

W.S. Post. :  
FILE 114. :

SERIAL 025393

Acts Feb. 15, 1901 and  
March 4, 1911.

For power plant and transmission  
line. Right of Way Application.

ESCONDIDO MUTUAL WATER COMPANY,  
Escondido, California.

Over parts of Secs. 1, 2, 3, 10, 15, 22, 27, 28, 32, 33, T. 11 S.  
R. 1 W., and Secs. 5 & 6 T. 12 S., R. 1 W.,

1914.

Dec. 29 Application, Maps, etc filed.  
" 31 " sent G.L.O. (General land office)

1916

Mar. 3. Claimants file withdrawal of application, without pre-  
judice and filed new application (See 028487)

April 26. F of 4/20/16 finally rejects application and returns maps and field notes.

May 3. Maps to claimant.

SERIAL 028487.

Act Feb. 15, 1901 (31 Stat 790)  
RIGHT OF WAY APPLICATION for  
Transmission line, etc. Power House  
Site and Penstock line.

ESCONDIDO MUTUAL WATER COMPANY,  
Escondido, Cal.

In Secs. 1, 2, 3, 10, 15, 22 & 27, T. 11 S., R. 1 W.,  
and Sec. 6, T. 12 S., R. 1 W.,

1916.

May 3. Application filed and sent to G.L.O.

*Geo. R. Rickham*

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

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

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

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

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



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

as aforesaid.

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



The foregoing provision is intended to and shall give the party of the first part the right to take and divert all water flowing in the San Luis Rey River channel at its said point of diversion, whether the same be from the water shed lying between the said reservoirs of the party of the second part and the point of diversion or water escaping from said reservoirs by seepage or otherwise.

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

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

anything herein contained.

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



day of July of the year immediately following, shall not exceed 100 miner's inches above the amount required by the Indians then the said 100 inches, or less, which shall be flowing in said river shall not be included in making up the said quantity of 1,350,000,000 gallons.

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

be constructed by it.

It is further expressly agreed by the parties hereto that the inability of the said party of the first part, for any reason or cause whatsoever, to receive the said 27,000,000 gallons of water per day in its said ditch during such rainy season, shall not prevent the party of the second part from being credited with that amount on the total quantity of water which the said party of the first part is entitled to receive, during said year, to-wit: on the total quantity of 1,350,000,000 gallons at its said point of diversion if he, the said party of the second part, shall be able to deliver to said party of the first part said amount of 27,000,000 gallons per day, and the said party of the first part shall be deemed and held to have received said total quantity of said 27,000,000 gallons per day for each and every day on which the party of the second part is able and willing to deliver the same, although the said party of the first part may be unable to receive it, and that said party of the first part shall be credited with waters which may have fallen during the said rainy season, commencing November first as aforesaid, which were diverted from any of said dams or reservoirs of said party of the second part out of the said drainage basin, and the party of the second part agrees that the party of the first part shall receive at said point of diversion not less than 1,350,000,000 gallons of water each year, provided the run off equals that amount. In event of a break in the conduit of the party of the first part preventing the diversion of 2000 inches or 27,000,000 gallons daily at any time



between November first of any year and April fifteenth of the following year, said party of the first part shall immediately notify the second part of that fact, and if at the time of the happening of such break and notification the said second party is supplying water from his reservoirs to make up the daily diversion of 27,000,000 gallons per day herein provided for, the said second party shall thereupon, during the continuance of said break, cease to deliver said deficiency and shall hold the same for future delivery to said first party until the conduit of said first part is repaired provided such repair shall be made with due diligence; provided further that if there is any deficiency in the quantity of water to be furnished to said party of the first part at the head of its ditch or conduit at said point of diversion which deficiency may be due to the construction of any of the dams of said party of the second part, that one-fourth ( $\frac{1}{4}$ ) of such deficiency may be delivered to the part of the first part by the party of the second part from the lower portion of the system which it may hereafter construct or out of the Pamo reservoir hereafter to be built, such one-fourth ( $\frac{1}{4}$ ) of such deficiency to be delivered at the head of the pipe line leading to the city reservoir of Escondido at an elevation of not less than 888 feet, and such delivery to be made at any reasonable rate to be ascertained by the daily average use during the irrigation season; it being the understanding and agreement of the parties hereto that if,

by reason of the construction and maintenance of said dams by the party of the second part, and the impounding and collecting of water thereby and his diversion of said water as aforesaid therefrom, there is any deficiency in the said total quantity of water which said party of the first part is entitled to receive per annum at its said point of diversion that one-fourth of such deficiency may be delivered to the said party of the first part by the said party of the second part out of the said lower portion of his system or out of the Pamo reservoir in the manner aforesaid.

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

It is further understood and agreed by the parties hereto that nothing herein contained shall ever be taken or construed as a waiver by either of the parties hereto of its or his right to use any water or waters which, after the diversion hereinbefore provided for, are made, may flow in said river by any lands riparian thereto



or upon any lands in said Warner's Ranch, nor as a waiver by the party of the second part of any of his rights as a riparian owner by virtue of his ownership of said ranch.

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

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

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

Escondido Mutual Water Co.

By Albert Beven, Pres.

Attest:

By H. Carpenter, Secty.

Wm. G. Henshaw.

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

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

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

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

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

NOW THEREFORE, in consideration of the premises and of the covenants and agreements hereinafter contained on the part of the party of the second part, the said party of the first part hereby consents and agrees to the construction and maintenance by the said party of the second part of dams and reservoirs across the said San Luis Rey River in said County, above the westerly line of Warner's Ranch and dams and reservoirs across Lusardi Creek above the point where the conduit hereafter to be constructed by the said party of the second part will, when constructed, cross said Lusardi Creek, and to the impounding and collecting in and by such dams and reservoirs of the waters of the said creek and of said San Luis Rey River and the affluents thereof and streams running into the same, and to the diversion from said dams and reservoirs of the waters of said San Luis Rey River and its said affluents and said other streams including said creek into other parts of said County and into other water sheds than the water sheds which supplies said River and streams; and the said party



of the first part hereby relinquishes unto the said party of the second part, and waives all and every right and claim to object to the construction and maintenance of said dams and reservoirs, or any of them, or the said impounding and collecting of said waters thereby and the diversion thereof as aforesaid, and also all claims for damages and all rights of action of every kind by reason or on account of or which might grow out of the construction, maintenance and operation of the said dam and reservoirs and the said impounding and collecting thereby of such waters and the diversion of the same therefrom as aforesaid.

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

The foregoing provision is intended to and shall give the party of the first part the right to take and divert all water flowing in the San Luis Rey River channel at its said point of diversion, whether the same be from the water shed lying between the said reservoirs of the said party of the second part and the point of diversion or water escaping from said reservoirs by seepage or otherwise.

In consideration of the foregoing consent and relinquishment, the said party of the second part hereby agrees that the party of the first part is entitled to divert each and every year from said San Luis Rey River, at its said point of diversion, a minimum of 100,000 miner's inches measured under a four inch pressure, the same being 1,350,000,000 gallons per

year, and that said 1,350,000,000 gallons is the amount which the said party of the first part is entitled to divert from said San Luis Rey River at its said point of diversion near the boundary line between said Sections 32 and 33 in Township 10 South, Range 1, East S.B.M.

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

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

It is further hereby expressly agreed by the parties hereto that the said party of the first part shall and will be ready to receive water from the said party of the second part and from the said San Luis Rey River in an amount



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

It is further expressly agreed by the parties hereto that the inability of the said party of the first part, for any reason or cause whatsoever, to receive the said 27,000,000 gallons of water per day in its said ditch during such rainy season, shall not prevent the party of the second part from being credited with that amount of the total quantity of water which said party of the first part is entitled to receive during said year, to-wit: on the total quantity of 1,350,000,000 gallons at its said point of diversion if he, the said party of the second part, shall be able to deliver to said party of the first part said amount of 27,000,000 gallons per day, and the said party of the first part shall be deemed and held to have received said total quantity of said 27,000,000 gallons per day for each and every day on which the party of the second part is able and willing to deliver the same, although the said party of the first part may be unable to receive it, and that said party of the first part shall be credited with waters which may have fallen during the said rainy season, commencing November first as aforesaid, which were diverted from any of said dams or reservoirs of said party of the second part out of the said drainage basin, and the party of the second part agrees that the party of the first part shall receive at said point of diversion not less than 1,350,000,000 gallons of water each year, provided the run-off equals that amount. In event of a break in the conduit of the party of the first part preventing the diversion of 2000 inches or 27,000,000 gallons daily at any time between November first of any year and April fifteenth of the following year, said party of the first part shall immediately notify the ~~second~~ party of the second part of that fact, and if at the time of the happening of such break and notification the said second party is supplying water from his reservoirs to make up the daily diversion of 27,000,000 gallons per day herein provided for, the said second party shall thereupon, during the continuance of said break, cease to deliver said deficiency and shall hold the same for future delivery to said first party until the conduit of said first party is repaired provided such repair shall be made with due diligence; provided further

that if there is any deficiency in the quantity of water to be furnished to said party of the first part at the head of its ditch or conduit at said point of diversion which deficiency may be due to the construction of any of the dams of said party of the second part, that one-fourth ( $\frac{1}{4}$ ) of such deficiency may be delivered to the party of the first part by the party of the second part from the lower portion of the system which it may hereafter construct or out of the Pamo reservoir hereafter to be built, such one-fourth ( $\frac{1}{4}$ ) of such deficiency to be delivered at the head of the pipe line leading to the city reservoir of Escondido at an elevation of not less than 888 feet, and such delivery to be made at any reasonable rate to be ascertained by the daily average use during the irrigation season; it being the understanding and agreement of the parties hereto that if by reason of the construction and maintenance of said dams by the party of the second part, and the impounding and collecting of water thereby and his diversion of said water as aforesaid therefrom, there is any deficiency in the said total quantity of water which said party of the first part is entitled to receive per annum at its said point of diversion that one-fourth of such deficiency may be delivered to the said party of the first part by the said party of the second part out of the said lower portion of his system or out of the Pamo reservoir in the manner aforesaid.

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

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

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



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

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

Escondido Mutual Water Co.  
By Albert Beven, Pres.

Attest:

Hy N. Carpenter, Secty.

Wm. G. Henshaw.

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

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

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

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

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

NOW THEREFORE, in consideration of the premises and of the covenants and agreements hereinafter contained on the part of the party of the second part, the said party of the first part hereby consents and agrees to the construction and maintenance by the said party of the second part of dams and reservoirs across the said San Luis Rey River in said County,



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

It is further mutually agreed between the parties hereto that the party of the second part hereby consents that the party of the first part may divert from the San Luis Rey River, at the said point where said party of the first part now takes its water from said River, all the run-off from the water shed lying between the dam or dams hereinbefore mentioned, and to be constructed by the party of the second part, and the said point of diversion from said River by the party of the first part; it being the purpose and intent of this provision



that the party of the second part, as the riparian owner of lands along the San Luis Rey River, waives his right to the rainfall on the water shed between the dam or dams of the party of the second part, to be constructed as herein provided for, and the said point of diversion from said San Luis Rey River by the party of the first part; and the said party of the second part hereby relinquishes to said party of the first part, and waives all and every right and claim to object to the diversion of the run-off from said water shed lying between said dams and said point of diversion by said party of the first part, and also waives all claims for damages and all rights of action of every kind or nature by reason or on account of or which might grow out of the diversion, impounding and utilization of the waters falling upon said water shed and flowing down the natural course of the San Luis Rey River to the point of diversion hereinbefore referred to, where the party of the first part takes its water from said San Luis Rey River.

The foregoing provision is intended to and shall give the party of the first part the right to take and divert all water flowing in the San Luis Rey River channel at its said point of diversion, whether the same be from the water shed lying between the said reservoirs of the party of the second part and the point of diversion or water escaping from said reservoirs by seepage or otherwise.

In consideration of the foregoing consent and relinquishment, the said party of the second part hereby agrees that the party of the first part is entitled to divert each and every year from said San Luis Rey River, at its said point of diversion, a minimum of 100,000 miner's inches measured under a four inch pressure, the same being 1,350,000,000 gallons per year, and that said 1,350,000,000 gallons is the amount which the said party of the first part is entitled to divert from said San Luis Rey River at its said point of diversion near



the boundary line between said Sections 32 and 33 in Township 10 South, Range 1 East, S. B. M.

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

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



the said 200 inches or less which shall be flowing in said river shall not be included in making up the said quantity of 1,350,000,000 gallons; and if at any time after the first day of July 1917, and while this contract remains in force and effect, the amount of water which shall flow in said river between the first day of November of any year and the first day of July of the year immediately following, shall not exceed 100 miner's inches above the amount required by the Indians, then the said 100 inches, or less, which shall be flowing in said river shall not be included in making up the said quantity of 1,350,000,000 gallons.

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



be constructed by it.

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



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



out of the Pamo reservoir in the manner aforesaid.

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

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

It is further hereby understood and agreed by the parties hereto that the phrase "Miner's inch", as hereinbefore used, shall be always taken and construed to mean a quantity of water equal to 15,500 gallons every twenty-four hours.

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

IN WITNESS WHEREOF, the said party of the first part has



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

Escondido Mutual Water Co.

Attest:

By Albert Beven, Pres.

Hy N. Carpenter, Secy.

Wm. G. Henshaw



Agreement:  
Lecordido Mutual Water Co.

&

Mm G Houshous

June 21, 1912



ESCONDIDO MUTUAL WATER CO., Escondido, 80 cu. ft. per sec. from San Luis Rey R., in San Diego Co., for irrig. and domestic purposes in City of Escondido. Water to be used on 13,230 acres. Amt. of water to be stored 20,000 ac. ft. Main diversion ditch 16 mi. long. (App. allowed 90 das. from 5-28-20 to complete app.) 1848; and same applicant, for 80 cu. ft. per sec. from San Luis Rey R., for power purposes. Amt. of water to be stored 20,000 ac. ft. Amt. power to be developed 910 THP. (App. allowed 90 das. from 5-28-20 to complete. 1849.

DALL KALBOUSH, Dunsmuir, Siskiyou Co., 1/2 cu. ft. per sec. from Little Castle Cr., Siskiyou Co., trkb. Sacto. R., for irrig. 5 acres 1850

ESCONDIDO MUTUAL WATER CO., Escondido, 80 cu. ft. per sec. from San Luis Rey R., in San Diego Co., for irrigating and domestic purposes in City of Escondido. Water to be used on 13,231 acres. Amt. of water to be stored 20,000 ac. ft. Main diversion ditch 16 mi. long. (App. allowed 90 das. from 5/28/20 to complete app.) 1848. Ans same applicant, for 80 cu. ft. per sec. from San Luis Rey R., for power purposes. Amt. of water to be stored 20,000 ac. ft. Amt. power to be developed 910 THP. (App. allowed 90 das from 5/28/20 to complete. 1849.



CORONADO WATER CO., San Diego, for appropriation of underground waters flowing thru Secs. 1,2,3,4,5,6,T 18 S., R. 2 W, and Secs. 31,32,33,34,& 35,T 18 S.,R 2 W. S.B.M., in San Diego Co., for sale and distribution for domestic & municipal purposes in the Tia Juana River Basin, 1851.

ESCONDIDO MUTUAL WATER CO.?, Escondido, 80 cu. ft. per sec. from San Luis Rey R., in San Diego Co., for irrigating and domestic purposes in City of Escondido, Water to be used on 13,231 acres. Amt of water to be stored 20,000 ac. ft. Main diversion ditch 16 mi. long. (App. allowed 90 das. from 5/28/20 to complete app.) 1848. Ans same applicant, for 80 cu. ft. per sec. from San Luis Rey R., for power purposes. Amt of water to be stored 20,000 ac. ft. Amt power to be developed 910 THP. (App. allowed 90 das from 5/28/20 to complete. 1849.



THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of October, 1921, by and between \_\_\_\_\_, a corporation duly incorporated under the laws of \_\_\_\_\_, hereinafter designated the first party, and Escondido Mutual Water Company, a corporation duly incorporated under the laws of the State of California, hereinafter designated the second party, witnesseth:

WHEREAS the first party is contemplating the building of a dam and reservoir on that certain tract of land situated in the County of San Diego, State of California, commonly known as Warner's Ranch, for the purpose of impounding the waters of the San Luis Rey River and its affluents, the location or site of such proposed dam being in the gorge, through which said San Luis Rey River flows from said Warner's Ranch, and in the vicinity of the place where the westerly boundary of said ranch crosses said San Luis Rey River and said gorge; said Warner's Ranch is also known as the San Jose De Valle and Valle De San Jose. The location or site of said proposed Warner Dam and Warner Reservoir is shown upon the map attached hereto and marked Exhibit A, said site being designated "Warner Reservoir", and

WHEREAS it is contemplated that said dam will ultimately be built to such a height as to be capable of storing in said reservoir approximately 200,000 acre feet, and that the run-off from the water shed tributary to said reservoir if gathered therein will yield for irrigation use approximately 28,000 acre feet and for domestic uses approximately 24,750 acre feet per annum, and

WHEREAS the second party claims to be the owner of a certain ditch or conduit extending from its point of intake on the banks of the San Luis Rey River about nine

miles below said proposed Warner dam site and thence running in a generally Southwesterly direction to a reservoir owned by said second party; said ditch and reservoir of said second party being and having been for several years used by it for the purpose of conducting water for distribution over certain lands in and in the vicinity of the city of Escondido in said San Diego County. The location of the said ditch or conduit and said reservoir of said second party is shown on the said map Exhibit A attached hereto; said ditch line being designated on said map by the line marked "Escondido Mutual Water Company Ditch", the reservoir being marked "Escondido Mutual Water Company Reservoir", and

WHEREAS the second party claims to have the right to divert from the said San Luis Rey River at the Northerly terminus or intake point of said ditch, water to the amount of 1,350,000,000 gallons per annum, the equivalent of which is two hundred eighty-six and thirteen hundredths (286.13) miner's inches, as hereinafter defined, continuous flow, which amount of water together with certain water for use of certain Indian reservations in the vicinity of said ditch, said second party has been accustomed to divert during certain parts of the year from said river and to conduct through said ditch into said reservoir; excepting that the water diverted for the use of said Indian reservations is delivered wholly or in part along the line of said ditch. Wherever in this contract the expression miner's inch is used the parties hereto mean one fiftieth part of a cubic foot of water per second; and

WHEREAS the second party is desirous of securing for its own use a greater supply of water than the said 286.13 miner's inches diverted by it as aforesaid through said ditch



and into its said reservoir and is desirous of purchasing the same from the first party in the event that first party shall construct said dam and reservoir on said Warner's Ranch as aforesaid, and

WHEREAS, it is contemplated by the parties hereto that if such additional water be supplied by the first party to the second party from said Warner Reservoir, the same will be conducted in a ditch to be constructed by the first party from said Warner Reservoir to a connection with the said ditch of the second party, or, at the option of the first party, the same may be allowed to flow from said Warner Reservoir in the natural stream bed of said San Luis Rey River, to the said intake point of the said ditch of the second party; and in either case it is contemplated that the ditch of the second party, below the point at which the first party may elect to deliver water into the same will be wholly or in part enlarged and improved to such an extent, that it will be sufficient to carry the said 286.13 miner's inches of the second party diverted as aforesaid at the said intake point of said ditch, the said Indian reservation waters, all the water which may be furnished by the first party to the second party under this contract, and in addition to all of the aforesaid waters, all water which the first party may desire to conduct through said ditch, it being understood, however, that the maximum capacity of said ditch will not exceed 5,000 miner's inches, and

WHEREAS it is further contemplated by the parties hereto that in the event of the second party purchasing water from the first party hereunder, and the enlargement or improvement of said ditch as aforesaid, that the course of the water into said reservoir of the second party as the same now

flows, will be changed from the southerly portal of the last tunnel on said ditch to the said reservoir, so as to utilize for power purposes the drop existing between said portal and said reservoir; the approximate location of said proposed change of course being shown on the said map Exhibit A by the line marked "Proposed Change of Conduit"; and

WHEREAS it is also contemplated that, in the event of the enlargement or improvement of said ditch so as to take care of said additional amount of water as above set forth, the reservoir of the second party will be also increased and the dam by which the water in said reservoir is impounded will be raised, strengthened, and otherwise improved.

