



OFFICE OF  
CITY ATTORNEY  
**CITY OF SAN DIEGO**

SAN DIEGO, CALIFORNIA

May 20, 1929.

Mr. Ed Fletcher,  
San Diego, Calif.

Dear Sir:

In suit No. 60021, City of San Diego against yourself, I think, and involving title to the Northeast quarter of Pueblo Lot 1193, you will be allowed ten days additional time in which to enter appearance on the part of defendants.

Very truly yours,

*M. W. Conkling*  
City Attorney.

*10 Savoy Lane  
Lester*  
MWC/H

M. W. CONKLING,  
CITY ATTORNEY  
C. L. BYERS, ASSISTANT  
DEPUTIES  
H. C. HOPKINS  
C. G. QUITMAN  
HARRY B. CLARK  
H. W. HAGNE

May 20, 1929.

Judge M. W. Conkling,  
City Hall,  
San Diego, California.

My dear Judge Conkling:

This will introduce my secretary, Miss May. I cannot come down as I am waiting for a long distance telephone call from San Francisco.

Regarding Suit No. 60021, to quit title to Acre Lot 151, otherwise known as the Northeast Quarter of Pueblo Lot 1193, will say that this land for years belonged to O. J. Stough, as I understand it, and the land was in the Linda Vista Irrigation District.

There were bonds outstanding of nearly \$400,000, said bonds being approved as to their legality by the Supreme Court of California. Before the District was dissolved, assessments were made by the Board of Directors and about 95 percent of the taxes were paid. O. J. Stough let his taxes go delinquent, and the payment to the district of the total amount of the taxes amounted to \$1187.71. Under the state law, after 5 years the property was deeded by the County to Charles B. Gould, which deed is dated May 21, 1925. Catherine F. Taylor, my daughter has since become the owner of record.

We acquired this title in good faith. Our attorney, Mr. A. H. Sweet handled all of the proceedings dissolving the Linda Vista Irrigation District and said they were legal.

My daughter is willing to accept \$1187.71 plus simple interest at six percent from the 28th day of February, 1912, if a settlement can be made without having to hire an attorney. The above offer is made in behalf of my daughter.

Will you please give me a week or ten days in which to make the appearance of my daughter in court in case you do not care to effect a compromise. The claim of the city as to the ownership of this lot I do not know but the money for the taxes was made in good faith and we are not looking for litigation with the City of San Diego.



CITY ATTORNEY

NOV 1958

Dear Sir:

The Certificate of the Linda Vista Irrigation District is on file with the County Clerk of San Diego.

Would you kindly reply by Miss May.

Yours very truly,

RF:KIM

2P



May 21, 1929

*Sunday 27*  
*or*  
*Tuesday 28*

Judge H. W. Conkling,  
City Attorney,  
San Diego, California.

My dear Judge Conkling:

Re: Suit 60021

My secretary, Miss May, said that you would recommend to the City that they pay 50 cents on the dollar, ie 1/2 of \$1187.71 or \$593.85 plus simple interest from date of February 28, 1912 which is the date we acquired the warrant.

If this is your understanding please prepare the necessary papers and we will execute them and I will accept this settlement.

I thank you for your interest in the matter.

Yours very truly,

EF:KIM

*Handwritten signature*  
*21, 1929*

60021 Suit No

*Acce 2151 =*  
*72'14' 1193*  
*Rebels*

*- . c*

*Stahl U, 4 R. 3. 31*

*Stadler*

*Harrison Home Les*  
*(suit) paper -*



*Water Rights*

June 2nd, 1929.

Judge M. W. Conkling  
City Hall  
San Diego, California.

My dear Judge:

Fools enter where angels fear to tread, but it seems to me that your first move in your controversy with the La Mesa District should have been to make application to the Railroad Commission of California and get them to either claim jurisdiction and determine the rate the City should pay for water or disclaim any jurisdiction and refuse to establish the rate, then it is a matter of going into court.

It seems to me from the newspapers that the two situations are entirely different, the Santa Fe District and the La Mesa District matter. In one case the City is buying water from the District, whatever the City needs up to a million gallons a day unless they have lost that right, while the Santa Fe District entered into a contract for water with your predecessors at an agreed price for a definite length of time. The City of San Diego, before buying the San Dieguito System from the San Dieguito Water Company recognized these contracts made with the Santa Fe and San Dieguito Districts and bought the system subject to those contracts under which the San Dieguito District, the Santa Fe District and Dal Har are now getting water. At no time was the San Dieguito Mutual Water Company, or the San Dieguito Water Company a public utility, in fact the Railroad Commission of California rendered a decision that they had no jurisdiction in relation thereto.

