

WALTER LEROY HUBER
Civil Engineer

Jan. 15, 1916.

Hon. J. A. Elston,
House of Representatives,
Washington, D. C.

Dear Mr. Elston:

I wish to direct your attention to a bill which has been, or will be, introduced in the House of Representatives, to grant to the City of San Diego, by special legislation the El Capitan Reservoir site on the San Diego River. I am enclosing herewith a clipping from the "San Diego Tribune" of December 28, 1915, pertaining to this measure.

The reservoir site under consideration is now the subject of a bitter controversy before the U. S. Land Office. Two hearings have been held at the Local Land Office at Los Angeles; one lasting from Dec. 20-23, incl., and one from Jan. 4-7, incl. A third session is to begin on February 9.

The acquisition of this site by the City of San Diego is, in my opinion, an indirect move and is intended to cloud the title of the Cuyamaca Water Company's system. The La Mesa Lemon Grove and Spring Valley Irrigation District has a contract with the Cuyamaca Water Company, to buy the latter Company's system, at a valuation fixed by the State Railroad Commission of California. This valuation has been fixed by the Commission after an exhaustive investigation by Commissioner Thelen as \$745,000.00. The City of San Diego is interested in acquiring the same system and, should the above mentioned reservoir site be granted to the City, it would thereby place a flaw in the title of the Water Company, which would seriously interfere with the sale of its system to the La Mesa District. The Water Company has offered to sell water to the City of San Diego at a price of 10¢ per 1000 gal. or at a price to be fixed by the State Railroad Commission. Testimony at the Land Office hearings already held, has shown conclusively that the system which the city has proposed - by utilizing this El Capitan site - would be one by which it would not be possible to deliver water to the City of San Diego at a cheaper rate than that offered by the Cuyamaca Water Company. The City has also had, and still has, an opportunity to purchase the Volcan system which would afford an abundant supply from the next stream to the north of the San Diego River, the San Luis Rey River.

In the Land Office hearings the City's application has been bitterly contested by the U. S. Office of Indian Affairs. In fact at the last hearing, the Assistant Engineer of the Indian Office testified that the system of the Cuyamaca Water Company, when completed, will be capable of utilizing practically all of the available water supply from the San Diego River; that it is a more feasible system, both from the standpoint of water supply and for economic reasons, than that proposed by the City and that, in addition, it does not necessitate the abandonment of the Capitan Grande Indian Reservation. Since the application by the City of San Diego does

necessitate the abandonment of the Capitan Grande Indian Reservation, he stated that the Government should, in his opinion, not consider the city's application.

I wish to explain that I am a consulting engineer for the Cuyamaca Water Company and, hence, might be charged with being partisan. However, I wish to ask that when this bill is under consideration, you take steps to learn the real facts from an unbiased source, as you no doubt can through the office of Indian Affairs, or at least through some branch of the Interior Department, since that Department also is entrusted with the supervision of the Land Office. I would also be glad if you would ask Mr. Kent who is, I believe, a member of the Committee on Public Lands, through which Committee such bills must pass, to learn the real facts.

I personally, think that Special Legislation, contrary to the findings by the executive departments of the Government which have made careful investigations of all pertinent facts, is in most cases vicious. Necessarily such measures are rushed through without complete investigations.

Very truly,

W. L. Huber.

WLH/OH

1407 Euclid Avenue,
Berkeley, Calif.

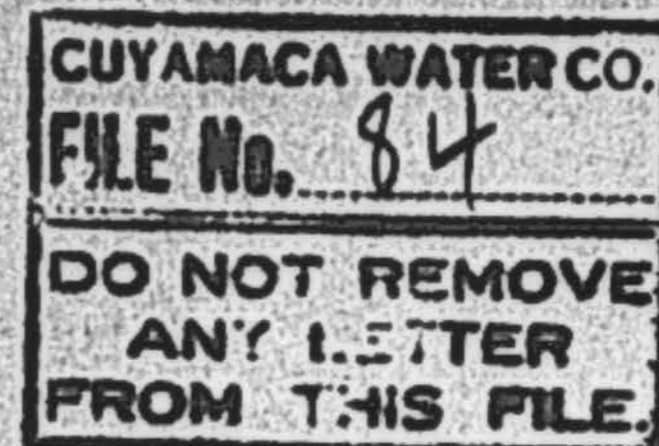
Copy-MMS
Original to O. R. W. Robinson,
406 International Bank Bldg.,
Los Angeles, Calif.

