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CHAPTER XXIV  
WATER PROBLEMS.

To one unaccustomed with the southwest it would be difficult to understand the natural water conditions about San Diego. For that reason those to whom it is familiar should pardon us for giving a brief description. Roughly speaking the land from the Bay of San Diego slopes gradually upward to the foothills, a distance varying approximately from ten to thirty miles. This sloping land is more or less broken by ravines or small canyons. These ravines were natural waterways in very ancient times, but now are entirely dry, except that some of them carry a small amount of water in the rainy season. The San Diego River crosses the incorporated territory at the north end of the populated part of the City of San Diego. This river rises in the mountains about 65 miles or so back of the City and is fed by several small streams which run the year around, there are many others which are more or less dry in summer. The river passes through El Capitan Indian Reservation which is now occupied by probably less than 50 Indians. The government has always claimed to protect these aborigines in their ancient rights to this water. Below this Reservation, and down to the City, there are many valuable spots of agricultur-

al lands, but without water for irrigation these spots, varying in size from a few acres to several thousand acres, would have practically no value. This territory includes half a dozen small but more or less prosperous towns and is traversed by fine boulevards, and the Cuyamaca Eastern Ry Company. The country is all tributary to San Diego. Before the river reaches the City limits it sinks below its broad, sandy bed and becomes perfectly dry, except in and soon after, the so-called rainy season. To one not familiar with this season it is thought to be a season of almost continuous rain, but this is far from the fact. The rainy season simply means that time of the year in which it is expected to and may rain, but there are many weeks and even months that it does not rain, even in the so-called rainy season; while in the dry season it is not expected to, and very seldom does, rain. The rains may start at any time from November to January and end any time from March to May. It might be said in passing that these rains fall gently and slowly and are extremely refreshing. The vacant lands become covered with wild flowers set in a background of green grass, and the whole back country is a land of beauty. All the wild vegetable life grows and matures rapidly for the rains will soon cease and Nature's work must be finished. The average rainfall, according to the United States Weather Bureau since 18\_\_, is



\_\_\_\_\_ inches per year; while about the headlands of the San Diego River it is 50 inches a year. Within the history of San Diego there have been some years of extreme drought and some known as flood years. The most noted of the flood years were 1861, 1884 and 1916, while the drought of the 70's was such as to cause the loss of most of the livestock in the vicinity of San Diego and resulted in the end of the once profitable cattle, hide and tallow industry.

Water has ever been the outstanding cry of San Diego, as well as the back country. Enterprises for the development of that indispensable commodity have been entered into, some of them with more or less success. Several times the people believed that they had at last secured a sufficient quantity of water to supply the City for all time, only to find in a few years that they were little better off than they were a few years before. Then another agitation would start among the citizens for water development which would usually result in another blunder, — heavy loss and little water. These colossal blunders were and are purely political. From time to time several men have come forth and attempted with much patriotism and energy to develop the great abundance of easily accessible water in and about San Diego. These men have in most cases been rewarded for their beneficial efforts and expenditures by political opposition fostered by those from whom

better things might have been expected.

The first recorded bloodshed in San Diego was when Cabrillo sent his men ashore in search of water, and three of them were wounded by Indian arrows. The next arrivals, sixty years later, encountered a warlike threat over a hole of water. Sebastian Viscaïno tells us that on November 11, 1602, his men dug wells on the sand and when the sea was high the wells contained sweet and good water, but when the tide went out the water was "brack". "One day a sentinel gave notice that many Indians were coming along the beach all armed with bows and arrows, but naked and besmeared with black and white paint." After some peace overtures the Indians abandoned their warlike attitude. The history of San Diego was then closed for 166 years, but when it was again opened one of the first statements is to the effect that if the friendly Indians had not carried water from San Diego River to the stricken new arrivals they would all have died from thirst. The camp was moved to the bank of the river in order to be close to the only source of water. During the first few years of the development of the Presidio at Old Town, water was carried from the river in urns and skins. In the dry season holes were dug in the sandy bed of the river for a few feet where an abundance of pure water was obtained. For many years wells were dug in the sandy river bed and boxed up, and water was

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Fort Guijarros on Ballast Point. There was a large underground cistern at the old lighthouse on Point Loma. The water was caught in a large cement space on the ground and run into an underground cistern. In a letter written January 2, 1850 to the Treasury Department by A. M. \_\_\_\_\_ of the Coast Survey, in which he recommended the building of a lighthouse on Ballast Point and on Point Loma he said, "There is no water nearer than five miles from La Playa. It is hauled from the San Diego River. Some men are at present boring an artesian well at La Playa but success seems doubtful."

A well was put down in New Town at F and State Streets about 1851. A well was installed about a block from the present Court House in 1868, and was owned and operated for profit by Tasker and Hope. For two or three years they sold water by the bucket and barrel. It was good drinking water and brought as high as 25¢ a bucket. Meantime, water was hauled from the river near Old Town. For more than three years the Barracks and government storehouse at the foot of Market Street were supplied with a good portion of their water by hauling from the river, though the government put in a large cistern at the Barracks and after it was filled from the rains it furnished good drinking water. This cistern was used for drinking purposes until the Barracks was taken down.

On August 15, 1880, a protest was signed by more than

20 citizens of Old Town, protesting against persons settling along the valley near the Old Mission, for the reason that they interfered with the long and notorious use of the only permanent supply of water. The Trustee's Minutes of February 22, 1869, show the following: "Resolved that all permanent water within the limits of the City be reserved for public use in general."