If I can be of any assistance to you in this matter, don't hesitate to call on me.

Sincerely your friend,

EF:GMF



November 20, 1930.

*Important*

Judge M. W. Conkling,  
City Attorney,  
San Diego, Calif.

My dear Judge:

Confirming our conferences of last Thursday and today, will say I am of the opinion that an arrangement can be made with the District whereby, without cost to the city, the District will deed the following properties.

First: Mission Gorge dam site No. 3, together with all surveys and lands now owned by the Guyanaca Water Company, to the 350 foot contour.

Second: The El Monte pumping plant.

Third: The 400 or 500 acres of water bearing gravels adjacent thereto, above and below the El Monte pumping plant, whatever the District owns at that point.

Fourth: El Capitan dam site and all lands within the reservoir site owned by the District.

Fifth: All rights of the District to the Fletcher dam site, so-called, and reservoir lands, such rights as they have.

Sixth: Guyanaca dam and reservoir, approximately 1100 acres of land, whatever the District owns, subject to the hunting, fishing and boating rights heretofore granted to the Guyanaca Water Company, which contract has roughly 10 years to run.

Seventh: Diverting dam, all rights of way, entire flume line which includes Sand Creek, South Fork and Chocolate steel and concrete siphons, a mile and a half of tunnel, permanent construction, all distribution lines of the District; also including Murray Hill, Eucalyptus and Mt. Helix reservoirs.

All of the above free of any cost.

-2-

Eighth: Murray Dam and lands flooded, and floodage rights which the District owns, the purchase price of same to be \$ 150,000.00.

Ninth: The city to purchase the 400 or 500 acres of land owned by the District within the Mission Gorge reservoir site, the price to be the average of similar lands.

Tenth: The La Mesa District to pay all outstanding bonds, both principal and interest.

Eleventh: The city to enter into an agreement with the District to furnish water to the district consumers under the present conditions, regulations and rates which are as follows: 15 cents per 100 cubic feet per month for first 1000 feet; 10 cents per 100 cubic feet for the next 2000 feet per month and 6 cents per 100 cubic feet for all over and above 3000 cubic feet per month.

These rates under present conditions will yield the city above all operating expenses, a profit of approximately \$30,000 to \$50,000 per year, this profit to be devoted to the reconstruction and replacement of facilities within the district and spent by the district, or the city can take the responsibility of maintaining the facilities of the district and keep the profit.

If the district is paid the profit, the city would be relieved of any obligations to install, replace, or build new pipe lines in the district.

It is recognized that the main flume line now owned by the district will have to be rebuilt within about five years, and when the time comes to rebuild the said main flume, the cost of reconstruction in permanent form with pipe lines or conduit is to be paid for by the city, and the irrigation district, in proportion to its use each year by the city and the district. The reconstruction of such flume or conduit to be financed by the City of San Diego, and with respect to that portion of the flume which lies above the point on the river where it is possible, the city may hereafter construct a dam to be known as the Capitan dam; that if it should prove to be less expensive to put the water thru the said flume from the diverting dam on Boulder Creek and South



Fork, in that case the city may pump water into the present flume or other provided conduit, the said Capitan dam and the district will pay the cost of said pumping proportionate to the amount of water taken and used by it in each year as above contemplated, in the event a flume is built.

To illustrate: If it cost \$800,000 to build such a flume or pipe line, the amount of water delivered to the city by the district thru the flume will be accurately kept, and the district will, each year, apportion the cost of the reconstruction of the flume based on the cost of interest, sinking fund, operation and maintenance each year, and should a portion of the present flume be reconstructed a similar apportionment will be made. If a part of the flume is abandoned and a dam at Capitan used instead and the water pumped therefrom to said flume or conduit, then the apportionment of said pumping will be made in the same manner.

Last year the entire consumption of the Cuyamaca system was an average of approximately 3,800,000 gallons a day. This year it will be less. The reconstruction of the flume will save to the City at least 1,000,000 gallons a day, net safe yield of water, which is now lost thru leakage.

Should the lands in the La Mesa District be annexed to the City of San Diego, they would automatically pay city rates thereafter, and the District's rights to water reduced in proportion.