NOW THEREFORE IT IS HEREBY AGREED between the parties hereto as follows, to-wit:

I.

First Party's Covenant to Sell.

Upon and subject to all of the terms and conditions in this contract set out and for the price hereinafter stated, the first party agrees that, if and when it shall construct said Warner reservoir and dam, whereby the waters of said San Luis Rey River will be impounded as aforesaid, and water is stored in said reservoir to the amount of 30,000 acre feet, it will commence, and for the period of 50 years thereafter continue to sell and deliver to the second party 2500 acre feet of water per annum, (with an option for an additional amount up to 2500 acre feet per annum, as hereinafter provided) for the price of \$15.00 per acre foot per annum, the times of payment, manner of delivery and measurement to be as hereinafter set forth; provided, however, that if during any period the first party shall sell water to any other person or corporation for irrigation purposes



for a price less than \$15.00 per acre foot per annum, then the second party shall be entitled to water during a like period at such lower price, provided always that the cost of delivery to the second party hereunder is not greater than the cost of delivery to the person or persons to whom water may be sold at such lower price;

## II.

### Second Party's Covenant to Buy.

The second party hereby agrees that, if and when the first party shall construct said dam and reservoir and shall have stored therein at least 30,000 acre feet as aforesaid it will buy and take from the first party at such time, and continuously thereafter for the period of 50 years, at least 2500 acre feet of water per annum, and will pay therefor to the first party the said price of \$15.00 per acre foot per annum; provided, however, that in such event it is agreed that the second party shall have the option for the period of three years from the time of the commencement of the delivery of water under this contract, but no longer, and time is of the essence hereof, to purchase from the first party at said price of \$15.00 per acre foot per annum, and upon the same terms as herein provided with respect to said 2500 acre feet per annum, an additional amount not exceeding 2500 acre feet per annum during and for that part of said period of 50 years remaining at the time of the exercise of such option, which may be exercised only within said three years from the time of the delivery of water under this contract as aforesaid; provided always, and as a condition to the grant of this option, that notice in writing of the exercise thereof must be given by the second party to the first party within said

three year period; and from the time of the exercise of such option by the second party it shall thenceforth during the remainder of said 50 year period be obligated to take the additional amount of water which it shall have elected to purchase under said option and shall pay therefor the said price of \$15.00 per acre foot per annum, and in the event of the election by the second party to take said additional water, then the same shall be subject as aforesaid, to all of the terms hereof pertaining to the purchase and sale of said 2500 acre feet.

## III.

### Time and Place of Delivery.

The said water herein provided to be sold by the first party to the second party shall be delivered by the first party to the second party either at the intake of the second party's said ditch on the San Luis Rey River or, at the option of the first party, into said ditch of the second party at some other point on the line of said ditch which may be selected by first party. It is understood and agreed that all water hereby provided to be sold to the second party by the first party is to be delivered at an approximately uniform rate of flow within a six months period in each year, commencing on the 1st day of April.

It is expressly understood and agreed that from and after the delivery of any water agreed to be sold and delivered by the first party to the second party, whether at the intake of the second party's ditch or at some other point on the line of said ditch or wheresoever said water may be delivered to the second party, the title thereto or ownership thereof shall vest in the second party and from and after the delivery to it as



aforesaid the first party shall not be responsible or liable for the transportation or the conducting thereof through said or any ditch to said reservoir of the second party or other place, and all risk attending all loss or diminution in volume from seepage, evaporation, leakage or escape from said ditch from whatsoever cause, as well as all risk of deterioration in quality from whatsoever cause, shall be borne and carried entirely by the second party.

It is anticipated by the parties hereto that in the transmission of water through said ditch and in the storage thereof in said reservoir of the second party a loss of water will occur from evaporation, leakage, injury to or destruction of the ditch, and possibly from other causes; therefore whenever such commingled waters of the parties hereto are being transmitted in said ditch or stored in said reservoir, and a loss or diminution from any of the causes above referred to occurs, such loss or diminution shall be apportioned between and borne by the parties hereto respectively.

#### IV.

##### Lease of Ditch and Reservoir.

In consideration of this contract and the rental to be paid by the first party as hereinafter set out, second party hereby agrees to lease unto the first party said ditch and reservoir of second party, together with the rights of way in or over the land upon which said ditch or reservoir is located, with all rights and appurtenances thereunto belonging or in any wise appertaining; such lease shall include any new ditch or conduit that may be constructed upon the same or a different course for the purpose of conducting water into said reservoir, to the extent that the same shall go over any land owned or in which the second party has any right, title

or estate; and it is agreed that this contract shall operate as a lease and entitle the first party to the possession and control of such ditch and reservoir and to the land and right of way upon which the same are located from the time that first party commences to furnish water to second party hereunder and such lease shall continue for the said term of 50 years; provided, however, that it is understood that immediately upon the execution of this contract and thenceforth until the commencement of the term of said lease first party shall have the right to enter upon the lands or right of way over which said ditch of the second party runs and upon which said reservoir of the second party is located for the purpose of making surveys and doing such work of enlargement or improvement as is contemplated hereby to be done. Subject to the right of the second party to have its said 286.13 inches of water and the water which may be sold to it hereunder by the first party, and the Indian reservation water conducted in said ditch, first party shall have the right under its said lease to use said ditch to its full capacity for the conducting of any water which it may desire to have conducted therein. Likewise with respect to said reservoir of the second party, first party under said lease shall, subject to the use thereof by the second party for the storage of its said waters, have the right to use said reservoir for the storage of such water as it may desire to have conducted through said ditch into said reservoir.

#### V.

##### Enlargement of Ditch of Second Party.

It is hereby agreed that said ditch of the second party may be enlarged and improved so that it will have a capacity sufficient to carry all of the waters of the second party, said Indian reservation water and all the water first



party may desire to have conducted therein, not to exceed, however, a capacity of 5,000 miner's inches, and that such improvements, including change of course, the lining thereof, and the construction of siphons, shall be made in said ditch as shall be required for the effective and economical conducting of water therein as contemplated hereby. All work of enlarging, changing the course of or otherwise improving said ditch, as well as the repair and maintenance thereof, shall be under the direction and control of the first party, subject always to the approval of the second party, provided, however, that if the parties hereto should not be able to agree as to the manner in which said ditch shall be enlarged, changed, improved, maintained or repaired, then the matter shall be submitted to a board of arbitrators consisting of three members, one to be chosen by each party and the two so chosen to choose a third and a decision by the majority shall be binding upon the parties hereto.

#### VI.

Proportion in Which Cost of Enlargement,  
Changing and Improvement of Ditch to be  
Borne by Parties.

The cost of enlargement, changing the course of and other improvement of said ditch shall be borne by the parties hereto in the proportion of two-thirds by the first party and one-third by the second party. First party shall during the work of enlarging and improving said ditch render to the second party monthly bills or statements covering the cost of such work, and the second party shall within \_\_\_\_\_ days thereafter pay to the first party its one-third of such cost.

#### VII.

Proportion in which Cost of Repair and  
Maintenance of Ditch to be Borne by Parties.

The cost (being as above defined) of the repair and maintenance of said ditch shall be borne by the parties hereto in the proportion of the amount of water in acre feet per annum transmitted therein for the use and development of the parties hereto respectively, during each water year, which shall be from the 1st of April to the 31st of March. The settlement and adjustment for each water year shall be made during the month of April next succeeding. Intermediate settlements and adjustments shall be made at the end of each of the first three months periods of each of such water year proportioned on the respective water runs preceding each such settlement; and as heretofore provided complete settlement for the water year shall be made at the end of each such water year. Payments of the amounts found due shall be made promptly.

The water so claimed to be owned by the second party as aforesaid and any greater amount of water which may be diverted by it from said river below said Warner's Dam, and the water which it may purchase from the first party, and the Indian water, shall be considered, in determining such proportion of the cost of maintenance and repair, as water of the second party transmitted for its use and development.

The first party shall during the last month of each water year furnish the second party for its approval an estimate or budget of the prospective expenditures for repairs and maintenance for the succeeding water year, provided, however, that in the event of any emergency affecting the safety of the ditch or the continuance of the undiminished flow of water therein, the first party at its discretion may incur expenditures to remedy



same without first obtaining approval of second party.

#### VIII.

##### Enlarging and Improvement of Reservoir.

(Here put in provisions about enlarging Escondido reservoir and the payment of cost of enlargement or improvement and also cost of repairs and maintenance, etc.)

#### IX.

##### Rental for Ditch and Reservoir.

First party agrees to pay to the second party as rental for each year for the use of said ditch and reservoir an amount equal to \$1.00 multiplied by the number of acre feet of water belonging to the first party and conducted by it for its use and benefit in such year through said ditch to said reservoir, excluding always in computing or determining the amount of such rental for any year all water sold by first party to second party hereunder; provided, however, that the total amount of such annual rental so to be paid by the first party shall not be less in any one year than a sum equal to \$2.00 multiplied by the number of acre feet of water which the second party shall purchase and receive from the first party hereunder during such year, nor in any event more than Ten Thousand Dollars (\$10,000.00) per year; and provided further that it is expressly understood and agreed that no rental whatsoever shall become due, owing or payable until said Warner Dam and Reservoir shall be built and water of the first party transported through said ditch under the terms hereof.

#### X.

##### Method of Measurement of Water and of Payment Therefor.

(Here state method of measuring for the purpose of computing rentals, time of payment, etc.)

*Pass*

(1)

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_ A. D. 1912, by and between ESCONDIDO MUTUAL WATER COMPANY, a corporation organized and existing under the laws of the State of California, the party of the first part, and the VOLCAN LAND AND WATER COMPANY, a corporation organized and existing under the laws of Arizona, party of the second part, WITNESSETH:

THAT WHEREAS, the party of the first part is the owner of a water system and system for the impounding, diversion, selling and distribution of water to the City of Escondido and the inhabitants thereof and the country adjacent thereto, and in the operation of such system diverts water from the San Louis Rey River in the County of San Diego, State of California, at a point near the boundary line between Sections 32 and 33 in Township 10 South, Range One East, S. B. M. in said County;

AND WHEREAS the said party of the first part owns certain lands riparian to the said San Louis Rey River and certain water rights;

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

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

NOW THEREFORE, in consideration of the premises and of



the covenants and agreements hereinafter contained on the part of the party of the second part, the said party of the first part hereby consents and agrees to the construction and maintenance by the said party of the second part of dams and reservoirs across the said San Louis Rey River in said county at the points and places above the said point of diversion of water from said river by the said party of the first part, and to the impounding and collecting in and by such dams and reservoirs the waters of the said San Louis Rey River and the affluents thereof and streams running into the same, and to the diversion from said dams and reservoirs of the waters of said San Louis Rey River and its said affluents and said other streams into other parts of said county and into other water sheds than the water shed which supplies said river and streams; and the said party of the first part hereby relinquishes unto the said party of the second part, and waives all and every right and claim to object to the construction and maintenance of said dams and reservoirs, or any of them, or the said impounding and collecting of said waters thereby and the diversion thereof as aforesaid and also all claims for damages and all rights of action of every kind by reason or on account of or which might grow out of the construction, maintenance and operation of the said dams and reservoirs and the said impounding and collecting thereby of such waters and the diversion of the same therefrom as aforesaid; and the said party of the first part, for and upon the same considerations, does hereby grant and transfer to the party of the second part all riparian rights belonging to the said party of the first part and which are appurtenant to or form a part of any and all lands of the said party of the first part, fronting or abutting upon the said river or any of said streams or through which said river, or any of its

said affluents or streams, runs or has its course, and all riparian rights appurtenant to or forming a part of any lands in the valley of said San Louis Rey River and all other water rights of the said party of the first part which are appurtenant to any of the lands of said party of the first part in said valley, and which lands contain or touch the ditch known as the Libbey Ditch.

In consideration of the foregoing grants, consent and relinquishment, the said party of the second part hereby agrees that the party of the first part is entitled to receive in each and every year, in the Bear Valley dam and reservoir of the said party of the first part, located in Section 32, Township Eleven South, Range One West, S. B. M., in said County, a quantity of water equivalent to seventy-one thousand miner's inches, measured under a four inch pressure flowing for one day, that is to say nine hundred and twenty million one hundred sixty thousand gallons, and that the said 71000 miner's inches flowing for one day, or 920,160,000 gallons, is the net amount which the said party of the first part is entitled to receive in said Bear Valley dam and reservoir each year from whatever source such water may come and if said quantity of water is obtained in any year in said Bear Valley dam and reservoir then the obligations of the party of the second part herein contained to supply water to the said party of the first part shall be held to be fulfilled and complied with and it shall be under no further obligations to furnish or supply water in or during such year to said party of the first part and it shall be relieved of all obligations for such year by reason or on account of this agreement or anything herein contained or otherwise.

It is further expressly agreed by the parties hereto that in order to definitely determine the quantity of water

Changed to 100,000 M. I. days  
at point of diversion, but of ditch

A. H. SWEET  
SAN DIEGO, CAL.

A. H. SWEET  
SAN DIEGO, CAL.



all out because of change to Point of diversion.  
Amended to Nov. 1 - to April 15

necessary to enter the system or ditch of said party of the first part, at its said point of diversion of the waters of the San Louis Rey River, located as aforesaid near the boundary between Sections 32 and 33, Township 10 South, Range One East S. B. M., and therein referred to as the "Head of the ditch" in order to secure said party of the first part the said 920,160,000 gallons per annum, an allowance of twenty-five per cent of said 920,160,000 gallons shall be made for actual leakage of the said ditch or conduit of the said party of the first part by which it carries or takes said water from the said point of diversion to said Bear Valley dam and reservoir, and that if any loss of water exists or shall occur beyond or above twenty-five per cent of said 920,160,000 gallons per annum, such loss shall be considered due to the neglect of the said party of the first part or the improper maintenance by it of its said system and the said party of the second part shall not be chargeable with any part of said loss or held to make up any part of the same by furnishing or supplying said party of the first part with water or permitting the supplying of the same to said party of the first part.

It is further expressly agreed by the parties hereto that the period through which said 920,160,000 gallons of water per annum may be delivered to said party of the first part or taken by it, shall be the entire year commencing on the first day of October of each calendar year, and that the actual measurement of water flowing into the said ditch or conduit of said party of the first part at said point of diversion shall be made and maintained by each of the parties hereto at its own expense and each of them shall have the right, unhampered by the other, of making such measurements

and keeping a record thereof and of the quantity of water at any and all times flowing into the said ditch or conduit; and that duplicate copies of all such records shall be made by each party and one of such duplicates delivered by each party to the other at least once every \_\_\_\_\_ days.

It is further hereby expressly agreed by the parties hereto that the said party of the first part shall and will be ready to receive water from the said party of the second part and from the said San Louis Rey River in an amount of at least 25,920,000 gallons per day (the same being 2000 miner's inches measured under a four inch pressure per day) at all times during the rainy season, which season is understood and agreed by the parties hereto to commence on the first day of December of each calendar year and end on or about the first day of April of the first following calendar year; and that the said party of the second part may, at any time during such season, supplement and increase the flow of said river by an amount of water which will bring up the total quantity which may be supplied to the said party of the first part and turned into or allowed to run into its said ditch at said point of diversion, to 25,920,000 gallons per day; and that said party of the second part may supply such amount to said party of the first part by turning or allowing to run into said river from any or all its said dams and reservoirs, such quantity of water or by taking and carrying the same to the said head of said ditch at said point of diversion by means of ditches, flumes, pipe lines or conduits which may be constructed by it.

It is further expressly agreed by the parties hereto that the inability of the said party of the first part, for any reason or cause whatsoever, to receive the said 25,920,000 gallons of water per day in its said ditch during such



rainy season, shall not prevent the party of the second part from being credited with that amount on the total quantity of water which the said party of the first part is entitled to receive during said year to-wit: on the total quantity of 960,160,000 gallons in its said Bear Valley dam and reservoir if it, the said party of the second part, shall be able to deliver to said party of the first part said amount of 25,920,000 gallons per day, and the said party of the first part shall be deemed and held to have received said total quantity of said 25,920,000 gallons per day for each and every day on which the said party of the second part is able and willing to deliver the same, although the said party of the first part may be unable to receive it and that said party of the first part shall be credited with waters which may have fallen during the said rainy season commencing December first as aforesaid, which were diverted from any of said dams or reservoirs of said party of the second part out of the said drainage basin, and the party of the second part agrees that the party of the first part shall receive, if its said ditch is in proper condition to carry that amount, the said quantity of 920,160,000 gallons of water each year in the Bear Valley dam and reservoir of said party of the first part, provided however, that if there is any deficiency in the quantity of water to be furnished to said party of the first part at the head of its ditch at said point of diversion, which deficiency may be due to the construction of any of the dams of said party of the second part, that such deficiency may be delivered to the party of the first part by the party of the second part from the lower portion of the system which it may hereafter construct and out of the Pamo reservoir hereafter to be built, such deficiency to be delivered at the head of the pipe line leading to the City Reservoir of

Escondido at an elevation of 888 feet and such delivery to be made at any reasonable rate to be ascertained by the daily average use during the irrigating season, provided further however, that the amount of such deficiency to be so supplied by the Pamo reservoir to the said party of the first part shall not exceed in any year one-fourth of the total quantity of water to be supplied to said party of the first part in such year in its said Bear Valley dam and reservoir to-wit: the quantity of 920,160,000 gallons; it being the understanding and agreement of the parties hereto that if, by reason of the construction and maintenance of said dams by the party of the second part and the impounding and collecting of water thereby and its diversion of said water as aforesaid therefrom there is any deficiency in the said total quantity of water to which said party of the first part is entitled to receive per annum in its said Bear Valley dam and reservoir, that such deficiency, not exceeding one-fourth of said total quantity, may be delivered to said party of the first part by the said party of the second part out of the said Pamo reservoir in the manner aforesaid.

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



river at said point of diversion during such year or more water than could be diverted by said party of the first part by its said ditch if said dams were not constructed.

IT is further agreed by the parties hereto that if the party of the second part shall bear the expense of lining the whole or any part of the Escondido Ditch of said party of the first part, that said party of the first part will permit such lining to be made and done under its direction and reasonable regulations and that the quantity of water which may be saved by such lining and repairs shall be credited upon the total amount of water to be delivered by the party of the second part to the party of the first part and upon the said total amount to which the said party of the first part is entitled to receive per annum in its said Bear Valley dam and reservoir to-wit: the amount of 920,160,000 gallons each year; on the other hand, however, if the said party of the first part shall line and improve its said ditch the amount of water so saved by such lining shall be credited to it and be added to the amount it is entitled to receive annually.

