

July 13, 1916.

Mr. Cato Sells,  
Commissioner of Indian Affairs,  
Washington, D. C.

My dear Mr. Sells:

I stated to you that the City of San Diego at the present time, and for some years to come will not be financially able to build the El Capitan Dam, which will flood the lands of the El Capitan Indian Reservation, said application now before the Secretary of the Interior for his decision.

I enclose herewith protestant's Exhibit "R", which was introduced in the hearing before the Los Angeles Land Office last February, and consists of a statement signed by the Auditor of San Diego City, showing that the assessed valuation of the City for the year 1915 was \$80,500,000, and that the present bonding margin of the city is only \$1,643,237.29.

I also enclose herewith statement showing the assessed valuation of property in the heart of the city of San Diego, showing our best property is assessed at \$3,600 a front foot, with the lots only 100 feet in depth. On investigation, you will find that the assessment is equal to the cash value of the property today, and there is no early possibility of increasing the valuations, therefore the bonding capacity of the city cannot be increased, and the city will be unable for years to come to finance the El Capitan project.

The City Council of San Diego employed Chief Engineer

O'Shaughnessey, of San Francisco, to draw up plans and specifications for the rebuilding of Lower Otay Dam that went out last winter; also the Barrett Dam, and a new pipeline to replace the old one, from Lower Otay Dam to the City.

The City Council of San Diego, in conference, have agreed to call an election for bonds to build the proposed dams and pipeline mentioned above, which election will be held within the next ninety days, and have ordered the City Attorney to prepare the necessary papers. The proposed bond issue is for \$1,372,760, all as per newspaper clippings, herewith attached. It is also proposed to add \$200,000 for a pumping plant in the Tia Juana River. Unquestionably, this bond issue will carry, and you can readily see there will be no bonding margin left by which the city can secure funds to build the proposed El Capitan Dam, for many years to come. And with the above mentioned improvements completed, it will increase the present supply of water to the city over 100%.

I contend that this proves that the City of San Diego is not financially able to undertake the El Capitan Project, which calls for the expenditure of at least \$3,000,000 -- and San Diego's city engineer admits it will cost \$2,000,000. If you will read his testimony, you will see that the City Engineer of San Diego has only "made a guess," while competent engineers, both Government and our own, have estimated that the cost of the

El Capitan Project will be between 3 and 4 million dollars.

San Diego contended before the Los Angeles Land Office and Secretary Lane that the City of San Diego is short of water, and that an emergency exists.

In answer thereto, I refer you to the report of the City Manager of Operations of San Diego, under date of June 1, 1916, showing that there is now contained in the present reservoirs of the City of San Diego 14,254,000,000 gallons of water. I also refer you to the report of the City Auditor of San Diego for the year 1915, page 62, which reads as follows:

"The average daily consumption of the entire San Diego City System, inside and outside the City limits, is 8,420,825 gallons; or 3,073,000,000 gallons a year."

There is at present a four-year's supply of water for the City of San Diego, if it does not rain another drop, and this estimate allows also over 2,000,000,000 for evaporation. San Diego, however, is using now 500,000,000 gallons more water per year than usual, on account of our Exposition, which closes January 1, 1917. The City of San Diego is also now pumping 5,000,000 gallons of water daily from its wells in the San Diego River, which is more than one-half of its daily consumption. In addition thereto, the Cuyamaca Water Co. has made a definite offer to furnish 2,000,000,000 gallons of water per year for the next ten years, at a price per thousand gallons to be set by the Public Utilities Commission of the State of

California.

The gravity water of the City of San Diego last year cost 17½¢ per thousand gallons, delivered to the city reservoir. We furnished them 500,000,000 gallons this year, at 10¢ per thousand gallons, and glad to supply all they want up to 2,000,000,000 gallons per year, at 10¢ per thousand gallons.

Our large reservoir at La Mesa Dam, which you saw, is only seven miles from the San Diego city reservoir, and we have two pipelines already laid to the City of San Diego -- one a 20" line from La Mesa Reservoir; and the other one a 14" line from our flume direct; so we can furnish the City approximately 7,000,000 gallons of water daily, if needed. With this supply, together with the right to assume a normal rainfall to come, there is at least eight or ten years' supply of water assured for the City of San Diego today, and absolutely no emergency exists.

The City Attorney of San Diego claims that we have approximately 100,000 people in San Diego today, and his exhibits show that he claims we shall have 155,000 people in this city within three and a half years, or in 1920, and his exhibits try to prove that San Diego will be using approximately 16,000,000 gallons of water daily, or double our present consumption, on January 1, 1920.

These exhibits are misleading. San Diego today has fully 10,000 people less than it had at the commencement of the

depression a year or so ago, and with the closing of our Exposition, I am satisfied we shall have 5000 people less than we have today. My estimate of the population of San Diego today is between 75,000 and 80,000 people.

We have lately annexed Encanto, with several hundred people; but, as we have always supplied them with water, it makes no increase in the demand for water. To substantiate my statement, while you are here let me take you over the city and show you the empty houses here at the present time, as well as the empty store buildings. I have always been considered a booster for San Diego, but when such false representations are made, it is only justice to the Cuyamaca Water Co. that they be corrected.

I call your attention to the fact that the City of San Diego asks the Department of Indian Affairs and the Secretary of the Interior to pull chestnuts out of the fire for the City of San Diego, and recommend to Congress that these Indians be removed from their reservations. I am satisfied Congress will never repudiate its agreement with the Indians, as Congress, by act itself, agreed to furnish a deed to the Indians "two tribal patents having already been issued," giving to these Indians this land free and clear of all encumbrances, excepting rights of way not to exceed 100 feet in width, at the end of

25 years. The 25 years will expire in March, 1919. The Indians to a man have unanimously protested against being removed, and a representative of the Indian Service has testified that it will take force to move them.

I sincerely trust that the Department of the Interior and the Department of Indian Affairs will not take sides in this controversy between the Cuyamaca Water Co. and the City of San Diego, by recommending the removal of the Indians. And, may I suggest that the proper procedure is, in my opinion, to ask the City of San Diego to go into court and prove that it has a water right, and show its title to any water of the San Diego River before granting the application of the City of San Diego, as your favorable action on the city's application means many years' of litigation and needless expense to the Cuyamaca Water Co., which in good faith has lived up to its obligations with the U. S. Government for nearly thirty years; has furnished these Indians with water, free of charge to the U. S. Government; and we feel that at least a moral obligation exists on the part of the Secretary of the Interior, the Office of Indian Affairs, and Congress to protect us against the attacks of the City of San Diego until such time as an emergency exists and the City of San Diego is financially able and can prove its ownership to water rights on the San Diego River that will warrant the construction

of the El Capitan Dam, the damsite being now the property of the Cuyamaca Water Co.

There are five other sources of supply that the City of San Diego can go to for water, at less cost per thousand gallons, than they can secure it by building the El Capitan Dam. I am in position to prove this statement at any time you desire to have me do so, and it is a matter of record among the archives of the City of San Diego, investigations having been made by engineers at the expense of the City of San Diego.

Please remember that the cities of El Cajon, La Mesa, East San Diego; also the towns of Lemon Grove and Spring Valley, with the exception of a small portion of the City of East San Diego, are entirely dependent upon the Cuyamaca Water Co. for their present and prospective needs of water. Owing to the elevation of these cities and towns mentioned above, the water of the San Diego River, through the system of the Cuyamaca Co., is their only available source of supply, and their future growth is entirely dependent upon our ability to increase our storage for their increased demands.

It does seem a crime that the City of San Diego will attempt to take what surface waters there may be now from the San Diego River, which if successful would kill the growth of these towns; particularly so, when San Diego has available many other sources of supply, which in no way affect any municipality or suburban towns.

If this permit is granted by the Secretary of the Interior and the bill is passed by Congress, it puts a cloud on the title to our water rights that we have initiated; it kills the sale of any future bonds that we may desire to issue for the completion of the dams that are now under construction upon sites that we have purchased.

It is impossible for me to believe that the authorities would work such an injustice upon us as to grant the city's request, when it is clearly shown that the City of San Diego is not financially able to build this system and will not be for many years to come; that there is no necessity for this water development for the city's needs, for many years to come; and that there are other and cheaper sources of water supply. This statement is clearly proven true, by the fact that the City of San Diego in its bill before Congress, has inserted therein a clause stipulating that they reserve the right not to commence work for five years from date of passage of the bill.

The City Attorney of San Diego has admitted in Court that the Indians must be moved; that the City of San Diego will not let them live on the rim of the reservoir. Enclosed herewith find protest to the President of the United States, signed by practically all the Indians on the Reservation.

We have faithfully lived up to our obligations to the

U. S. Government. We feel that we are entitled to the Government's protection, under the circumstances, and respectfully petition that the said application of the City of San Diego be denied.

yours very truly,

CUYAMACA WATER COMPANY.

---

Manager.

F-S

*Copy*

San Diego, California, July 13, 1916.

Mr. Cato Sells,  
Commissioner of Indian Affairs,  
Washington, D. C.

My dear Mr. Sells:

I stated to you that the City of San Diego at the present time, and for some years to come will not be financially able to build the El Capitan Dam, which will flood the lands of the El Capitan Indian Reservation, said application now before the Secretary of the Interior for his decision.

I enclose herewith protestant's Exhibit "R", which was introduced in the hearing before the Los Angeles Land Office last February, and consists of a statement signed by the Auditor of San Diego City, showing that the assessed valuation of the City for the year 1915 was \$30,500,000, and that the present bonding margin of the city is only \$1,643,237.29.

I also enclose herewith statement showing the assessed valuation of property in the heart of the city of San Diego, showing our best property is assessed at \$3,600 a front foot, with the lots only 100 feet in depth. On investigation, you will find that the assessment is equal to the cash value of the property today, and there is no early possibility of increasing the valuations, therefore the bonding capacity of the city can not be increased, and the city will be unable for years to come to finance the El Capitan project.

The City Council of San Diego employed Chief Engineer O'Shaughnessey, of San Francisco, to draw up plans and specifications for the rebuilding of Lower Otay Dam that went out last winter; also the Barrett Dam, and a new pipeline to replace the old one, from Lower Otay Dam to the City.

The City Council of San Diego, in conference, have agreed to call an election for bonds to build the proposed dams and pipeline mentioned above, which election will be held within the next ninety days, and have ordered the City Attorney to prepare the necessary papers. The proposed bond issue is for \$1,372,760, all as per newspaper clippings, herewith attached. It is also proposed to add \$200,000 for a pumping plant in the Tia Juana River. Unquestionably, this bond issue will carry, and you can readily see there will be no bonding margin left by which the city can secure funds to build the proposed El Capitan Dam, for many years to come. And with the above mentioned improvements completed, it will increase the present supply of water to the city over 100%.

I contend that this proves that the City of San Diego is not financially able to undertake the El Capitan Project, which calls for the expenditure of at least \$3,000,000 -- and San

Diego's city engineer admits it will cost \$2,000,000. If you will read his testimony, you will see that the City Engineer of San Diego has only "made a guess," while competent engineers, both Government and our own, have estimated that the cost of the El Capitan Project will be between 3 and 4 million dollars.

San Diego contended before the Los Angeles Land Office and Secretary Lane that the City of San Diego is short of water, and that an emergency exists.

In answer thereto, I refer to the report of the City Manager of Operations of San Diego, under date of June 1, 1916, showing that there is now contained in the present reservoirs of the City of San Diego 14,254,000,000 gallons of water. I also refer you to the report of the City Auditor of San Diego for the year 1915, page 62, which reads as follows:

"The average daily consumption of the entire San Diego City System inside and outside the city limits, is 8,420,825 gallons; or 3,073,000,000 gallons a year."

There is at present a four-year's supply of water for the City of San Diego, if it does not rain another drop, and this estimate allows also over 2,000,000,000 for evaporation. San Diego, however, is using now 500,000,000 gallons more water per year than usual, on account of our Exposition, which closes January 1, 1917. The City of San Diego is also now pumping 5,000,000 gallons of water daily from its wells in the San Diego River, which is more than one-half of its daily consumption. In addition thereto, the Cuyamaca Water Co. has made a definite offer to furnish 2,000,000,000 gallons of water per year for the next ten years, at a price per thousand gallons to be set by the Public Utilities Commission of the State of California.

The gravity water of the City of San Diego last year cost 17½¢ per thousand gallons, delivered to the city reservoir. We furnished them 500,000,000 gallons this year, at 10¢ per thousand gallons, and glad to supply all they want up to 2,000,000,000 gallons per year, at 10¢ per thousand gallons.

Our large reservoir at La Mesa Dam, which you saw, is only seven miles from the San Diego city reservoir, and we have two pipelines already laid to the City of San Diego -- one a 20" line from La Mesa Reservoir; and the other one a 14" line from our flume direct; so we can furnish the City approximately 7,000,000 gallons of water daily, if needed. With this supply, together with the right to assume a normal rainfall to come, there is at least eight or ten years' supply of water assured for the City of San Diego today, and absolutely no emergency exists.

The City Attorney of San Diego claims that we have approximately 100,000 people in San Diego today, and his exhibits show that he claims we shall have 155,000 people in this city within

three and a half years, or in 1920, and his exhibits try to prove that San Diego will be using approximately 16,000,000 gallons of water daily, or double our present consumption, on January 1, 1920.

These exhibits are misleading. San Diego today has fully 10,000 people less than it had at the commencement of the depression a year or so ago, and with the closing of our Exposition, I am satisfied we shall have 5000 people less than we have today. My estimate of the population of San Diego today is between 75,000 and 80,000 people.

We have lately annexed Encanto, with several hundred people; but, as we have always supplied them with water, it makes no increase in the demand for water. To substantiate my statement, while you are here let me take you over the city and show you the empty houses here at the present time, as well as the empty store buildings. I have always been considered a booster for San Diego, but when such false representations are made, it is only justice to the Cuyamaca Water Co. that they be corrected.

