

LAW OFFICES
J. W. MCKINLEY
432-437 PACIFIC ELECTRIC BUILDING
LOS ANGELES, CALIFORNIA

January 9th, 1912. 39

Mr. Ed Fletcher,

1551 D Street, San Diego, Cal.

Dear Sir:-

Please write and let me know whether or not on Tuesday, January 16th, it will suit you and Mr. Belcher to meet with Mr. Woolwine and myself at your office in San Diego for the purpose of completing the organization of the Volcan Water Company.

An early reply will greatly oblige,

Yours truly,

J. W. McKinley

SVM/C

Nov. 13th,
1913.

Judge J. W. McKinley,

Los Angeles, Cal.

My dear Mr McKinley:

Mr Sweet tells me that he has sent a copy of his letter of November 12th to you in the matter of the Hubert Riparian rights. Mr Keller has admitted in letters which I have the following facts: that he promised me the riparian rights for Henshaw; that he sent the deed to Culver early last spring and asked Culver to sign it giving Henshaw the riparian rights and that it was a matter of oversight. Keller was agent for and did all of the business for Mr C. A. Canfield; in fact, Keller told me he had a quarter interest in the profits of all the Canfield-San Luis Rey proposition, so that this Hubert riparian right agreement which he has had is interested in. Canfield did not pay a cent for the Hubert riparian rights and never knew that they were being bought. When the South Coast Land Co sold to Canfield, Canfield did not know that the Fletcher-Salmons Investment Co, owned these riparian rights of Hubert. Keller afterwards was agent both for Culver in giving the Fletcher-Salmons Investment Co. instructions to deed to Culver. He is also President of the South Coast Land Company and also did all the business for C. A. Canfield in the purchase of all lands and handled this matter entirely for C.A. Canfield.

Mr McKinley

-2-

Please go immediately to Mr Culver, inform him of the situation and make him come thru. You will see by the certificate of title furnished by the Southern Title Guaranty Co. that Canfield now holds the Culver riparian rights which Henshaw should have as far as building the Warners Dam is concerned.

And remember one thing more, that Mr Keller signed a written contract with Mr Henshaw and myself to acquire these riparian rights for the San Luis Rey River and I would not be in Kaler's shoes for any amount of money if he doesn't come thru and deliver the goods.

Please keep me posted in this matter as to what is going on.

Very truly yours,

EK

Law Offices
J. W. McKinley
432-437 Pacific Electric Building
Los Angeles, California

-C O P Y-

August 8th, 1914.

William G. Henshaw, Esq.,
Mills Bldg.,
San Francisco, California.

Dear Sir:-

Pursuant to the request of your Mr. Treanor, Manager of the Riverside Portland Cement Company, for such information as I can give on the question of the value of flowing water per inch from my experience and information gained in water cases, I beg to submit the following.

It should be said at the outset that there is hardly a case in the reports of any state in which the court made a finding or allowance of damages based on the value of flowing water per inch. The only case, which has come to my personal knowledge, where evidence was introduced and an allowance made is the recent case in Los Angeles County in which the Baldwin Estate interests were involved with the Sierra Madre Water Company. I believe Mr Treanor is familiar with the testimony in that case. That case was not appealed and payment was made on the basis of the findings and judgment of the Superior Court. The reason for this state of authorities is that the law does not recognize property in the corpus of the waters so long as flowing naturally. The right to its use may be acquired, which will be regarded and protected as property, but this right carries with it no specific property in the water itself, with the possible exception of the case of water in a ditch severed from the natural stream. It is because of this state of the law that in an action for damages for diversion of water, or any other action where the question of the value of the right to use the water is involved, the damages are ascertained by the loss to the enterprise in which the water was used for loss of the flow and use.

It is only in the recent case of the San Joaquin and Kings River Canal and Irrigation Co. v. the County of Stanislaus, decided by the U. S. Supreme Court April 27, 1914, and reported in the Advance Opinions of the Supreme Court (1913) No. 13, page 653, that the courts have held that the ownership of the sole right to furnish certain water is in itself a thing of value and such ownership must be taken into consideration in any action by a municipality in fixing the rates to be charged by the owner. In that case the Court said:

"But even if the rate paid is not to be determined as upon a purchase of water from the plaintiff, still, at the lowest, the plaintiff has the sole right to furnish this water, the owner of the irrigated lands cannot get it except through the plaintiff's help, and it would be unjust not to take that fact into account in fixing the rates."

"The declaration in the Constitution of 1879 that water appropriated for sale is appropriated to a public use must be taken according to its subject-matter. The use is not by the public at large, like that of the ocean for sailing, but by certain individuals for their private benefit respectively. Thayer v. California Development Co. 164 Cal. 117, 128, 128 Pac. 121; Fallbrook Irrig. Dist. v. Bradley, 164 U.S. 112, 161, 41 L. ed. 369, 389, 17 Sup. Ct. Rep. 56. The declaration, therefore, does not necessarily mean more than that the few within reach of the supply may demand it for a reasonable price. The roadbed of a railroad is devoted to a public use in a stricter sense, yet the title of the railroad remains, and the use, though it may be demanded, must be paid for. In this case it is said that a part of the water was appropriated before the Constitution went into effect, and that a suit now is pending to condemn more as against a riparian proprietor, for which, of course, the plaintiff must pay. It seems unreasonable to suppose that the Constitution meant that if a party, instead of using the water on his own land, as he may, sees fit to distribute it to others, he loses the rights that he has bought or lawfully acquired. Recurring to the fact that in every instance only a few specified individuals get the right to a supply, and that it clearly appears from the latest statement of the supreme court of California (Palmer v. Railroad Commission, January 20, 1914 (-- Cal. --, 138 Pac. 997) that the water when appropriated is private property, it is unreasonable to suppose that the constitutional declaration meant to compel a gift from the former owner to the users, and that in dealing with water "appropriated for sale" it meant that there should be nothing to sell."