It is further agreed by the parties hereto that the said party of the first part will convey and carry, upon the demand of the party of the second part, through the said ditch of the party of the first part beginning at said point of diversion, any waters which the said party of the second part, may sell and dispose of and which can be more economically and efficiently carried, conveyed or distributed through or by means of said ditch than through or by means of any part of the system of said party of the second part hereafter to be constructed, but that the management of said ditch of said party of the first part shall be controlled by it under its reasonable regulations and the party of the

second part shall defray the pro rata proportion of the maintenance charges of said ditch while it is being used to carry the waters of said party of the second part and shall also, during such time, pay such proportion of the interest on the money invested in said ditch at the rate of six per cent per annum, it being the understanding and intention of the parties hereto that if the party of the first part permits the party of the second part to use said ditch for the conveying and carrying of water, that the party of the second part will pay a pro rata proportion of the maintenance charges of said ditch during the time it is being so used and also interest at said rate on a like proportion of the money invested in the portion of the ditch so used by said party of the second part.

IT is further hereby understood and agreed by the parties hereto that the phrase "miner's inch" as hereinbefore used shall be always taken and construed to mean a quantity of water equal to 12,960 gallons every twenty-four hours.

IN WITNESS WHEREOF the said parties have caused this agreement to be executed in their respective corporate names and under their respective corporate seals the day and year first above written.

ESCONDIDO MUTUAL WATER COMPANY

By \_\_\_\_\_

VOLCAN LAND AND WATER COMPANY

By \_\_\_\_\_



*Pinto Copy*  
*1st Draft*  
AGREEMENT.

AGREEMENT between the Volcan Land & Water Company and the Escondido Mutual Water Company: In the construction of Warner's Dam The Volcan Land & Water Co. recognizes the water rights of the Escondido Mutual Water Co. to a certain quantity of the waters of the San Luis Rey River, and this agreement is entered into to exactly define these rights in so far as affected by the construction of Warner's Dam, to guarantee to Escondido Mutual Water Co. the supply herein agreed upon. The stipulations are as follows:

The Volcan Land & Water Co. agrees that in its construction of Warner's Dam, that the Escondido Mutual Water Co. shall be protected in a total quantity equivalent to 71,000 Miners Inches *flowing under 4" from* flowing for one day, as received and measured at the Bear Valley Reservoir of the Escondido Reservoir of the Escondido Mutual Water Co. The method of ascertaining this quantity and the rate and manner of delivering it shall be as follows; defined or modified in administrative detail if necessary by mutual regulations satisfactory to both parties.

(a) The amount of 71,000 Miners Inches flowing for one day is designated as the net amount received in the Bear Valley Reservoir, and in ascertaining the equivalent amount to enter the Escondido Mutual Water Company's diversion point on the San Luis Rey River, hereafter referred to as the head of the ditch, it is agreed that an additional amount shall enter to allow for the actual leakage in the Escondido Mutual Water Company's conduit, but this amount shall not exceed 25% of said 71,000 Miners Inches, any loss beyond this amount, if it exist, shall be considered due to the neglect of maintenance by the Escondido Mutual Water Co.

The period through which this 71,000 Miners Inches may be delivered shall be the entire year. October 1st shall be taken as the date for commencing the accounting for the following season. The *actual* ~~acquired~~ measurement of waters flowing into and past the

intake of the Escondido Ditch shall be maintained at the joint expense of both parties, and duplicate records delivered to each. It is understood that the Escondido Mutual Water Co. are ready to receive this water at the rate of 2000 Miners Inches per day, and at any time during the rainy season, normally from December 1st to April 1st, upon notice of the Escondido Mutual Water Co. the Volcan Land & Water Co. shall supplement the flow of the River by an amount which will bring up the total available for the ditch head of 2000 Miners Inches.

That inability to receive by the Escondido Water Company due to accident of the ditch or other cause shall not prevent the crediting of the Volcan Land & Water Co. with water under this agreement at the rate of 2000 Miners Inches per day. On the other hand, the Escondido Mutual Water Company shall be credited when ready to receive with waters which may have fallen during said season commencing October 1st which were ~~impounded~~ *diverted*

*from* Warner's Dam out of the drairage basin *by* the Volcan Land & Water Company's ditch. In other words, it shall be the duty of the Volcan Land & Water Company to so administer its reservoir waters during each season so as to in good faith guarantee and insure the delivery of 71,000 Miners Inches in Bear Valley Dam.

It is agreed as an alternative that a portion of this deficit which may arise due to the construction of the dam may be delivered by the Volcan Water Co. *from* ~~during~~ the lower portion of its system out of the Pamo Reservoir at the head of the pipe line leading to the City Reservoir of Escondido at an elevation of 888 <sup>*of delivery or flow*</sup> feet at a reasonable rate, to be ascertained by considering the average daily use during the irrigating season. It is agreed that that portion of this deficit so supplied from the Pamo Reservoir shall not exceed one-fourth of 71,000 Miners Inches. In other words, not to exceed the amount of lands which can be covered by the City Reservoir.

It is understood that the rainfall in Southern California varies greatly; that certain extremely dry years occur at periods



at periods of five to eleven years apart in which all water companies are obliged to curtail the supply to consumers; that it is so stated in contracts that it is a physical impossibility to do toerhwise. It is therefore agreed that on the occurence of such extremely dry years that the above guarantee of 71,000 Miners Inches shall not be construed as a guarantee to deliver an amount greater than actually falls on the watershed, or would be supplied at the intake of the Escondido Ditch if <sup>tributary to the Escondido</sup> ~~no~~ <sup>Warner</sup> dam had been constructed.

Further, the obligation to supply the deficit shall be curtailed to the Escondido Mutual Water Company in the same proportion as the consumers of the Volcan Land & Water Co. may be curtailed during the same season. In other words, the status of the deficit shall be the same as that of any other person holding a water right of the Volcan Land & Water Co.

It is further agreed that in the event that further surveys and investigation disclose other reservoirs upon the San Luis Rey River, the Volcan Land & Water Co. may build and supply the waters required under this agreement from said reservoirs.

That the Escondido Mutual Water Co. consents to the diversion of water from the San Luis Rey River in so far as it does not affect its rights to waters in a diversion at the head of the Escondido Ditch, and that it transfers to the Volcan Land & Water Co. all Riperian rights held by said Company through its ownership of lands upon the Libbey Ditch upon the Lower San Luis Rey River in so far as these rights may be affected by the construction of Warner's Dam, and that the sum of Ten Dollars, (\$10.00) receipt of which is hereby acknowledged, is agreed to be the ascertained and liquidated value of said Riperian Rights. It is agreed that at any time upon the offer of the Volcan Land & Water Co. to bear the expense of lining any portion of the Escondido ~~XXXXXXXXXX~~ Ditch, that the Escondido Mutual Water

Company agrees to permit the same to be done under its own direction; that the salvage or saving in leakage due to such lining shall accrue to the Volcan Land & Water Co. On the other hand, if the Escondido Mutual Water Co. proceed to improve and render water-tight their ditch, the salvage so obtained shall accrue to the Escondido Mutual Water Company.

It is agreed that the Escondido Water Company will convey as carrier upon the demand of the Volcan Land & Water Co. any waters which said Company may sell and which will be more economically conveyed through this ditch, but that the management of the ditch shall be controlled by the Escondido Water Company and said water conveyed under its regulations; that the Volcan Land & Water Co., in such a case, shall defray a pro rata portion of the maintenance charges of the ditch plus a pro rata share of the interest on the capital invested.

That in furnishing water under this agreement from the Pamo Reservoir in lieu of San Luis Rey, the Volcan Land & Water Co. expressly agrees that it does not impair the existing rights of the Escondido Mutual Water Co., but proposes and will execute this as a matter of economical management, in furnishing the same water by a different route or other water in lieu of that which otherwise under this agreement it must supply from Warners Dam.

This agreement becomes operative when, and only when the works necessary to carry out the stipulations are built and ready for service.



AGREEMENT.

~~TIME LIMIT five years from date of completion of dam.~~

THIS AGREEMENT, Made and entered into this \_\_\_\_\_ day of February, 1912, by and between Volcan Land & Water Company, a corporation, party of the first part, and \_\_\_\_\_, party of the second part, Witnesseth,

THAT WHEREAS the party of the first part is contemplating the construction and is about to construct a dam and reservoir in that part of San Diego County, State of California, known as Warners Ranch and across the San Luis Rey River, and thereby to perpetually collect and impound water, including those flowing in said river, at that point or place and to divert the water so collected and impounded from the valley of the San Luis Rey River and its water shed into other parts and water sheds in said county for domestic use, irrigation, and other purposes; and

WHEREAS, the party of the second part is the owner of the following described land situated in said county and state and in the valley of said river, to-wit:

NOW THEREFORE, In consideration of the premises and of the agreements hereinafter contained on the part of the party of the first part, the said party of the second part hereby consents to the construction of said dam and reservoir and the said diversion of said waters, and gives to the said party of the first part the right to construct such dam and reservoir and thereby to perpetually collect and impound any and all waters of said river at the place where such dam shall be constructed, and divert said waters from the said valley and water shed of the San Luis Rey River into other water sheds and parts of said San Diego County.

And the said party of the first part, in consideration of the premises and of the agreements and grant of the said party of the second part hereinbefore contained, does hereby agree that in the event the water level of the San Luis Rey River in the said

land of the said party of the second part shall be lowered by reason of the construction of said dam and reservoir, or the diversion thereby of the waters of said river as aforesaid, it, the said party of the first part, will supply within \_\_\_\_\_ months after the lowering of said water level as aforesaid, water in sufficient quantities to irrigate the said lands of the said party of the second part, and that the said party of the first part will compensate the said party of the second part for all damage which he may sustain from the time of the lowering of the water level by reason of the construction of said dam and reservoir, and the diversion thereby of the water of said river until it, the said party of the first part, shall begin to furnish said party of the second part with water for the irrigation of his said lands, and that the said party of the first part will pay such damage either in money or in the free use of water by the said party of the second part as he may elect.

It is further agreed by the parties hereto that if the fact and amount of damage to the said party of the second part by reason of said impounding and diversion of waters by the said party of the first part as and in the manner aforesaid can not be agreed upon by the parties hereto, that then and in that event the question of such damage shall be submitted to the arbitration and decision of three competent persons, one to be selected by each of the parties hereto, and the third by the two chosen, and the decision of such arbitrators or any two of them, shall be binding and conclusive upon the parties hereto, and the amount of damage which they, or any two of them may determine to have been sustained by the said party of the second part by reason of the lowering of the water level on account of the construction of said dam and reservoir and the diversion thereby of the waters of said river as aforesaid, from the time such lowering begins until the party of the first part shall begin to furnish water for irrigation upon said lands to party of the second part,



pursuant to the terms of this agreement, shall be paid by the said party of the first part to the party of the second part either in water without expense to the said party of the second part, or in money as the said party of the second part may elect.

It is further agreed by the parties hereto that the water which the party of the first part shall furnish to the said party of the second part for irrigation of said land (except the water which may be furnished in payment of damages hereinbefore provided) shall be furnished at a reasonable rental and price and the party of the second part agrees to pay the party of the first part a reasonable price for such water and make such payments at such times as may be prescribed by the rules and regulations of the party of the first part.

It is hereby mutually agreed by said parties that the phrase "the water level" as hereinbefore used mean, and shall always be understood, taken and construed to mean and be, the level of the ground water plane, or the plane of saturation of the San Luis Rey River in said land.

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

VOLCAN LAND & WATER COMPANY,

By \_\_\_\_\_,

\_\_\_\_\_

\_\_\_\_\_

*By [signature]*



**AGREEMENT**  
**Between**

**SAN DIEGO COUNTY WATER COMPANY**  
**and**  
**ESCONDIDO MUTUAL WATER COMPANY**

**Dated Nov. 10, 1922.**



THIS AGREEMENT, made and entered into this 10th day of November, 1922, by and between SAN DIEGO COUNTY WATER COMPANY, a corporation duly incorporated under the laws of California, hereinafter designated the First Party, and ESCONDIDO MUTUAL WATER COMPANY, a corporation duly incorporated under the laws of the State of California, hereinafter designated the Second Party,

W I T N E S S E T H :

1. WHEREAS, the First Party is building a dam and reservoir on that certain tract of land situated in the County of San Diego, State of California, commonly known as Warner's Ranch, for the purpose of impounding the waters of the San Luis Rey River and its affluents, the location or site of such proposed dam being in the gorge, through which said San Luis Rey River flows from said Warner's Ranch, and in the vicinity of the place where the westerly boundary of said ranch crosses said San Luis Rey River and said gorge; said Warner's Ranch is also known as the San Jose De Valle and Valle De San Jose. The location or site of said proposed dam and reservoir is shown upon the map attached hereto and marked Exhibit "A", said site being designated "Henshaw Reservoir", and,

2. WHEREAS, it is contemplated that said dam will be

constructed to a height of one hundred ten feet (110) above the stream bed and with a storage capacity of approximately one hundred sixty-four thousand (164,000) acre feet, and that the same will be completed to such height within one (1) year from the date hereof, it being further contemplated, however, that after completion of said dam to the height aforesaid the height thereof may be increased to such an extent as to give a reservoir capacity of approximately two hundred thousand (200,000) acre feet, and

3. WHEREAS, it is estimated that the run-off from the water shed naturally tributary to said reservoir, if gathered therein, will yield for domestic or irrigation uses as follows: With the dam completed to said height of one hundred ten (110) feet, as now contemplated as aforesaid, the estimated yield for domestic uses is approximately twenty-one thousand two hundred forty (21,240) acre feet per annum, and for irrigation uses twenty-four thousand (24,000) acre feet per annum. If said dam should be ultimately raised so as to give a reservoir capacity of approximately two hundred thousand (200,000) acre feet the estimated yield for irrigation uses is twenty-eight thousand (28,000) acre feet and for domestic uses twenty-four thousand seven hundred fifty (24,750) acre feet per annum, and

4. WHEREAS, the Second Party claims to be the owner of a certain conduit extending from its point of intake on the banks of the San Luis Rey River about nine (9) miles below



said proposed Henshaw dam site and thence running in a generally Southwesterly direction to a reservoir owned by said second party, which reservoir may be sometimes referred to herein as "Bear Valley Reservoir"; said conduit and reservoir of said Second Party being and having been for twenty-eight (28) years used by it and its predecessor in interest for the purpose of conducting water for distribution for domestic and irrigation uses over certain lands in the vicinity of, and in the city of Escondido, in said San Diego County. The approximate location of the said conduit and said reservoir of said Second Party is shown on the said map "Exhibit A" attached hereto; said conduit line being designated on said map by the line marked "Escondido Mutual Water Company Conduit", the reservoir being marked, "Bear Valley Reservoir", and,

5. WHEREAS, the Second Party and its predecessor for twenty-eight (28) years past have been accustomed to divert water from said San Luis Rey River at the Northerly terminus or intake point of said conduit for its own use and benefit, and beginning with the year 1914, for the use of a certain Indian reservation in the vicinity of said conduit (water to the use of which said Indians claim title), and has conducted the water, so diverted, through said conduit into its said reservoir; excepting, that the water diverted for the use of said Indian reservation has been delivered to them wholly or in part along the line of said conduit before reaching said reservoir; the water so diverted for the use of Second Party

into its said conduit, as aforesaid, may be hereinafter referred to as "Second Party's diverted water", and the water so diverted into and conducted in said conduit for the use of said Indians may be hereinafter referred to as the "Indian water", and,

6. WHEREAS, the Second Party is desirous of securing for its own use a greater supply of water than the amount so diverted by it as aforesaid through said conduit and into its said reservoir, and is desirous of purchasing the same from the First Party in the event that First Party shall complete the construction of said dam and reservoir on said Warner's Ranch as aforesaid, and,

7. WHEREAS, it is contemplated by the parties hereto that if such additional water be supplied by the First Party to the Second Party from said Henshaw reservoir, the same will be conducted in a conduit to be constructed by the First Party from said reservoir to a connection with the said conduit of the Second Party at or near said intake thereof, or, at the option of the First Party, the same may be allowed to flow from said Henshaw Reservoir in the natural stream bed of said San Luis Rey River, to the said intake point of said conduit; and in either case it is contemplated that the conduit of the Second Party below said point of delivery into said conduit will be wholly, or in part, enlarged or/and improved to such an extent that it will be sufficient to carry the said water of the Second Party diverted as aforesaid from said San Luis



Rey River at the said intake point of said conduit, the said Indian water, all the water which may be furnished by the First Party to the Second Party under this contract, and in addition to all of the aforesaid waters, all water which the First Party may desire to conduct as herein provided from said Henshaw Reservoir through said conduit, and,

8. WHEREAS, it is further contemplated by the parties hereto that in the event of the Second Party purchasing water from the First Party hereunder, and the enlargement or improvement of said conduit as aforesaid, the course of the water into said reservoir of the Second Party as the same now flows from the Southerly portal of the last tunnel on said conduit to the said reservoir may be changed, so as to utilize for power purposes the drop existing between said portal and said reservoir, the approximate location of said proposed change of course being shown on the said map Exhibit "A" by the line marked, "Proposed Change of Conduit";

NOW, THEREFORE, IT IS HEREBY AGREED between the parties hereto as follows, to-wit:

#### ARTICLE I.

##### FIRST PARTY'S COVENANT TO SELL.

Upon and subject to all of the terms and conditions in this contract set out and for the price hereinafter stated, the first party agrees that, if and when it shall have completed said dam to said height of one hundred ten (110) feet, whereby the

waters of said San Luis Rey River will be impounded as aforesaid, and water is stored in said reservoir to the amount of five thousand (5,000) acre feet, it will commence, and perpetually thereafter continue to sell and deliver to the Second Party at or near its intake, or, in the event that the point of delivery should subsequently be changed to some other point, as hereinafter provided for, then at such other point, two thousand five hundred (2,500) acre feet of water per annum (with an option for an additional amount up to twenty-five hundred (2500) acre feet per annum as hereinafter provided), for the price of Fifteen Dollars (\$15.00) per acre foot per annum, the times of payment, manner and place of delivery and measurement to be as hereinafter set forth.

#### ARTICLE II.

##### SECOND PARTY'S COVENANT TO BUY.

The Second Party hereby agrees that, if and when the First Party shall have completed said dam and reservoir and shall have stored therein at least five thousand (5,000) acre feet as aforesaid, it will purchase and take from the First Party at such time, and continuously thereafter at least two thousand five hundred (2,500) acre feet of water per annum, and will pay therefor to the First Party the said price of Fifteen Dollars (\$15.00) per acre foot per annum, except and provided, however, that Second Party shall not be required to accept delivery of water from First Party during the year 1923,



but nevertheless Second Party shall be charged by First Party with the total amount of the purchase price of said water which shall be paid for as provided in Article XI hereof.