I call your attention to the fact that the City of San Diego asks the Department of Indian Affairs and the Secretary of the Interior to pull chestnuts out of the fire for the City of San Diego, and recommend to Congress that these Indians be removed from their reservations. I am satisfied Congress will never repudiate its agreement with the Indians, as Congress, by act itself, agreed to furnish a deed to the Indians "two tribal patents having already been issued," giving to these Indians this land free and clear of all encumbrances, excepting rights of way not to exceed 100 feet in width, at the end of 25 years. The 25 years will expire in March, 1919. The Indians to a man have unanimously protested against being removed, and a representative of the Indian Service has testified that it will take force to move them.

I sincerely trust that the Department of the Interior and the Department of Indian Affairs will not take sides in this controversy between the Cuyamaca Water Co. and the City of San Diego, by recommending the removal of the Indians. And, may I suggest that the proper procedure is, in my opinion, to ask the City of San Diego to go into court and prove that it has a water right, and show its title to any water of the San Diego River before granting the application of the City of San Diego, as your favorable action on the city's application means many years' of litigation and needless expense to the Cuyamaca Water Co., which in good faith has lived up to its obligations with the U. S. Government for nearly thirty years; has furnished these Indians with water, free of charge to the U. S. Government; and we feel that at least a moral obligation exists on the part of the Secretary of the Interior, the office of Indian Affairs and Congress to protect us against the attacks of the City of San Diego until such time as an emergency exists and the City of San Diego is financially able and can prove its ownership to water rights on the San Diego River that will warrant the construction of the El Capitan Dam, the damsite, being now the property of the Cuyamaca Water Co.



There are five other sources of supply that the City of San Diego can go to for water, at less cost per thousand gallons, than they can secure it by building the El Capitan Dam. I am in position to prove this statement at any time you desire to have me do so, and it is a matter of record among the archives of the City of San Diego, investigations having been made by engineers at the expense of the City of San Diego.

Please remember that the cities of El Cajon, La Mesa, East San Diego; also the towns of Lemon Grove and Spring Valley, with the exception of a small portion of the City of East San Diego, are entirely dependent upon the Cuyamaca Water Co. for their present and prospective needs of water. Owing to the elevation of these cities and town mentioned above, the water of the San Diego River, through the system of the Cuyamaca Co., is their only available source of supply, and their future growth is entirely dependent upon our ability to increase our storage for their increased demands.

It does seem a crime that the City of San Diego will attempt to take what surface waters there may be now from the San Diego River, which if successful would kill the growth of these towns; particularly so, when San Diego has available many other sources of supply, which in no way affect any municipality or suburban towns.

If this permit is granted by the Secretary of the Interior and the bill is passed by Congress, it puts a cloud on the title to our water rights that we have initiated; it kills the sale of any future bonds that we may desire to issue for the completion of the dams that are now under construction upon sites that we have purchased.

It is impossible for me to believe that the authorities would work such an injustice upon us as to grant the city's request, when it is clearly shown that the City of San Diego is not financially able to build this system and will not be for many years to come; that there is no necessity for this water development for the city's needs, for many years to come; and that there are other and cheaper sources of water supply. This statement is clearly proven true, by the fact that the City of San Diego in its bill before Congress, has inserted therein a clause stipulating that they reserve the right not to commence work for five years from date of passage of the bill.

The City Attorney of San Diego has admitted in Court that the Indians must be moved; that the City of San Diego will not let them live on the rim of the reservoir. Enclosed herewith find protest to the President of the United States, signed by practically all the Indians on the Reservation.

We have faithfully lived up to our obligations to the U. S. Government. We feel that we are entitled to the Government's protection, under the circumstances, and respectfully petition that the said application of the City of San Diego be denied.

Yours very truly,

CUYAMACA WATER COMPANY,

(Signed) Ed Fletcher  
Manager.

August 4, 1916.

Hon. Cato Sells,  
Commissioner of Indian Affairs,  
Washington, D. C.

My dear Mr. Sells:

Under separate cover, I am sending you booklet of photos of San Diego County, that I am sure will be of interest.

Enclosed herewith find clipping from the San Diego Union of August 1st, showing that an election has been ordered for water bonds aggregating approximately \$2,000,000, which takes up practically all the bonding capacity of the City of San Diego. This leaves the City of San Diego absolutely without any financial ability to build the El Capitan project, even if you should grant the city's application.

The fact of the matter is that the original plan of the city to build the El Capitan project is abandoned. This is proven conclusively by the decision to build Barrett and Lower Otay dams, as per clipping above referred to, and also by the decision to form a water district, which is meeting with hearty support.

Enclosed find clipping from the San Diego Tribune of the 12th of July, showing that a water district is now being formed, which includes the City of San Diego and the La Mesa Irrigation District, together with the cities of East San Diego and about

84

30,000 acres of land on the Linda Vista Mesa, unquestionably, the intention being to make a comprehensive water development, and it will take all the water that can be developed from the Cuyamaca and the Volcan systems to irrigate the proposed water district which is now being formed.

The exhibit submitted by City Attorney Cosgrove at the hearing in Los Angeles, showed that San Diego would have approximately 110,000 population by September 1, 1916; and 155,000 by January 1, 1920. I refer to San Diego's Exhibit No. 2.

Enclosed find clipping from the San Diego Sun of August 3d, showing sworn testimony of H. H. Jones, Manager of the San Diego Gas and Electric Co., showing the population of San Diego to be not to exceed 82,500, and that he does not expect practically any growth whatsoever for the city of San Diego for the next two or three years. I call your attention to this matter, for the reason that the city of San Diego claimed a shortage of water, that an emergency existed; and that our increase in population would be such that a dire calamity would befall us in case the city's application was not granted. I have already submitted to you written reports of the Manager of Operations of the City of San Diego, showing that there is in excess of a four-year's supply of water now on hand in the reservoirs. In addition, the city is pumping 5,000,000 gallons daily from its pumping plants in the San Diego River, and the Cuyamaca Water Co. is in position

to take care of at least half of the supply of the City of San Diego, at any time San Diego desires to purchase water from us, which, together with a normal rainfall, assures the City of San Diego of an eight-year's supply in sight at the present time.

No emergency exists; the city is not in a financial condition to build the El Capitan project, which will cost at least \$3,000,000, and, as stated before, the persecution of the Cuyamaca Water Co. is one of politics and personalities, and I respectfully request that the application of the City of San Diego be denied.

Very sincerely yours,

CUYAMACA WATER COMPANY.

-----  
 Manager.

F-8

84

August 4, 1916.

Hon. Cato Sells,  
Commissioner of Indian Affairs,  
Washington, D. C.

My dear Mr. Sells:

Under separate cover, I am sending you booklet of photos of San Diego County, that I am sure will be of interest.

Enclosed herewith find clipping from the San Diego Union of August 1st, showing that an election has been ordered for water bonds aggregating approximately \$2,000,000, which takes up practically all the bonding capacity of the City of San Diego. This leaves the City of San Diego absolutely without any financial ability to build the El Capitan project, even if you should grant the city's application.

The fact of the matter is that the original plan of the city to build the El Capitan project is abandoned. This is proven conclusively by the decision to build Barrett and Lower Otay dams, as per clipping above referred to, and also by the decision to form a water district, which is meeting with hearty support.

Enclosed find clipping from the San Diego Tribune of the 12th of July, showing that a water district is now being formed, which includes the City of San Diego and the La Mesa Irrigation District, together with the cities of East San Diego and about 20,000 acres of land on the Linda Vista Mesa, unquestionably, the intention being to make a comprehensive water development, and it will take all the water that can be developed from the Cuyamaca and

-2-

the Volcan systems to irrigate the proposed water district which is now being formed.

The exhibit submitted by City Attorney Cosgrove at the hearing in Los Angeles, showed that San Diego would have approximately 110,000 population by September 1, 1916; and 155,000 by January 1, 1920. I refer to San Diego's Exhibit No. 9.

Enclosed find clipping from the San Diego Sun of August 3d, showing sworn testimony of H. H. Jones, Manager of the San Diego Gas and Electric Co., showing the population of San Diego to be not to exceed 82,500, and that he does not expect practically any growth whatsoever for the city of San Diego for the next two or three years. I call your attention to this matter, for the reason that the city of San Diego claimed a shortage of water; that an emergency existed; and that our increase in population would be such that a dire calamity would befall us in case the city's application was not granted. I have already submitted to you written reports of the Manager of Operations of the City of San Diego, showing that there is in excess of a four-year's supply water now on hand in the reservoirs. In addition, the city is pumping 5,000,000 gallons daily from its pumping plants in the San Diego River, and the Cuyamaca Water Co. is in position to take care of at least half of the supply of the City of San Diego, at any time San Diego desires to purchase water from us, which, together with a normal rainfall, assures the City of San Diego of an eight-year's supply in sight at the present time.

No emergency exists; the city is not in a financial condition

to build the El Capitan project, which will cost at least \$3,000,000, and, as stated before, the persecution of the Cuyamaca Water Co. is one of politics and personalities, and I respectfully request that the application of the City of San Diego be denied.

Very sincerely yours,

CUYAMACA WATER COMPANY.

\_\_\_\_\_  
Manager

F-S

*Cuyamaca*

#824

September 17, 1917

Honorable Secretary of the Interior,  
Washington, D. C.

Los Angeles 014683

Dear Sir:

Referring to the application to flood the lands of the El Capitan Indian Reservation, afterwards assigned to the City of San Diego, without expense to the said city, the application having been rejected by the Secretary of the Interior, and re-hearing asked for by the City of San Diego, will say:

It is over fifteen months since the hearing in Washington. Since that time material changes have taken place, vitally affecting the case. The City of San Diego, instead of attempting to develop water on the San Diego River has voted bonds and will in a few days let a contract to build the Lower Otay Dam, with a capacity of 15,000,000,000 gallons of water, to cost roughly \$700,000., the bonds lately having been voted, and said dam will be completed, according to the City Engineer H. M. Savage, by January 1, 1919, in time to catch the waters that winter.

On the first day of August, 1917, according to the report of the City Manager of San Diego, there was on hands in the reservoirs of the city 14,237,879,000 gallons of water. The daily consumption for the year 1917 will not be in excess of 8,500,000 gallons. During the year 1916, the total consumption from the San Diego City system was 3,025,511,996 gallons. In addition thereto, the City of San Diego has its pumping plants in the San Diego River completely installed ready for service on twenty-four hours' notice, from which can be pumped into the

city system direct between 4,000,000 and 5,000,000 gallons daily. These pumping plants have not been used by the city to any extent, if at all, for the last year or two. The above facts should demonstrate conclusively, in my opinion, that no emergency exists, as claimed by the City; that it is unquestionably the City's intention to develop water elsewhere, and the general consensus of opinion is that the city will build its other dam, Barrett, as soon as the Lower Otay is completed, which will materially increase the city's supply of water.

The City of San Diego has issued bonds almost to its limit, there being approximately \$1,000,000 excess bonding capacity at the present time. The City's own testimony in this case shows that it will cost approximately \$2,000,000 to \$3,000,000 to build El Capitan Dam and a pipeline to the city, and the testimony shows that no one knows how far it is to bedrock at El Capitan Dam. We have satisfied ourselves, at the expense of several thousand dollars, that bedrock is at least 150 feet, if not more, and in our opinion a conservative estimate of the cost of building El Capitan Dam alone will be \$1,500,000, to which is to be added the cost of acquisition of 22 miles of riparian rights on the river or the furnishing of 6,000 acre feet (U.S. Government engineer's estimates) to the riparian owners below; the cost of building 22 miles of pipeline, estimated at \$800,000; the condemning of the damsite and nearly a mile of the reservoir site, which we own in fee simple; together with the cost of \$200,000 or \$300,000 for moving the Indians. All the above makes the proposition prohibitive

from the city's standpoint as the city has only a bonding capacity of approximately a million dollars while it will cost three or four million at least to complete the project.

At the hearing in Los Angeles, the testimony of the Government engineers, as well as our own show that the net safe yield with the El Capitan built is not to exceed 3,000,000 or 4,000,000 gallons daily. This was based on conditions as they were at the time of the hearing. Since then the Cuyamaca Water Co. has commenced construction, and nearly completed Murray Dam. This dam is built of concrete, is 117 feet in height and has a capacity of 2,200,000,000 gallons. It will be completed by January 1, 1918. We have put our flume in condition to carry 20,000,000 gallons of water daily, and each year hereafter we will divert from the San Diego River approximately 1,500,000,000 to 2,000,000,000 gallons of excess water which was not included in the figures given at the hearing of this case in Los Angeles. In other words, the net safe yield is reduced to the extent of our new diversion, which makes the El Capitan plan absolutely unfeasible as we can prove the cost of the water developed from the El Capitan will be prohibitive owing to the excessive cost of the work compared with the net safe yield.

In addition thereto, the President of the Chamber of Commerce of San Diego appointed a committee of twenty of the most prominent citizens of San Diego to make an investigation into the matter, and that committee has unanimously recommended that instead of building El Capitan Dam the first dam to be built shall be in the

San Diego River at a point known as the San Diego Gorge, nineteen miles below the so-called El Capitan dam site. At the San Diego Gorge dam site, bed rock is exposed, the engineering problems are simple, and here will be caught not alone all the waters that would be caught at El Capitan Dam site, but in addition thereto 186 sq. miles of watershed below the El Capitan Damsite. The value of this additional water shed cannot be over estimated when one considers that the entire water shed of the Cuyamaca system is only 104 sq. mi.

Morena . . . . .	119	"	"
Otay . . . . .	98	"	"
Sweetwater . . . .	186	"	"
Carroll . . . . .	196	"	"
San Diego Gorge.	375	"	"

all as per map I am sending under separate cover.

In addition thereto, the Chamber of Commerce Committee has recommended the purchase of 5,000,000 gallons of water daily from the Volcan Co., at 10¢ a thousand gallons, all as per clipping herewith enclosed. This is remarkably cheap water as compared to the water now developed by the City of San Diego, every drop of which costs 19¢ per thousand gallons, according to the report of the City Manager of San Diego, said reports being herewith attached. Please note that said City Manager in making his report did not include additional costs, which bring the cost of every drop of water delivered in the city to more than 27¢ per one thousand gallons against the Volcan Co's offer of 10¢;



and in all sincerity I make the solemn statement that I can prove to any disinterested engineer that the cost of every drop of water ever developed from the El Capitan will be in excess of 20¢ per thousand gallons delivered at the city limits. We have offered the surplus water of the Cuyamaca system to the city at 6¢ per thousand gallons but the city has refused to buy to date.