I suggest that if it is desirable, a maximum amount of irrigation water per year to be supplied the district shall not exceed four million gallons daily on the average.

If a settlement is made with the district and by paying \$150,000, the city would immediately get possession of Murray Dam, now connected with the city's pipe lines, and acquire a full reservoir of approximately 2 billion gallons of water.

In addition to supplying all of the needs of the district, the present flume line and Murray dam will immediately add to the city's supply of water a minimum of at least 3,000,000 gallons of water daily, a very valuable asset.

As the present cost of San Diego's water is at least 21 cents a thousand gallons delivered,

-4-

based on that cost, if this deal is consummated, the water delivered in one year from Murray dam for the city's needs would produce a revenue of approximately \$110,000 a year, so that the city would be getting back the cost of Murray dam in less than two years.

Another advantage is that the water from Murray dam being at an elevation of 500 to 550 feet above sea level, will eliminate entirely the pumping cost of \$60,000 to \$100,000 now being paid by the city to pump water to the higher levels.

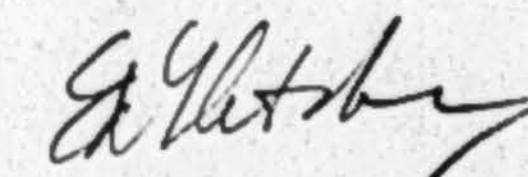
The city has voted money to build Chollas reservoir at a cost of \$550,000. When built it will hold less than 600,000,000 gallons of water and will only be at an elevation of approximately 400 feet. Murray dam, close by, at a higher level, holds two billion gallons, and in my opinion, by acquiring this system there will never be any need of enlarging Chollas reservoir, thereby eliminating the \$ 550,000 expenditure, the bonds for which have already been voted.

The above is a suggestion for your prompt consideration, of a settlement which I am willing to work for between the District and the City Council, subject in all probability to the necessity of submitting it to the people for their ratification. Before any action by the City Council is taken, if any, I would suggest that you submit to me, for the approval of the proper authorities, a copy of any proposed resolution or contract which the City Council will consider.

I ask that my name be kept out of these negotiations. I hope some favorable action can be taken. This litigation has been going on for many years. It has put a cloud on the title to all the property in the district, and a settlement of the San Diego River problems would do more, in my opinion, to stimulate the confidence and return of good times in San Diego at this time than any other individual action that the city could take.

Yours very truly,

EF:KLM





### JUDGE CONKLING'S VIEWS

The proper kind of a dam to build is a rock filled dam at El Capitan. It should be built not less than 170 feet high. Better if built 190 feet high which means it will flood the flume.

They have all promised not to take their water but not putting it in writing. That brings up a legal question.

In my mind there is no legal objection to seeing that it will not interfere or prevent the taking of a limited amount of water from the river by other people. There is a statute which prohibits them agreeing to themselves take water from the river and deliver it to other people. If the district takes it that is a different matter.

Water does not become private property until it is actually brought in to a reservoir or creek. That is simply a real estate right, a right to real property and is the right to take the water from the river which is a right of use it.

It is real estate and when the water is once impounded then it becomes the personal property of the city. The city, by statute, is prohibited from making contracts for the delivery of that water.

The El Capitan Committee talked about our taking the water out of the El Capitan lake. If there is a shortage, what is your answer to that. The agreement should be that the city will not seek to prevent and will not prevent the irrigation district from taking say four million gallons of water from the San Diego River in the customary way and if the city builds El Capitan dam to a point where it floods the flume that the water that the district has actually taken thru the said flume at any time, instead of the flume dropping that water into the city's reservoir and taking it out again at the bottom, whatever they allow, 20% for seepage and evaporation. This is not selling the water at all. It is in consideration of the district doing certain things, abandoning the flume and pipe line.

The next thing. As to below the El Monte pumping plant and where ever the district has heretofore pumped something like three million allons daily from the El Monte sands, the city agrees that it may continue to take that. The district may pump the water from the sands, whatever supply they have

in the river or reservoir at any point above the dam. That is not agreeing to sell water at all. Simply a guarantee that you will permit it over a certain period. Or the city may instead drop that amount of water over its reservoir and allow it to go in to the sands. In the event the city sees fit to deliver it in to the reservoir or take it from the reservoir they are paying the same amount that they would have had to pay if the city dropped it in to the sands and they had to pump it.