It is further agreed that the Second Party shall have the option for the period of three (3) years from May 1, 1923, but no longer, and time is of the essence hereof, to purchase from the First Party at said price of Fifteen Dollars (\$15.00) per acre foot per annum, and upon and subject to the same terms and conditions as are herein provided with respect to said two thousand five hundred (2,500) acre feet per annum, any additional amount from time to time not exceeding a total of two thousand five hundred (2,500) acre feet per annum, and perpetually, which may be exercised only within said three (3) years; provided always, and as a condition to the grant of this option, that notice in writing of the exercise thereof, and stating the amount of water which Second Party shall have elected to purchase, must be given by the Second Party to the First Party within said three (3) year period; and from the time of the exercise of such option by the Second Party it shall thenceforth perpetually be obligated to take the additional amount of water which it shall have so elected to purchase under said option, and shall pay therefor the said price of Fifteen Dollars (\$15.00) per acre foot per annum; in the event of the election by the Second Party totake said additional water, or any part thereof, then the same shall

be thereafter subject as aforesaid, to all of the terms hereof pertaining to the purchase and sale of the First two thousand five hundred (2,500) acre feet.

The written notice specified in this article may be given over the signatures of the president and secretary of the Escondido Mutual Water Company, with the seal of the corporation attached, and delivered in person to any executive officer of the First Party, or by enclosing said notice in an envelope addressed to the First Party at its principal place of business, bearing the requisite postal stamps and deposited in any post office of the United States, in San Diego County, and said notice may be given as herein provided at any time within said three (3) years period mentioned in this article.

### ARTICLE III.

#### TIME AND PLACE OF DELIVERY.

That said water herein provided to be sold by the First Party to the Second Party shall be delivered by the First Party to the Second Party at or near the intake of the Second Party's said conduit on the San Luis Rey River; provided, however, that the First Party shall have the right at any time hereafter, at its own expense solely, subject to the provisions in regard thereto in subdivision (g) of Article IV contained, to change the place of delivery thereof to some other point on said conduit below said intake, and in such event delivery of said water shall and may be made at said new point. It is understood and agreed that all water hereby



provided to be sold to the Second Party by the First Party is to be delivered as follows: Five Hundred (500) acre feet for each of the following months of each year: June, July, August and September; and two hundred fifty (250) acre feet for each of the months of October and November of each year. Should Second Party exercise its option and purchase two thousand five hundred (2,500) acre feet or less additional water as herein provided, such additional water shall be thereafter delivered in the same manner, at the same times, and proportionately in the same quantities as is herein provided for the delivery of the first two thousand five hundred (2,500) acre feet of water.

It is understood and agreed that the title to and ownership of any and all water agreed to be sold by the First Party to the Second Party hereunder shall vest in the Second Party upon, and at the time of, delivery thereof to Second Party as herein provided.

#### ARTICLE IV.

##### JOINT USE OF CONDUIT AND RESERVOIR.

For the purpose of defining the rights, obligations, authority and power of the respective parties over the property jointly to be used as herein provided, it is mutually agreed by and between the parties as follows:

(a) The Second Party hereby gives, grants and sets over to the First Party the right to perpetually flow, carry and transport water through said conduit or canal up to two-

thirds ( $2/3$ ) of its carrying capacity from the point of delivery selected by said First Party as in this contract provided, to the Bear Valley Reservoir, and there to release said water through the outlet to be constructed as provided in this contract, or at any intermediate point on said conduit, provided always, however, that the foregoing grant of the right of the First Party is subject to the provision that until said conduit shall be enlarged as contemplated by the parties hereto, provision for which is hereinafter made, the right of the First Party to use said conduit shall be subordinate to the right of the Second Party to the use thereof, and the First Party may only use said conduit or a part thereof when and to the extent that such use thereof will not interfere with the reasonable use thereof by the Second Party.

(b) It is mutually understood and agreed between the parties that immediately upon the execution of this contract the First Party shall have the right of ingress and egress upon all lands, or rights of way over which the conduit or canal of the Second Party runs and upon which the reservoir of the Second Party is situated, for the purpose of making such surveys, enlargements, changes or improvements as are provided to be made by this contract, and all such rights shall continue during the life of this contract.

(c) For the purpose of maintaining, operating and repairing the properties to be jointly used by both parties to this agreement, said parties shall join in the selection of a superintendent who shall be mutually acceptable to each of



them. Except as otherwise herein provided, said superintendent shall have charge of the properties to be jointly used and of all thereof; and shall purchase all material and employ all labor required. He shall submit, on or before the first day of April of each year, a budget (which shall include the superintendent's salary as fixed by the parties) of the work which he proposes to do during the water year following, for the approval of each party to this agreement; and also plans and estimates for any reconstruction work or betterments which in his judgment may be required. The approval of both parties to such budget shall be requested by him. If both parties dissent to any portion or all of the budget, then the superintendent shall not carry out the portion of the work to which objection has been made but shall proceed with the work to which no written objection shall have been made by either party. If, however, one party dissents to and the other approves any or all of the work proposed by the superintendent, he may proceed therewith, unless the party dissenting protests and asks, in writing, for an arbitration thereon, in which case each party shall appoint one arbitrator and the two so appointed shall select a third and the decision of any two shall be binding as to the work to be done. In case the two arbitrators appointed by the parties are unable to agree on the selection of a third arbitrator, then he shall be selected by the president of the San Diego Section of the American Society of Civil Engineers.

If either party demands in writing the removal of the superintendent, then he shall be removed, and the parties to this agreement shall jointly appoint a new superintendent who is acceptable to both. If the parties are unable to agree as to the appointment of a superintendent, then his selection shall be made by a board of arbitration selected as described above, and he shall hold his position for the remainder of the water year, unless removed by consent of both parties.

The superintendent shall have charge of all head gates and outlets for the operation of the property that is jointly used by the two parties to this agreement. He shall also have charge of all measurements of water made along said conduit, or in connection with the Bear Valley reservoir, and shall keep all necessary records and make the necessary computations. Either party, however, shall at all times have access to these measuring devices, records and computations, and shall have the privilege, if it so elects, of establishing and maintaining its own set of measuring instruments, provided these are installed and maintained at its own expense. The determination, made by the superintendent, of the amounts of water, shall be accepted as final and binding on both parties; provided, however, that either party shall have the right to refer to a board of arbitration, selected as provided above, the question of the correctness of such determination, in which event the decision of a majority of the board shall be final.



and binding on both parties.

If and when any expense has been incurred as provided in said budget, the superintendent shall make a written requisition upon each of the parties hereto for its share or proportion of such expense, and said requisition shall be promptly paid.

In the event of the destruction or damage by earthquake, fire or other cause, of all, or any portion of the property jointly used, if the repair or restoration of the property so damaged or destroyed cannot be made or accomplished with the funds provided by the aforesaid budget, or with any funds available for that purpose, the said superintendent shall immediately notify the president, manager or secretary of each of the parties hereto in writing of that fact, and the parties hereto shall thereupon immediately take such concerted action through their officers, directors, engineers and employees as under the contingencies will best serve to restore or conserve said jointly used property.

(d) It is further provided that in the event the First Party shall fail to complete said dam within one (1) year from date hereof, to such a height that the storage capacity of said Henshaw reservoir shall be not less than approximately one hundred sixty-four thousand (164,000) acre feet, then the right of First Party to the use of the conduit of the Second Party for any purpose whatsoever shall thenceforth cease and determine.

(e) Each of the parties hereto shall have the right, at all times, to inspect said conduit and all records of measurements and computations of water conducted into said conduit, or delivered out of the same, and to inspect and examine into the accuracy of all measuring devices in use at any time or place, for the benefit of the parties hereto.

(f) It is further agreed that while the right of use of said conduit shall be vested in the parties hereto respectively in the proportion of two-thirds ( $2/3$ ) of the carrying capacity in the First Party, and one-third ( $1/3$ ) of such carrying capacity in the Second Party, subject to the provisions of subdivision (a) of this Article, nevertheless, each party shall have the right to use temporarily, from time to time, all or the whole of the capacity of said conduit when such use will not interfere with the use thereof by such other party. To this end the First Party agrees that during any storm or flood period when water is flowing in the San Luis Rey River at the intake of the Second Party, subject to diversion, and in such quantity as will fill the conduit herein referred to to its full capacity, said Second Party shall have the right to, and shall use said conduit to its full capacity, provided Bear Valley Reservoir has storage capacity therefor, during the said storm or flood period; and during the time that the full capacity of said conduit is so in use by Second Party for the purpose of carrying water from the San Luis Rey River to its Bear Valley Reservoir, the First Party shall have and is hereby given the right to withdraw from the said Bear Valley



Reservoir such water as it may require in fulfillment of other contracts for the delivery of water; provided, that said First Party shall thereafter, before May 1st following, when requested by Second Party, supply to the Second Party in the Bear Valley Reservoir a quantity of water equal to that it has withdrawn from said reservoir, which water so supplied to the Second Party shall be considered only as a replacement of water withdrawn, as aforesaid.

(g) It is further agreed that while it is contemplated by the parties hereto that the First Party will use said conduit for conducting its water as aforesaid nevertheless it shall not be required to do so, and it may at any time abandon the use of said conduit or any part thereof, in which event its right to use such abandoned part shall cease, and the First Party thenceforth shall not be obligated in any way to contribute to the expense and maintenance of said abandoned portion of said conduit, and shall not thereafter be called upon by the Second Party to contribute at all to the maintenance, operation, construction, reconstruction or repair of said abandoned portion of said conduit. All of such cost and expenses pertaining to such abandoned portion shall thenceforth be borne and paid by the Second Party, provided, however, that notwithstanding the First Party may abandon the use of said conduit, or a part thereof, as aforesaid, it shall nevertheless be obligated to pay the Ten Thousand Dollars (\$10,000.00) per annum agreed to be paid as compensation for its use, and as part of the con-

sideration for entering into this contract, in the manner and to the extent as provided in Article X hereof, the same as though the use of said conduit by the Party of the First Part had been continued. Such abandonment shall be evidenced only by a declaration in writing to that effect by the First Party, delivered to the Second Party, at least three months prior to the beginning of the water year, and upon such declaration being made and delivered, the Second Party shall thenceforth be permitted to use the abandoned portion of said conduit to its full capacity without compensation therefor to the First Party. In the event of the abandonment of any portion of said conduit as above provided for, and the First Party shall desire to construct a conduit for its waters into said reservoir over another route at its own cost and expense, the Second Party agrees to grant to First Party, without cost to it, upon such terms and conditions as will prevent interference with Second Party's reservoir, conduit or other works, the necessary right of way, over any lands owned by the Second Party, during the life of this contract, not exceeding fifty (50) feet in width, for the construction, maintenance and operation of said conduit over such other route.

(h) The Second Party further hereby grants to the First Party the perpetual right to have the waters of the First Party, which may be conducted in the conduit of the Second Party, or by other conduit, flow into and through said reservoir of the Second Party and be discharged out of the same into the conduit of the First Party which may be constructed by it to connect with said reservoir for the purpose of conducting its said waters therefrom, together with the right to store



in each year, from May 1st to December 1st following, waters of the First Party in said reservoir of the Second Party to the extent of the capacity thereof not used and not necessary for the use by the Second Party for the storage of its waters.

The Second Party hereby grants to First Party a right of way during the life of this contract over and across any lands owned by it which may be necessary for First Party to cross for the purpose of constructing, maintaining and operating a conduit through which said First Party may convey water from the outlet of the Bear Valley Reservoir to its consumers, said right of way not to exceed fifty (50) feet in width; said conduit to be so constructed and operated as not to interfere with the works of the Second Party.

(i) The Second Party undertakes that in the event of the completion of said Henshaw Dam and Reservoir, it, the Second Party, will, on or before January 1st, 1924, have had constructed a new outlet for the discharge of waters from the Bear Valley Reservoir, so designed and constructed as to take care of the discharge of the waters of both the First and Second Parties, and to distribute the same into the respective conduits of the said parties, in the proportion of their ownership therein. The said new outlet shall be constructed by the Second Party, as aforesaid, and under the direction of the engineers of Second Party and upon plans approved by the engineer of First Party. The cost of construction of said new outlet shall be borne in equal parts by the parties hereto.

(j) The cost and expense of maintaining, reconstructing, repairing, changing or otherwise improving said reservoir, (excepting therefrom the cost of putting in, maintaining and operating said new outlet as aforesaid, and such expenses and costs as First Party is required to pay under the provisions of Article IX hereof) shall always be paid and borne entirely and exclusively by the Second Party, and the First Party shall be under no obligation in respect thereof whatsoever. The Second Party shall have the exclusive control and management of said reservoir, including the dam connected therewith, provided, however, that the superintendent of operations hereinbefore provided shall also have charge of measuring out to the parties hereto, respectively, the water from said Bear Valley Reservoir, and shall operate all gates and measuring devices in use in connection therewith, and he shall keep all records necessary or proper to be kept in respect to said work of measuring and distributing said waters. Said records and said measuring devices shall at all times be subject to the inspection of both parties to this contract. The expense of such superintendency shall be included within the maintenance and operation cost and expense and paid and borne by the parties hereto as hereinafter provided in Article VIII.

(k) While it is contemplated that the First Party will use said reservoir for the purposes above set forth, nevertheless it shall not be required to do so and may abandon such use at any time and in such event its right to use said reservoir for said purposes hereby granted shall cease. Such abandonment shall be evidenced



only by a declaration in writing to that effect by the First Party delivered to the Second Party.

Upon such abandonment the said superintendent of operations shall no longer have control of the measuring of any of the water out of said reservoir, and the First Party shall no longer be obligated or liable to pay any expense of said measurement. It is expressly understood between the parties, however, that said First Party shall nevertheless be obligated to pay Ten Thousand Dollars (\$10,000). per annum agreed to be paid as compensation for the use of said conduit and reservoir, and for such other rights as are by this contract granted or to be granted to First Party, and said Ten Thousand Dollars (\$10,000.00) payments shall be a part of the consideration to Second Party for entering into this contract.

(1) In the event that First Party shall exercise its right to abandon a portion of the conduit jointly to be used by the parties, a superintendent shall nevertheless be selected in the manner as hereinbefore provided and shall discharge the duties hereinbefore imposed upon him, and his compensation shall be paid as provided in this article; but in the event said First Party shall elect to exercise its right to abandon the use of all of said conduit, but does not abandon its right under this instrument to the use in part of Bear Valley Reservoir, said superintendent shall nevertheless be selected in the manner as hereinbefore provided, and the expense of such superintendency shall thereafter be apportioned between the parties on the basis of the service rendered for the benefit of the respective parties.

#### ARTICLE V.

#### INCREASE OF CAPACITY OF CONDUIT OF SECOND PARTY.

It is hereby agreed that said conduit of the Second Party shall be enlarged, improved and/or the course thereof changed so that it will have a capacity of seventy (70) second feet of water, and that such improvements, including change of course, the lining thereof, and the construction of siphons, shall be made in said conduit as shall be required for the effective and economical conducting of water therein as contemplated hereby. All work of enlarging, changing the course of, or otherwise improving said conduit, shall be under the direction of the First Party, subject always to the approval of the Second Party, provided, however, that if the parties hereto should not be able to agree as to the manner in which said conduit shall be enlarged, changed or improved, then the matter shall be submitted to a board of arbitrators consisting of three (3) members, one to be chosen by each party, and the two so chosen to choose a third, and a decision by the majority shall be binding upon the parties hereto. It is agreed between the parties hereto that the work of improving said conduit, as provided for herein, shall be done as follows: The portion of said conduit lying between the point known to the parties hereto as "Hell Hole" and Bear Valley Reservoir, including the siphon across "Hell Hole" Creek, shall be improved during the year 1923; one-half (1/2) of the remaining section lying between the point at or near Second Party's intake which may be



selected for the delivery of water by First Party to Second Party and "Hell Hole" shall be improved during the year 1924, and the remainder of said section during the year 1925; provided, however, that instead of adopting and carrying out the foregoing plan of improvement as to the time of doing said work, said First Party may make said improvements within a shorter period of time, and it shall have, and it is hereby given the right to commence said work as soon as it may desire so to do, and prosecute the same to completion as soon as practicable, which work shall include the improvement of the whole of said conduit from the point of delivery at or near Second Party's intake on the San Luis Rey River to said Bear Valley Reservoir; in which event, however, First Party shall pay the entire cost of such improvement but the Second Party shall pay to the first Party its one-third ( $1/3$ ) of such cost, as shall have been paid by First Party, without interest, as follows: During the year 1923 Second Party shall pay to the First Party a sum equal to one-third ( $1/3$ ) of the total cost of such improvement of said conduit between Bear Valley Reservoir and a point on said conduit at or near "Hell Hole"; during the year 1924 a sum equal to one-third ( $1/3$ ) of the cost of completing one-half ( $1/2$ ) of the improvement of the remaining section of said conduit from said "Hell Hole" to a point at or near said intake of Second Party; and during the year 1925 a sum equal to one-third ( $1/3$ ) of the cost of the improvement of the remainder of said conduit. The work of improvement of said conduit shall be prosecuted only during the period of each year from July 1st to December 1st following, both dates inclusive, unless the parties hereto shall

consent to such work being done at other times. The words "improve" and "improvement" used in this paragraph shall be construed as embracing the work of enlarging, changing the course of or doing other work provided to be done in this article in order to increase the capacity of said conduit.

#### ARTICLE VI.

##### LOSS OF WATER IN TRANSMISSION AND STORAGE.

Neither party shall be liable to the other party for loss of its water while being transmitted in said conduit or stored in said reservoir of Second Party, and while not commingled with water of the other party.

It is anticipated by the parties hereto that in the transmission of commingled water through said conduit and in the storage thereof in said reservoir of the Second Party a loss of water will occur from evaporation, leakage, injury to or destruction of the conduit, and possibly from other causes; therefore, whenever while commingled waters are being transmitted in said conduit or stored in said reservoir a loss or diminution from any of the causes above referred to occurs, then in any subsequent division of such commingled waters and in any accounting therefor between the parties hereto, all such loss or diminution shall be borne by the parties respectively in the ratio of their ownership of the waters respecting which such loss or diminution occurs; provided, however, that all waters which may escape from said reservoir of the Second Party and which may be salvaged by it shall be charged to Second Party and accounted for to First Party. It is understood,



however, that the water of certain springs arising at or under said Bear Valley Dam not in excess of ninety (90) gallons per minute flow is not a portion of any leakage or loss provided for herein.

#### ARTICLE VII.

##### PROPORTION IN WHICH COST OF ENLARGEMENT, CHANGING OR IMPROVEMENT OF CONDUIT TO BE BORNE BY PARTIES.

The cost of enlargement, changing the course of and other improvements of said jointly used conduit shall be borne by the parties hereto in the proportion of two-thirds ( $2/3$ ) by the First Party and one-third ( $1/3$ ) by the Second Party; provided, that should the Party of the First Part elect to increase the carrying capacity of said conduit so it will carry in excess of seventy (70) cubic feet of water per second of time, it shall have the right so to do, and in such event any and all cost or expense of increasing the carrying capacity of said conduit, so that it will carry more than seventy (70) cubic feet of water per second of time, shall be borne by the Party of the First Part. First Party shall, during the work of enlarging, changing or improving said conduit render to the Second Party monthly bills or statements covering the cost of such work, and the Second Party shall within thirty (30) days thereafter, upon evidence of the payment of all labor and material bills, pay to the First Party its one-third ( $1/3$ ) of such cost, except

as in Article V hereof provided; provided, that the Second Party shall not be liable for its proportion of any expenditure for such work unless the same shall have been approved by it or determined by arbitration as in Article V hereof provided.