In several water suits, with which I have been connected, the testimony of experts has been introduced frequently as to the value of water rights, both water that is supplied by pumping and gravity water and in some cases the value of flowing or gravity water per inch in different localities has been discussed with varying values placed thereon by different experts. There are so many conditions that must be taken into consideration in ascertaining the value of any particular flow of water, whether gravity flow or achieved by pumping, that it naturally follows that the testimony as to values varies greatly with the particular properties in question. I am confident that in my experience I have heard testimony of values of gravity water which ranged from \$1,000.00 to \$5,000.00 per inch, and have frequently heard experts state that certain gravity flows now existing in California exceed \$5,000.00 per inch in value on account of peculiar local conditions. This statement

was made particularly with reference to certain water in Santa Barbara County. The amount of water in the particular territory involved, the elevation of the supply, the possibility of conveying the water by gravity to fertile lands by reason of the elevation at which it can be controlled, the character and size of the territory to be supplied, and the presence or absence of other large sources of water supply, are all important factors in determining the value.

As far back as 1892, when there was some agitation among the stockholders of the Cucamonga Fruit Land Company for the sale of its property, a report was circulated by the officers concerning the assets and future of the Company. This Company owned the right for a considerable number of years of further development on certain water bearing lands, and the report states the following:

"There is no doubt whatever that large quantities of water can be sold in the neighboring colonies of Ontario and Chino and in the dry ranch district adjacent to Cucamonga on the south.

The only price mentioned has been \$800.00 to \$1,000.00 an inch and by the parties in Ontario this price has been called cheap. The Cucamonga Fruit Land Company is the only place there is any chance for Ontario to purchase more water and the people of Ontario recognize this fact. A large quantity can be sold to the colonies adjoining Cucamonga, should it be advisable to do so, at prices ranging from \$900.00 to \$1,200.00 per inch and so far as can be estimated from surface indications from two to three thousand miners inches of water can be developed."

Accompanying the report of the officers of this corporation at that time was a report on the entire properties of this Company, with reference to their possibilities of water development, made by E. T. Wright, a Civil Engineer of high standing in this community, in which he states:

"The price of water in this locality is high and sells from \$750.00 to \$7,000.00 (?) an inch and this Company has now about ninety inches flowing; and I consider the right to increase this supply has the greatest value of all their property."

I have made the above quotation from this early report for the reason that it seems to me a valuable indication of the high value placed on water in the locality referred to at an early date when the area under cultivation and the consequent demand for water was much smaller than at the present day. There are many other cases, which have been in the courts in this county and adjacent counties within recent years, in which testimony as to the value of flowing gravity water and flowing water from wells has been introduced. In some of these cases I was not actively interested, but

have heard from some of the experts who testified that such testimony was given. In various cases where the Union Hollywood Water Company was involved a Company whose entire supply is developed from wells by pumping the question of the value of gravity water arose in the comparison of the value of such a water flow with the value of the water obtained from wells by pumping; the difference in value being accounted for by the expenses of operation. In those cases the various experts fixed the value of gravity flow water at prices ranging from approximately \$1,200.00 to \$2,500.00 per inch. It must be remembered, however, that the locality, the method of development, and the nature of the use, (in those cases principally domestic) and the character of the community to be served, were all factors in determining these values. In one case involving one of the sources of supply at Redlands, the testimony on the value of gravity water per inch ranged from \$1,500.00 to \$2,000.00. In the recent litigation between the Ontario and Pomona Companies, while the main question involved was the final adjudication of the proportionate rights of various users of the waters of the San Antonio Canyon, there was testimony as to the value of waters, both gravity flow and obtained by pumping, and the testimony as to gravity flow values varied from \$1,500.00 to \$3,000.00. In the Sierra Madre case, which I have previously mentioned, the testimony varied from \$2,000.00 to \$3,500.00.

I wish to state in conclusion that the brief time in which I have made this reply to your request has precluded me from the possibility of more authentic and accurate information based on an examination of the transcript of the testimony in these various cases, and the lands and values named are therefore to some extent approximated from memory. It seems to me that it would be highly advisable, in the case of a contemplated sale of your water rights in the San Luis Rey River, to have a competent engineer survey the entire situation, taking into consideration all the various factors which influence value, before the completion of such a sale and before accepting figures given by other interests. I shall be very glad, if you so desire, to go into this matter further and with a greater amount of time would be able to gain access to the actual testimony in many cases where this subject was discussed.

Yours etc.,

(Signed) J W McKinley

Ed Fletcher Papers

1870-1955

MSS.81

Box: 18 Folder: 5

General Correspondence - McKinley, J.W.



Copyright: UC Regents

Use: This work is available from the UC San Diego Libraries. This digital copy of the work is intended to support research, teaching, and private study.

Constraints: This work is protected by the U.S. Copyright Law (Title 17, U.S.C.). Use of this work beyond that allowed by "fair use" requires written permission of the UC Regents. Permission may be obtained from the UC San Diego Libraries department having custody of the work (<http://libraries.ucsd.edu/collections/mscl/>). Responsibility for obtaining permissions and any use and distribution of this work rests exclusively with the user and not the UC San Diego Libraries.