In conclusion, I can only again call your attention to the fact that this Hamilton application was made either wholly or in part from records deliberately taken from our office without the consent of any of the owners and never returned by Hamilton's engineer one C. T. Sackett, who was in our employ. We paid \$1500. for the data that said Sackett took from our office. We brought said Sackett from Montana, and any information he secured on the San Diego River was while in our employ, particularly the El Capitan dam site and reservoir site.

We could have settled this case at one time and eliminated the Hamilton application for \$3,000, although the original offer to us was \$25,000. We considered the Hamilton application was born in infamy, and we refused to be held up, although it has cost us today \$25,000 in litigation. Only the Supreme Court of the United States will ever settle this question, for we feel certain of our position that it is only an attempt on the part of political enemies to punish us or to hold us up, and by granting the application of the City of San Diego, which paid nothing for this Hamilton water filing, the City of San Diego will be playing into the hands of a clique of men who are determined to

cloud the title to our property and block the legitimate development of San Diego County.

I desire to call your attention to the following facts: That the Secretary of the Interior can only give a temporary permit, revokable at any time; that the City of San Diego cannot vote and sell bonds based on any temporary permit, as has been proven in the Hetch-Hetchy case, by the City of San Francisco; that the Indians have unanimously protested against being removed, and that their removal will lay the foundation for another case such as described in Ramona; that the removal of these Indians violates the terms of the U. S. Government, when the Government by act of Congress, in 1894, set these lands aside for the Indians and agreed to deliver them to the Indians free and clear of all encumbrance, at the end of twenty-five years, or in March, 1919. Acting on this pledge of Congress, these Indians have subdivided their property to their own satisfaction, and have a right to demand a deed in March 1919. I do not believe the U. S. Government will ever repudiate this action; and I urge the Secretary of the Interior to take all these matters into consideration, and render a decision in our favor, against the City of San Diego, as he has already done in the application of said Hamilton.

I sincerely trust for an early and favorable decision.

Respectfully submitted,

CUYAMACA WATER COMPANY

---

Manager

84

October 1, 1917.

Hon. Cato Sells,  
Commissioner of Indian Affairs,  
San Diego, Calif.

Dear Sir:

The Cuyamaca Water Company built, thirty years ago, a diverting dam on the San Diego River in the El Capitan Indian Reservation, same now being in use.

We are intending to either raise the present Diverting Dam, to a sufficient height to control the flood waters on the San Diego River at that point, or to build another dam at a point 300 or 400 feet below the present damsite, provided same is agreeable to your Department.

We would like permission to sink possibly two or three shafts to determine bedrock, and will be glad to give you the benefit of our knowledge when said work is completed. We will be responsible for any damage, and sincerely trust that you will grant us permission, immediately, so that we may commence our explorations. This information we would appreciate your keeping confidential.

Hoping that you can see your way clear to grant this request for the temporary exploration work,

Very sincerely yours,

CUYAMACA WATER COMPANY,

Manager.

F-8

84

October 2, 1917.

Honorable Commissioner,  
of Indian Affairs,  
Washington, D. C.

My dear Mr. Sells:

Could you not before leaving San Diego just drop a line to the Superintendent of the El Capitan Indian Reservation, allowing us to temporarily sink shafts Reservation on the/300 or 400 feet below our present Diverting Dam? We would like to get this information at once, and your Mr. Reed expressed a desire to know what the conditions were there, which information we will be glad to furnish you.

Unquestionably, the logical development of the San Diego River, which conserves the water and does not disturb the Indians is to raise the present Diverting Dam owned by the Cuyamaca Water Co. 60 or 80 feet, or build 300 or 400 feet below there a dam of sufficient height to control the flood waters. This is a great advantage to the Indians, for it gives them a perpetual source of supply on the Reservation but above them, instead of below, as would be the case if the El Capitan were built.

The damsite above floods no Indian lands and no one will be forced to move; while, if the El Capitan were built, as the City asks for, the entire Reservation will have to be moved. By raising our Diverting Dam, or by building the proposed dam 300 or 400 feet below, if bedrock is satisfactory, all the

waters of the Upper San Diego River will be conserved; and by building the San Diego Gorge Dam, two miles above the San Diego Mission, all the rest of the waters of the San Diego River will be conserved.

This is the logical development for the greatest conservation of water on the San Diego River. If the El Capitan were built, it is a serious question whether the San Diego Gorge dam will ever be built, thereby losing the catchment from 187 sq. mi of water shed below the proposed El Capitan dam site.

Very sincerely yours,

CUYAMACA WATER COMPANY,

\_\_\_\_\_  
Manager.

F-S

84

October 2, 1917.

Honorable Commissioner  
of Indian Affairs,  
Washington, D. C.

This is to certify, under oath, that the owners of the Cuyamaca Water Company never have been paid one cent in dividends since the purchase of the system by Messrs. Murray, Henshaw and Fletcher on June 1, 1910; that not enough income has ever been received from the sale of water to pay even operating expenses of the said system, although the operating expenses have been kept down practically to the amount certified to by the State Railroad Commission as a legitimate operating expense; that the owners of the Cuyamaca Water System have since they purchased the system invested in its development not less than \$700,000, including the building of Murray Dam, now under construction; That the present revenue from the rates established by the State Railroad Commission April 1, 1917 is not sufficient to pay operating expenses and depreciation, to say nothing of interest on the investment; that the Cuyamaca Water Co. has repeatedly offered to the City of San Diego any amount of water up to 7,000,000 gallons daily, at 6¢ per thousand gallons, but the city officials have to date not seen fit to make any purchase of water, although the price of 6¢ a thousand gallons delivered to the city limits is less than one-fourth the cost of all water delivered by gravity from the present system owned by the City of San Diego.

Respectfully submitted

CUYAMACA WATER COMPANY \_\_\_\_\_ Manager.

F-S

84

October 2, 1917.

Mr. James A. Murray,

Mr. Wm. G. Henshaw.

Gentlemen:

The commissioner of Indian Affairs is here and I have gone the limit with him. It has taken me nearly a week of my time. The City of San Diego is showing every courtesy to Mr. Sells and his party, including a banquet tonight. However, after the banquet with the city officials he has voluntarily offered to let me give him a resume of the entire case early tonight, to his entire party. Only time will tell whether we win out or not.

With all my other work this attorney business is some job, but at any rate we are not spending any more money for attorney's fees. There is good indications, however, that the City of San Diego is going to buy water from us in the near future.

I enclose map of San Diego County showing the San Diego Gorge drainage and location of the dam, near the Old Mission in the San Diego River, which will be of interest.

Yours very truly,

F-S

84

October 2, 1917.

Honorable Commissioner  
of Indian Affairs,  
Washington, D. C.

My dear Mr. Sells:

In the matter of the Pala and Rincon Indian Reservations, my understanding at the conference in Washington with you and your representatives, so far as same affects the construction of Warners Dam is as follows:

That we agreed that the Pala Reservation could in no wise be affected, owing to the fact that the Pauma Creek, with its abundance of water, coming below both the Warners Dam and the Escondido intake fully protects the rights of the Indians in the Pala Reservation, and there could be no damage.

But on the Rincon reservation, the offer I am ready to recommend to our company is that in case there is a shortage of water for the Indians, caused by the construction of Warners Dam, that the Volcan Land & Water Co. will at its own expense put down wells and install a pumping plant or plants in the gravels of the San Luis Rey River on the said Rincon Reservation, and furnish the power for the operation of any pumping plants for the development of the necessary water to take care of the Indians.

The amount of water should be agreed upon at the present time and a fair contract protecting all interests of both the Indians and ourselves I hope will be drawn up immediately.

84 /

October 4, 1917.

because within a short time the failure to sign this contract will stop the development of that section of the country.

We own now 98% of the riparian rights on the San Luis Rey River from Warners Dam, 54 miles West to the ocean. We have 12,000 acres of land signed up for the use of water; and in addition thereto the San Diego Chamber of Commerce Water Committee, composed of prominent business men of the city has recommended, and in all probability the water that we develop from the San Luis Rey to the Santa Ysabel Rivers will be brought toward the City of San Diego, and we will furnish 5,000,000 or 10,000,000 gallons daily to the City of San Diego, at 10¢ a thousand gallons; or a district will be formed which will take over all our properties. Negotiations in this matter are progressing favorably at the present time.

I do not want to unduly urge you in this matter, but I do hope that before you leave California you will select an engineer to work out the details with us, that a report may be made to you in Washington immediately and a contract drawn up and signed, for by so doing you will be encouraging the conservation of water -- our most valuable asset.

Very truly yours,

VOLCAN LAND & WATER COMPANY,

\_\_\_\_\_  
Manager.

F-3

Hon. Cato Sells,  
Commissioner of Indian Affairs,  
Clarke Hotel,  
Los Angeles, Calif.

My dear Mr. Sells:

Enclosed find sworn statement in regard to affairs of the Cuyamaca Water Co., as per my promise to you when in San Diego.

Yours very truly,

F-S

\_\_\_\_\_  
Manager.

P. S. I want you to know, Mr. Sells, that neither directly nor indirectly have we or any of our employees by any underhanded means attempted to influence the Indians in the matter of this El Capitan case. At least this is true so far as my knowledge of the case is concerned, and if you have any information which in any way brings into question the integrity of any of our employees, it is only fair and justice to me that I be furnished with this information, so that it may not occur again, as I have no trouble in winning out by playing the game fair and do not have to stoop to underhanded methods to win.

Knowing you will take this in the spirit in which it is written, and thanking you again for the courtesy and tact with which you have handled this case, I remain,

Very sincerely yours,

F-S

84

October 29, 1917.

Hon. Cato Sells,  
Commissioner of Indian Affairs,  
Washington, D. C.

Sir:

I have the honor to call to your attention a permit granted by the U. S. Government, giving the San Diego Flume Company permission to build a diverting Dam, under the heading

"Land, 25142-1892"  
dated July 18, 1892,  
addressed to L. F. Doolittle, Secretary San Diego Flume Co.,  
San Diego, California, and signed by T. J. Morgan, Commissioner.

We are the successors of the San Diego Flume Co. and have fully lived up to our contract whereby the U. S. Government, having Indians as its ward, were able without spending a dollar to have a private corporation take over the responsibility of delivering water free of charge to the Indians for their lands within the El Capitan Indian Reservation during the summer months, when no water was running in the river.

The dam was built, and the flume placed at such a high elevation that all the Indian lands that are tillable have been irrigated by gravity. For this service the Cuyamaca Water Co. has never received one cent from the Government, covering 30-odd years of service.

In addition to building the Diverting Dam, which impounds a small part of the waters of the San Diego River, we built the Cuyamaca Dam with a capacity of nearly 5000 acre-feet, and this has been an absolute assurance to the Indians of water during the summer months, for any water passing on to our consumers below first goes to the Diverting Dam and thence through our flume through the Indian Reservation. The company coming, as it were, into court with clean hands, asks you to give, if possible, in advance, your attitude toward the following development; i. e.,

The construction of a much higher dam than the present one, to be built of concrete, at the present diverting dam, or 300 or 400 feet below, as the case may be.

Our attorney informs us that we have the legal right to raise the Diverting Dam to any height we desire, and that we secured that right through the original agreement between

84

October 29, 1917.

Hon. Cato Sells,  
Commissioner of Indian Affairs,  
Washington, D. C.

My dear Mr. Sells:

I thank you kindly for your letter of October 23rd, to Daniel E. Murphy, Superintendent of the Pala Indian Reservation, giving us the right to ascertain the depth to bedrock below our diverting dam. I assure you this is appreciated.

I want to assure you again that neither I nor any employee of ours, to our knowledge, have ever in any underhanded way secured signatures to any petition signed by the Indians, in the matter of the flooding of the El Capitan Indian Reservation by the City. So far as I know, every signature was genuine and signed voluntarily, knowing the facts; i. e., that the city of San Diego was planning to build a dam to flood the Indian Reservation. If there is any underhanded work, or misrepresentation of any character, I give you my word of honor that any employee involved in it will be discharged on the spot, and I certainly appreciate the opportunity of refuting any statement made by anyone outside of our employ to that effect.

I urge that you furnish me with any information you have on the subject, so that the question of the integrity of the Cuyamaca Water Co. can be vindicated, and if any underhanded work has gone on without my knowledge I would consider it a favor to make amends.

Yours very truly,

CUYAMACA WATER COMPANY,

By \_\_\_\_\_

Manager.

F-S

the San Diego Flume Co. and the U. S. Government, being said No. 35142-1892. Will you please secure from the proper authorities a legal opinion on this subject; also, if the old diverting dam were abandoned and a new location 300 or 400 feet below were selected for a higher dam, would there be any other procedure for us to go through except to file a new map? My understanding is that there are no Indians above the dam that we propose to build, whose lands will be flooded. There are, however, several private property owners outside the reservation.

To me, the logical place for the building of a dam on the San Diego River is at the Diverting Dam, at the head of our flume, at a sufficient elevation to put water by gravity to the coast.

It would expedite matters very much if you could see your way clear to secure for us an expression from your office, in relation to the question herewith submitted, and same would be greatly appreciated.

Respectfully submitted,

CUYAMACA WATER COMPANY,

By \_\_\_\_\_  
Manager.



January 21, 1918.

Hon. Cato Sells,  
Commissioner of Indian Affairs,  
Washington, D. C.

My dear Mr. Sells:

I have read with considerable interest and regret your report on the El Capitan matter, but have no criticism to make, for I know it is impossible for you to understand local conditions or take cognizance of the same, under the circumstances.

I shall be in Washington the 28th to present our side of the case to the Public Lands Committee.

I would appreciate it very much if you would have the contract ready in the matter of the Rincon Reservation - our securing the permit to build Warners Dam. I hope that this matter can be adjusted while I am there, as I shall only want to stay a day or two. I would appreciate anything that you can do to hasten matters.

Yours very truly,

F-S

January 21, 1918.

Hon. Cato Sells,  
Commissioner of Indian Affairs,  
Washington, D. C.