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Feb. 29, 1916.

Hon. J. A. Elston,
c/o Hall of Congress,
Washington, D. C.

My dear Mr. Elston:



I thank you for your kind letter of the 24th, and hope to meet you personally later on. It is my intention the last of the month or the first of April to be in Washington on some other matters, and shall make it a point to see you.

All we want is a chance to present our case to the Public Lands Committee, if there is any danger of action being taken.

Mr. Kettner is in an embarrassing position. I sincerely hope that you will keep in touch with the Public Lands Committee, and let me know if there is any possibility of any action whatsoever being taken, so that we may have a chance to present our side of the case to the Public Lands Committee before any action is taken. I will consider this a personal favor.

The whole thing is a game of politics. The City of San Diego has no money with which to build this reservoir if they wanted to, and, adding insult to injury, they have brought a suit to condemn all of our property, but we can't get it to trial. Their sole object is to block the sale of our system to the La Mesa Irrigation District.

CUYAMACA WATER CO.
 FILE NO. _____
 DO NOT REMOVE
 FROM THIS FILE.

Thanking you for your kind interest in this matter, and
 hoping sometime to be able to return the favor; believe me,

Very sincerely yours,

Manager.

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WALTER LEROY HUBER
CIVIL ENGINEER

[HUBER to
Congressman
ELSTON

April 2, 1916.

Hon. J. A. Elston,
House of Representatives,
Washington, D.C.

Dear Mr. Elston:-

My exchange of telegrams with you yesterday was prompted by an article in a San Diego paper of March 29th which stated that Congressman Kettner had asked that the City Council of San Diego send a representative to Washington to urge favorable action by the Public Lands Committee on his bill. Mr. Fletcher was worried by such report because he had not received an invitation to be present and to present the adverse arguments for his Company at such hearing. From other developments he was of the opinion that the bill was being railroaded through without proper hearing.

Your telegram was reassuring to me, and no doubt has been to him. From previous correspondence with you on this subject, I infer that the calendar of the Public Lands Committee is so filled that it will be a long time before this bill can possibly be considered and that it would not be at all surprising if it does not receive consideration at this Session - unless it be made special. To prevent action without full consideration of all arguments, I would be glad if you would have a request filed with the Public Lands Committee to notify Mr. Ed. Fletcher, Manager of Cuyamaca Water Company, San Diego, California, long enough before any action on H. R. 11540 to allow him to reach Washington and present to the Committee his arguments against favorable action. I am also

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writing to Mr. Fletcher and asking that he personally file such a request with the Chairman of the Committee whom I understand is the Hon. Scott Ferriss.

I wish to thank you for the prompt consideration which you have given my various communications. I certainly appreciate your kindness.

Very sincerely,

W. L. Huber

WLH/EW

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Copy to U.S. Post.

April 14, 1916.

Hon. J. A. Elston,
House of Representatives,
Washington, D.C.

Dear Mr. Elston:

Since my letter of April 3 to you was written, information has been gathered which will have a very important effect upon any legislation, such as H. R. 11540., to grant to the City of San Diego a reservoir within the Capitan Grande Indian Reservation.

