showing title to Warner's Hot Springs and their lands,

or, if the Pueblo of San Diego or the Indian Pueblo, known now as Ex-Mission, had presented, according to law and act of congress within the five year period their ownership of the paramount rights to the waters of the San Diego River, they would have been in ownership of same today, but the five year period elapsed and neither the Indians nor the Pueblo of San Diego ever made any claim to protect their rights, and I don't see how in God's name the Supreme Court of the United States, when this question comes up for final decision, can do anything else but knock out the paramount right.

You are probably aware that there is in reality, two pueblos, one the military, San Diego Pueblo; the other the Mission Pueblo. Both were created under the same conditions and recognized, both by the Spanish and American authorities.

The Indian pueblo, I believe, embraced some of Mr. Scripps lands. It also takes in over fifteen or twenty thousand acres in the La Mesa Irrigation District. Certainly one pueblo has not any better right than the other if the paramount right is to stand and the Mission lands now known as the Ex-Mission, it would seem to me, have just as much right to the waters of the San Diego River as the Pueblo of San Diego, if Spanish law is to prevail as to the ownership of the waters of the San Diego River in direct conflict with the U. S. Laws.

We have been in undisputed possession forty-two years and it seems pretty tough to take these rights away from the La Mesa District and their successors, particularly when their predecessors, the San Diego Flume Company were created by act of congress and permission was given to build a dam on the Indian lands and divert any and all waters originating or passing through El Capitan reservation, and the consideration was the furnishing of water to the Indians in perpetuity, free of charge. A bond is still up for faithful performance with the Government and we have carried on, both the San Diego Flume Company, the Cuyamaca Water Company and its successors, the La Mesa District.

I thought perhaps you would like to take this matter up with Mr. Scripps, get our point of view, and we would like yours. Certainly Mr. Scripps and his properties are vitally affected by this paramount right attitude which the city is taking and it vitally affects the value of Mr. Scripps' properties.

Mr. Curtis Hillyer
#3

May 7, 1931.

I am sending you an extra copy, just thinking perhaps you would like to send a copy to Mr. Robert Scripps, with your reaction thereto.

With kind personal regards,

Very sincerely yours,

EF/RC

P. S. I am enclosing copy of written opinion from the attorney of the La Mesa District, Albert J. Lee, dated October 29th, 1930 regarding the Ex-Mission lands that I am sure will be of interest.

E.F.

Referring to the five year period referred to above will say that Congress in making a treaty with Mexico and in appointing a commission to determine the titles to lands in the United States which were captured including California there was a clause in the act of Congress making the dead line five years from date of passage of the act in which ownership to lands and property rights must be presented before the commission and acted on by the commission.

Water is a property right the same as land and the question of the paramount right should have been adjudicated at that time, in my opinion, but it was not and I hope my contention has merit to it.

E.F.

CURTIS HILLYER
IRVE C. BOLDMAN
P. F. O'ROURKE
GILMORE TILLMAN
JAY MOWREY

LAW OFFICES
OF
CURTIS HILLYER
306 SCRIPPS BUILDING
SAN DIEGO, CALIFORNIA

January 16, 1932

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

Dear Mr. Fletcher:

I wonder if you have examined the proposed settlement between the La Mesa, Lemon Grove and Spring Valley Irrigation District and the City of San Diego. I have seen a copy of the suggested basis of agreement, which, of course, is not a binding contract, but contemplates the execution of a later instrument. I cannot see where the district is getting anything out of this settlement except what it has already in the paramount rights decision, that is to say, the right to use the water, if, as and when the City has no need for it.

The first paragraph of the suggested agreement reads "That the City has the paramount right to the waters of the San Diego River and its tributaries for the use of its inhabitants." That paragraph kills all the rest of the agreement. If the City has the paramount right, it can take the water when it needs it in absolute disregard of anything else in the agreement. It seems to me that if the District is going to have a binding contract with the City of San Diego, it ought to join with the riparian owners in endeavoring to secure from Congress, a condition that the City shall not acquire the Indian Reservation lands in the basin of the El Capitan Reservoir site, except upon what will amount to a waiver of its paramount rights as far as the contract with the district is concerned, and as far as the rights of the riparian owners are concerned.

I understand that Mr. Lee is in Washington at the present time, but whether he is representing the district or the City, I do not know; it may be that he is acting for both. It seems to me that he ought to be co-operating with the riparian owners.

I would suggest that if you are interested in having a binding contract between the City and the district, that you look into this matter. The recognition of the paramount rights in the City is equivalent to the writing in at the beginning of each paragraph in the contract, the words "Unless and until the city needs the water for the use of its inhabitants." There are a great many provisions in the memorandum, and it goes into a great deal of detail. Apparently the district is getting a great deal. In fact, it is getting nothing that the City cannot take away at any time that it sees fit to do so.

very truly yours,

Curtis Hillyer
CURTIS HILLYER

January 18, 1932.

Miss Alice:-

Here is a very important document, this letter from Curtis Hillyer, to be put in my water history.

E.F.

EF/RC

Ed Fletcher Papers

1870-1955

MSS.81

Box: 12 Folder: 12

General Correspondence - Hillyer, Curtis



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