My dear Mr. Sells:

I have read with considerable interest and regret your report on the El Capitan matter, but have no criticism to make, for I know it is impossible for you to understand local conditions or take cognizance of the same, under the circumstances.

I shall be in Washington the 28th to present our side of the case to the Public Lands Committee.

I would appreciate it very much if you would have the contract ready in the matter of the Rincon Reservation - our securing the permit to build Warners Dam. I hope that this matter can be adjusted while I am there, as I shall only want to stay a day or two. I would appreciate anything that you can do to hasten matters.

Yours very truly,

F-S

Washington, D. C.

January 30, 1918.

Hon. Cato Sells,

Commissioner of Indian Affairs,

Washington, D. C.

Dear Sir:

We have financed and are planning to immediately complete the construction of the dam at or adjacent to the diverting dam as originally planned by the San Diego Flume Company, our predecessors, as per grant of the United States Land Office to the San Diego Flume Company August 20, 1892.

We have lived up to every requirement specified in the contract with the exception of completing the project as originally planned. Before commencing the construction of the dam as originally intended it will be necessary for us to get the approval of the state authorities, which will be done.

We write this letter simply to call your attention to the improvement planned and to ascertain if you have any objection thereto.

Respectfully submitted,

CUYAMACA WATER COMPANY

By

\_\_\_\_\_  
Manager.

Washington, D. C.

January 30, 1918.

Hon. Cato Sells,

Commissioner of Indian Affairs,

Washington, D. C.

Dear Sir:

We have financed and are planning to immediately complete the construction of the dam at or adjacent to the diverting dam as originally planned by the San Diego Flume Company, our predecessors, as per grant of the United States Land Office to the San Diego Flume Company August 20, 1892.

We have lived up to every requirement specified in the contract with the exception of completing the project as originally planned. Before commencing the construction of the dam as originally intended it will be necessary for us to get the approval of the state authorities, which will be done.

We write this letter simply to call your attention to the improvement planned and to ascertain if you have any objection thereto.

Respectfully submitted,

CUYAMACA WATER COMPANY

By

\_\_\_\_\_  
Manager.

## DEPARTMENT OF THE INTERIOR

9237-18

OFFICE OF INDIAN AFFAIRS

WASHINGTON FEB 15 1918

Mr. Ed Fletcher,

Manager Cuyamaca Water Company,

San Diego, California.

My dear Mr. Fletcher:

By letter dated January 30, 1918, you indicated that it was the intention of the Cuyamaca Water Company to construct a dam at or adjacent to the present diverting dam on the El Capitan Reservation which diverts water from the San Diego River into flumes of the Cuyamaca Company, successors in interest to the San Diego Flume Company.

It appears from the records of the Office that on September 16, 1892, the Acting Secretary of the Interior granted to the San Diego Flume Company its assigns and successors,

A right of way one hundred feet in width, with all the usual rights of land and water and of ingress, egress and regress, for the purpose of constructing, maintaining and operating an irrigation flume or canal with the necessary laterals and works appurtenant thereto, through the Capitan Grande Indian Reservation, along the line indicated on the map accompanying a report of the Mission Indian Commission approved by the President December 29, 1891, subject, however, to the terms and conditions prescribed by the Department and accepted by the Company.

The "terms and conditions" under which this right of way was granted, which terms and conditions had previously been agreed to by the San Diego Flume Company under date of August 28, 1892, have been carefully examined, and nothing is said therein, or in

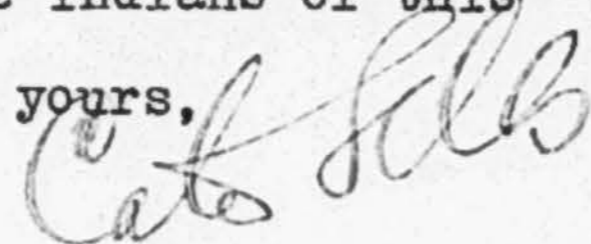
Departmental letter of September 12, 1892, granting the right of way in question, about the construction of a "dam", the right of way simply covering the construction of "an irrigating flume or canal with the necessary works appurtenant thereto". The map referred to in connection with this transaction does show, in Section 11, Township 14 South of Range 2 East, a projection across the San Diego River opposite which is written the word, "dam". This right of way was granted under authority of Section 8 of the Act of January 12, 1891 (26 Stat. 712) which authorizes the Secretary of the Interior, upon such terms and conditions as he may prescribe, to grant a right of way for the construction of "a flume, ditch, canal, pipe, or other appliances for the conveyance of water over, across, or through such reservation for agricultural, manufacturing or other purposes". It will be noted that nothing is said in the Act with respect to the construction of a dam. Ordinarily, however, some means of diversion in order to convey water from a running stream into a ditch, canal, flume or other means of conveyance must necessarily be implied, and it is believed that ample authority exists under the Act cited for the construction of a dam for the purpose of diverting water from the river into the flume, a right of way for which was granted under the Act mentioned. In other words, a flume for the conveyance of water would be useless without some means of diverting water into the flume so constructed.

As I understand your recent proposition, however, it is entirely a different matter. You propose either to increase the height of the present diverting dam to possibly one hundred feet, or construct a new dam across the San Diego River below the present dam of the Cuyamaca Company, not alone for the purpose of diverting water into your flumes already constructed, but for the purpose of furnishing an extensive reservoir in order to impound storm and other waters of the San Diego River which would submerge some fifteen or twenty acres of land within the reservation.

I am unable, therefore, to agree with your view of the matter, that the right, previously granted to the San Diego Flume Company and now owned by the Cuyamaca Company for a flume across the Capitan Grande Reservation, is sufficient to warrant the construction of an impounding or storage dam in place of the present diversion dam across

the San Diego River. I am constrained to suggest, therefore, that before any steps are taken by you with a view of increasing the height of the present dam or constructing a new dam in lieu of the one now built, you submit application therefor, in the usual manner, under the regulations governing such matters, in order that it may be considered with a view of fully protecting the interests of the Indians of this reservation.

Sincerely yours,



Commissioner.

Carbon to

Mr. Wheeler.

April 26, 1918.

Commissioner of Indian Affairs,  
Washington, D. C.

My dear Mr. Sells:

When in Washington you instructed me to see Mr. Reeves and procure from him a draft of the proposed agreement whereby the Government gives consent to the construction of Warners Dam. I secured a draft from Mr. Reeves who said same had been written hurriedly and was subject to revision. My associates asked that the contract be made in my name. I have made no change in the original draft excepting to more clearly define the words "normal flow" which I hope will meet with the approval of your office. The contract, as you see, has been signed, and if it is approved as written kindly have a bond in the sum of \$10,000 drawn up by your Department and I shall be pleased to have it signed by responsible parties.

We are desirous of having this matter closed at an early date, and appreciate anything that you can do to facilitate matters.

I sincerely trust that if you ever get to California again and have any reason for coming to San Diego, that you will allow my car as well as myself to be at your service.

Very sincerely yours,

WHEREAS, William G. Henshaw, of the City of Oakland, State of California, is planning for the construction of large storage dams or reservoirs for the purpose of impounding storm and other waters for irrigation, domestic, including municipal supply, and other purposes on the upper reaches of the San Luis Rey River in the State of California, at a point commonly known as "Warner's Ranch" in Sections Three and Ten, Township Eleven South, Range Two East, San Bernardino Meridian;

AND WHEREAS, in order to accomplish the purposes outlined in the foregoing it has been, and is, necessary to acquire or otherwise protect outstanding rights to water in and along the said San Luis Rey River, both above and below the said proposed dam;

AND WHEREAS, the Indians of the Pala Indian Reservation, located in Townships Nine and Ten South, Range Two West, San Bernardino Meridian, California, below the said proposed Warner's Ranch Dam, have a prior first right to the normal flow of the said San Luis Rey River to the extent of six cubic feet of water per second when the quantity of water in said river at the point where it crosses the eastern boundary line of said Pala Indian Reservation is sufficient to produce that quantity of water;

AND WHEREAS, by contract dated February 2, 1914, by and between the United States of America, acting for and on behalf of the Indians of the Rincon Reservation, California, the party of the first part, and the Escondido Mutual Water Company, successor in interest to the Escondido Irrigation District, a corporation duly organized under the laws of the State of California, party of the second part, in which said contract the

5-378.

**INCLOSURE 15116**

FROM  
**OFFICE OF INDIAN AFFAIRS,**  
DEPARTMENT OF THE INTERIOR.

6-1201

prior rights of the Indians of the said Rincon Indian Reservation in and to the waters of the San Luis Rey River, were recognized and defined; a copy of said contract being attached hereto, marked "Exhibit A", and hereby made a part hereof;

AND WHEREAS, by contract dated June 21, 1912, by and between the aforesaid Escondido Mutual Water Company, party of the first part, and William G. Henshaw, of the City of Oakland, State of California, party of the second part, in which said contract the said Escondido Mutual Water Company did agree to the construction of said proposed reservoir or reservoirs at "Warner's Ranch", subject to certain conditions, stipulations, covenants and agreements in said contract contained; a copy of which said contract being attached hereto, marked "Exhibit B", and hereby made a part hereof;

NOW THEREFORE, this agreement made and entered into this \_\_\_\_ day of \_\_\_\_\_, 19\_\_, by and between William G. Henshaw, of the City of Oakland, State of California, party of the first part, and the United States of America, acting by \_\_\_\_\_, Secretary of the Interior, on behalf of the Indians of the Rincon and Pala Reservations, California, party of the second part;

WITNESSETH, That for and in consideration of the fact that the construction of the said proposed dam or dams at "Warner's Ranch" will be of substantial benefit to the Indians of the reservations referred to herein, in that the impounding of storm waters of the said San Luis Rey River will tend to prevent the loss of land by erosion along said river and will tend to prevent other damage from storm and flood

waters to the reservations and other property of the said Indians, and in further consideration of the mutual covenants herein contained, it is mutually agreed and understood by and between the parties hereto;

1. That the Secretary of the Interior, in behalf of the Indians of the said Pala and Rincon Reservations, subject to the conditions and stipulations hereinafter contained, will interpose no objection to the construction of the said proposed dam or dams at "Warner's Ranch" on the said San Luis Rey River.

2. That the prior rights of the Indians of the Rincon Reservation in and to the flow of the said San Luis Rey River, as defined in the above mentioned contract with the Escondido Mutual Water Company which said contract is set forth in full in "Exhibit A" hereof, are hereby expressly admitted, recognized and acknowledged by the party of the first part hereto.

3. That should the construction of the said proposed reservoir or reservoirs at "Warner's Ranch", and the impounding of storm and other waters to be conserved thereby, so interfere with the flow of the San Luis Rey River or lower the water plane under the surface of the land within the said Rincon Reservation, as to diminish the supply of waters available for the Indians of said Reservation as defined in the said contract, heretofore referred to, with the said Escondido Mutual Water Company, then and in that event, the party of the first part, at his own expense, and without cost to the Indians of the said Rincon Reservation, will deliver, or cause to be delivered, at the intake of the Escondido Company's canal on the south bank of the said San Luis Rey River, in Section Thirty-three (33), Township Ten

(10) South, Range One (1), East, S. B. M., at all times, during each and every calendar year, an amount of water sufficient to supply the Indians of the said Rincon Reservation with the quantity of water called for in the outstanding contract with the said Escondido Mutual Water Company as set forth in "Exhibit A" hereof; which water, for use of the Indians, shall be in excess of, over, and above, the quantity of water agreed to be delivered to the Escondido Mutual Water Company, by the party of the first part in his contract with the said Escondido Mutual Water Company as set forth in "Exhibit B" hereof.

4. In lieu of furnishing the additional supply of water for use of the Indians of the Rincon Reservation at the intake of the canal of the Escondido Mutual Water Company, as set forth in the foregoing, the party of the first part, at his option, and at his own expense, may sink such additional wells, install such additional pumps, pumping machinery, pipes, pipe lines, fittings, equipment, appliances and supplies, including power, for properly operating the same, in addition to those now on said Reservation, as may be necessary to supply the Indians of the said Rincon Reservation with the quantity of water called for by the contract with the Escondido Mutual Water Company as set forth in "Exhibit A" hereof; the location of such additional wells, the type of pumps and motors, the size and kind of pipe, and the installation of such machinery, pipes, pipe lines, et cetera, as may be necessary to connect such additional pumping plants up with the present distributing system now on said Reservation, to be subject to the approval of the party of the second part. And the party of the first

part hereby agrees to supply such power, labor, material, equipment, supplies, et cetera, as may be necessary for the proper operation of such additional pumping plants, other than those now on said Reservation, and that he will properly maintain, operate and care for the same at his own expense and without cost to the Indians of said Reservation.

5. To assure economical and successful operation of the pumping plants now on said Rincon Indian Reservation, and the proper operation of such additional pumping plants as may be installed pursuant to this agreement, the party of the first part hereby agrees that the underground water plane underlying the surface of the said Rincon Reservation shall not be allowed to fall below the levels or elevations hereinafter designated by measurements to be calculated from the nearest United States Geological Survey Bench Mark;

(a) At pumping plant No. 1, located in the South East corner of the North East quarter of the South East quarter of Section thirty-five, Township ten South, Range one West, San Bernardino Meridian, (SE corner of the NE $\frac{1}{4}$  of the SE $\frac{1}{4}$ , Sec. 35, T. 10 S., R. 1 W., S. B. M.) California, the water plane shall not be allowed to fall below elevation 865.50 in the Government well at that point.

(b) At pumping plant No. 2, located in the West half of the North East quarter of said Section thirty-five, same Township and Range as given in the preceding paragraph, the water plane shall not be allowed to fall below elevation 850.50 in the Government wells at that point.

(c) At pumping plant No. 3, located in the North East corner of the North East quarter of the North West quarter of said Section thirty-five in the same Township and Range as described in sub-paragraph (a) hereof, the underground water level shall not be allowed to fall below elevation 843.50 in the Government wells at that point.