The cost of the work, and of any and all work to be done and to be jointly paid for under this contract, shall include all necessary field expenses entering into construction, such as labor, materials, salaries of engineers, superintendents and other employees at the field office. In case the full time of any field employee is not applied to said work, but is divided with other jobs, his salary shall be apportioned accordingly. Buildings necessary for the field work shall be included in cost, together with cost of maintaining and operating commissary and hospital, and physicians' services, also telegraph and telephone services. The cost of reconstructing and replacing any of the work destroyed or damaged during the construction period, shall be included in the cost, unless caused by negligence, in which event the total of such cost shall be paid by the negligent party. General office and executive expenses of either party shall not be included in the cost thereof. It is understood, however, that such time of professional employees of either party as is actually and necessarily spent on the work in the field, may be charged as a portion of the cost thereof. Litigation relative to the water or water rights is not a portion of the cost of the work.



All profit derived from the operations of commissary, hospitals, or other facilities or from rebates, salvages and refunds shall be accounted for and applied in reduction of the cost of the work. If the work done on the portion of the conduit which is to be jointly used is let by contract, the Party of the First Part agrees to obtain competitive bids and award the contract to the best lowest bidder, provided, however, that before making said award the bids shall be submitted to the Party of the Second Part and be subject to its approval. The same rule shall apply to the purchase of materials involving expenditures in excess of One Thousand Dollars (\$1,000.00). If the work is done by day labor, the standard rate of wages shall be that paid in the locality where the work is being done and the wage scale shall be submitted for approval to the Party of the Second Part.

#### ARTICLE VIII.

##### PROPORTION IN WHICH COST OF REPAIR, MAINTENANCE AND OPERATION OF CONDUIT TO BE BORNE BY PARTIES.

The cost of the repair, operation and maintenance of the portion of said conduit jointly used shall be borne by the parties hereto in the proportion of the amount of water in acre feet per water year transmitted therein for the use and benefit of the parties hereto respectively during each water year, which shall be from the first of April to the 31st of March following.

settlement and adjustment for each water year shall be made during the month of April next succeeding. Intermediate settlement and adjustments shall be made at the end of each period of three (3) months of each water year, proportioned on the respective water runs preceding each such settlement; and as heretofore provided, complete settlement for the water year shall be made at the end of each such water year. Payments of the amounts found due shall be made promptly upon notice from the superintendent.

For the purpose of such settlement only, all water carried through the portion of said conduit jointly used and not belonging to the First Party shall be considered the water of the Second Party.

#### ARTICLE IX.

##### ENLARGEMENT AND IMPROVEMENT OF RESERVOIR.

Subject to the right of the First Party to have its water flow through said reservoir as in Article IV hereof given, the Party of the Second Part reserves for its right and use the storage capacity in its reservoir known as the Bear Valley Reservoir up to the ninety-five (95) foot contour according to the map of the Escondido Mutual Water Company used in making its application for license for the erection of a power plant, filed in the United States Land Office at Los Angeles, on the 1st day of February, 1921.



If at any time between May 1st and December 1st of any year, the Second Party is not using the full storage capacity up to said ninety-five (95) foot contour reserved to it, then and in such event the First Party shall have the privilege of using such portion of said storage capacity as is not in use by the Second Party, subject to the provisions of Article IV.

The First Party shall have the right to increase the capacity of Second Party's reservoir from said ninety-five (95) foot contour, or from such lower contour to which the Second Party shall have raised said dam, and to that end to raise said Bear Valley Dam to a point not above the one hundred seventeen (117) foot contour, as shown on said map; provided, however, that the First Party shall bear and pay the entire cost of so increasing the capacity of said reservoir, including the cost of raising said dam, the expense of acquiring any additional right of way that may be needed, the cost of necessary changes in the outlet and of such other changes or additions as may be required to be made in connection with or as a part of the work of increasing the capacity of said reservoir.

If the capacity of said reservoir is increased by First Party, as above provided, then First Party shall have the exclusive and prior right to the use of such increased capacity; provided, however, that Second Party may use the same when not being used by First Party. In the event of the increase in capacity of said reservoir, as aforesaid, then the increased cost of maintenance, repair and operation thereof, (including

also increase in taxes thereon) due to such increase of capacity of said reservoir shall be borne and paid by the First Party. In event of the destruction of such portion of said dam, First Party may, at its own cost, reconstruct the same.

All plans and specifications for raising said dam, as herein provided, shall be submitted to and approved by the engineer of Second Party, and the construction work shall be under the supervision and directions of First Party's engineers..

#### ARTICLE X.

##### COMPENSATION FOR USE OF CONDUIT AND RESERVOIR.

First Party agrees to pay to the Second Party each year commencing in 1923, for the use of said conduit and reservoir and the right to distribute water through said reservoir, and for such other rights as are by this contract granted or to be granted to First Party, and as a part of the consideration of this contract, the sum of Ten Thousand Dollars (\$10,000) per annum in quarterly annual installments of Two Thousand Five Hundred Dollars (\$2,500.00) each, the first installment to be paid April 1st of each year and the remaining quarterly installments to be paid on the first day of July, the first day of October, and the first day of January following.

If the First Party should fail to make such payments hereinbefore referred to, or any of them, in the manner and at the times when the same shall be due, as herein provided, and such default or failure shall continue for a period of sixty (60) days, then the Second Party shall have the right to, and may suspend the right of the First Party to use said canal for



the conducting of its water until all such payments, together with any additional amounts which shall have become due after such default, shall have been fully made and discharged, provided that if First Party should fail for the period of six (6) months after any such default to pay in full the amount so in default or arrears, together with any other sum or sums that shall have subsequently, and within such six (6) months period, become due, then all right of the First Party hereunder to use said conduit or reservoir for the conducting or storing of its water shall at the option of the Second Party terminate and forever cease. It is understood and agreed, however, that in the event that the Second Party should elect to terminate First Party's right to use said conduit, then and in such event the First Party shall not thenceforth be required or obligated to pay any part of the expense or cost of maintenance, repair or operation of the property theretofore jointly used, or any of them, nor shall it be required to pay said charge of Ten Thousand Dollars (\$10,000) hereinabove referred to, or any part thereof.

The remedy as to default in respect to the payments hereinbefore provided for shall be considered as cumulative in favor of the Second Party, and not exclusive of any other right or remedy which said Second Party may have in law or in equity. It is expressly understood that the waiver by Second Party of any default herein referred to shall not be considered a waiver of any subsequent or other default.

## ARTICLE XI.

### METHOD OF MEASUREMENT OF WATER AND OF PAYMENT THEREFOR.

Devices shall be installed for the measurement of the various quantities of water involved under the terms of this contract at the expense of two-thirds ( $2/3$ ) to the First Party and one-third ( $1/3$ ) to the Second Party. These devices shall be standard, and where practical, automatic recording instruments and of such accuracy that the errors of measurement shall not exceed three per cent. ( $3\%$ ) from the true quantity. Losses shall be measured from the Bear Valley Reservoir, and the conduit leading thereto which is jointly used.

The point of measurement of water delivered by the First Party to the Second Party hereunder shall be at the point of delivery thereof into the conduit of the Second Party. It is understood and agreed that any water naturally flowing into said Bear Valley Reservoir from the water shed naturally tributary thereto, including the waters naturally flowing into said conduit, or which Second Party may appropriate along the line of said conduit and below the intake thereof and deliver into said conduit, shall not be claimed by First Party.

The Second Party covenants that it will make payment for said twenty-five hundred (2500) acre feet of water purchased by it as aforesaid, and for such additional amount as it may elect to take under the option provided for in Articles I and II hereof, quarterly on the first day of April, July, October and January, respectively, of each such water year. Payment



shall be made promptly on said dates respectively for all water delivered during the preceding three (3) months, provided always, however, that it is expressly understood and agreed that if the Second Party shall fail or refuse to take or accept delivery of any water which it is or may become obligated to take under the terms of this contract, nevertheless it shall make full payment for said water to the First Party, providing the First Party shall be ready to make delivery of said water to the Second Party as provided for herein. Such payment shall be made in the same manner and time as though said water had been duly taken by the First Party in accordance with the terms hereof. Provided further, however, that it is agreed, as referred to in Article II hereof, that as to the year 1923 only, payment on account of water not taken shall be deferred for the term of five (5) years from May 1st, 1923, and that no interest shall be payable on such deferred payment during the first three (3) years of said five (5) year term, but the same shall bear interest during the last two (2) years of said term at the rate of six per cent. (6%) per annum, payable quarterly from the beginning of said two (2) years; provided always, however, that if the right of the Second Party to purchase water hereunder shall terminate on account of its default as provided for in this contract, then all such deferred payments shall become immediately due and payable at the time of the termination of such right to purchase, notwithstanding said five (5) year period shall not have elapsed at the time of such termination.

If the said Second Party shall fail to make such payment or payments hereinbefore referred to, or any part thereof, in the manner and at the times when the same shall be due as herein provided, and such default or failure shall continue for a period of sixty (60) days, then the First Party shall have the right to, and may suspend further delivery of any water to the Second Party hereunder until all such payments, together with any additional amounts which shall have become due after such default, shall have been fully made and discharged; provided, that if the Second Party should fail, for the period of six (6) months after any such default, to pay in full the amount so in default or arrears, together with any other sum or sums which shall have subsequently and within such six (6) months period, become due, then all right of the Second Party hereunder to purchase or receive water from the First Party shall, at the option of First Party, terminate and forever cease; but such termination of the right of the Second Party to purchase or receive water hereunder shall in no wise affect the rights hereby given or granted to the First Party in or with respect to said conduit or reservoir of the Second Party, or any right of way, granted or to be granted to First Party by Second Party provided for herein, and all such rights shall remain vested in the First Party with the same force and effect as though the termination of such right of Second Party to purchase water had never occurred. The remedy as to default in respect to payments hereinbefore provided for shall be considered as cumulative in favor of the First Party and not exclusive of any other right



or remedy to which under the law it might be or become entitled. It is expressly understood that the waiver by First Party of any default herein referred to shall not be considered a waiver of any subsequent or other default.

It is understood and agreed, however, that in the event the First Party shall elect to terminate the right of the Second Party to purchase or receive water hereunder, as hereinbefore provided for, then the Second Party shall thenceforth be under no obligation whatsoever to purchase, take or pay for any water whatsoever from the First Party.

#### ARTICLE XII.

##### CHANGE OF COURSE OF CONDUIT, INSTALLATION AND OPERATION OF JOINT POWER PLANT.

Within a period of three (3) years from date hereof the route or course of the conduit shall be changed between the southerly portal of the most southerly tunnel on said conduit to the penstock to be constructed above the Bear Valley Reservoir so as to obtain the advantage of a power drop, and the cost thereof shall be borne by the parties hereto in the proportion of two-thirds ( $2/3$ ) by the First Party and one-third ( $1/3$ ) by the Second Party, and the title to said portion of said conduit and right of way shall vest in Second Party subject to the right in First Party to use the same as herein provided. If a power plant is installed for the benefit of both parties, then all cost and expense of or incident to the construction of said power plant shall be borne by the parties hereto in the proportion of two-thirds ( $2/3$ ) thereof by the First Party and one-third ( $1/3$ ) by the Second Party. The right to the use of said portion of said conduit shall vest in the parties as follows: Two-thirds

( $2/3$ ) of said use in the First Party and one-third ( $1/3$ ) of said use in the Second Party. The title and ownership of said power plant shall vest in the parties as follows: Two-thirds ( $2/3$ ) in the First Party and one-third ( $1/3$ ) in the Second Party. All of the provisions herein pertaining to the conduit leading from the intake to the Bear Valley Reservoir shall apply to the aforesaid portion covering the changed course as herein provided. Said conduit and plant shall be constructed under the supervision and direction of the First Party. All plans, estimates and construction contracts for this work shall be submitted to the Second Party for and subject to its approval. The First Party shall render to the Second Party monthly bills showing the cost and expenditures of each month, and thereupon the Second Party shall, upon evidence of payment thereof, pay to the First Party its said proportion of one-third ( $1/3$ ) of such cost and expense. Said power plant shall be managed and operated by the superintendent in charge of joint operations, as provided for in Article IV, and the net revenue therefrom shall be divided between the parties hereto in the same proportion of the amount of water in acre feet owned by the parties respectively passed through said plant in the generation of power. In lieu of dividing the net income or revenue from the operation of said plant in the proportion aforesaid, each party shall have the option and right to take current at the switchboard in said power house in the same proportion in which it would be entitled to share in said net revenues; pro-



vided always, that the expense and cost of the operation and maintenance of said plant shall be paid by the parties hereto in the same proportion. All cost of delivery to either party of current from said switchboard, and transmission therefrom, shall be borne by the parties so taking the current. Either party hereto may propose in writing to the other party that such power plant be installed, and thereupon the other party shall within ninety (90) days after service of such proposal serve upon the party making such proposal a statement whether it desires to join in the installation of such plant; if the party to whom such proposal is made states that it desires to join in the installation of such plant, it shall have the right so to do; if, however, such party shall decline to join in the installation of such plant, or if it shall fail to state in writing within said ninety (90) days whether it desires to join in the installation of such plant, then the other party shall be at liberty to proceed with the erection of the same at its own cost and expense, and in such event, subject to the option which is hereby granted and hereinafter referred to, to acquire an interest therein, it shall be the exclusive owner of said plant and enjoy all of the benefits and revenues therefrom.

Should either party proceed with the erection of the power plant contemplated in this paragraph and erect the same at its own cost and expense, it shall thereafter enjoy all of the benefits and revenues from the sale of current therefrom until the other party shall exercise its option to acquire by purchase such interest in said power plant as it would have had

had it originally joined the other party, as hereinbefore provided, in the construction of the same. Such option to purchase may be exercised at any time within twenty (20) years from the date hereof and the party who may have constructed said power plant hereby agrees to sell to the other party such interest as the other party is entitled to acquire under said option (being a two-thirds ( $2/3$ ) as to the First Party and one-third ( $1/3$ ) interest as to the Second Party, as the case may be) at the then value thereof, which value shall be based upon the original cost plus betterments, less depreciation, which depreciation shall be determined by the then existing rules and regulations of the State Railroad Commission. Upon the exercise of such option, proper instruments of conveyance shall be executed.

Preceding the exercise of said option, the party erecting said power plant, as herein provided, agrees with the other party that it will not, without the consent of the other party, contract to sell and deliver current generated from water passing through said power plant and belonging to the other party for a period of more than one (1) year from the date of such contract.

In the event of the erection of such power plant, neither of the parties shall be required to release all or any portion of its water for the purpose of generating power.

An option is hereby given by Second Party to the First Party to exchange power kilowatt for kilowatt, which may be generated to credit of First Party at said joint power house, at the switchboard of said power house, for power generated by Second



Party at its Rincon power house, and delivered to First Party at the switchboard thereof.

The option is also given by Second Party to First Party to purchase any surplus power Second Party may have at its Rincon power plant at the lowest commercial rate at which it sells power, excluding expressly the sale to the Rincon Indians.

An option is hereby granted by First Party to the Second Party for a period of twenty-five (25) years from date hereof to purchase from year to year the surplus power of the First Party generated at said joint power plant upon the following conditions: The sales of such surplus power to Second Party under this option shall be from year to year, as aforesaid, and for a reasonable price; provided always, however, that if First Party shall have abona fide offer from a third party to purchase power for a longer period than one (1) year, First Party shall offer the sale of said power to Second Party upon the same terms and upon the same conditions of said bona fide offer, and said Second Party shall have fifteen (15) days, and no longer, in which to consider and accept or reject said offer; and if Second Party does not accept said offer and promptly enter into a contract with First Party in accordance therewith, then First Party may make such sale to any other party on the terms of such offer.

The term "surplus power" includes all power which First Party does not actually use for its own purposes.

Second Party shall, at least six (6) months before the expiration of any contract between the parties hereto for the purchase of power, serve notice in writing upon First Party that it elects to exercise its option to take power for the following year,

and unless such written notice is served as herein provided, said First Party shall no longer be obligated to sell its surplus, or any power to said Second Party, as herein provided.

#### ARTICLE XIII.

##### FIRST PARTY NOT LIABLE FOR SHORTAGE OR FAILURE OF SUPPLY FROM CERTAIN CAUSES.

It is always understood and agreed that in the event of said dam being constructed and the delivery of water to Second Party being commenced hereunder, First Party, anything herein to the contrary notwithstanding, shall not at any time during the term hereof be liable in damage or otherwise for any failure in whole or in part to deliver to the Second Party the amount of water which it may have purchased hereunder, where such failure is caused by injury to or destruction of any of the conduits or reservoirs herein referred to, by war, riots, acts of God, insufficient rain fall or other condition or thing, whether of the nature or kind above set out or not, which the First Party could not have prevented by the exercise of reasonable care; but the First Party agrees that in the event of injury to or destruction of any part of said Henshaw Reservoir or conduit, it will cause the same to be repaired or renewed with all reasonable diligence; it being understood that the cost and expense of such renewal or repair as to the Henshaw Dam and reservoir and the conduit leading therefrom to a connection with the conduit of the Second Party shall be borne exclusively by the First Party. The cost of the repair of such portion of the conduit of Second Party as may be used by First Party as hereinbefore provided, shall be borne by the parties hereto respectively in the same proportion as above provided



in Article VIII hereof; and the cost of renewals of said conduit or any part thereof shall be borne in the proportion of two-thirds (2/3) by the First Party and one-third (1/3) by the Second Party.

It is understood and agreed that the First Party shall always have the right to shut off the flow of water from said Henshaw reservoir or in any of said conduits, through which it delivers water to Second Party, for repairing or for cleaning the same or for any other purpose reasonably necessary in order to properly maintain and keep up said dam, reservoirs or conduits, provided, however, that in the event of the stopping of the flow of water as aforesaid for any of the purposes referred to, the work of repair, renewal, cleaning out, maintenance or enlargement shall be undertaken and carried out with all reasonable diligence.

It is agreed, however, that before shutting off the water as provided for in this paragraph, for any purposes whatsoever, the Party of the First Part shall, prior to the shutting off of such water, give the Party of the Second Part at least one (1) week's notice in writing, except in case of emergency, when no notice shall be required.

#### ARTICLE XIV.

##### DEFINITION OF RIGHTS OF RESPECTIVE PARTIES IN RESPECT OF DEVELOPMENT OF POWER.

It is further agreed that the First Party shall have the exclusive right to development of power which can be de-

veloped from the water flowing in its conduit from the Henshaw reservoir to the point of delivery of water to the Second Party; that from the said point of delivery into said Second Party's conduit the First Party shall have the exclusive right to develop power from the water there flowing and owned and controlled by it, and the Second Party shall have the exclusive right to develop power from water there flowing and owned and controlled by said Second Party. This provision, however, is subject to the provisions contained in Article XII of this contract.

#### ARTICLE XV.

##### FIRST PARTY'S COVENANT TO FURNISH WATER CONDITIONAL UPON ITS BUILDING DAM.

Anything herein to the contrary notwithstanding, it is expressly understood and agreed that the First Party does not undertake to sell and deliver to the Second Party any water whatsoever except upon the completion of said Henshaw dam and reservoir to a capacity of approximately one hundred sixty-four thousand (164,000) acre feet; but it is further expressly understood and agreed that the First Party does not undertake, nor shall it to any extent be obligated to complete said dam or reservoir; provided, however, that if the First Party shall fail to complete said Henshaw dam within one (1) year from date hereof, to such a height that the storage capacity of said dam and reservoir shall be not less than approximately one hundred sixty-four thousand (164,000) acre feet, then the Second Party shall be thenceforth and forever released from its obligation to purchase water from the First Party.