The Capitan Grande Indian Reservation was created by Act of Congress, approved Jan. 12, 1891 (26 Stat. 712), a copy of which is enclosed for your reference. In accordance with Section 3 of this Act, all of the lands, excepting an area of less than 10 acres, were in March 1894 included in a tribal patent to the Capitan Grande Band of Indians. In accordance with the above mentioned Section of this Act, these lands are now held in trust for the Indians by the U.S. "for the sole use and benefit of the Band". Further, in accordance with this Act, it appears that the Department of the Interior (which is charged with the administration of the Reservation) is without power to dispose of these lands, which it is simply holding in trust. After carefully studying the Act, I am very doubtful whether Congress itself has power to dispose of patented lands. Since the title has not passed from the United States, the State laws of eminent domain are not applicable.

At the very end of the Act a method is presented for acquiring rights of way over patented lands, by contract with the tribe, subject to the approval of the Secretary of the Interior.

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Even by this clause, in view of the wording of Section 3, I do not believe that the Secretary is authorized to approve such grant as it is incompatible with the purposes for which the Reservation was created. In the recent hearing before the U.S. Land Office, all of the officials of the Office of Indian Affairs who testified, agreed that if the Reservoir proposed by the City of San Diego should be built, the Reservation must be abandoned.

I will be very glad if you will have this additional information called to the attention of the Committee on Public Lands, when the measure is under consideration by that Committee.

Very Sincerely,

WLH:OH

W. L. Huber

Jan. 12, 1891 - 26 Stat. 712.

CHAP. 65. - An act for the relief of the Mission Indians in the State of California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That immediately after the passage of this act the Secretary of the Interior shall appoint three disinterested persons as commissioners to arrange a just and satisfactory settlement of the Mission Indians residing in the State of California, upon reservations which shall be secured to them as hereinafter provided.

SEC. 2. That it shall be the duty of said commissioners to select a reservation for each band or village of the Mission Indians residing within said State, which reservation shall include, as far as practicable, the lands and villages which have been in the actual occupation and possession of said Indians, and which shall be sufficient in extent to meet their just requirements, which selection shall be valid when approved by the President and Secretary of the Interior. They shall also appraise the value of the improvements belonging to any person to whom valid existing rights have attached under the public-land laws of the United States, or to the assignee of such person, where such improvements are situated within the limits of any reservation selected and defined by said commissioners subject in each case to the approval of the Secretary of the Interior. In cases where the Indians are in occupation of lands within the limits of confirmed private grants, the commissioners shall determine and define the boundaries of such lands, and shall ascertain whether there are vacant public lands in the vicinity to which they may be removed. And the said commission is hereby authorized to employ a

competent surveyor and the necessary assistants.

SEC. 3. That the commissioners, upon the completion of their duties, shall report the result to the Secretary of the Interior, who, if no valid objection exists, shall cause a patent to issue for each of the reservations selected by the commission and approved by him in favor of each band or village of Indians occupying any such reservation, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus patented, subject to the provisions of section four of this act, for the period of twenty-five years, in trust, for the sole use and benefit of the band or village to which it is issued, and that at the expiration of said period the United States will convey the same or the remaining portion not previously patented in severalty by patent to said band or village, discharged of said trust, and free of all charge or incumbrance whatsoever: PROVIDED, That no patent shall embrace any tract or tracts to which existing valid rights have attached in favor of any person under any of the United States laws providing for the disposition of the public domain, unless such person shall acquiesce in and accept the appraisal provided for in the preceding section in all respects and shall thereafter upon demand and payment of said appraised value, execute a release of all title and claim thereto; and a separate patent in similar form, may be issued for any such tract or tracts, at any time thereafter. Any such person shall be permitted to exercise the same right to take land under the public-land laws of the United States as though he had not made settlement on the lands embraced in said reservation; and a separate patent in similar form, may be issued for any tract or tracts at any time after the appraised value of the improvements thereon shall have been paid: AND PROVIDED FURTHER, That in case any land shall be

selected under this act to which any railroad company is or shall hereafter be entitled to receive a patent, such railroad company shall, upon releasing all claim and title thereto, and on the approval of the President and Secretary of the Interior, be allowed to select an equal quantity of other land of like value in lieu thereof, at such place as the Secretary of the Interior shall determine: AND PROVIDED FURTHER, That said patents declaring such lands to be held in trust as aforesaid shall be retained and kept in the Interior Department, and certified copies of the same shall be forwarded to and kept at the agency by the agent having charge of the Indians for whom such lands are to be held in trust, and said copies shall be open to inspection at such agency.