XX In 1869 E. W. Morse dug a well, put in a windmill and irrigated the first garden in New <sup>S</sup>San Diego. The achievement was given considerable newspaper publicity at the time. About the same time A. E. Horton put in a windmill and irrigated several vacant lots. The San Diego Bulletin of September 24, 1870, commented as follows on the well water at the Horton House: "The Horton House is the most imposing edifice in San Diego. The supply of water and gas is complete. The former is taken from a never-failing well of pure water on the premises and is carried all over the building by means of machinery."

XX Notwithstanding the City's extreme need of water, and strange as it may seem, in March 1868, the Trustees granted to E. C. Gray the exclusive right to the use of the water of a public well in San Diego. In the same year they also granted water rights in the San Diego River. In 1871, the City granted to D. P. Callaway and others the right to develop water in San *Diego*



Diego.

(P) On December 17, 1773, the Viceroy at Mexico City, in compliance with an order of King Charles III, in a long communication to Fr. Serra, which document is copied in full elsewhere in this work, said: "His Grace orders as a holy trust upon your conscience to administer this concession and Royal grant to the water in this arroyo referred to for the common benefit, whether Gentile or converted, who dwell today or in the future in the province of the Mission of San Diego de Alcalá. This concession and the fruits also shall be held as to these children and their children and children and successors for all time forever." The same document says, "But at a subsequent time and in a more opportune manner, the Fathers should cause to be constructed a firm dam from which (water) may be drawn for the future Pueblo, and agriculture and mills in this community, because great hopes are placed in (it being) a fine city some day." This paragraph is far-reaching in its scope and sheds much historical light. It plainly infers that the dam built by the Fathers across San Diego River above the Mission, which feat historians have always attributed wholly to the Fathers, was, in fact, suggested and ordered to be built by the Viceroy, and to be built not alone for the Mission but for the future Pueblo and "fine city", which they hoped would be built.

(D) This accounts fully for the "Padres' Ditch" to Old Town. There are two points: first, the Franciscans were not responsible for building the dam and aqueduct; and second, it was ordered built principally, if not wholly, for the future City of San Diego, and this was subject to the order that all the waters in the province should be held in trust for all the people.

(E) On the following dates the City officials granted rights to individuals to develop water within the limits of San Diego: April 13, 1871; June 16, 1871 and March 31, 1873. The City purchased back some of these rights on June 30, 1901, and August 5, 1901. On September 17th, 1901, the City took steps to purchase from the San Diego Water Company all the city plant used by it. In November 1904, and in February 1905, the City instituted legal proceedings to purchase water rights along San Diego River which it had previously disposed of. An action was filed in 1928 to recover the City's title to a piece of land transferred to these water interests during that period. By 1873 there were around 2000 people in San Diego, and the only water supply was from wells and what was hauled from Old Town.

*Very important*

(E) About that time Jacob Grandlike formed a corporation known as San Diego Water Company. It put down an artesian well in the park near 11th and B Streets. For a time it fur-



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nished about 50,000 gallons per day, which was the first water piped over portions of the City, in the year 1874. This well resulted in great embarrassment, humiliation and financial loss to San Diego. About that time, and several years after, there was considerable rivalry and jealousy between San Diego, National City, Old Town, Los Angeles and other towns on the Coast. The water from this artesian well was not good and San Diego's bad water was a standing joke throughout the state for many years and did not entirely die out until 1915. This bad water actually lasted no more than three years.

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By 1875 the San Diego Water Company had enlarged its capital stock from \$10,000 to \$250,000 and had put down some large wells in San Diego River bed near the foot of Sandrock Grade. It began to pump water into large tanks on the hill back of Old Town. From there the first good water was furnished to San Diego in 1875. A large reservoir was constructed on the hill back of the Florence Hotel, now Casa Loma, at 5th and Fir Streets. The people at that time thought they had an inexhaustible supply of water for any city that would ever be built here. Since then, from time to time, many wells have been put down in the river bed and hardly a year has passed that water has not been pumped therefrom into the City.

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In the years from 1870 to 1874, there was such controversy

(E)

over methods of getting water. Some wanted to give 40 acres of the park to the Water Company to furnish water to the City. This was bitterly opposed by the Tribune, the Weekly Bulletin and the World. The agitation for water was not active from 1875 to about 1882. The latter date again the water question became an issue.

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About 1884, the San Diego Flume Company began to be considered. It was incorporated in 1886. Theodore S. VanDike, George D. Copeland and A. W. Howard were its principal promoters. Later they associated W. E. Robinson, Gen. Marlett, Milton Santee, R. H. Stretch, E. W. Morse, Robert Allison, Gen. Grittenden, George W. Marston, J. M. Luce and others. The scheme was not popular with San Diegans. There is no reason to assume that the promoters had any but the best intentions of bringing to the City an abundant supply of good water and to irrigate the lands on both sides of the way. For some reasons the Flume Company was never understood, and has not been to this day. Considerable effort was made to enlist public sentiment in its favor. The San Diego Union of August 19, 1886, gave almost a full page to an eulogy of the Flume Company and made the statement that it was the greatest enterprise ever undertaken in San Diego. The Union under date of January 3, 1889, said: "When first broached, the subject of bringing pure water to San Diego from the far-away mountains was treat-



ed as a joke. When W. E. Robinson and T. S. Van Dike, the first to broach it, first publicly discussed it, it was at the risk of provoking a legal inquiry as to their sanity." One of the largest celebrations ever held in San Diego was that in honor of the completion of the flume on February 22, 1889. The Cuyamaca Flume Company's reservoir is 720 feet long, 35 feet high and 145 feet wide at base and 16 feet at the top. From this dam the water plunges down Boulder Creek 12 miles to the diverting dam across the San Diego River. This dam is of solid granite and cement 450 feet long, 36 feet high, 16 feet wide at base and 7 feet at top. The water is brought to the City by more than 35 miles of flume and tunnels. The original expenditure was about \$2,250,000 and about \$400,000 has since been expended on the project.