Should it become necessary to discharge stored water into the San Luis Rey River from the reservoir or reservoirs to be constructed at "Warner's Ranch", in order to replenish the underground supply at Rincon, and maintain such underground water at the elevation designated in the foregoing sub-paragraphs (a), (b) and (c) hereof, the party of the first part hereby agrees to discharge water from such reservoir or reservoirs in such manner and in such quantities as will result in no damage to the lands of the said Rincon Reservation, and as will best allow the water so discharged to permeate the sand, gravel, or other sub-soils underlying the said Reservation.

6. It is the sense of this agreement that the flow of the San Luis Rey River is to be maintained at all times for the benefit of the Indians of the said Rincon Reservation strictly in accordance with the rights of said Indians as recognized and defined in the said contract between the United States of America and the Escondido Mutual Water Company as set forth in "Exhibit A" hereof. After construction of the proposed reservoir or reservoirs at "Warner's Ranch", should the flow of the said San Luis Rey River, available for the use of the Indians of the said Rincon Indian Reservation fall below that defined in the said contract with the said Escondido Mutual Water Com-

pany, then and in that event, the party of the first part hereby agrees either to deliver at the intake of the canal of the said Escondido Mutual Water Company sufficient water to supply the Indians of the said Reservation with the amount to which they are entitled under said contract, or at the option of the party of the first part, at his own expense, to furnish the Indians of the said Reservation with water pumped from underground reservoirs in sufficient quantity, which, with the gravity flow, if any available, will supply the Indians of said Reservation with the quantity of water for irrigation purposes called for in the said contract with the said Escondido Mutual Water Company as set forth in "Exhibit A" hereof; all without cost to the Indians of said Reservation, either for pumps, power, machinery, material, equipment, supplies, or labor, necessary for the proper installation, operation, maintenance, repair, or up-keep of the same.

7. It is further understood and agreed by and between the parties hereto that the existing contracts between the United States of America and the Escondido Mutual Water Company, and between William G. Henshaw and the Escondido Mutual Water Company, as set forth in "Exhibit A" and "Exhibit B" hereof respectively, shall remain in full force and effect, and shall not be modified, altered, changed, or in any manner abridged hereby, except as such contracts may be inconsistent with the provisions of this agreement, in which event, this agreement shall prevail and the provisions of the preceding contracts referred to are hereby modified accordingly, to the



extent of such conflict only, and in no other manner whatsoever; it being the intention that this agreement shall be regarded as supplemental to and to be considered in connection with the existing agreements to which reference is made. That is to say, the obligations arising under the contract between the United States of America and the said Escondido Mutual Water Company, ("Exhibit A") shall remain in full force and effect, but after the construction of the proposed reservoir or reservoirs at "Warner's Ranch", should the waters of the San Luis Rey River, available for the benefit of the Indians of the Rincon Indian Reservation, fall below the quantities specified in the contract of the said Escondido Mutual Water Company, then and in that event, the provisions of this agreement shall spring into full force and effect to the extent and for the purpose of guaranteeing to the Indians of said Rincon Indian Reservation the quantity of water called for by the said contract with the said Escondido Mutual Water Company, without cost to the Indians of said Reservation except as specified in said contract to which reference is made ("Exhibit A").

8. Owing to the extensive watershed between the Pala Indian Reservation and "Warner's Ranch", the parties hereto understand that the flow of the San Luis Rey River at, in, and through the said Pala Indian Reservation may not be affected by construction of the proposed dam or dams at "Warner's Ranch", but after completion of the said reservoir or reservoirs, should the waters of the San Luis Rey River available for use of the Indians of the Pala Reservation to

which they have a prior first right, not exceeding a maximum of six cubic feet per second, fall below the quantity required for the Indians of said Reservation, then and in that event the party of the second part hereby agrees, at his own expense and without cost to the Indians of the said Reservation, to sink such wells, install such pumps, motors, pipes, pipe lines, fittings, appliances, material and supplies, in addition to those now on said Reservation, as may be necessary to furnish the Indians of the said Pala Reservation with the quantity of water for irrigation purposes to which they are entitled, not exceeding a maximum of six cubic feet per second. The party of the first part further agrees to furnish, at his own expense, such power, labor, materials and supplies as may be required for the proper operation, up-keep, maintenance and repair of such additional machinery, pumps, pipe lines, et cetera, as may be installed hereunder; the location of such additional pumping plants, the size, kind and style of motors, pumps, machinery, fittings, et cetera, and the installation of each and every part thereof to be subject to the approval of the party of the second part, all without cost to the Indians of said Reservation.

9. No member of or delegate to Congress, or Resident Commissioner either after election or appointment, or either before or after he has qualified and during his continuance in office, and no officer, agent or employee of the Government shall be admitted to any share or part of this contract or agreement, and the provisions of Sections 3739-3740-3741 and 3742 of the Revised Statutes of the United States relating to contracts

enter into and form a part of this agreement so far as the same may be applicable. Nothing herein contained, however, shall be construed to extend to any incorporated company where such contract or agreement is made for the general benefit of such corporation or company, as provided in Section 116 of the Act of Congress approved March 4, 1909 (35 Stats. 1109).

10. It is further agreed and understood by and between the parties hereto that the party of the first part, with the consent and approval of the party of the second part, shall have the right to set over, transfer and assign to other persons, firms or corporations, this contract and all rights hereunder.

11. To assure faithful performance of this contract by the party of the first part hereto and all the covenants herein contained, he hereby agrees to furnish unto the party of the second part a good and satisfactory bond in the sum of twenty-five thousand dollars (\$25,000), and this contract, of which the said bond is to form a part, shall not be in full force or become effective until such bond has been furnished to the satisfaction of the party of the second part.

IN WITNESS WHEREOF, the parties hereto have subscribed their names the year and day first above written.

\_\_\_\_\_  
By \_\_\_\_\_

UNITED STATES OF AMERICA

By \_\_\_\_\_  
Secretary of the Interior.

Witness:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THIS MEMORANDUM OF AGREEMENT, made and entered into this second day of February, 1914, by the United States, for and on behalf of the Rincon Indians, party of the first part, and the Escondido Mutual Water Company, a corporation organized and existing under and by virtue of the laws of the State of California, party of the second part, WITNESSETH,

WHEREAS, a certain contract was made and entered into on the 4th day of June, 1894, by and between the Escondido Irrigation District of California, party of the first part, and the Potrero Band or Village of Mission Indians, party of the second part, wherein and whereby the rights of the Potrero and Rincon Indians, living on their respective reservations in the San Luis Rey Valley, and the Escondido Irrigation District, were set forth and defined in relation to certain water privileges and water rights, and

WHEREAS, By reason of changed conditions, the assignment of all the right, title and interest in and to said contract by the Escondido Irrigation District, the Escondido Mutual Water Company has succeeded to all the obligations, rights, privileges and franchises of the Escondido Irrigation District, and

WHEREAS, Certain improvement are contemplated on the Rincon reservation by the United States Indian Service:

NOW, THEREFORE, Said contract of June 4th, 1894, is hereby modified and the rights of the parties hereto are defined as follows:

It is mutually understood and agreed that the Rincon Indians herein mentioned are entitled to the flow of

*"Exhibit A" Page 1*

the San Luis Rey river up to a maximum of six cubic feet per second.

It is further mutually understood and agreed that the United States, for and on behalf of said Rincon Indians, has reserved for their use and disposition, and shall reserve for their use and disposition, in any agreement relating to the water flowing or to flow in the San Luis Rey river, a minimum flow of six cubic feet of water per second of time, measured at or near the intake of the canal of the Escondido Mutual Water Company, and, in extremely dry years, a minimum flow of three cubic feet of water per second of time for the months of July, August, and September of each such extremely dry year. The flow of water so reserved shall be carried in the ditch of the Escondido Mutual Water Company and delivered by said Company to said Indians at the power plant to be constructed on the site hereinafter mentioned, and any water not needed or to be needed by said Indians shall be subject to the use and disposition of the Escondido Mutual Water Company for any purpose whatsoever: Provided, however, that no use or disposition of water by the company shall be made so as to work a disadvantage to said Indians, or any of them, or as infringing upon or otherwise limiting the rights reserved by them or the United States on their behalf.

That the United States, for and on behalf of the Rincon Indians, party of the first part, consents to and agrees with the Escondido Mutual Water Company, its successors or assigns, party of the second part, that the said second party, to-wit, the Escondido Mutual Water Company,

*Exhibit A" Page 2*

may erect and maintain a power plant for the generation of electric current and the necessary buildings for said power plant and its attendants on the Rincon Indian reservation, at a point north of the present ditch line of the Escondido Mutual Water Company, and for the construction and operation of said power plant the Escondido Mutual Water Company is hereby granted the use of the following described real property:

Beginning at a point 1160.7 feet west and 335 feet south of the northeast corner of section 2, township 11 south, range 1 west, San Bernardino Base and Meridian; thence from said point of beginning 250 feet south, thence 300 feet west, thence 250 feet north, thence 300 feet east to the point of beginning, embracing 1.72 acres.

It is hereby mutually agreed that the Escondido Mutual Water Company have sufficient water for domestic use and for irrigating trees, gardens and lawns on the land above described, provided such use shall not work any detriment or disadvantage to any of said Rincon Indians.

### III

There is hereby granted by the party of the first part to the Escondido Mutual Water Company, the party of the second part, a right of way across the Rincon and San Pasquel Indian reservations for the construction of power transmission lines so that said party of the second part may have ingress, egress and regress for the purpose of constructing, operating, repairing and maintaining its power plant and transmission lines; and there is also granted to said party of the second part a right of way for a road across said Rincon Indian reservation, from a point

*Exhibit A" Page 3*

on the county road crossing said reservation to the power plant site hereinbefore described, said right of way for road purposes not to exceed thirty feet in width; it being expressly understood that the Escondido Mutual Water Company, its successors or assigns, in the construction and maintenance of its power plant and in the enjoyment of its rights of way for ingress, egress and regress, shall so use its rights as to interfere with the Indians as little as possible, and the party of the second part agrees to operate and maintain its pipe lines, power plants and transmission lines and accessories in such manner as not to damage the property or interests of said Rincon Indians or the party of the first part and to cause them no inconvenience other than such as may be necessarily incident to the construction and operation of said power plant and the maintenance of its pipe lines, transmission lines and accessories to said power plant.

## IV

In consideration of the rights of way herein granted to the Escondido Mutual Water Company, its successors and assigns, the Escondido Mutual Water Company agrees to construct and put in operation the power plant herein referred to and to furnish to the Rincon Indians power for pumping purposes on the said Rincon reservation, according to the terms and conditions hereinafter set forth. In further consideration of said rights of way, privileges and benefits passing to the party of the second part, it agrees to deliver at its power plant, to be constructed on

*Exhibit A Page 4*

the site hereinbefore described, all the water used for generating electricity at said plant, to the Rincon Indians, to be subject to the use and disposition of the party of the first part for any purpose whatsoever.

The said party of the second part also agrees to furnish at said power plant to the Rincon Indians, from the power plant erected on the site hereinbefore described, electric current not to exceed the rate of seventy (70) kilowatts, said current to be constantly available whenever required for pumping water, so that when the pumped water is added to the water which passes through the power plant, said Indians will have all the water needed for their use, not to exceed six cubic feet per second; and the United States, for and on behalf of the said Indians, shall pay to the party of the second part one-eighth of one cent per kilowatt-hour for all current furnished under this clause.

## V.

It is further mutually agreed by and between the parties that if the water flowing in the San Luis Rey river at the intake of the canal of the Escondido Mutual Water Company should be less than two cubic feet per second, the party of the second part may shut down its power plant and let the water run through the penstock for the use of the Indians, then and in that event the party of the second part will furnish electric current to said Indians from its power plant located below the reservoir, to the extent of the requirements of said Rincon Indians, not exceeding the rate of seventy kilowatts.

*Exhibit A Page 5*

Said Company shall apply the same rules and regulations for the delivery of current under the clause next foregoing to said Indians as it applies to the stockholders of the Escondido Mutual Water Company using current for pumping purposes, and for such electrical current so delivered, the United States, for and on behalf of the Rincon Indians, agrees to pay to said party of the second part one and one-half cents per kilowatt hour. It is mutually understood and agreed that the measurement of electric power, for which payment is provided in this contract, shall be made at the power house of the party of the first part and at the same voltage as motors, provided said voltage be not less than two thousand two hundred. All expense of material and apparatus connecting up to and including meter shall be paid by the party of the second part. Payment for electric current shall be made by the United States for and on behalf of said Indians to the party of the second part for quarterly periods, and the party of the second part shall be responsible for the accuracy of the meter and shall test the same at reasonable intervals, or upon reasonable evidence presented by the party of the first part that the meter is incorrect.

VI

It is further expressly understood that the delivery of the electric current hereinbefore provided for by the party of the second part to the party of the first part shall be subject to the reasonable rules and regulations of the Escondido Mutual Water Company and the laws of the State of California, provided the rules and regula-

*Exhibit A - Page 6*

tions of the said Escondido Mutual Water Company shall at all times be reasonable and shall not in any manner abridge or modify the rights of said Indians as provided by the terms of this contract.

IN WITNESS WHEREOF, The parties hereunto have set their hands and affixed their seals.

MAR 21 1914

THE UNITED STATES OF AMERICA.

By (Signed) A. A. Jones

Witnessed

First Asst. Secretary of the Interior.

(Signed) A.W. Woheford.

" F.E. Bondinot

ESCONDIDO MUTUAL WATER COMPANY.

By (Signed) Albert Beven

President.

Attest:

(Signed) Ned W. Phelps

Secretary.

STATE OF CALIFORNIA, )  
 ) SS.  
 COUNTY OF SAN DIEGO. )

On this 3rd day of February in the year one thousand, nine hundred and fourteen A. D. before me E. E. Turrentine a Notary Public in and for said County of San Diego, State of California, residing there in, duly commissioned and sworn, personally appeared Albert Beven and Ned W. Phelps known to me to be the President and Secretary of the Corporation that executed the within instrument, and acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said County, the day and year in this certificate first above written.

(Signed) E. E. Turrentine

Notary Public in and for San Diego County, State of California.