SEC. 4. That whenever any of the Indians residing upon any reservation patented under the provisions of this act shall, in the opinion of the Secretary of the Interior, be so advanced in civilization as to be capable of owning and managing land in severalty, the Secretary of the Interior may cause allotments to be made to such Indians, out of the land of such reservation, in quantity as follows: To each head of a family not more than six hundred and forty acres nor less than one hundred and sixty acres of pasture or grazing land, and in addition thereto not exceeding twenty acres, as he shall deem for the best interest of the allottee, of arable land in some suitable locality; to each single person over twenty-one years of age not less than eighty nor more than six hundred and forty acres of pasture or grazing land and not exceeding ten acres of such arable land.

SEC. 5. That upon the approval of the allotments provided for in the preceding section by the Secretary of the Interior he shall cause patents to issue therefor in the name of the allottees, which shall be of the legal effect and declare that the United States does not and will hold the land thus allotted for the period

of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State of California, and that at the expiration of said period the United States will convey the same by patent to the said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: PROVIDED, That these patents, when issued, shall override the patent authorized to be issued to the band or village as aforesaid, and shall separate the individual allotment from the lands held in common, which proviso shall be incorporated in each of the village patents.

SEC. 6. That in case where the lands occupied by any band or village of Indians are wholly or in part within the limits of any confirmed private grant or grants, it shall be the duty of the Attorney-General of the United States, upon request of the Secretary of the Interior, through special counsel or otherwise, to defend such Indians in the rights secured to them in the original grants from the Mexican Government, and in an act for the government and protection of Indians passed by the legislature of the State of California April twenty-second, eighteen hundred and fifty, or to bring any suit, in the name of the United States, in the Circuit Court of the United States for California, that may be found necessary to the full protection of the legal or equitable rights of any Indian or tribe of Indians in any of such lands.

SEC. 7. That each of the commissioners authorized to be appointed by the first section of this act shall be paid at the rate

of eight dollars per day for the time he is actually and necessarily employed in the discharge of his duties, and necessary traveling expenses; and for the payment of the same, and of the expense of surveying, the sum of ten thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated.

SEC. 8. That previous to the issuance of a patent for any reservation as provided in section three of this act the Secretary of the Interior may authorize any citizen of the United States, firm, or corporation to construct 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, upon condition that the Indians owning or occupying such reservation or reservations shall, at all times during such ownership or occupation, be supplied with sufficient quantity of water for irrigating and domestic purposes upon such terms as shall be prescribed in writing by the Secretary of the Interior, and upon such other terms as he may prescribe, and may grant a right of way for rail or other roads through such reservation: PROVIDED, That any individual, firm, or corporation desiring such privilege shall first give bond to the United States, in such sum as may be required by the Secretary of the Interior, with good and sufficient sureties, for the performance of such conditions and stipulations as said Secretary may require as a condition precedent to the granting of such authority: AND PROVIDED FURTHER, That this act shall not authorize the Secretary of the Interior to grant a right of way to any railroad company through any reservation for a longer distance than ten miles. And any patent issued for any reservation upon which such privilege has been granted, or for any allotment therein, shall be subject to such privilege, right of way, or easement. Subsequent to the issuance of any tribal patent, or of any individual trust

patent as provided in section five of this act, any citizen of the United States, firm, or corporation may contract with the tribe, band, or individual for whose use and benefit any lands are held in trust by the United States, for the right to construct a flume, ditch, canal, pipe, or other appliances for the conveyance of water over, across, or through such lands, which contract shall not be valid unless approved by the Secretary of the Interior under such conditions as he may see fit to impose.

Approved, January 12, 1891.

Ed Fletcher Papers

1870-1955

MSS.81

Box: 7 Folder: 4

General Correspondence - Elston, J.A.



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