It was believed by many at that time that the City's water supply was finally settled for all time to come, but this belief was of short duration. Before one year had passed, the water question was again taken up. In 1889, the following appeared in the Union: "It will be remembered that some weeks ago a special committee consisting of Col. G. G. Bradt, H. T. Christian and J. D. Schuyler were appointed as a special committee to investigate the question of a water supply for San Diego." The records show that

this committee filed an elaborate, instructive and valuable report in which it was recommended that the City should own its own water system, that steps should be taken and surveys made for the future sources of supply, that a gravity system should be favored, that the City be piped for 100,000 people, that the Council submit a bond issue to the people for this purpose, and that business principles be used. If the latter suggestion had been followed, the water question would have long since disappeared. The committee stated that the Flume Company would sell at a fair profit and that a million dollars would pay for a complete system sufficient for many years, and that the same would pay for itself. The following June a meeting was held between the City Council and the Flume Company in which the Flume Company presented the following: "The directors of the Flume Company desiring to join the City in the present movement to secure for the municipality a plentiful supply of pure water at such rates as will lead to its abundant use in irrigating lands, trees and public parks, as well as large reductions of insurance rates, hereby make the following propositions:" Then follows an offer to lease.

Under date of June 15, 1890 an open letter appeared in the Union headed as follows: "The Water question. Adequate supply can be got quickly and cheaply. Mission Valley supply

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insufficient. The Flume Company entitled to fair treatment. Schemes should be watched." The letter was critical of the attitude of the City as the following extract will show: "I am surprised to see efforts made by some of our citizens to oppose the Flume Company. The men who put their money into that enterprise wanted to make a million blades of grass grow where none had grown before. They were encouraged to do this by our citizens and newspapers. The same thing may be said of the City Water Company when they first took the risk of putting in a water system. Our citizens were buying water from carts at the rate of \$2.50 per 1000 gallons. Mr. Babcock is a pretty bad man and has greatly injured our city by building the Coronado Hotel, street car-lines and other nuisances. There is little question that he would give us about as cheap water as can be obtained in other cities." This splendid letter is signed "A. Thirstakus".

One of the first discoveries made by that master mind of E. S. Babcock, after his arrival at San Diego in 1884, was that no lasting results could be expected for San Diego and its surroundings without an abundant supply of water. This vital problem he attacked with all his genius and marvelous ability. Mr. Babcock was a poor man, all the capital he had was brains. For several years his life was a continuous fight between brains and money. He never had the money to pay for the great accom-

plishments for San Diego that he saw possible, or with which to influence political control. He took hold of the little San Diego Water Company, but seeing it to be inadequate for the end desired, he set about for higher developments. In 1886 and 1887, the Sweetwater Dam was built. Its purpose was to furnish water for National City and Chula Vista and to irrigate the fertile land south of San Diego. About the same time the Otay Dam was commenced. In 1895 Mr. Babcock sold a half interest in this enterprise to the Spreckels interest. Later Spreckels acquired the other half and the concern was operated under the name of Southern California Mountain Water Company. The Otay water never actually reached the city until 1906.

The following extracts are taken from an article which appeared in the Riverside Press about 1886, concerning the San Diego Flume Company: "The greatest enterprise yet undertaken in San Diego County is the building of a water system. This is more important than the building of the Santa Fe or Southern Pacific system of the bay. The people of San Diego County have for years talked the idea that water for irrigation in that section is not necessary. They have talked this nuisance so long that many of them believe what they say and even today they are ready to condemn any proposal to furnish the water. Many of the people and capitalists in and around San Diego seem to throw cold water on the enterprise. No pun

*S. Babcock*



intended. The writer of that article, Mr. L. M. Holt, afterwards became an investor in San Diego water enterprises.

In the San Diego Union under date of November 11, 1874, appeared the following letter signed by L. L. Locking: "To one who has given attention to the subject, it is evident that the future supply of pure and wholesome water for the city must come from the San Diego River.

"In August last with a party formed for the purpose of laying a line of level from the tide water in the Bay across the table land to Mission Valley, thence following up the windings of the river to a point in its bed about 25 miles distance, and found the elevation to be 52 feet above mean tide, and amply sufficient to overflow the entire Mesa between here and the Mission with a 100 feet to spare.

"The drainage of territory into the river and its tributaries above this point covers an area of at least 5 townships. From which the annual rainfall is assumed to be 12 inches.

"The above data shows that San Diego River affords an abundant supply for a large population provided it can be saved and utilized." (Signed) L. L. Locking."

X Under date of September 5, 1876 appeared a protest by a citizen against the City's neglect to develop its own water system. Several other private letters appeared in the Union on the same subject. One of the letters contained the following re-

garding the purchase of the San Diego Water Company system:

"We should never pay \$125,000 for an article when we can make it ourselves for \$50,000." Another citizen's letter said, "We cannot create similar works for \$50,000 or \$60,000 or \$100,000." In those early years the San Diego Union took no stand in favor of the City building its own water system.

The Dailey World during its short life was very energetic in behalf of the people for an adequate City water supply, but it was soon merged with other publications which represented private interests. Mr. Joseph D. Lynch, the editor of the World, very ably pointed out that San Diego county was 3000 years behind Asiatic countries in its irrigation development. It might now be added that comparatively little has yet been accomplished.