ARTICLE XVI.

EXAMINATION OF ACCOUNTS COVERING COST  
AND EXPENSE.

It is agreed that each party shall have the right to inspect at reasonable times the books of account of the other party in so far as they cover the cost and expense of the construction, enlargement, improving, changing, repair, maintenance and operation of any jointly used property, including the power plant provided for in Article XII hereof, and Second Party's reservoir.

ARTICLE XVII.

WAIVER OF PERSONAL LIABILITY OF STOCKHOLDERS AND  
OFFICERS.

The contracting parties have entered into this agreement wholly upon the confidence which each has in the other and with no intention of looking to the personal liability of any stockholder, director or officer of either contracting party, and therefore, each agrees with the other as a material consideration for the execution of this agreement that neither party shall in the enforcement of any monetary demand growing out of or existing by virtue of this contract, have recourse to any personal statutory or constitutional liability against any stockholder, director or officer of either party hereto, and each corporation hereby waives any right which may now or hereafter arise or accrue to it to maintain any suit or legal proceeding to collect from any stockholder, director or officer of the other party any claim or demand which may arise or accrue to it against the other contracting party by virtue of any pro-

vision in this contract, or breach thereof.

ARTICLE XVIII.

NET SAFE YIELD OF FIRST PARTY'S  
RESERVOIRS.

It is always understood and agreed that the First Party does not undertake or agree to sell or deliver water to the Second Party from any other supply than such as may flow into said proposed Henshaw Reservoir from the San Luis Rey water shed.

And, anything herein to the contrary notwithstanding, it is further understood and agreed that the First Party reserves and shall always have the right to sell or contract to sell to other parties than the Second Party water to be furnished from said reservoir; and such right so reserved shall be unrestricted, except as follows:

In the event of said reservoir being constructed so that it will have a capacity of approximately two hundred thousand (200,000) acre feet, then First Party may sell or contract to sell water to be furnished from said reservoir to parties other than Second Party, on the basis of an estimated net safe yield from said reservoir of twenty-eight thousand (28,000) acre feet per annum for irrigation purposes, or twenty-four thousand seven hundred fifty (24,750) acre feet per annum for domestic purposes; or in the event that said reservoir shall be constructed so that it will have the capacity of approximately one hundred sixty-four thousand (164,000) acre feet, then the First Party may sell or contract to sell water to be furnished from said reservoir to parties



other than Second Party, on the basis of an estimated net safe yield from said reservoir of twenty-four thousand (24,000) acre feet for irrigation purposes, or twenty-one thousand two hundred forty (21,240) acre feet for domestic purposes. It is understood that one and thirteen hundredths (1.13) times the volume of domestic water sold plus the volume of irrigation water sold shall not exceed twenty-eight thousand (28,000) acre feet per annum in case of the construction of a reservoir of two hundred thousand (200,000) acre feet capacity, or twenty-four thousand (24,000) acre feet per annum in case of the construction of a reservoir of one hundred sixty-four thousand (164,000) acre feet capacity.

It is believed that said estimates of the net safe yield from the said reservoir for the respective purposes aforesaid are reliable and conservative, nevertheless years or period or series of years may come wherein the rain fall upon the water shed tributary to said proposed Henshaw reservoir will be insufficient to fulfill said estimates of net safe yield therefor, and so that it will be impossible or impracticable to deliver to Second Party the full amount of water per annum agreed, subject to the conditions in this contract stated, to be sold to it as hereinbefore set out, and also deliver the amount of water which the first party may, in pursuance to the terms of this agreement, contract to sell to some other party or parties for domestic or irrigation purposes, or for both such purposes. It is agreed therefore, in the event of such shortage there shall be delivered to the

Second Party from the supply in said reservoir not less than and up to fifty per cent. (50%) of all water which the Party of the First Part has contracted to sell and deliver to the Party of the Second Part, and which said Second Party has agreed to purchase, including the option water, so long only as there is sufficient water impounded in said reservoir to furnish said Second Party said fifty per cent. (50%) of water. And should it become necessary for the First Party to reduce below one hundred per cent. (100%) the quantity of water which it has contracted to deliver to other consumers for irrigation purposes, because of the shortage of rain fall, the water which said first party has contracted to deliver to Second Party shall be reduced in the same proportion only that it is necessary to reduce the supply of water sold to other consumers for irrigation purposes, but not to any less amount than as provided in the last preceding sentence. The word "year", as used in this article, means a period of twelve (12) months commencing on the first day of April and ending on the last day of March.

#### ARTICLE XIX.

##### ADJUSTMENT OF INDIAN WATER SUPPLY.

It is mutually understood and agreed as follows: The First Party agrees that from January 1st to and including June 30th of each year, it will, subject to the proviso and upon the terms and conditions hereinafter set out, cause to be maintained a continuous flow of at least six (6) cubic feet



of water per second in the said San Luis Rey River at the intake of the conduit of the Escondido Mutual Water Company for the purpose of satisfying the water rights of the Rincon Indians, and in order to cause said flow of water to be so maintained during said period said First Party will, if necessary, release from its reservoir such amount of water as added to the amount naturally flowing at said intake will amount to a flow of at least six (6) cubic feet per second of time; provided always, however, that in no event shall said First Party be required to release from said reservoir for the purposes aforesaid a greater quantity of water, than at the time of such release is flowing into said reservoir from the water shed naturally tributary thereto, nor in any event a greater quantity of water than at such time would be flowing in said river at said intake if said reservoir had not been constructed.

Said Escondido Mutual Water Company agrees to carry and deliver to the Rincon Indians water from July 1st of each year to December 31st of the same year in the manner, and to the extent only, provided by the terms of its contract of February 2, 1914, with the Rincon Indians, except as hereinafter provided. In the event that the Indians, or the United States Government in their behalf, demand that gravity water be supplied to said Indians by either party hereto at the intake of said conduit of the Second Party at any time during said six months period from July 1st to December 31st of each year, then the Second Party agrees that the said Indians shall be entitled to receive gravity water naturally flowing in said

San Luis Rey River at the point of said intake, and if the amount so flowing at said point shall be less than the amount which said Indians are entitled to have flow at said intake and said First Party shall release from its reservoir water to supply such deficiency, then Second Party agrees that a deduction shall be made from the six (6) second feet which the First Party is required as above set forth to supply said Indians for the first six (6) months period of the year following such release, and water to the amount of such deduction shall be supplied to said Indians by Second Party during such six (6) months period, if demanded from First Party by said Indians, or the Government of the United States in their behalf, provided, however, that the Second Party shall not be required to so supply to said Indians on account of such releases by First Party during said six (6) months period a greater amount of water than shall have flowed into the Henshaw Reservoir during said period of releases by First Party. In lieu of the foregoing provision, Second Party may furnish to First Party from its Bear Valley Reservoir, during the period from January 1 to June 30 following the releases hereinbefore mentioned, water equal in acre feet to the aforesaid releases.

Or, in lieu of supplying water, as aforesaid, to said Indians, the Second Party shall have the option to supply to the First Party, and without cost, during such six (6) months period following such releases, electric current delivered at the Second Party's switchboard at its Rincon power house, sufficient to pump from the underlying strata of the Rincon Reservation on the San Luis Rey River, to the elevation of the



tail race of the Rincon power house, such quantity of water as may have been released by First Party from its reservoir in supplying said Rincon Indians with gravity water during the preceding six (6) months period, provided the electric current so furnished shall not exceed seventy (70) kilowatts; or Second Party may, at its option, supply the aforesaid releases partly by the delivery of water as herein provided, and partly by the delivery of electric current as aforesaid. In order to determine the amount of water so released for the purposes of said Indians and the amount of water flowing into the Henshaw Reservoir during the period of such releases First Party shall maintain proper and efficient measuring devices which, with all records of such measurement, shall at all reasonable times be open to inspection of Second Party, and copies of such records shall be furnished by First Party to Second Party.

Nothing in this contract shall be construed as an obligation by one party to perform any contractual obligation of the other party to the aforesaid Rincon Indians, except as in this contract otherwise provided.

#### ARTICLE XX.

##### CONCERNING THE DIVISION OF SAN LUIS REY RIVER WATER AND PROVIDING FOR RELEASES FROM RESERVOIR UNDER CONTRACT OF 1912.

The amount of water, if any, which the First Party may be required to release from the Henshaw reservoir under the provisions of the contract between the Escondido Mutual Water Company and William G. Henshaw of date June 21, 1912, shall be determined as follows:

Measurements of water shall be made as follows: In

order to determine the amount of the flow of the San Luis Rey River at the Henshaw Dam during the period from November 1st to July 1st of the calendar year following, had the Henshaw dam not been built, the inflow as indicated by the rise or fall of the water on the gauge rod, together with the corresponding volumetric capacity of the reservoir, shall be given consideration, together with the out flow of the reservoir, and with any leakage from the dam during the same interval of time. To the quantity of inflow as thus indicated there shall be added the evaporation losses from the reservoir water surface less ninety per cent. (90%) of the rain fall thereon occurring during said interval. From the sum of these quantities there shall be deducted the evaporation losses that would have occurred from the moist lands from the area flooded at that time had said dam not been built, as determined by measurements thereof.

The flow at the intake of the Escondido conduit, had the Henshaw dam not been built, shall be determined as follows: To the natural flow at the Henshaw damsite, had the dam not been built, which shall have been determined in the manner described in the next preceding paragraph, there shall be added the water entering the channel of the San Luis Rey River between the said dam and the Escondido intake, as indicated by the difference between the measurements of the stream to be continuously made at and near said two points during the period from November 1 to July 1 of the calendar year following. The water, if any, which First Party may be required to deliver to the Second Party under said contract between it and said Wm. G. Henshaw, of date June 21, 1912, shall be de-



livered to the Second Party into its conduit commencing July 1st following the ascertainment of such amount, and at such rate as may be desired by Second Party, not exceeding one thousand (1,000) acre feet per month.

From July 1st to November 1st all the water up to six (6) second feet that may be flowing in the San Luis Rey River at Second Party's intake shall be considered as belonging to the Rincon Indians. Any water which the Second Party might have diverted between any November 1st and January 1st of the calendar year following, out of the water to which the Rincon Indians may be entitled, is chargeable against the said one billion three hundred fifty million (1,350,000,000) gallons referred to in said contract of June 21, 1912, and there shall be in like manner charged against the one billion three hundred fifty million (1,350,000,000) gallons of water any water which the Second Party might have diverted over and above the flow of water to which said Indians are entitled.

From January 1st to July 1st of each year, the First Party agrees to maintain a flow of water at the intake of Second Party for the purpose of satisfying the water rights of the Rincon Indians as provided in Article XIX hereof; provided, if said Indians do not demand all of said water, the Second Party may divert any portion of it to its reservoir without such diverted water being charged against the said one billion three hundred fifty million (1,350,000,000) gallons. From January 1st to July 1st of each year the Second Party is entitled, as against First Party, to divert all the water which may then be

flowing in the river at its intake in excess of the afore-said six (6) second feet, and such excess water, up to the then capacity of Second Party's conduit, shall be charged against the said one billion three hundred fifty million (1,350,000,000) gallons.

If on July 1st the quantity of water which Second Party might have diverted during the next preceding eight (8) months, properly chargeable to it, as hereinbefore set forth, does not equal said one billion three hundred fifty million (1,350,000,000) gallons, and if said amount would have been flowing at the point of said intake, had said Henshaw dam not been built, then the First Party agrees to release and deliver such deficiency to said Second Party as said Second Party may require, at the rate not to exceed one thousand (1,000) acre feet per month at such point as First Party is required to deliver purchased water to Second Party; and releases by said company sufficient to meet such deficiencies shall be in full discharge of all the obligations of said Wm. C. Henshaw, or of said company, under said contract of 1912 respecting the delivery of any amount of water to make up said one billion three hundred fifty million (1,350,000,000) gallons.

The gross evaporation loss from Henshaw and the Bear Valley Reservoirs shall be determined from observations made from a standard evaporation pan floating in the water of said reservoirs, or other devices approved jointly by the engineers of the two parties hereto. Rainfall records shall be kept with



two or more standard eight inch rain gauges at each reservoir. The net evaporation from each reservoir shall be the gross evaporation less ninety per cent. (90%) of the rainfall at such reservoir, as shown by said rain gauges for the interval of time in question.

The amount of gravity water delivered to the Indians shall be determined by the measurement thereof at the intake of the Second Party. There shall also be determined by adequate measurements the amount of water that may be pumped for the Indians from various wells on the Rincon reservation for which electric power is supplied by either party.

All of the above measurements shall be made within an accuracy of three per cent. (3%).

It is understood and agreed that that certain provision in said contract of June 21, 1912, which reads as follows:

"But if at any time from the first day of November of any year to the first day of July of the following year prior to the first day of July, 1917, there shall not exceed 200 miner's inches of water flowing in said river, above the amount required by the Indians, then the said 200 inches or less which shall be flowing in said river shall not be included in making up the said quantity of 1,350,000,000 gallons; and if at any time after the first day of July, 1917, and while this contract remains in force and effect, the amount of water which shall flow in said river between the first day of November of any year and the first day of July of the year immediately following, shall not exceed 100 miner's inches above the amount required by the Indians, then the said 100 inches, or less, which shall be flowing in said river shall not be included in making up the said quantity of 1,350,000,000 gallons".

shall no longer be operative or in force.

#### ARTICLE XXI.

##### IMPROVEMENT AND STRENGTHENING OF BEAR VALLEY DAM.

The Second Party covenants that during the first six (6) months of the year 1923 it will commence the work of strengthening and otherwise improving its Bear Valley Dam and will prosecute the work after the commencement thereof with all reasonable diligence to completion, and when completed it shall thereafter maintain the same in good order and condition. Said work shall be done under and in accordance with plans and specifications to be prepared by the engineer of the Second Party and shall be subject to the approval of the engineer of the First Party.

The Second Party further agrees that until the completion of the work of strengthening and improving its said dam in accordance with such plans and specifications as above provided, it will indemnify and forever save and hold harmless the First Party from and against any liability in favor of any third person or party arising or growing out of damage or injury to person or property caused by the water escaping from said Bear Valley Reservoir, but that upon the completion of said work of strengthening and improving, as above provided, the indemnity hereby provided for shall terminate.

#### ARTICLE XXII.

##### PAYMENTS IN GOLD COIN.

All payments provided in this contract to be made by



one party to the other shall be made in gold coin of the United States, of the present standard of weight and fineness, or in other lawful money of the United States in an amount which shall be equivalent to the value of the amount of such payment in said gold coin at the time when such payment shall become due under the provisions hereof.

#### ARTICLE XXIII.

##### RIGHT TO INCREASE FIRST PARTY'S SALES.

In relation to the net safe yield provided for in Article XVIII from Henshaw Reservoir, it is contemplated that the First Party, if it shall so desire, may store a portion of the waters of the San Luis Rey River and the runoff of local drainage areas, at other places than the Henshaw Reservoir; in which event the capacity of said Henshaw Reservoir may not be increased above approximately one hundred sixty-four thousand (164,000) acre feet; and it is further contemplated that in the event the First Party shall provide other storage places for water, an additional net safe yield will be obtained above the amount estimated as the yield from a reservoir of approximately one hundred sixty-four thousand (164,000) acre feet capacity; and it is agreed that the engineers of the two parties shall estimate the amount of such additional safe yield, and in case they are unable to agree thereon, the question shall be determined by a board of arbitration to consist of three members, each party to select one and the two so selected to

select the third member, and a decision by any two of said arbitrators shall be final as to the amount of said additional safe yield. In the event of an additional safe yield being provided by additional storage as above set out, the First Party may increase the sales and deliveries of water over that heretofore in this article provided for, in the same proportion that the net safe yield is increased by providing such additional storage. It is agreed, however, that the First Party shall not make use of such additional storage in such a way or to such an extent as to decrease the amount of water which the Second Party would be entitled to receive under the provisions of this contract if the said waters tributary to said Henshaw Reservoir had all been stored therein, and in no event shall the First Party have the right to impound in such other reservoirs in excess of thirty-six thousand (36,000) acre feet of the run off water from the water shed tributary to the Henshaw Reservoir.

#### ARTICLE XXIV.

##### DELIVERY OF INDIAN WATER.

All water which First Party may be required to release from its reservoir under the terms of this contract for the purpose of supplying said Indians shall, if and when requested by Second Party, be delivered at or near Second Party's intake.

#### ARTICLE XXV.

##### PARTIES TO BE BOUND BY THE CONTRACT.

Each and all of the provisions of this contract shall inure to the benefit of the parties hereto only, and the pro-



visions thereof are not intended for the benefit of third parties, but shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the First Party has executed this contract by John Treanor, thereunto duly authorized by resolution duly adopted at a meeting of its Board of Directors regularly and duly called and held on the 31st day of October, 1922, and the Second Party has caused this contract to be duly executed by its officers thereunto first duly authorized by resolution duly and regularly adopted by its Board of Directors the day and year first in this contract written.

THE SAN DIEGO COUNTY WATER COMPANY,

By John Treanor,

Duly authorized to execute the foregoing contract in the name of and on behalf of the San Diego County Water Company by formal resolution of the Board of Directors of the San Diego County Water Company passed at a Special Meeting held at the office of the Corporation on the thirty-first (31) day of October, 1922.

ATTEST:

(SEAL)

John Treanor  
Vice President

ESCONDIDO MUTUAL WATER COMPANY,

By Meredith Conway,

President.

ATTEST:

J. B. Dixon  
Secretary.

(SEAL)

STATE OF CALIFORNIA } ss  
COUNTY OF SAN DIEGO }

On this 10th day of November, in the year one thousand, nine hundred and twenty-two, A. D., before me J. J. RUTHERFORD, a Notary Public in and for said County of San Diego, State of California, residing therein, duly commissioned and sworn, personally appeared JOHN TREANOR, known to me to be the authorized agent of the Corporation that executed the within instrument, and acknowledged to me that such Corporation executed the same.