(Seal)

*Exhibit A - Page 7*

THIS AGREEMENT, made and entered into this 21st day of June A D 1912, by and between the ESCONDIDO MUTUAL WATER COMPANY, a corporation organized and existing under the laws of the State of California, the party of the first part, and WILLIAM G. HENSHAW, of Oakland, California, party of the second part, WITNESSETH:

THAT WHEREAS, the party of the first part is the owner of a water system and system for the impounding, diversion and distribution of water to its stockholders, and in the operation of such system diverts water from the San Luis Rey River in the County of San Diego, State of California, at a point near the boundary line between Sections Thirty-two (32) and Thirty-three (33) in Township Ten (10) South, Range One (1) East S B M in said County; and

WHEREAS, the said parties own certain lands riparian to the said San Luis Rey River and certain water rights; and

WHEREAS, the party of the second part contemplates the construction of dams and reservoirs above the said point of diversion of water by the said party of the first part, and the impounding and collection of the waters of said San Luis Rey River and other streams in and by such dams and reservoirs and the diversion therefrom of such waters into other watersheds and parts of said county; and

WHEREAS, the parties hereto are desirous of adjusting and settling their rights to all such waters and their respective claims thereto and to the rights to impound and divert the same;

*Exhibit B*

NOW THEREFORE, in consideration of the premises and of the covenants and agreements hereinafter contained on the part of the party of the second part, the said party of the first part hereby consents and agrees to the construction and maintenance by the said party of the second part of dams and reservoirs across the said San Luis Rey River in said County, above the westerly line of Warner's Ranch and dams and reservoirs across Lusardi Creek above the point where the conduit hereafter to be constructed by the said party of the second part will, when constructed, cross said Lusardi Creek, and to the impounding and collecting in and by such dams and reservoirs of the waters of the said creek and of said San Luis Rey River and the affluents thereof and streams running into the same, and to the diversion from said dams and reservoirs of the waters of said San Luis Rey River and its said affluents and said other streams including said creek into other parts of said County and into other watersheds than the watershed which supplies said River and streams; and the said party of the first part hereby relinquishes unto the said party of the second part, and waives all and every right and claim to object to the construction and maintenance of said dams and reservoirs, or any of them, or the said impounding and collecting of said waters thereby and the diversion thereof as aforesaid, and also all claims for damages and all rights of action of every kind by reason or on account of or which might grow out of the construction, maintenance and operation of the said dam and reservoirs and the said impounding and collecting thereby of such waters and the diversion of the same therefrom as aforesaid.

*Exhibit B*

It is further mutually agreed between the parties hereto that the party of the second part hereby consents that the party of the first part may divert from the San Luis Rey River, at the said point where said party of the first part now takes its water from said River, all the run-off from the watershed lying between the dam or dams hereinbefore mentioned, and to be constructed by the party of the second part, and the said point of diversion from said River by the party of the first part; it being the purpose and intent of this provision that the party of the second part, as the riparian owner of lands along the San Luis Rey River, waives his right to the rainfall on the water shed between the dam or dams of the party of the second part, to be constructed as herein provided for, and the said point of diversion from said San Luis Rey River by the party of the first part; and the said party of the second part hereby relinquishes to said party of the first part, and waives all and every right and claim to object to the diversion of the run-off from said water shed lying between said dams and said point of diversion by said party of the first part, and also waives all claims for damages and all rights of action of every kind or nature by reason or on account of or which might grow out of the diversion, impounding and utilization of the waters falling upon said watershed and flowing down the natural course of the San Luis Rey River to the point of diversion hereinbefore referred to, where the party of the first part takes its water from said San Luis Rey River.

The foregoing provision is intended to and shall give the party of the first part the right to take and divert all water

flowing in the San Luis Rey River channel at its said point of diversion, whether the same be from the water shed lying between the said reservoirs of the party of the second part and the point of diversion or water escaping from said reservoirs by seepage or otherwise.

In consideration of the foregoing consent and relinquishment, the said party of the second part hereby agrees that the party of the first part is entitled to divert each and every year from said San Luis Rey River, at its said point of diversion, a minimum of 100,000 miner's inches measured under a four inch pressure, the same being 1,350,000,000 gallons per year, and that said 1,350,000,000 gallons is the amount which the said party of the first part is entitled to divert from said San Luis Rey River at its said point of diversion near the boundary line between said sections 32 and 33 in Township 10 South, Range 1 East, S B M.

It is further agreed that if the said quantity of water, to-wit, 1,350,000,000 gallons, is or can be obtained from the flow in the San Luis Rey River in any year at said point of diversion of said party of the first part, then the obligations of the said party of the second part herein contained, to supply water to said party of the first part, shall be held to be fulfilled and complied with, and he shall be under no further obligations to furnish or supply water in or during such year to said party of the first part, and he shall be relieved of all obligations for such year by reason of this agreement or anything herein contained.

It is further expressly agreed by the parties hereto

that the period through which said 1,350,000,000 gallons of water per annum may be delivered to said party of the first part or taken by it, shall be the part of each year commencing on the first day of November of each year and ending on the first day of July of the following calendar year, and that the actual measurement of water flowing into the said ditch or conduit of said party of the first part at said point of diversion shall be made and maintained by each of the parties hereto at its own expense, and each of them shall have the right, unhampered by the other, of making such measurements and keeping a record thereof and of the quantity of water at any and all times flowing into the said ditch or conduit; and that duplicate copies of all such records shall be made by each party and one of such duplicates delivered by each party to the other at least once every 30 days; but if at any time from the first day of November of any year to the first day of July of the following year prior to the first day of July 1917, there shall not exceed 200 Miner's inches of water flowing in said river, above the amount required by the Indians, then the said 200 inches or less which shall be flowing in said river shall not be included in making up the said quantity of 1,350,000,000 gallons; and if at any time after the first day of July 1917, and while this contract remains in force and effect, the amount of water which shall flow in said river between the first day of November of any year and the first day of July of the year immediately following, shall not exceed 100 miner's inches above the amount required by the Indians,

*Exhibit B*

then the said 100 inches, or less, which shall be flowing in said river shall not be included in making up the said quantity of 1,350,000,000 gallons.

It is further hereby expressly agreed by the parties hereto that the said party of the first part shall and will be ready to receive water from the said party of the second part and from the said San Luis Rey River in an amount of at least 27,000,000 gallons per day (the same being 2000 miner's inches measured under a four inch pressure per day) at all times during the rainy season, which season is understood and agreed by the parties hereto to commence on the first day of November of each calendar year and end on or about the first day of July of the first following calendar year; and that the said party of the second part may, at any time during such season supplement and increase the flow of said river by an amount of water which will bring up the total quantity which may be supplied to the said party of the first part and turned into or allowed to run into its said ditch or conduit at said point of diversion, to 27,000,000 gallons per day; and that said party of the second part may supply such amount to said party of the first part by turning or allowing to run into said river from any or all its said dams and reservoirs, such quantity of water, or by taking and carrying the same to the head of said ditch at said point of diversion by means of ditches, flumes, pipe lines or conduits which may be constructed by it.

It is further expressly agreed by the parties hereto that the inability of the said party of the first part, for any reason or cause whatsoever, to receive the said 27,000,000

*Exhibit B*



gallons of water per day in its said ditch during such rainy season, shall not prevent the party of the second part from being credited with that amount on the total quantity of water which the said party of the first part is entitled to receive during said year, to-wit; on the total quantity of 1,350,000,000 gallons at its said point of diversion if he, the said party of the second part, shall be able to deliver to said party of the first part said amount of 27,000,000 gallons per day, and the said party of the first part shall be deemed and held to have received said total quantity of said 27,000,000 gallons per day for each and every day on which the party of the second part is able and willing to deliver the same, although the said party of the first part may be unable to receive it, and that said party of the first part shall be credited with waters which may have fallen during the said rainy season, commencing November first as aforesaid, which were diverted from any of said dams or reservoirs of said party of the second part out of the said drainage basin, and the party of the second part agrees that the party of the first part shall receive at said point of diversion not less than 1,350,000,000 gallons of water each year, providing the run off equals that amount. In event of a break in the conduit of the party of the first part preventing the diversion of 2000 inches or 27,000,000 gallons daily at any time between November first of any year and April fifteenth of the following year, said party of the first part shall immediately notify the second party of that fact, and if at the time of the happening of such break and notification the said second party is supplying water from his reservoirs to make up the

*Exhibit B*

daily diversion of 27,000,000 gallons per day herein provided for, the said second party shall thereupon, during the continuance of said break, cease to deliver said deficiency and shall hold the same for future delivery to said first party until the conduit of said first part is repaired provided such repair shall be made with due diligence; provided further that if there is any deficiency in the quantity of water to be furnished to said party of the first part at the head of its ditch or conduit at said point of diversion, which deficiency may be due to the construction of any of the dams of said party of the second part, that one-fourth ( $\frac{1}{4}$ ) of such deficiency may be delivered to the party of the first part by the party of the second part from the lower portion of the system which it may hereafter construct or out of the Pamo reservoir hereafter to be built, such one-fourth ( $\frac{1}{4}$ ) of such deficiency to be delivered at the head of the pipe line leading to the city reservoir of Escondido at an elevation of not less than 888 feet, and such delivery to be made at any reasonable rate to be ascertained by the daily average use during the irrigating season; it being the understanding and agreement of the parties hereto that if, by reason of the construction and maintenance of said dam by the party of the second part, and the impounding and collecting of water thereby and his diversion of said water as aforesaid therefrom, there is any deficiency in the said total quantity of water which said party of the first part is entitled to receive per annum at its said point of diversion that one-fourth of such deficiency may be delivered

*Exhibit B*

to the said party of the first part by the said party of the second part out of the said lower portion of his system or out of the Pamo reservoir in the manner aforesaid.

It is further expressly understood and agreed by the parties hereto that the party of the second part shall not be required or held to deliver to the party of the first part in any year more water than the annual run-off of said San Luis Rey River at said point of diversion, or which could be diverted by the said party of the first part at said point of diversion by its said ditch; if the said dams proposed to be built by the said party of the second part were not constructed; and that nothing herein contained shall be taken or construed ever to entitle the said party of the first part to more water or to have delivered to it more water in any year than the actual run-off of said river at said point of diversion during such year, or more water than could be diverted by said party of the first part by its said ditch if said dams were not constructed.

It is further understood and agreed by the parties hereto that nothing herein contained shall ever be taken or construed as a waiver by either of the parties hereto of its or his right to use any water or waters which, after the diversions hereinbefore provided for, are made, may flow in said River by any lands riparian thereto or upon any lands in said Warner's Ranch, nor as a waiver by the party of the second part of any of his rights as a riparian owner by virtue of his ownership of said ranch.

It is further hereby understood and agreed by the parties hereto that the phrase "Miner's inch", as hereinbefore used, shall be always taken and construed to mean a quantity of water equal to 13,500 gallons every twenty-four hours.

"Exhibit B"

It is further agreed by the parties hereto that the terms and provisions of this agreement shall inure to the benefit of and apply to and bind the successors and assigns of the party of the first part and the heirs and assigns of the party of the second part.

IN WITNESS WHEREOF, the said party of the first part has caused this agreement to be executed in its corporate name and under its corporate seal, by its President and Secretary, and the party of the second part has hereunto set his hand the day and year first above written.

Escondido Mutual Water Co.

Attest:

By Albert Beven, Pres.

Hy N. Carpenter, Secty.

Wm. G. Henshaw

Exhibit B

REFER IN REPLY TO THE FOLLOWING:

## DEPARTMENT OF THE INTERIOR

37417-18

OFFICE OF INDIAN AFFAIRS

WASHINGTON OCT 11 1918

Mr. Ed Fletcher,

920 Eighth Street,

San Diego, California.

My dear Mr. Fletcher:

Further consideration has been given to the proposed contract covering the contemplated construction of the reservoir or reservoirs at "Warner's Ranch" on the upper reaches of the San Luis Rey River, California, and the possible effect of such reservoirs on the prior rights of the Indians of the Pala and Rincon Reservations in and to the waters of that stream.

The form of contract handed you informally while in this City was tentative only, was not intended for execution, but was designed to form the basis of a more perfected instrument upon which all parties interested could agree and which could be submitted to the Secretary for approval as to form before final execution. The matter is one of vital importance to the Indians of the Rincon Reservation, and possibly also those at Pala, although the drainage area between "Warner's Ranch" and the Pala Reservation is so great that the construction of the proposed dam may not diminish the flow of the San Luis Rey River at the latter point.

Again, the Escondido Mutual Water Company has acquired certain rights in and to the waters of the San Luis Rey River, over and above the needs of the Indians, and the rights of both the Indians and the Company referred to have been defined in an agreement dated February 2, 1914, which was approved by the Department on March 21, 1914. The construction of the proposed dam at "Warner's Ranch" will undoubtedly affect the rights of the Indians at Rincon as well as those of the Escondido people and while you have previously furnished us with a copy of the contract between William G. Henshaw and the Escondido Mutual Water Company covering the construction of the proposed dam at "Warner's Ranch" yet,

by supplemental agreement, we would not desire to jeopardize the rights of the Escondido people under the existing contract without their consent. It was contemplated, therefore, that whatever form of contract is finally agreed upon would be submitted to the Escondido Mutual Water Company for consideration before execution and that the completed contract, prior to submission to the Department, would carry the written consent of that Company thereto.

In the enclosed form of contract, therefore, reference is had to the prior contracts with the Escondido people. Please examine the enclosed form carefully and submit any suggestions in connection therewith you may desire to offer. Do not proceed with the execution of the enclosed form, however, until advised so to do, as further investigation and consideration may show the necessity of making other changes therein, particularly as to form. Should you desire additional information regarding measurements, engineering details, etc., it is suggested that you take the matter up with Mr. Herbert V. Clotts, our Supervising Engineer at 528 Federal Building, Los Angeles, California. Mr. Clotts has been furnished with a copy of this letter and the proposed form of contract, with the request that he bring it to the attention of the Escondido Mutual Water Company for an expression of their views hereon.

Sincerely yours,



Commissioner.

Two copies with  
enclosures to Super-  
vising Engineer Clotts.

San Diego, California.  
January 7th, 1913

Honorable Cato Sells,  
Commissioner of Indian Affairs,  
Washington, D. C.