X At a Trustees' meeting in 1887, in an effort to fix the purchase price of water from the Babcock interests and the City's sale thereof to consumers, Mr. Babcock offered a price so that large consumers could have their rate cut 50% less than small ones; and gave as his reason that he wanted to encourage manufacturing and irrigation, that he did not want a profit, and that he looked to the development of the City for his profit to come later. He said he wanted to induce the keeping of large gardens and establishing of nurseries. The Trustees contested Mr. Babcock's offer to reduce prices to large consumers and suggested an ulterior motive not disclosed. Mr.



Babcock then withdrew his offer to sell to the City at reduced rates. He said that he was hurt to think they would not permit him to sell the water at a less price. For many years the beautiful shrubbery, lawns and flowers at Coronado and the contrast with San Diego's dry lots was a subject of comment by visitors. The reason was that Babcock was able to furnish Coronado with an abundance of cheap water.

In the spring of 1889, Mr. Babcock went on a tour of the eastern cities, and to London in search of capital to invest in San Diego, and particularly in the development of water. The Union of July 2, 1889, quoted Mr. Babcock as saying: "English capitalists are very much interested in Southern California and if they are properly treated will invest between \$8,000,000 and \$10,000,000 in and about San Diego." Mr. Babcock said also that new companies would be formed to develop water. The representatives of the capital arrived, ready to begin operations, about August 1889, but the welcome they had expected, from those for whom they were attempting to deliver water, was not forthcoming; and they returned to England with their capital. As a result of this, according to Mr. Babcock, <sup>Kidd</sup> Kidden & Peabody and other capitalists were discouraged from coming here. Mr. Babcock kept up his heroic fight to get the people to permit water development until he was beaten down by powerful financial interests. He finally gave up in despair.

and to this day water remains undeveloped. No other man with the single exception of Fr. Serra, accomplished so much or worked so faithfully in behalf of San Diego than did E. S. Babcock. Seldom in history has a great man received so little of a richly deserved gratitude. These conclusions are forced upon us only by the cold facts of San Diego history. ~~The benefactors of Mr. Babcock cursed, but followed him.~~

In 1890 mass meetings were held in San Diego for considering water questions. They were participated in by Judge M. A. Luce, Ranford Warthing, Senator Bowers, G. D. Copeland, C. G. Wheeler, J. O. W. Pain, A. McCrimmon and others. In December 1890, a mass meeting was held to discuss English capital investing in a railroad and water enterprise at San Diego, and on January 1, 1891, the Union said: "San Diego is abundantly supplied with pure cold water from pipes all over the city under heavy pressure from immense reservoirs located on the mesa north of the city and the supply comes from the head of the San Diego river filtering through many feet of sands." This investment of large capital was encouraged by Mr. Babcock, and, needless to say, was fought and discouraged, as the above quotation indicates.

Through the efforts of Mr. Babcock in 1894, the Mt. de Carte Land and Water Company, Otay Water Company, Jamul Irrigation District and San Diego Land and Town Company agreed to



unite forces and serve the City of San Diego, and to develop the entire water resources, if the City would permit it. The plan was proposed to the City on August 2, 1904. The Union said the next day, "Great enthusiasm manifested. Citizens regard it as the best for San Diego." About 1894, it was offered to sell to the City 1000 miners inches in Mt. De Carte Water Company interest for \$1,400,000, with an option to purchase the system in 40 years for \$5,000,000. This scheme also fell through on account of the financial interests which conflicted with those of the City.

It had been known as far back as the early 70's that a dam could be erected for a small cost a few miles above the Old Mission which would afford an abundance of water for the City at reasonable cost. Gen Rosecrans said in '73, that such a water system could be installed at a cost of \$30,000 which would supply a city of a large size. Of course, such a sum, even at that time, was ridiculously low; but taken in the light of subsequent history an expense of \$3,000,000 would have been an intelligent investment. It long ago would have paid for itself and saved the City much in money loss. In 1873, the Daily World said: "The canyon is 700 feet above the level of the Bay and even Point Loma might be supplied with water from a reservoir located there. The cost is trifling, by General Rosecrans' estimate, less than \$40,000,000 would build a dam and bring the

main pipes to the mesa. The highest calculation we have seen to accomplish this desirable result involves only \$60,000.00 expenditure. Now with such facts shall we allow ourselves to lack water?"

Of course this statement was made in 1873, and no one supposed at that time that San Diego would ever in a thousand years have a 100,000 population. Gen. Rosecrans was talking in terms of <sup>a</sup> 10,000 population town. But if such water rights had been taken-advantage of at that time, and followed up, at a cost of a few hundred thousand dollars, it would have saved the City before this date tens of millions and still greater sums in the future.

In November 1894, City Engineer Capps reported to the Council his estimated cost for two dams above the Old Mission as \$1,586,462.00

The City of San Diego has always contended that it had some superior or paramount right to all the waters of San Diego River. Edwin M. Capps testified in a recent case that when he was City Engineer he received an opinion from Judge W. T. McNealy, to this effect, and that he conveyed the opinion to members of the Council. City Attorney W. R. Andrews was asked for an opinion and he said the City never had any such right.

In the Union of June 7, 1894, appears the following:  
"Water Shortage. Flume Company scale down 50%. Past state-



ments of Mr. Babcock fully sustained."

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In 1895, John D. Spreckels began to take an active part in offering to sell water to the City of San Diego. The City continued to try in a feeble way to increase its own supply of water, but without success; and finally Mr. Spreckels was able to secure a contract with the City in 1905 for the Southern California Mountain Water Company. This company began delivering water to the City in August 1907, under its contract with the City.