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

J. J. RUTHERFORD

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

(SEAL)

STATE OF CALIFORNIA } ss  
COUNTY OF SAN DIEGO }

On this 10th day of November, in the year one thousand and nine hundred and twenty-two, before me, J. J. RUTHERFORD, a Notary Public in and for said County, personally appeared MEREDITH CONWAY, known to me to be the President, and J. B. DIXON, known to me to be the Secretary of the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

J. J. RUTHERFORD

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

(SEAL)



# Escondido Mt Water Co

## E Line Transit Notes

A Line  
301+20 Forenight on Pipe Line  
Angle 93° 20' Left

Stat.	Defl.	Mag.	Course
28	29° L		S 81° 40' E
428.6			
23+50	39° 25' R		S 52° 35' E
168.7			
21+60	52° 50' L		N 88° E
101.2			
20+60	53° 45' L		S 39° 15' E
378.5			
16+50	80° 42' R		S 14° 30' W
386.4			
12+50	42° 12' R		S 66° 30' E
105.7			
10+75	33° 50' L		N 71° 30' E
269.2			
8	45° R		S 74° 30' E
179.7			
6	28° 27' L		N 60° 40' E
49.7			
5+50	67° L		N 88° 50' E
99.5			
4+50	90° 55' R		S 23° 35' E
97.6			
3+50	44° 05' L		N 65° 45' E
120.0			
1+50	48° 45' L		S 70° 30' E
111.0			
301+20	93° 20' L		S 21° 20' E

66+50	46° 47' R	S 42° E
119		
65+25	76° 08' L	S 88° 40' E
67		
64+50	92° 30' R	S 12° 30' E
375		
60+50	21° L	N 75° 15' E
145		
59	27° 15' L	S 84° 15' E
304		
56	73° 10' L	S 57° 45' E
537		
50+75	78° 35' R	S 15° 40' W
377		
47	80° 25' L	S 63° E
446		
42+50	85° 15' R	S 18° W
330.8		
39	22° 40' L	S 67° 15' E
126		
37+25	25° 10' L	S 45° E
121		
36	1 1/2° L	S 19° 30' E
385		
32	65° 50' R	S 17° 50' E
338.3		
28		



# Levels

301+20

0+50

2+00

Elev

Grade

859.70

859.20

859.30

859.00

117° L

N 58° 30' E

242.3 ft cor. lot 5, B. 6

83

37° 40' R

S 31° W

Pipe Line

382

79

86° 27' L

S 6° 45' E

134

77+50

63° 57' R

S 79° 30' W

194

75+50

27° 35' L

S 16° W

708

68+30

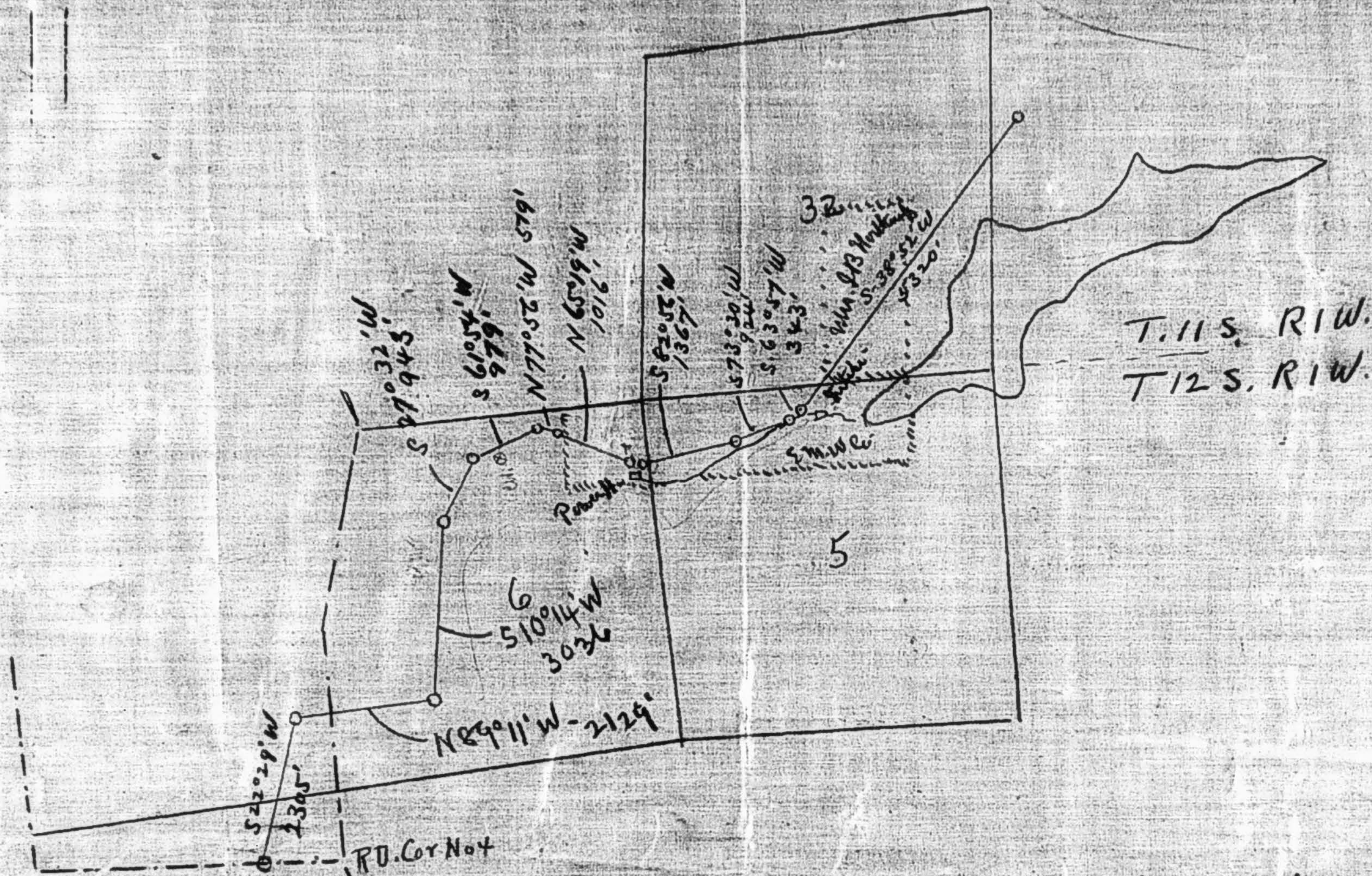
85° 15' R

S 43° 10' W

181

66+50





T. 11 S. RIW.  
T. 12 S. RIW.

General Map  
of  
Final Location  
of  
Power Plants & Transmission Line  
of the  
Escondido Mutual Water Company  
June 1915 -  
Scale 1 inch = 2000'



Table No. 27  
Irrigation & Domestic Water Sold By  
Escondido Mutual Water Company

SEASON May 1 to: May 1	I R R I G A T I O N		D O M E S T I C		T O T A L	
	Inches	Ac. Ft.	Inches	Ac. Ft.	Inches	Ac. Ft.
1895-96	11,356	450			11,356	450
96-97	37,126	1470			37,126	1470
97-98	17,470	692			17,470	692
98-99	4,756	188			4,756	188
99-00	9,596	380			9,596	380
1900-01	6,763	268			6,763	268
01-02	12,285	487			12,285	487
02-03	13,115	519			13,115	519
03-04	9,742	386			9,742	386
04-05	12,070	478			12,070	478
05-06	15,043	596			15,043	596
06-07	23,508	931			23,508	931
07-08	30,006	1188	4191	166	34,197	1354
08-09	30,589	1212	4380	173	34,939	1385
09-10	31,636	1253	6735	267	38,371	1520
10-11	32,124	1272	7300	289	39,424	1561
11-12	12,451	493	5047	200	17,498	693
12-13	17,974	712	5947	236	23,921	948
13-14	22,070	874	4512	179	26,583	1053
14-15	21,783	863	5371	213	27,154	1076

NOTE: Data furnished by Mr. J. B. Dixon, Supt. of Escondido Mutual Water Co.

Table No. 28  
Net Diversion and Sale of Water by  
Escondido Mutual Water Company

1905-06 to 1914-15

S E A S O N	(1)	(2)	(3)
	Diversion Acre Feet Excluding Rincon Water	Total Amount of Water Sold Acre Feet	Ratio of Amount Sold to Net Diversion: Acre Feet
1905-06	1922	596	31.0%
06-07	2247	931	41.3%
07-08	2943	1354	46.0%
08-09	3877	1384	35.7%
09-10	2640	1520	57.6%
10-11	3968	1561	39.4%
11-12	3058	693	22.7%
12-13	2928	948	32.3%
13-14	5845	1053	18.0%
14-15	7277	1076	14.8%
20 yr. Average	3671	1112	30.2%

Col. No. 1 Net diversion acre feet taken from Table No. 11

Col. No. 2 Total amount water sold by Escondido Mutual Water Co., acre feet, for domestic and irrigation use, taken from Table No. 27.

Col. No. 3 Ratio of amount of water sold to net diversion in per cent.



Escondido  
~~Pineapple~~ for low  
~~lands~~

~~10,000~~  
~~2,000,000~~ Elev.

City Reservoir 873

Settling Res. 903

Everything above 650

The more 800  
 3/4 of water stock.

North side ditch &  
 850

Reconstruction of Esc. Ditch  
 63,500 To Rock Creek.

Assuming that the finished ditch to be 3'x4' with 4" bottom and walls .123 cu. yd of concrete will be required per lineal foot.

.123 x #1200 = 1.48 per lineal foot.

63,500 ft less 800 ft flume = 62,700

62,700 ft @ 1.48 = \$ 92,796

800 ft flume @ 4.20 3,360

\$ 96,156

Assuming Hull Creek siphon is constructed, there will be 14,000 ft less ditch required.

14,000 ft @ 1.50 = \$ 21,000

\$ 96,156 less \$ 21,000 = \$ 75,156

Plus Cost of Siphon:

7,815  
 \$ 82,971

Estimated by Sukler  
 Wohlford  
 Nov. 1915.

cu yds of concrete  
 1:5 mix requires  
 1:6 " "

7712 c. y.

10,000 bbls

8500 "



RINCON - ESCONDIDO M. W. CO. AGREEMENT (Feb. 2, 1914)

(Itemized for your information)

- (1) Rincon Indians entitled to a maximum flow of San Luis Rey River of ----- 6 sec. ft.
  - (2) Land set aside by Indians for use of Escondido M.W.Co. power plant ----- 1.77 ac.
  - (3) Road and pole line R's of W to above.
  - (4) Escondido Mut. Water Co. furnishes power for pumping as follows:
    - (a) The Rincon Indians to get all of above power and if water through power house is less than 6 sec. ft., the River reserve can be drawn upon and water furnished Indians through penstock.
    - (b) Maximum power demand of Indians 70 K. W. The pumped water plus the total through power house not to exceed 6 sec. ft.To be paid for at 1/8 cent K.W.H.
  - (5) When San Luis Rey River at Ditch Intakes fall below 3 sec.ft., the Esc. M.W.Co. to furnish power from its Escondido plant to produce the above requirement, viz., 70 K.W. for 6 sec. ft. pumped water - rate of cost 1.5 cents K.W.H.
- The Indians reserve the right to a 3 sec. ft. minimum flow at the Intake of Ditch during months of July, August, September and October and a minimum flow of 6 sec. ft. the remaining 8 months of the year. All to be delivered through the ditch and 2 sec.ft. through penstock and the remaining 4 sec. ft. subject to the disposal of the Esc. M. W. Co.
- (6) The sale of electric power subject to rules and regulations of Esc. Mut. W. Co. and State Laws.

888.69 is

head of pipe  
coming to city  
covers 25% of  
water stock.

L.T. Co. under-  
subscribed



ESCONDIDO MUT. W. CO. - VOLCAN L. & W. CO. AGREEMENT  
(June 21st, 1912)

(Itemized for your information)

(1) Esc. M.W.Co. waives all rights to object to the Warner Construction or the storage or runoff above the dam.

(2) Volcan L & W Co. (Henshaw) relinquishes all claim to the runoff of watershed between Warner Dam and Escondido Ditch; also any seepage from dam.

(3) Esc. Mut. W. Co. has right to divert 2,000 sec. ft. or 4140 ac. ft. per year provided the runoff of all sheds above the Ditch is in excess of that amount.

(4) If the 4140 ac. ft. (1,350,000,000 gals) can be obtained in any year at the Ditch intake, Mr. Henshaw will not be called upon for additional water during that year.

(5) Esc. M.W.Co. to divert during winter season from Nov. 1st to July 1st.

(6) Any flow in the River during the winter months, Nov. 1st to July 1st, not exceeding two sec. ft. plus the water required by the Indians shall not be included in 4140 ac.ft.

(7) During the winter season, Nov. 1st to July 1st, the Esc. Mut. W. Co. to divert 40 sec.ft. (2,000 M.I.) Mr. Henshaw may augment the stream flow from storage water to produce this result.

(8) Inability of Esc. Mut. W. Co. to receive a 40 sec.ft. (27,000,000 gals. per day) flow from Nov. 1st to July 1st when same is available shall be charged with the total volume entitled, except in case of break in Esc. M.W.Co. system between Nov. 1st and Apr. 15th, when same, if being supplied from Volcan Reservoirs shall be accredited.

ESCONDIDO MUT. W. CO. - VOLCAN L & W CO. - AGREEMENT (CONT'D)

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(9) One quarter of any yearly deficiency which Mr. Henshaw may be called upon to deliver may be delivered to the Esc. Mut. W.Co. at head of pipe leading to Escondido City Reservoir - Elevation 888 feet.

(10) The volume of water to be delivered to the Escondido M.W.Co. by Mr. Henshaw in any year shall not exceed the volume of water that could be diverted if the ~~same~~ dam were not constructed.



Table No. 1.

Total and Net Diversion of Escondido Ditch, and Amount of  
Water Turned out to Rincon Reservation.

Quantities in acre feet.

	Total Diversion	Water delivered to Indians	Net Diversion Esc. M.W.Co.
1896-97	6,017		6,017
97-98	3,881	131	3,750
98-99	1,765	194	1,571
99-00	2,003	440	1,563
1900-01	2,795		2,795
01-02	No record		
02-03	4,237		4,237
03-04	No flume		
04-05	3,435		3,435
05-06	1,922		1,922
06-07	2,247		2,247
07-08	3,408	465	2,943
08-09	4,173	296	3,877
09-10	2,999	359	2,640
1910-11	3,968		3,968
11-12	3,088	30	3,058
12-13	2,960	32	2,928
13-14	5,932	87	5,845
14-15	7,277		7,277
Avg. 17 yrs	3,653		3,534

Table No. 2

Runoff San Luis Rey River at Ditch Intake

Escondido Mutual Water Company

1895-96 - 1914-15

	(1)	(2)	(3)	(4)	(5)
	Runoff Ac. Ft. at Warner	Total Runoff Acre Feet at Pala 318 sq.mi.	Increased Flow Warner's to Pala	Runoff 32 sq.mi. above Intake	Runoff Ac.Ft. Passing Intake Escondido Mut- ual Water Co.
Season					
1895-96	7850	12600	4750	1390	9240
96-97	19200	30800	11600	3400	22600
97-98	4360	7000	2640	770	5130
98-99	2180	3500	1320	390	2570
99-00	1740	2800	1060	310	2050
1900-01	15500	24150	8650	2530	18030
01-02	7410	11900	4490	1310	8720
02-03	16570	26600	10030	2940	19510
03-04	3720	7680	3960	1160	4680
04-05	33700	45435	11735	3440	37140
05-06	67910	109922	42012	12300	80210
06-07	59500	85247	25747	7540	67040
07-08	14830	28308	13478	3950	18780
08-09	35300	52773	17473	5120	40420
09-10	25950	49639	23689	6940	32890
10-11	21160	36348	15188	4450	25610
11-12	12000	18598	6598	1940	13940
12-13	5913	9130	3217	940	6853
13-14	22634	35832	13198	3870	26504
14-15	60435	101707	41272	12100	72535
20 year Average	21890	35000	13105	3840	25750



Table No. 3

AVERAGE DAILY DIVERSION FROM SAN LUIS REY RIVER INTAKE OF ESCONDIDO  
MUTUAL WATER CO. DITCH  
Quantities in Second Feet

Month	1896-97	1897-98	1898-99	1899-00	1900-01	1902-03
Oct.	2.3					
Nov.	4.6				4.9	0.3
Dec.	7.1	6.3			1.1	0.5
Jan.	16.7	16.9	2.5	8.1	10.6	5.7
Feb.	24.2	15.4	11.0	6.1	9.8	23.0
Mar.	23.1	19.5	11.7	5.8	13.8	21.3
Apr.	19.7	5.9	47.4	7.4	6.7	17.0
May	3.5			5.9		3.7
June						
July						
Aug.						
Sept.						

Month	1904-05	1905-06	1906-07	1907-08	1908-09	1909-10
Oct.			2.1			
Nov.			1.1	1.5	1.3	
Dec.			17.2	9.6	6.7	
Jan.		7.3	2.5	9.9	9.0	8.2
Feb.		21.5		5.4	7.2	14.4
Mar.	18.5	4.6		7.2	13.7	9.1
Apr.	27.3			12.0	13.4	6.6
May	11.0		4.5	10.1	10.2	6.4
June			8.4	0.9	6.1	1.7
July			1.1		1.7	0.5
Aug.						0.3
Sept.						

Month	1910-11	1911-12	1912-13	1913-14	1914-15	Avg. Daily
Oct.						0.3
Nov.						0.8
Dec.	2.7		3.0	4.0	9.0	3.9
Jan.	8.0	8.0	3.6	11.0	14.6	8.4
Feb.	9.7	5.5	9.5	16.7	16.5	11.5
Mar.	19.0	8.0	21.1	31.7	19.4	14.5
Apr.	19.3	7.7	12.0	14.9	15.4	13.7
May	7.6	21.7	0.3	17.0	6.7	6.4
June		0.2		3.8	13.3	2.0
July					12.2	1.0
Aug.						
Sept.						

The above includes water turned out to the Rincon Ind. Reservation.

Table No. 4

MEAN DAILY USE OF WATER - RINCON INDIAN RESERVATION - TURNED  
OUT FROM ESCONDIDO MUTUAL WATER CO. FLUME

Quantities in Second Feet.

Month	1898	1899	1900	1908	1909
October					
November					
December					
January					
February					
March	2.5		4.7		
April	3.0	6.5	4.6		
May				9.6	
June					3.4
July					2.1
August					
September					

Month	1910	1912	1913	1914	Maximum	Average
October						
November						
December						
January						
February						
March					4.7	0.8
April					6.5	1.6
May	6.3	3.0	4.0	4.0	9.6	3.0
June	2.2				3.4	0.6
July	1.0				2.1	0.3
August	1.0				1.0	0.2
September						

The above table is of interest only to show comparative water usage each month over long period.



# MEMO

B

① The Esc. Mut Water Co has built and is operating a electric plant on the Rincon Indian Reservation. The max Indian demand on this plant is 6 sec feet or its power equivalent of 70 KWH. Same to be delivered from Nov. 1<sup>st</sup> to July 1<sup>st</sup> each winter. For power generated at the reservation plant the Indians pay  $\frac{1}{8}$ ¢ KWH and if Escandido power is supplied to make up this amount,  $\frac{1}{2}$ ¢ KWH is paid.

It is proposed by Mr. Palmer that free water or its equivalent in electricity be supplied up to the extent of 6 sec feet until June 15<sup>th</sup> of each year. Some difficulty may be experienced toward the last of the season in obtaining this amount as the flow of the river is reduced by the construction of the dam to  $\frac{1}{10}$  its present flow at present during May. ~~to supply this demand~~ <sup>be supplied by</sup> free flowing water as the mean Indian use being is about 3 sec ft and the average stream flow is above 6 sec feet.