My dear Mr. Sells:

I am more than pleased to have your letter of December 28th and to know that you are taking a personal interest in this matter, particularly as you remember my taking you to Warner's dam site and showing you the physical conditions.

I will answer your questions in rotation:

No. 1. We do not object to reference to prior contract between the Government and the Escondido Mutual Water Company, if you are referring to the original contract, made with the Irrigation District over thirty years ago. Any rights they have acquired from that original contract are fully protected..

We wish to call your attention to an agreement made between William G. Henshaw and the Escondido Mutual Water Company on the 31st day of June, 1912, which was recorded, and which gave to William G. Henshaw the right to build said dam. It is that contract we want the Escondido Mutual Water Company to live up to. Please take note that the new contract between your Department and the Escondido Mutual Water Company was not made until the 2nd day of February, 1914, a year and eight months after their contract was made with William G. Henshaw. We believe that the contract made on the 2nd day of February, 1914, between the Government and the Escondido Mutual Water Company vitally affects us, and that the present attitude of your Department in asking us to sign a contract one provision of which forces us to first get the consent of the Escondido Mutual Water Company, is in reality forcing us to approve the new contract between the Government and the Escondido Mutual Water Co., made February 2nd, 1914, and modifies in a vital manner the contract of June 31st, 1912, between the Escondido Mutual Water Company and William G. Henshaw.

Enclosed find copy of letter from Supervising Engineer H. V. Clotte, which is fully explanatory. We have no objection to your including any reference to the original contract made with the Escondido Irrigation District for we

Hon. C. S. No. 2.

have protected ourselves by the contract with the Escondido Mutual Water Company, successors to the Irrigation District. What we do object to is having our contract with the Escondido Mutual Water Company changed in any way. We feel that we have just as much right to ask of the Government, "Why did you sign this contract with the Escondido Mutual Water Company under date of February 2nd, 1914, without including therein a clause to the effect that our approval must be obtained first." As the Escondido Mutual Water Company had at that time entered into a contract with Mr. Henshaw.

The contract that the Escondido Mutual Water Company made with you was none of our business, and we feel that having entered into this contract of June 31st, 1912 with the Escondido Mutual Water Company, they should not insist upon our making any modification of that contract; using the Government as a club to force any change in our contract of 1912.

We are not in any way objecting to what the Government asks in their contract in order to protect the water supply of the Indians. All we ask is that the clause asking that we first have the consent of the Escondido Mutual Water Company be eliminated.

Referring to article No. 3: Mr. Clotte and ourselves are fully agreed in regard to this portion of the contract.

Regarding section No. 3, will say that we recognize that you have every right to safeguard the Government so as to prevent any transfer to irresponsible parties. Your suggestion that a clause be inserted to the effect that the consent of the Bonding Company first be secured before the Government agrees to any assignment of this contract is certainly fair.

Section No. 4. The amount of bond, \$35,000. we consider excessive under all the circumstances. You only asked us for \$5,000. bond on the El Capitan Indian Reservation agreement, and we hoped you would make this bond not more than \$10,000. or \$15,000. However, that is not of great importance.

Mr. Henshaw has very large investments in San Diego County. He has already put between two and three million dollars into this project, and it does seem a pity that

[Mc CURR & SELLIS]

CS No. 3.

January 9th., 1919.

there should be such delay in getting this matter settled. We have been nearly two years trying to get together on this contract, and I would consider it a personal favor, Mr. Commissioner, if you would follow the matter up and let us have a decision at an early date.

Copies of this letter have been sent to Hon. Wm. R. Wheeler and to Supervising Engineer Clotts.

Please remember we are perfectly willing to agree to all the Government's demands as provided in the contract, in the matter of delivery of water, but we do object to being compelled to ask the consent of the Escondido Mutual Water Company.

I hope I have made our position clear, and that it will meet your approval.

Yours very truly,

EF/ba  
cc WRW  
HVC

Copy of HVC Clott's letter  
and EF Reply sent to Cato Sells with original of this letter

Honorable Cato Sells,  
Commissioner of Indian Affairs,  
Washington, D. C.

Subject: Capitan Grande Indian Reservation - Application James A. Murray and Ed Fletcher for Reservoir Site. (Los Angeles 013283 - 7/5/11).

Dear Sir:-

During the past year and one-half, the writer has been giving an unusual amount of time to the study of the water problems of San Diego County.

Permit me now to call your attention to the application above referred to. There now exists an agreement between the La Mesa, Lemon Grove and Spring Valley Irrigation District and the owners of the Cuyamaca Water Company, which owners are the applicants above mentioned, whereby it is anticipated the irrigation district may be able to acquire the property owned by the company, conditioned, according to State laws, after complete examination and upon the approval by the State Engineer. Investigations are in progress under my direction and are sufficiently advanced to show conclusively that the early completion of such a reservoir is very greatly needed for the necessary development of the Cuyamaca System. The contemplated storage capacity is not large, but is important because the diversion

#2.

capacity of the Gayamaca System is limited by the capacity of its flume;- sudden floods passing down the San Diego River in the winter season go in the form of large waves and, except for the limited diversion capacity of the flume, pass on to the ocean unarrested and are not utilized.

The construction of the proposed reservoir would afford sufficient capacity for arresting the larger portion of these flood waves long enough to divert them, one after another, through the company's flume to its storage reservoirs located at the end of its flume, particularly to Murray Reservoir, a new structure, built at considerable cost and adding substantially to the much needed storage capacity. The rights of La Mesa, Lemon Grove and Spring Valley Irrigation District, in the event of its purchase of the system, will be fully protected, as the valuation of the system is fixed by this Department. I, therefore, make free to request that, unless the interests of your Department may be jeopardised by so doing, you assist in promoting the greatly needed development of further water conservation in this region by giving the application your approval.

Yours very truly,

-State Engineer-

WFM/EB  
CC-Fletcher

San Diego, Calif.  
January 16, 1919

Hon. Cato Sells,  
Commissioner of Indian Affairs,  
Washington, D. C.

My dear Mr. Sells:

On re-reading my letter to you of January 7th, in relation to the Rincon-Pala Indian Reservation contract to build Warner's Dam, it would seem that I have not, perhaps, made myself clear.

Referring to Article 3, will say that Mr. Clotts and ourselves are fully agreed as to this portion of the contract, but I should like to have you, Mr. Sells, see the injustice of the original contract.

Your letter might be taken to assume that none of us understands that the intake referred to is that of the Escondido Mutual Water Company Canal. The point is that the contract as originally drawn requires the Volcan Land & Water Company to deliver water at this intake, "An amount of water sufficient to supply the Indians - with the quantity of water called for in the outstanding contract - as set forth in Exhibit A."

You will thus readily see that the Volcan Land and Water Company will be required to deliver water at the intake of the Escondido ditch but in such quantity as to make a certain amount come out at the lower end. Obviously, if the Escondido ditch is inefficient and leaky it will require a great deal of water at the intake in order to fulfill this requirement. For instance, if it is required to deliver six second feet at the Indian Reservation and the losses in the Escondido ditch average 60%, it would thus be necessary to deliver at the Escondido intake not six second feet, but fifteen second feet in order to fulfill the contract.

My understanding is that Mr. Clotts has agreed to a modification of the contract in this respect, and I hope it meets your approval. With kind personal regards,

Very sincerely yours,

EF/bm  
cc WLH  
uber:

For your information. Also find enclosed copy of H. V. Clotts, under date of Jan. 9th. How shall I answer it?

102780-18 DEPARTMENT OF THE INTERIOR  
OFFICE OF INDIAN AFFAIRS

WASHINGTON

FEB -5 1919

Mr. Ed Fletcher,

920 Eighth Street,

San Diego, California.

My dear Mr. Fletcher:

I am in receipt of your letters of January 7 and 16, 1919, with further reference to the proposed contract covering the construction of a dam at Warner's Ranch on the upper reaches of the San Luis Rey River.

As indicated in my prior letter of December 28, 1918, it would be unfortunate if we set up in the proposed contract with you provisions which would conflict with the existing contract between the Government and the Escondido Mutual Water Company. While it may be possible to so draft the proposed contract as to avoid conflict with the provisions of the existing agreement with the Escondido people, or with the contract previously executed between you and the Escondido Mutual Water Company, yet, in order to avoid future misunderstanding and possible conflict, it might be advisable to seriously consider the formulation of but one contract to govern the entire subject matter. In this contract the three parties interested could join. This would eliminate a multiplicity of agreements and should remove any question of conflict.

In his letter of November 30, 1918, Supervising Engineer Clotts intimated that the Escondido Mutual Water Company object to certain provisions in the proposed contract with you and, as previously suggested, in negotiating the proposed contract with you, it is desirable, at least, to have the concurrence of the Escondido people therein.

In your letter of January 24, 1919 to Mr. Wheeler, the following appears:

"You might inform the interested parties in Washington that the State Engineer of Cal-

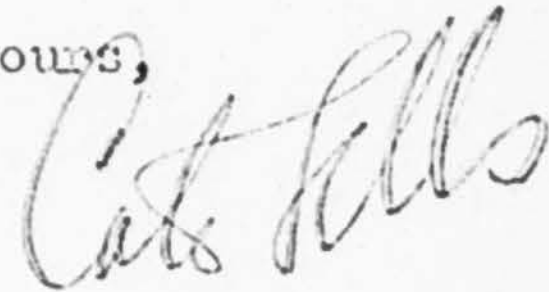
ifornia has made a report on the proposed San Luis Rey Irrigation District, which includes the purchase of Warners Dam; the water to be put between Oceanside and Escondido on 45,000 acres of land. The State authorities have rendered an opinion that the building of Warners Dam will not affect the water supply of Escondido Mutual Water Company or the Indian Reservation. If you desire to get this officially, please have them write to the State Engineer, W. F. McClure, Sacramento, California, and this statement will be confirmed."

If the opinion of the State authorities, indicated in the foregoing, is correct, then there is no need of any contract between you and the Government covering construction of the proposed dam at Warner's Ranch, at least, in so far as it affects the Indians of the Rincon Reservation. I have taken the matter up with the State Engineer in order to ascertain the facts on which this opinion is based. It may be suggested at this time, however, that, should this opinion subsequently prove erroneous, the results would be unfortunate to the Rincon Indians. The proposed contract with you is simply to avoid any such contingency. The only thing we ask is that the stream flow at the Rincon Reservation, as defined in the existing agreement between the Government and the Escondido Mutual Water Company be maintained, and that the underground water plane at Rincon shall not be allowed to fall below a given level.

I have no desire to inject unnecessary hardships into the proposed contract, as, undoubtedly, the building of a large storage reservoir at Warner's Ranch will materially aid in preventing destruction and damage from flood waters to property below, including that of the Indians. I would be glad to have you consider the advisability of substituting one contract, so as to avoid three possibly conflicting agreements covering the same subject matter. You may also find it to your

future advantage to have but one clean-cut instrument, about the terms of which there could be no misunderstanding.

Sincerely yours,



Commissioner.

Copy to  
Supervising Engineer Clotts.

[COSGROVE vs SELLS

T. B. COSGROVE, CITY ATTORNEY  
MILTON W. THORP, DEPUTY  
S. J. HIGGINS, DEPUTY  
C. O. BELLECK, PROSECUTOR

OFFICE OF  
CITY ATTORNEY  
CITY HALL

99348-1907.

MAR 1919 CALIFORNIA February 6, 1919.

Honorable Cato Sells,

Commissioner of Indian Affairs,

Department of the Interior,

Washington, D. C.

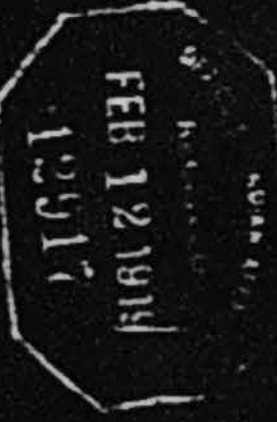
My dear Mr. Sells:

Your esteemed favor of the 24th ult., with attached maps, in the matter of the application of Messrs. Murray & Fletcher for easement for reservoir on Conejos Creek, and right of way for canal across the Capitan Grande Indian Reservation, California, is received, and the contents thereof carefully noted. The following I quote from the communication of Mr. Fletcher, the same being taken from your esteemed favor of the 21th:

"The damsite itself is over a mile away from and at a higher elevation than the area that might be flooded if the El Capitan dam was ever built by the City to 150 feet in height, as proposed."

Attached hereto I am handing you report made to me by W. C. Earle, Esq., Consulting Engineer for this municipality, who has handled the engineering and hydraulic questions involved in the City's application for reservoir easement at the El Capitan damsite. You will note under heading "Second" in the report of Mr. Earle, the following comment:

"These maps do not contain sufficient information to determine whether or not the surveyed line will encroach upon any land that may be flooded providing a 150 foot dam is constructed at El Capitan damsite. Elevations or a profile of the surveyed line should be furnished together with elevation of the flood line of the reservoir at El Capitan with a 150 foot dam, this with particular reference to Sections 3, 9 and 10, Twp. 15 S., R. 2 E., San Bernardino Meridian."



R-100  
1417-11

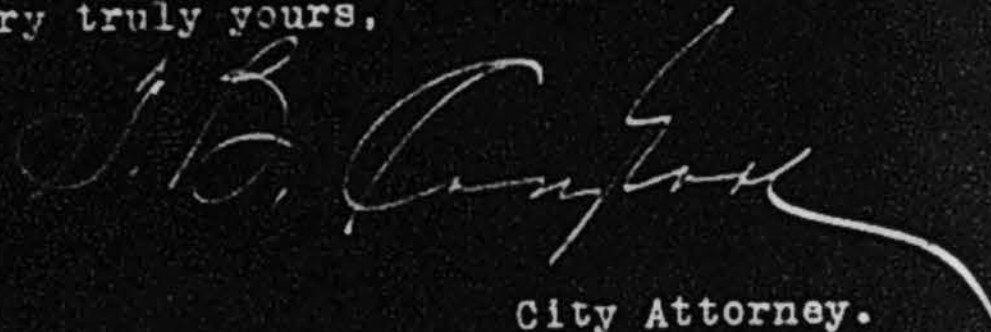


--2.