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The Minutes of the Board of Aldermen, Book 5, Page 109, show that the water Committee reported to the Board August 28, 1894, in part as follows: "We are opposed to City development because no source of supply is now possible to the City which does not lie behind a strong and extended barrier of litigation; further, because the City cannot develop water from any source yet suggested which would not deprive a large section of the country of all chance of future property, for the City can neither develop a surplus to sell nor can it join with the county in any plan of direct co-operation. The property of the City is so closely interwoven with the property of the adjoining county that the fallacy of separating the City development is selfish and shortsighted." The report contained other and similar statements, but despite this exhaustive, well-considered and elaborate report and its recommendations, supported by reason

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and facts, we find the Council later spending vast sums of money in a hopeless effort to accomplish that which the Committee had so ably warned against. The Council received the report of its Water Committee, engineers and experts and then stupidly cast them aside and proceeded to file expensive and worse than useless litigation. The only possible result would be to embitter the City's neighbors against her and to defer development of water to incalculable loss to both the City and her back country. The stupidity and gross incompetency displayed by those who instituted such ruthless warfare and litigation on the owners of the water in the back country make us blush to recite the facts.

In March 1896, Council \_\_\_\_\_ Engineer Capps for *the city* building Morena Dam. The dam was to impound 652,448,000 cu. feet of water and an aqueduct to carry 8,640,000 cu. ft. of water every 24 hours. It was agreed by the contractor that when the dam was once filled and the aqueduct constructed, it would "discharge continuously, perpetually and forever into said aqueduct a sufficient quantity of pure water so that there shall be discharged at least 1,728,000 cu. ft. of pure fresh water every twenty-four hours continuously, perpetually and forever." For these rights the City was to pay \$727,579.00. The Union favored this contract and criticized any offer made



made by E. S. Babcock. The mayor congratulated the Council on calling a bond election and settling the question of private or commercial ownership of City water. It was freely suggested that the water question was finally settled for a long time to come. On June 26, 1896, large mass meetings were held at the Plaza to urge the bond election and to hasten the bringing of water. Such prominent men took part as Judge Puterbaugh, Judge Luce, Judge McDonal, Judge Kinne, E. S. Babcock, George W. Marston and many others.

The Union next day said: "The good times here. San Diego arises to meet her great destiny. The friends of progress win. Water will flow." The bond carried by the narrow margin of 57 votes. After this election a business flurry started overnight. Work on the dam started with a rush and San Diego prosperity ran high. Before the end of October 1896, the work was well under way, but this sudden rush and enthusiasm was of short duration. The work slowed down and drug out for several years before the dam was actually finished and the promised water forthcoming. A suit was filed over the validity of the bonds which were upheld by Judge E. S. Torrence. The City, E. S. Babcock, and Mr. Spreckels had some misunderstanding and the work was closed down for a long time. Babcock was not financially able to hold out, and finally Mr. Spreckels won out and got control before the work could go ahead.

This water is carried across the hills by a flume and then released in a creek bed where it makes its way over rocks and sand to Otay Reservoir, from where it finally reaches the City. It was about 15 years before any of this water ever reached San Diego. The little boom, together with the promise of immediate water, had long been forgotten, but meantime the cries for water had not subsided. Mr. Babcock however had been forced to abandon his efforts and the water possibilities had passed into the hands of his rivals. Meantime the City, with all its rights and powers, sat idly by and raised no voice against private interests who were acquiring all the water rights in the back country.

As late as 1898, we find E. S. Babcock writing to the City Council as follows: "The writer is determined that this community shall have an abundance of pure good water at the earliest possible moment, and if your Honorable Body will hold the present water company to a strict accountability for their franchise, the water will come quickly." E. S. Babcock was a whale of a man, but the minnows never ceased to nibble upon him. He was an elephant, trying hard to do a great service for mankind, but the ants which swarmed about him, unable to appreciate such a giant, never ceased their destructive work until their great benefactor was ruined. To San Diego E. S. Babcock was an eagle on a humming bird's nest,



but he loved the little nest and would have liked to have protected the little birds until they were strong and able to buzz about.

In 1901, the City bought the distributing system of the San Diego Water Company. In 1904, the San Diego Water Company and the San Diego Flume Company consolidated. Under a contract with Spreckels of 1906, the City was to get all the water it needed laid down at its reservoir on University Heights for 4¢ per 1000 gallons. Immediately after this contract was entered into, a three-cornered fight arose. Many citizens believed that the City was not supplied for all times to come and that it should develop and own its own water supply, — a belief which subsequent events have proven to be true. The Spreckels interest insisted that they would take care of supplying the City with water, while Babcock pointed out that the Spreckels supply was only a drop in the bucket and that prompt action should be taken to supply not only the City but the back country as well. The people resented the Spreckels contract, and as a result an attempt was made by the City to develop more water by purchasing so-called water-bearing lands in El Cajon Valley. Owing to the hostility, and dissatisfaction of the people, and the fact that the City would only contract to take the water from year to year, it was unreasonable to expect the Spreckels interests to make any further water developments. The result was that the dis-

satisfaction grew from bad to worse and the water outlook became more unsatisfactory. Meantime, private interests were quick to avail themselves of the City's delays and to buy up all the water rights possible. The Spreckels water contract came at a time when San Diego was badly in need of it, and again the City owed much to the foresight of Mr. Babcock who is alone responsible for this supply. The Flume Company continued to develop and furnish water of the back country as best it could. Babcock became broken and spent at seeing his efforts wasted and the water problem unimproved. Col. Ed Fletcher, William G. Henshaw and James A. Murray, owners of the Flume Company, continued to acquire rights in the waters of the back country and to improve and expand their system.