Assuming for the remaining two weeks until June 15<sup>th</sup> a full electric supply of 70 KWH at the Volcan expense this would mean a net cost @  $\frac{1}{2}$ ¢ KWH of \$35.00

not in answer to Mr. Palmer's stipulation No. 1. I should say that certain curtailment of water may occur in the late power development for the Indian use but the curtailment of

A<sub>2</sub>

It is proposed by Mr. Palmer that free water or its equivalent in electricity be supplied to the extent of 6 sec feet until June 15<sup>th</sup> of each year. We know that the 32 sq miles of water shed below the Warner dam discharging at the Esc. Ditch yields an average yearly runoff of 3840 ac feet, that the total flowing water in the Esc. Ditch Division is 3653 ac ft of which the Indians use 119 ac ft. After

the dam is built the San Luis Rey River will pass only one-tenth of its present volume. Presuming that the water Escandido Mut W Co diverted at the first of the year the supply from the water shed below the dam would quickly ebb. If power were supplied to make up this deficiency to 6 sec feet of water as per the stipulation of Mr. Palmer then a gradually increasing amount of power would be needed <sup>from about May 1<sup>st</sup> up</sup> until 70 KWH were used June 15<sup>th</sup> and this continued for one month thereafter until July 15<sup>th</sup> i.e. a max of 70 KWH may be used for 53 days and at a cost of  $\frac{1}{2}$ ¢ per KWH to the Volcan company this would amount to a maximum of \$1335

31/2  
1/2  
2/3

for the irrigation season. Answering Mr. Palmer's stipulation No. 1 I should say that certain curtailment of water will occur <sup>and the last of the season</sup> below the Warner dam is solely depended upon the water shed below the six second feet.



13

but any excess over & above this amount is not of interest <sup>to the Esc. M. V. Co. in connection with power</sup> so long as the Esc. M. V. Co - Volcan agreement is intact and the 6 sec ft. flow only to the extent that the Esc. M. V. Co is obligated to the Indians and the Volcan would have to assume that obligation as no clause in the ~~said~~ agreement which relieves the Volcan Company. To this extent then it would be necessary for the Escondido Mut. V. Co & Volcan Water Co to have a mutual understanding <sup>possibly with compensation if there are not all the facts</sup> as to maintaining the Indian supply and the use of the flume & power house for this purpose as each are more or less jointly obligated.

2, 3 & 4 (3) My information on the extent of the power demand is not very copious except as mentioned above. The 70 KW is the maximum demand as fixed in the Esc. M. V. Co - Indian agreement as the equivalent of 6 sec ft. the full demand and the possible diminution of flow with reservoir Warner Dam built with come shortly after the rains in May so that 70 KW for 53 days should be a maximum figure for the partial year to July 15<sup>th</sup>. The peak of this power will depend upon the result on any agreement that may be made

14

(5) Any power up to the capacity of the present installation may be sold to the Indians upon demand, except that which is furnished free for farming. My understanding is that this amount is the residue from the power generated with the 6 sec ft. deliv. at the head of the penstock although it is probable that this plant has a much larger capacity. ~~So this~~ The power sold to the Indians for private use before June 15<sup>th</sup> brings  $\frac{1}{8}$  ¢ per K.W.H. may or may not be classed as income. Power furnished after June 15<sup>th</sup> may be sold at a price to the Indians at a price not to exceed  $\frac{1}{2}$  ¢ per K.W.H. We do not know the amount of these sales, but ~~it is not probable that any considerable~~ ~~was~~ At the present time the electricity is probably furnished from the Escondido at a ~~greatly~~ increased cost to supply this small consumption.

(6) The Service advises that flood water be turned down in sufficient quantity to keep a small stream running over the sands of the reservation. They do not state



D

which months include the rainy season. It should be sufficient to let the local showers and occasional spills together with the irrigation take care of this recharging. There will be years when it will be particularly hard to fulfill this condition, ~~and it is not satisfactory the six second foot~~ ~~clause~~ should be satisfactory.

Either supply or allow to be supplied by local rainfall or otherwise an amount equal to six second feet from the commencement of the runoff of such amount from the winter rains of the year to the time when the Indian usage begins. The total demand of the Esc Mont Water Co is 4140 ac ft, the Indians possibly 500 ac ft. of this total amount of 4640 ac ft 3840 ac ft of it is supplied from the lower 32 square miles of water shed leaving a net average amount of 800 ac ft to be let down from the Warner dam

(24)

10. The volume of water to be delivered to the Esc. M.W. Co. by Mr. Henshaw in any year shall not exceed the volume of water that could be diverted if the dam ~~was~~ not constructed.

X ~~Art~~ X

STIPULATIONS - TRNCON - VOLCAN CONTRACT

As proposed by H.K. Palmer U.S. Indian Service

① Volcan to agree with Esc. M.W. Co. as to extent of damage due to curtailment of water for power purposes

② Either 6 sec ft of water at head of pentak or electricity shall be supplied to Indians until June 15<sup>th</sup> to make up any deficiency

③ Five KW ft of electricity per acre foot of water pumped shall be provided free throughout the irrigating season

④ To compensate for loss of high pressure water after the power plant is shut down free additional power shall be supplied for one month each year (June 15<sup>th</sup> to July 15<sup>th</sup>)

⑤ Any additional power shall be paid for by the Indians at  $\frac{1}{8}$ ¢ per KW ft before June 15<sup>th</sup> and not to exceed  $\frac{1}{6}$ ¢ per KW ft thereafter

⑥ The Indian Service is to be given first right to flood waters to refill gravels and enough water let down to cause a small continuous stream to flow thru the irrigation



during the rainy season and until the water shall be required for irrigation on the Reservation. Part of the water may be required to go thru the penstock.

⑦ In case the above conditions do not fulfill the requirements a general clause is added in which sufficient compensation water may be obtained either by letting down more water or installing additional wells & machinery and such pipe lines as the Indian Service may see fit to approve.

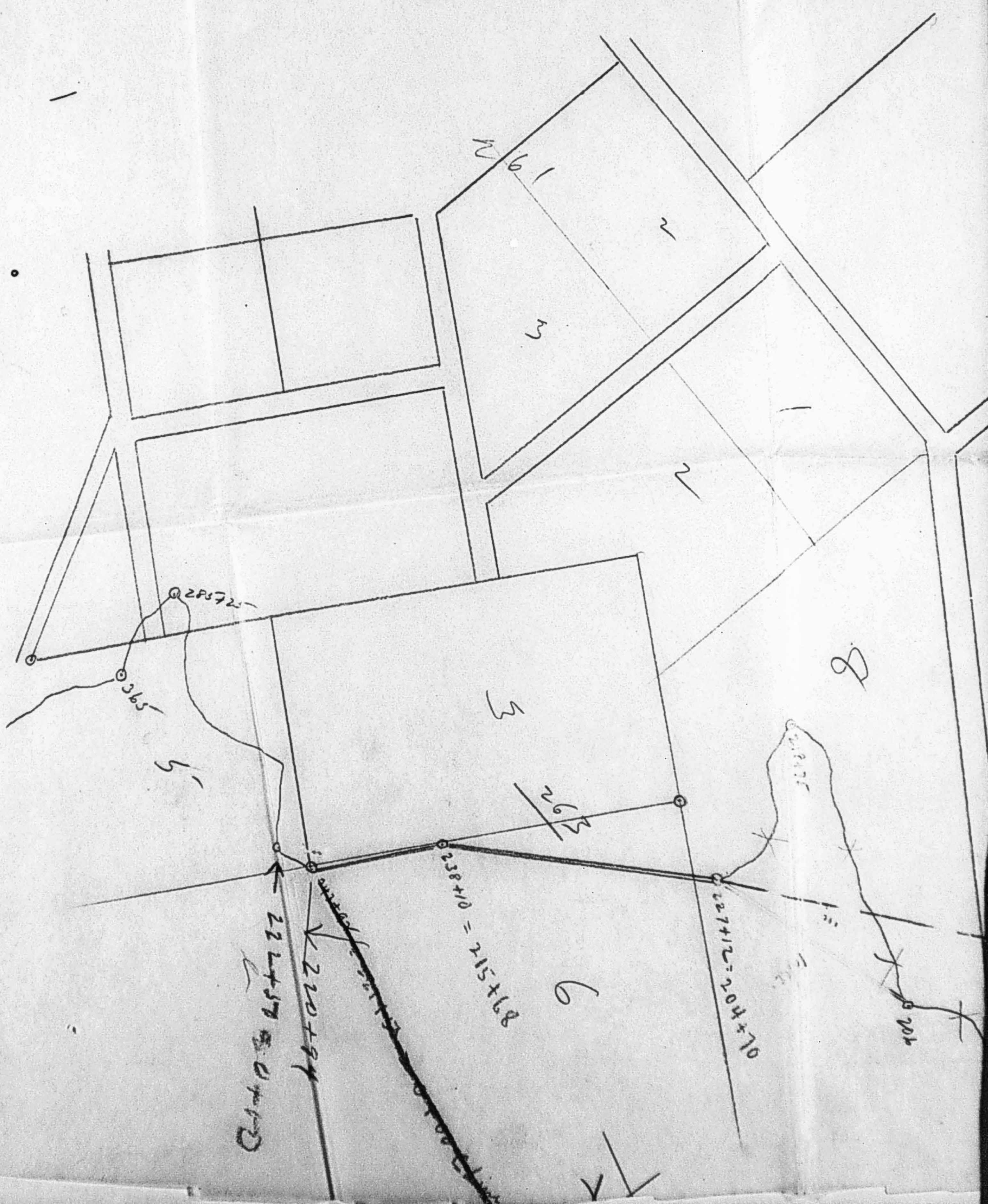
## DEMANDS of Esc. Mut. W. Co. & Union Indians

By agreement the Escondido Water Company is to divert 4140 ac ft net this to be accomplished at the max rate of 40 sec. ft. per day at times when the Indians water supply plus two sec feet can continuously be left in the San Luis Rey River. (Cap of flume 42.76 sec ft)

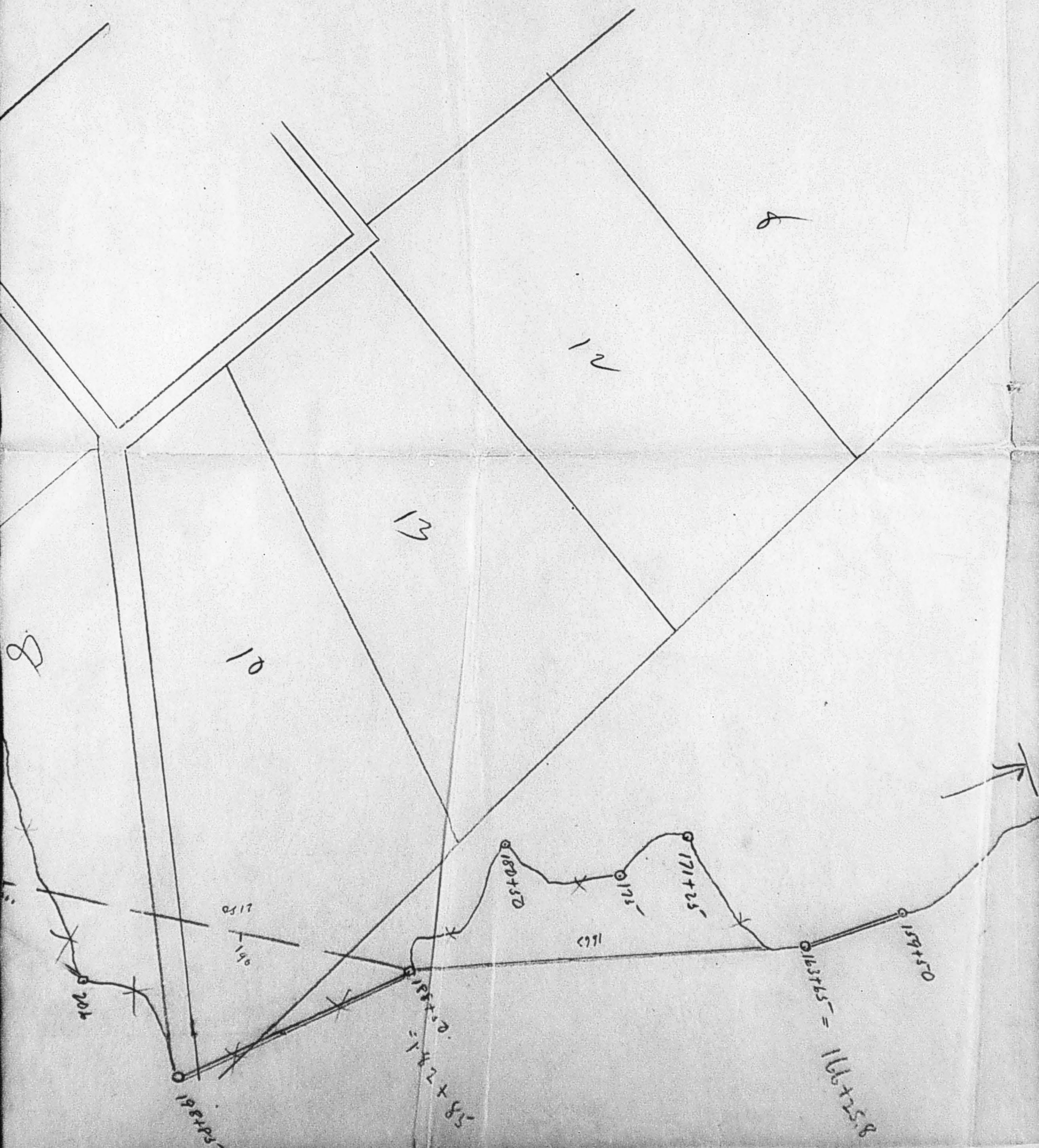
At the above rate of 40 sec ft it is possible to divert 4140 ac ft in about 8 weeks. Diversion should take place as early in the year as possible in order to allow the contracting flow to be used for the Indians. It is stated that the obligation of supplying the Indians apparently falls on the Volcan Company and if the Indian Service demands are complied with the water equivalent at the ditch intake during the months between (see sec 2 of letter) Jan 1<sup>st</sup> & June 15<sup>th</sup> of each year will be in excess of 6 sec. feet i.e. 6 sec ft at head of penstock (The Indian service having a right to convey the water thru Esc. Ditch) which means according to the Indian Service interpretation not to exceed 70 KVV which amount is sufficient to pump 6 sec feet through the distribution mains.



11.









Re Cor No 4

sec Cor

3

4

4  
2  
5

14995

14170 = 143 + 90.8

143 + 90.8

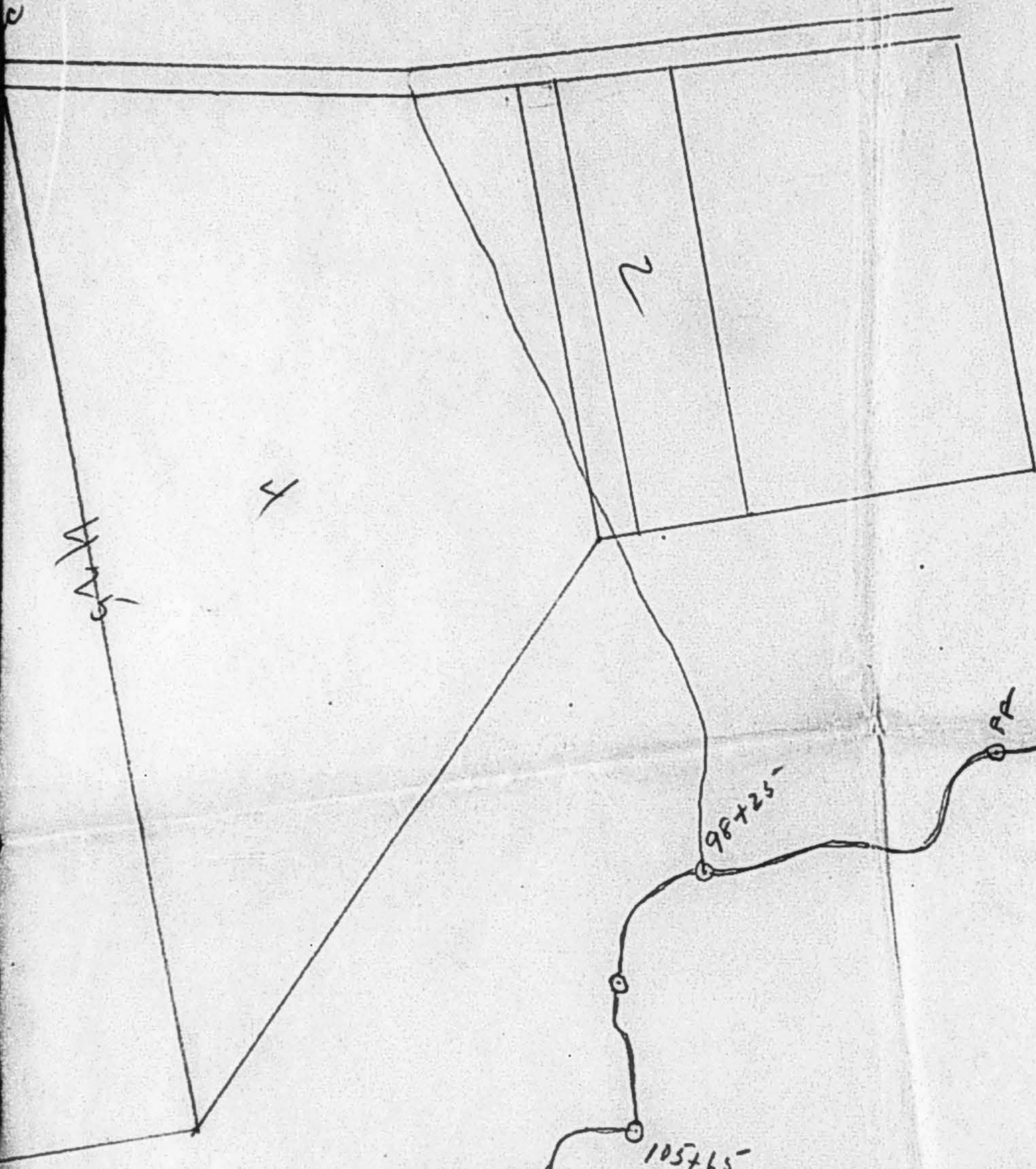
11247

"a" line

From WCo.  
From Comp



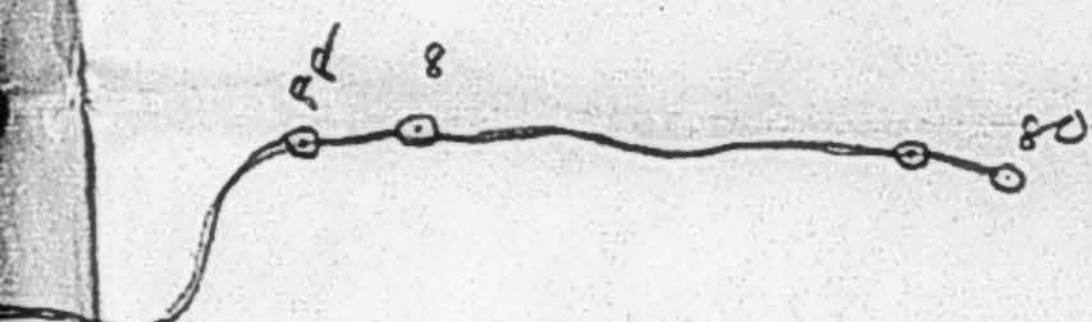
Cor



Seal

line  
From WCo.  
From Company's Maps.





Map.

Scale 400' = 1"  
(O.K. to use - after comparing  
with field notes plant.)

"A" line E.M.W. Co



**Ed Fletcher Papers**

**1870-1955**

**MSS.81**

**Box: 49 Folder: 3**

**Business Records - Water Companies - Volcan Land and  
Water Company - San Dieguito System - Volcan-Escondido  
Mutual Water Company Agreement - Papers and Notes**



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