This information the applicants unquestionably have, otherwise they would be unable to make the statement hereinbefore referred to. We respectfully request that we be furnished with this data, in order that we may verify the statement made by the applicants.

With sincere feelings of esteem, I am,

Very truly yours,



City Attorney.

TBC/S

February 17, 1919.

Honorable Gato Sells,  
Commissioner of Indian Affairs,  
Washington, D. C.

My dear Mr. Sells:-

I acknowledge receipt of your kind letter of February 5th, and I assume from your letter that you have written the state engineer, W. F. McClure, on this question.

In writing to you under date of January 24, 1919, I had as my authority the published report of the state authorities that there was such a large watershed right below the Warner's dam and above the Escondido intake, also above the Rincon and Palo reservations, that there was no question as to a sufficient supply of water for the Indians. And in addition to that the Escondido people are protected by a contract with us.

The state engineer was asked to assist in the formation of an irrigation district of 45,000 acres between Escondido and Occansido, the water to come from Warner's Dam. An investigation lasting nine months was made by the state authorities, costing nearly \$16,000, covering the question of water supply and cost of construction, and in this final report to the people included in the San Luis Rey irrigation district mentioned above, the state engineer made the report that the construction of Warner's Dam would not affect the water supply of the Escondido people owing to the large watershed above the Escondido intake and below Warner's Dam, and our Warner's water supply was not penalized by the state engineer in any way owing to the existing contract between the Escondido Mutual Water Company and ourselves. Therefore if you get a direct statement from the state engineer to this effect, I sincerely trust that we may receive a letter from you allowing us to proceed with the construction of Warner's Dam without the necessity of any further contract.

May I please hear from you on receipt of your reply from the state engineer?

With kind personal regards,

Very sincerely yours,

F-mk

[McClure to Sells]

STATE OF CALIFORNIA

DEPARTMENT OF ENGINEERING

SACRAMENTO

February 18th, 1919.

COPY

Honorable Cato Sells,  
Commissioner Indian Affairs,  
Washington, D. C.

Subject: San Luis Rey River-Warners Ranch- Proposed Dam.

My dear Mr. Sells:-

Responding to yours of February 5th, referring especially to priorities of water users on the San Luis Rey River, San Diego County, California.

This Department has, within the last year and a half, caused exhaustive investigations of this stream to be made. During the period of investigation, I made several trips over the ground and thus afforded myself the opportunity and advantage of first hand impression, as well as securing the benefit of painstaking investigations made by a competent engineer.

These investigations were made at the request of a special committee, looking toward the use of the San Luis Rey waters for a proposed irrigation district to be composed of some 43,000 acres, more or less, situate between Oceanside and Escondido. The area proposed to be incorporated in the district will be, as you no doubt know, - with proper irrigation, one of the finest in Southern California.

Should such a district be formed it would be necessary that it be irrigated, and for this purpose it would be necessary that a dam be built to impound reserve water, in Warner Valley, - and in this connection, - it would be necessary for the district to control certain rights to the water of San Luis Rey River. The reservoir site owned and the water rights of the river are controlled, very largely, by Mr. Ed Fletcher and his associates. The organization is known as the Volcan Land and Water Company.

An agreement has been entered into between the Volcan Land and Water Company and the Escondido Mutual Water Company whereby the rights of the last named Company are fully protected after the Warners Valley Dam may have been constructed. The studies by us have taken this agreement into account, an allowance being made when necessary, and the requirements of the proposed district provided for from the remainder.

Mr. Fletcher's statement to the effect that this Department has rendered an opinion that the building of Warners dam will not affect the water supply of Escondido Mutual Water Company, is correct, because in our plans and computations we have made adequate provision for such company's rights. Our computed tables indicate

Honorable Cato Sells.

-2-

2/18/19

that during but fourteen years out of thirty would it have been necessary to release any water from such a reservoir in order to meet the Escondido Company's requirements.

I understand that the Pala Indians claim a flow of six second feet. The diversion for this water is just below the Pala guage. Above this diversion there exists a large porous gravel area, which acts as a regulating reservoir, storing a portion of the winter flood waters and yielding, during the remainder of the year, quite a constant flow, Palma Creek with its drainage of twelve square miles is a perennial stream and joins the main river above the Pala diversion. This stream and the tributary drainage below the Escondido diversion will, without question, provide the required demand of the Pala Indians. Because of this fact, no special consideration was given to this small diversion in studying a safe yield from the proposed Warner reservoir.

Your Department has a contract with the Escondido Mutual Water Company whereby said Company is obligated to supply a stipulated amount of water to the Rincon Indian Reservation. The practice has been for the Escondido Mutual Water Company to stop its diversion in the summer time and for the Indians to take the entire flow of the San Luis Rey River, which in ordinary seasons amounts to about 1 1/2 second feet.

Warner Dam, proposed, would be about nine miles above the Escondido diversion. At a point about three miles below the dam site the stream goes dry in the summer months. It is quite improbably that the water passing the Warner dam site during the summer season is the same water as that diverted by the Indians during the summer season. This summer flow goes down stream and has a long flow and would probably not reach the point of diversion in less than two and a half or three months. Several perennial streams flowing from Palomar Mountain sustain the flow of the San Luis Rey River in the vicinity of the Escondido diversion point. We do not believe it will be necessary to release any water from the proposed reservoir in order to provide for the needs of the Rincon Indian Reservation.

You will note, therefore, that I do not entirely agree with the inference that the construction of Warner dam may have no effect upon the existing stream flow of the San Luis Rey River where it passes through the Rincon Indian Reservation. The construction of such dam certainly will have some effect upon the stream flow at this point, but not to the detriment of the present users, and in one emphatic way such construction would be beneficial, - namely, - that of prevention of damage from floods. My studied opinion is, however, that more than sufficient water to meet the requirements or rights of the Indians will be available after such dam may have been constructed.

Because of the need of the application of water to good land, I trust that some arrangement may be made whereby such applications

Honorable Cato Sells.

-3-

2/18/19

may be made without undue delay and without detriment to any vested interest, and - emphatically, - I would be one of the last to approve any plan which might in any way endanger the rights now held by the Indians.

Very sincerely yours,

(Signed) W. F. MCCLURE,  
STATE ENGINEER.

WFM:EMA

April 1, 1919.

Honorable Cato Sells,  
Commissioner of Indian Affairs,  
Washington, D. C.

My dear Mr. Sells:-

I am sorry to annoy you by writing again but for three years now we have been trying to get together on the question of the Rincon and Pala reservations and my permit to build Warners Dam. My understanding from you was that if the State Engineer's office determined that the construction of Warners Dam would not affect your water supply for the Rincon reservation that you would stand on your contract with the Esccondido Mutual Water Co., knowing that we had already made a contract to protect the water supply of the Esccondido Mutual Water Company. I am anxiously awaiting a letter from you to that effect as we do not propose to develop the work any further until we are in hearty co-operation with your Department, and hope at an early date to receive a letter from you along the lines above mentioned.

Anything that you can do to expedite this matter will be appreciated.

Very sincerely yours,

EF-k

[EF 4 McClure]

COPY

DEPARTMENT OF THE INTERIOR  
OFFICE OF INDIAN AFFAIRS

San Diego, California,  
June 5th, 1919

112592-15

Washington, May 2, 1919

Mr. W. F. McClure,  
State Engineer,  
Sacramento, California.

Mr. R. C. Fletcher,  
920 Fifth St.,  
San Diego, California.

Dear Sir:-

My dear Mr. Fletcher:

I acknowledge receipt of the report of  
W. L. Huber, giving valuation of the Cuyamaca Water  
Company in case of sale to the La Mesa, Lemon Grove  
and Spring Valley Irrigation District. It is the  
most comprehensive and intelligent report I have  
ever read. I wish, however, before you make your  
final determination as to value that you consider  
a petition for the following changes in valuation:

I have your letter in further reference  
to the construction of Warner's dam, wherein you  
say that it was your understanding that, if the  
State Engineer's office determined that the construction  
of Warner's dam would not affect the water supply for  
the Rincon Reservation, I would stand on the existing  
contract with the Escondido Mutual Water Co.

Cuyamaca Reservoir	Acres	Huber Val.
	1074	\$107,400
		Fletcher Val.
		\$161,100

Chief Engineer Reed is in Los Angeles at the  
present time and expects, before his return to Washing-  
ton, to make some further investigation of the Warner's  
dam project. In order that you might get in touch  
with him, I have wired you today as follows:

I ask this change for the following  
reasons:

"Chief Engineer Reed now in Los Angeles,  
Five twenty-eight Federal Building. Suggest  
you get in touch with him concerning Warner  
dam matter. Have wired him accordingly."

Decision No. 536 of the Railroad Commis-  
sion of California, valuation by Hon. Jack Mahlonan  
gives a valuation of \$144,000. on 1675 acres of  
land owned by the Company at that time, including  
Cuyamaca Lake and other land adjoining. There are  
1074 acres of land within the reservoir site, leav-  
ing 601 acres located outside the reservoir site  
down the canyon and to the summit of the middle  
Cuyamaca peak.

Sincerely yours,

(Signed) Cato Sells.

Cato Sells  
Commissioner.

Three or four witnesses testified that the  
land outside the reservoir site was not worth to  
exceed \$15,000. This leaves a value placed on the  
Cuyamaca reservoir lands of \$129,000. as determined  
by the State Railroad Commission.

At the time that valuation was made it was  
almost a physical impossibility to get an automobile  
to Cuyamaca Lake. Since that time \$1,250,000 have  
been spent in building roads into San Diego's back  
country, including the one to Cuyamaca Lake. So that

now these lands are easily accessible. In addition, the State Highway, a paved road, is being constructed via Descanso within ten or eleven miles of the southerly boundary of this property, while the County highway Commission will, in all probability, recommend a paved highway from Descanso to Julian to be included in the proposed bond issue of \$8,500,000.

Certainly, these lands have not depreciated in value since Mr. Schlenker made this valuation. There have been a large number of sales made of Pine Hills property, and there is great demand for our back country property.

Then again, Mr. Huber has placed the value of the Warner Reservoir lands at \$150 per acre. I see no reason why the reservoir lands of Guzman Lake should not stand the same valuation. There is surely an added value to be given the reservoir lands owing to their location as compared to agricultural, grazing or waste lands, and I respectfully petition that our prayer be granted and that the Guzman Reservoir lands be given an increased valuation by you of \$50. per acre.

I am objecting, also, to this valuation on account of the fact that it will be used against us either at the coming hearing before the State Railroad Commission, or in case of litigation in court. The tendency will be to make a lower rate per acre than would be the case if Mr. Huber had accepted the State Railroad Commission valuation.

Murray Reservoir: I object to the valuation of \$300. per acre for the following reasons:

The State Railroad Commission, in Decision 596, gave us a valuation of \$250. per acre, while Mr. Huber has only given us a valuation of \$200. and on the floodage rights he has only given us a value of \$85. per acre. Surely property has not depreciated in value: all California has gradually increased in value since 1913. I consider perpetual floodage rights of more value than outright deeds, for they do not necessitate the payment of any taxes, while outright ownership does. Yet, having perpetual floodage rights, we get all the advantages without any of the expense. Sometime the land adjoining Murray

Reservoir may be valued at \$1,000. an acre. Taxes will be extremely high, for this will certainly influence the Assessor to make a higher valuation of the Reservoir lands. I cannot too strongly urge that we get increased value on Murray Reservoir lands as follows:

119.71 acres @ \$250. per acre . . .	\$29,927.50
120 " " @ \$250. " " . . .	30,000.00
	<u>\$59,927.50</u>

Eucalyptus Reservoir: I cannot reconcile Mr. Huber's valuation of the above lands with the rest of his report. Eucalyptus Reservoir is within 200 yards of the State Highway, yet he only gives a valuation of \$150. per acre. The adjoining lands, to my certain knowledge, are worth from \$400. to \$600. per acre. I call your particular attention to the fact that we had to condemn two acres of Eucalyptus lands, for which we are given a valuation of \$600. per acre, the judgment of the court. I urge that the 4.71 acres of Eucalyptus reservoir lands be increased and made \$400. per acre, or a total of \$1884.

It is customary to give some value to County franchise where a public utility has been in existence for over thirty years, as in our case. It is not our fault that owing to personal prejudice on the part of Mr. Max Tholan, or for punishment for sins of omission or commission we have had rates established by Mr. Tholan which do not pay operating expenses on our system. The fact is that we are today collecting a rate hardly one half the average cost per acre, per annum, for water under the different irrigating systems in Southern California. I urge that you give us a reasonable valuation for our franchise, as well as a valuation for a going concern, both of which have been eliminated in making up the valuation of our system by Mr. Huber.

The going concern valuation is included in all valuations made by the State Railroad Commission of California, including Decision 536, in the Guzman Water Company's case.

I wish to call your attention to the fact that the Murray Dam contractors are bringing suit against the

-4-  
WMLC

Guyana Water Company for \$48,000. The litigation alone is costing us several thousand dollars and there will unquestionably be a judgment secured against us in excess of \$15,000 or \$20,000.

In determining the value of Murray Dam, Mr. Huber has given us no allowance for overhead, and only actual cost as of date January 1st, 1919. In all earnestness, I urge that an increased valuation of at least \$20,000. be allowed for Murray Dam.

In closing I wish to repeat that I consider this report the most remarkable I have ever read, and the objections I have made I feel warrant your attention but are made without any intention to question the sincerity of Mr. Huber or to criticize his work. In making out this report there were thousands of minor details to be considered, and there is no man but gets off on the wrong track at times. I have the highest respect for Mr. Huber's opinion and ask the same courtesy in return.

My case is closed and I await your final verdict, whatever it may be, with the knowledge that both you and Mr. Huber have given the best that is in you for a square deal to all parties in interest.

May I ask that you write us at an early date giving your final determination as to the valuation of the Guyana system.

Respectfully submitted,

CUYALACA WATER COMPANY,

By

Manager.

RP/dm  
JAM  
cc WCH  
CH

**Ed Fletcher Papers**

**1870-1955**

**MSS.81**

**Box: 24 Folder: 34**

**General Correspondence - Sells, Cato**



**The Library**  
UC SAN DIEGO

**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.