In 1905, bonds to the amount of \$1,500,000 were voted for to develop a municipal water supply on San Diego River, known as the El Cajon project. The bonds were defeated and private interests undertook, to, and did, enter into a contract between the City and the Southern California Mountain Water Company. This Spreckels contract was unpopular with the people. They thought that undue effort had been brought to bear in defeating the bonds and making it necessary to take water from the Spreckels interests. Mayor John L. Sehon vetoed the Spreckels contract, but the council passed it over the veto. It should be said that if Mr. Spreckels had not been in a position to



furnish the water, San Diego would have been in a pretty fix; but, on the other hand, if he had not been able to furnish it, the bonds would likely have carried and the City today would have owned its own water supply. For a time the water needs were fairly met.

A water report made to the Council January 1905, by C. S. Alverson, says that within 12 miles of San Diego there is a reasonable supply of water for the City's present needs which "can be supplied more economically than from any other source." Engineers H. N. Savage and John R. Freeman advised against the El Capitan project, and Mr. Freeman said that the project should not be entered into for at least 20 years.

In May 1913, Mayor Charles F. O'Neal, in his message to the Council, recommended that the City formulate to increase the City water supply. He urged that the rights of the City to the river water be protected. That message started the San Diego back country question, which was still in progress 15 years later. It was recommended that the City build its own water system and preserve its rights in San Diego River as a result of this W. R. Andrews gave his opinion on the point in 1913, and gave it to the effect that the city had no such rights. This opinion however resulted in his resignation. The City found itself suddenly in need of an attorney and T. B. Cosgrove was appointed in 1913. Mr.

Cosgrove was not affiliated with any San Diego faction. His opinion was given the Council in 1914 to the effect that the City owned paramount rights to all the water of San Diego River. Numerous efforts were then made to get the City and back country to agree upon some general compromise and water development plan, but neither side seemed to understand the other, and no one was big enough to take the matter in hand and bring about a settlement.

After the Otay reservoir was washed out by the flood of 1916, bonds were voted and the dam replaced by Engineer H. N. Savage in 1918, at a cost of \$355,157.00 Meantime bonds had been voted, and in 1919, work began by the City in constructing Barrett Dam a few miles from Morena Dam.. These dams were finished in 1922 at a cost of an additional \$500,000 which was voted in 1921 to complete the structure.

The City at great and useless cost prevailed upon Congress to pass a bill granting to the City right to build a dam and impound water upon the El Capitan Indian reservation. The City then, in 1918, undertook to assert its acquired rights. Litigation followed from which the City can never hope to surmount. In order to persuade Congress to pass the bill, the City attorney sated to the Congressional Committee: "..... Members of that Committee came to California to investigate the propotion. They were not able to understand just why the



City should take the position it did, as indicated by the above statements. The bill required that bonds be voted and work started within two years. The Indian lands to cost the City \$750,000. They probably had no value except for the dam-site. The investigation for the El Capitan project started in 1915 and was completed in 1919. The City's plan to interfere with the head waters of the San Diego River instead of erecting a dam at Mission Gorge, as had been suggested by most all the engineers since 1870, was \_\_\_\_\_. Those who appeared at a hearing of the City's claim were the Cuyamaca Water Company, the Indian Office, the General Land Office, Forest Service Department, Department of Agriculture; La Mesa, Lemon Grove and Spring Valley ranchers; farm associations and others. There was not the slightest excuse for the City's undertaking this litigation. The scheme was neither legally or otherwise sound or reasonable. From an engineering standpoint it was an absurdity, and from the business standpoint of the City it was a colossal and useless waste.

On August 30, 1918, in a resolution, the Council said:  
"During the past 20 years 84% of the water of San Diego River has gone to waste into the Pacific Ocean, in addition to its loss great damage to property in San Diego River valley."  
This statement was supported by eminent engineers. Mr. Thomas

H. King, a ~~very learned and eminent~~ civil engineer, recently stated that the mean annual runoff of the San Diego River is in excess of 48,000 acre feet. This is a total loss and could be saved by a proper dam at Mission Gorge. Mr. King also said the City's present method of handling its water resulted in a loss to the City in excess of 60% of the total amount handled, and that 17% of this loss is caused by allowing the water to run over and open creek bed below Morena in Dulzura Creek. Another eminent engineer, Mr. Charles H. Lee, placed this total loss at 68% of the total water diverted. Civil engineer, F. A. Rhodes, said: "The loss in 1925, over Dulzura Creek was 524,494,000,000 gallons, or a 20% loss" of all the water that passed over this open space. In other words, to show the 17% loss in money, it exceeds \$50,000 per year.

An interesting incident occurred in 1916, when C. M. Hatfield, the celebrated and well known rainmaker, entered into a contract with the City of San Diego to fill Barrett Dam. He actually constructed his paraphernalia at considerable expense, and soon thereafter the rain began to fall; and following this was the flood of 1916, the greatest freshet in the history of San Diego. December 2, 1916, Hatfield sued the City to recover \$10,000 which the City had promised to pay him, and alleged that he submitted the following proposition



to the City: "On December 9, 1915, I will fill Morena Reservoir to overflow between now and next December 20, 1916, for the sum of \$10,000, in default of which I ask no compensation." The City reported as follows: "December 13th the communication from C. M. Hatfield, transmitting certain propositions to install a precipitation plant at Morena, is accepted by the following vote, to-wit: Ayes, Councilmen Schmidt, Fox, Bruschi. Noes, none. Councilman Fay absent. The action was filed by attorneys Wood and Wood and Liggett & Liggett. The City filed its answer consisting of a large mass of defense and the action was never tried.