What is your answer to riparian owners enjoining? They can't enjoin the city. They' can't enjoin the city because the city owns the water. The city has the right to take the water.

The biggest objection to our delivering the district water does not lie in the fact that there is a statute that there is an agreement that the city may not deliver the water. The biggest objection lies in the fact that we have no water in the San Diego River for sale belonging to the riparian owners on the San Diego river.

We may agree that we will not let them take it. We cannot agree because there are other riparian owners below. We can agree not to interfere with them. As far as any statute is concerned forbidding us to sell water, the legislature made that statute and they can repeal it. The statute provides that the city cannot sell water except for a year at a time.

The next legislature will ratify any agreement the city and district makes.

Regarding Bringing Sutherland water to El Capitan. The objections to that are the same as the other. As soon as we sell water any riparian owner can show his rights on the San Diego River. If they carry this proposition and start in to condemn the river, I was going to show that the city is under agreement to sell three million gallons of water that they don't have to sell and which they have as a surplus. How can they say they need water when they have a three million surplus? This applies to the riparian owners along Mission Valley, Lakeside pipe line where the city has contracted to deliver the water.

They can sell like real estate, the right to take water from Sutherland, the water right which they have acquired at Sutherland or any where else, so long as they don't take it in their physical possession, so long



as it is not reduced to personal property and impounded.

Make El Capitan first a diverting dam . Then increase height to 190 feet. It will put water in to the La Mesa dam also water in to San Vicente which should be a storage dam. El Capitan can be kept empty and ready for the big flood and San Vicente ready for big drought.

The power of the legislature is supreme.

We can sell lands by vote of the people and before we put it in charge that we could not sell them we could have sold them, just so long as we can make a contract of some kind regarding our paramount right as it is a real estate right. Right respecting Real Estate. After it is caught and impounded it is personal property and there is where we can't sell.

Originally our Pueblo lands, our water rights, stood on exactly the same basis. We could sell either one. Then along came the famous city charter and state laws restricting the sale of our ~~water~~ Pueblo lands but not of our pueblo water rights. They never have been restricted.

If the city wants to make an agreement with the city regarding any amount of water, let your city attorney and district attorney know what you want to do. Agree on the terms, etc. and put it up to them, see how quick they come thru. The worst that they will say is that you must have an act of the legislature to ratify it. This is easily gotten.



November 25, 1930.

Hon., W. M. Conkling,  
City Attorney,  
City Hall,  
San Diego, California.

PERSONAL.

My dear Judge:-

Going over matters with the District, the following changes should be made and I am sure are simply errors on your part:

First: Section 1 should read, "In the Santa Ana Condemnation suit which the District owned or has since acquired."

Second: (A) under Paragraph 2 should be, "And all lands in the San Diego River bottom lying between El Capitan Dam Site and Lakeside, which the District owns or has acquired."

Third: You have made an error in No. 4. The price of domestic water is 15¢ per hundred cubic feet per month for the first 1000 feet per month and 10¢ per hundred cubic feet per month for the next 2000 feet per month and 6¢ per hundred cubic feet per month for irrigation water.

Fourth: Section 5 should read, "one-fortieth part with 5% interest each year until paid for." You are simply inserting the words, "until paid for," which are not in the present instrument herewith attached.

Will you kindly make the necessary changes?

Since talking with you on the telephone, I have gotten in touch with Mr. Harritt and he informs me that the Irrigation District was deeded by the Water Company sufficient land, not alone for the same site but all the land within the reservoir site necessary for the construction of a 160 foot dam at El Capitan, which complies in every particular with the grant of the United



Judge Conkling  
#2.

States Government through act of congress covering reservoir lands. You can only build to that height under your agreement with the government and have only acquired lands to that height and just so, when you acquire all the absolute rights of ownership which the Irrigation District now have, you are acquiring everything necessary for immediate construction and completion of the El Capitan project, so-called, excepting the 80 acres which Mr. Dowall asked for and which we have given an option to the District to purchase at \$100,00 an acre, or \$8,000.00.

Yours very truly,

EF/RC

P. S. If you decide to raise the dam to 200 feet in height, we will sell to the District the lands that we control between the 160 and 200 foot contour at \$100.00 an acre, provided a deal is consummated within one month from date.



**Ed Fletcher Papers**

**1870-1955**

**MSS.81**

**Box: 5 Folder: 10**

**General Correspondence - Conkling, M.W.**



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