The City officials, without their full knowledge perhaps, became involved in a scheme to furnish water for the Santa Fe Ranch by means of the Hodges Dam. As a result of this dam the ranch owners were able to sell this land at greatly enhanced value. The cost to build the dam was approximately \$800,000. The Santa Fe Ranch, consisting of 7250 acres of fine farming land, is practically valueless without water. The builders of the dam contracted to furnish the ranchers with water at about 4¢ per 1000 gallons. The cost to produce the water was said to have <sup>been</sup> greatly in excess of that amount. The dam was subsequently sold to the Henshaw interests for \$2,000,000. The new owners soon found that they were losing money and could not supply the ranchers at the agreed contracted rate. The large ranch owners had guaranteed the low water rate to the small

purchasers of their lands. It now became necessary for the dam owners and the ranch owners to find a way out of the difficulty. They then induced the City of San Diego to take the white elephant off their hands by a 20-year lease with an option to buy at the startling low figure of \$3,750,000.

A resolution of the City Council No. 35001, dated August 19, 1925, and voted for by Councilmen Bruschi, Held, Maire, Stewart and Weitzel and approved by Mayor John L. Bacon, reads: "Whereas said water company is willing to enter into a contract with said City whereby said company will lease said San Dieguito Water system to said City for the term of 30 years, and said company will grant to said City, upon payment of \$500,000 to said company, an option to purchase said water system for the price of \$3,750,00 with a provision that upon the execution of said option said \$500,000 will be applied upon said purchase price; " Bonds were voted and the \$5,000 was paid on the option; The lease was entered into and drawn to run for 30 years from December 1st, 1925. It provided among other things in part as follows: The City to take possession on or before December 1st, 1925; the City to pay a monthly rental of \$14,583.33 per month during 1926, \$15,583.33 per month during 1927, \$16,583.33 per month during 1928, \$17,583.33 per month during 1929, \$18,583.33 per month during 1930, \$19,583.33 per month during 1931, \$20,058.33 per month during 1932 and \$20,955.41 for each and every month thereafter until the expiration of the 30-year period. The City must make all repairs



and replacements, and keep the property in good condition; and must furnish the water contracted by the ranch holders according to their certain contracts which they City accepted and agreed to fulfill. That the City will for the assuring of the payment of thereof, create a water rent fund and keep a minimum therein of \$100,000 and the amount must be kept up by a levy and annual tax if the fund should fall below \$100,000. The City agreed to pay all taxes or assessments of every kind during the lease. The lease is as strong as possible to draw it against the interests of the City. It is signed on the part of the City by Councilmen Virgilio Bruschi, John A. Held, L. C. Maire, Don Mr. Stewart and Harry E. Weitzel.

In the summer of 1928, Engineer H. N. Savage recommended to the City that the Hodges Dam was unsafe, and that action should be taken to protect it.

The facts are, as since disclosed, the City could not afford to have accepted the dam as a gift. The water which the city will have to furnish the ranchers at from 3¢ to 7-1/2¢ per 1000 cu. ft. is approximately 10,000,000 gallons per day, and to deliver it costs somewhere near three times the sale price. The final sale to the City under the option has never been made, and if the City never accepts the right to purchase the property it will mean a loss of only a few hundred thousand.

In 1926, the Cuyamaca Water Company was furnishing water to East San Diego, Normal Heights, Kensington Park, Talmadge Park,

La Mesa, Lemon Grove and Spring Valley, El Cajon, Grossmont and Bostonia. It was supplying water to approximately 35,000 people and irrigating more than 10,000 acres of land.

The following is a brief sketch of some of the litigation over water in which the City has been from time to time engaged. In 1875, the San Diego Water Company contracted with the City to lay pipe and bring a supply of water from San Diego River to the City, and the City agreed to purchase from the company not to exceed 200,000 gallons per month for five years and to pay therefore \$100,00 per month. The company put in its plant, laid its pipes and furnished the water. The City lived up to its agreement for about two and one-half years and then repudiated its contract. A suit followed in which the Supreme Court decided, in 1881, that the contract was void for the reason that the San Diego Water Company's charter provided that the company should furnish water free to the City, and hence the City had no authority to pay for something which must be furnished to it free.

In 1880, a suit was filed by the San Diego Water Company against the San Diego Flume Company to enjoin the Flume Company from shutting off the water from the Flume Company's pipe leading into San Diego. The Water Company owned the City distributing system and the Flume Company delivered the water to their system for City supply. The Water Company was endeavoring to carry a City bond election with which its system was to be pur-

*Important  
S.A.F. Co.*



chased, but the City and the Flume Company were opposing it, Before the election, the two companies entered into an agreement to furnish and distribute the water, and the two properties were turned over to Babcock and Safton, as trustees to manage. The contract was to run 20 years, during which time the City was to receive from them an abundance of pure water. The Water Company then assigned its interest to Bryant Howard and others. Howard then subleased to the City.. For a time the Flume Company did not receive its pay and consequently cut the water off. The case went to the Supreme Court and was decided in 1893, in which it was held that the sublease to the City was void and that the Flume Company had the right to cut off the water from the Water Company which had not abided by its contract. Before this action was settled, another one was commenced between the same parties involving practically the same subject matter. It also went to the Supreme Court and resulted in a ruling against the City. This protracted litigation resulted finally in the dissolution of the whole contract, to the great loss of all parties.

In 1898, the Supreme Court, in an action against the City, decided that the San Diego Superior Court judge was disqualified from hearing a case involving the validity of a bond issue to purchase the San Diego Water Company. There were three appeals to the Supreme Court growing out of this matter, two of which went against the City.

\* similar point arose in the recent case of San Diego

against Cuyamaca Water Company, in which it was sought to disqualify all the San Diego judges from hearing the case. The Supreme Court in 1924, held that they were not disqualified by reason of their interest in San Diego's water supply.

Another case growing out of this Cuyamaca Water Company litigation was decided in 1927, by the Appellate Court involving the right of appeal.

While it was the water problem that caused Mr. Cosgrove to be appointed City Attorney in 1913, it was not until 1918, that the Council instructed him to appear before the Congressional Land Commission at Washington and advocate a bill for permission to impound the water passing through the El Capitan Indian Reservation. Before that Committee Mr. Cosgrove stated the City's position as follows: "....."

In 192\_\_ the City filed two actions against the Cuyamaca Water Company and Ed Fletcher, William G. Henshaw and James A. Murray as its owners. The City claimed to have the superior and paramount right to all the waters of the San Diego river by virtue of a trust created for the City of San Diego "imposed and recognized by the laws, orders and decrees of the government of Spain and Mexico. This complaint prayed the court for judgment "that the plaintiff is the owner of the paramount right to take and use all the waters of the San Diego River, as well as its branches, from its source to its mouth."

The other suit was to condemn certain lands and to pay



therefor \$745,000, the sum which the State Railroad Commission had established as the value of the lands.

Meantime Mr. Cosgrove had resigned as City Attorney and gone in partnership with the law firm of Hunsaker and Britt at Los Angeles. Mr. Cosgrove and his partners were retained as special counsel by the City to handle these suits which he had been interested in starting. Attorneys Shelley J. Higgins, Arthur F. H. Wright, Hunsaker, Britt and Cosgrove appeared for the City.

In the first mentioned case a demurrer was filed to the complaint in which a large number of legal objections were raised. It required \_\_\_\_\_ weeks to argue these law points to the court. Judge C. N. Andrews heard them and finally the City was permitted to proceed. These water rights involved many square miles of the best of the back country tributary to San Diego, including some small towns. Under such a condition it was to be expected that a long, hard and bitter fight would follow between San Diego and her neighbors. It was to be supposed ~~supposed~~ that if San Diego won the litigation it would be at a tremendous loss to those tributary to the City; and that San Diego would not only incur the extreme ill will of her neighbors, but lose their immense commercial trade. The winning of such a case in court would be to lose it economically. It would result in irreparable loss to the innocent settlers of the back country, and of course their loss would be indirectly a loss to

the City. The City's contention was that it would develop the water and continue to furnish the back country as usual, but it was feared that the City would first satisfy its own demands and the back country could take the overflow. At any rate the City's proposal to furnish water was not accepted. Not only did the Cuyamaca Water Company fight the case, but several others interested appeared in the fight. The City was opposed by Attorneys Crouch & Sanders, Sweet, Stearns & Forward, Philip Thatcher, E. V. ~~W~~ <sup>W</sup> ~~inn~~ <sup>inn</sup>ek, Sloane & Sloane, Flint & McKay, Arthur T. Smiley and others. The opposition contended that they had been in constant possession of the water of San Diego River for many years, and that San Diego had lost its right to the waters in the river by failure to possess itself of them; That the State Water Commission had granted the water rights in San Diego River to the Cuyamaca Water Company and that the City itself had granted away its water rights. They also pleaded many other defenses.

In the condemnation action it was contended that the value of the land sought to be condemned was \$1,000,000. The case was not brought on for trial until 1928. The nature of the condemnation action was such as to require its trial in a neutral county. It was therefore tried before a jury in Orange County, Judge M. C. Conkling from Imperial County presiding. Weeks were required to hear it. The jury gave a ver-



dict  
/of \$600,000 against the City. The court set aside this judgment on the grounds that it was excessive. Neither side was satisfied with the judgment and both sides appealed. The case was transferred to the District Court of Appeal in 1926, and came on for hearing on October 2, 1928/ Meantime two other appeals had been taken from collateral points growing out of these cases, of which notice will be taken elsewhere.

In the other case the Superior Court gave its judgment that the City had lost to the Cuyamaca Water Company 27 cu. ft. of water per second. The investigation and preparation of this case started in 1913, the action was filed in 1923, the appeal to the Supreme Court projected in 1927, and it is reasonable to assume that the decision will be handed down about 1932. Meantime, special counsel fees and other expenses go on, but the water question will not be settled unless the litigants themselves get together and settle the so-called differences.

A letter written by J. W. Roulac to the Mayor and City Council September, 1928, contained the following: "I am a member of the Citizens League, also a member of the committee on dams and water supply investigation.

"You are now confronted with one of the most momentous decisions you may ever be called upon to make in the history of

San Diego.

"The condition we find ourselves in is due to the manner in which the water situation has been handled heretofore, which is indeed a great financial misfortune to the tax payers.

"It is hard to conceive of a worse state of affairs. Ponder for a moment the millions of taxpayers' money that has been wasted and squandered! But on the other hand, consider that which has already been wasted is a mere drop in the bucket to the additional millions of taxpayers' money that will be thrown away for the benefit of a few if the present slate is not washed clean for a new start."

The Board of Water Commissioners for the City of San Diego, composed of Frederick M. White and Charles T. Chandler, on December 29, 1922, at the request of the City Council, rendered their report covering water development. The report was exhaustive and rested upon not only their own exhaustive investigation, but to a large extent upon well-considered opinions of the very best engineers. The report necessarily criticizes the City for its past blunders and it also calls attention to the indication made by the court that Mr. Cosgrove was probably wrong in his opinion rendered as City Attorney to the effect that San Diego was the owner of the paramount right to all the waters in San Diego River. The Commission did not approve the litigation which grew out of Mr. Cosgrove's decision. The



**Ed Fletcher Papers**

**1870-1955**

**MSS.81**

**Box: 73 Folder: 4**

**Writings and Interviews - Water History -  
Unidentified book chapter "Water Problems"**



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