

Wm. J. Rorer

Cyril J. Rorer

Chas B. Spraker

Robert Sprague

W. J. Stewart

Edson Stevens

John M. Stewart

Robert B. Taylor

Flowers A. Thiering

Harry Thiering

W. J. Trumble

C. A. Vincent

James White

J. K. Wagner

Norman E. Walker

L. F. Wille

Wm Howard

Wm C. Zimmermann

Lorel Beale Dugg

Pearl Zuch



From the papers of Ed Fletcher, the following letters were removed to the alphabetized correspondence files:

"POWER CONTRACT WITH SAN DIEGO GAS AND ELECTRIC CO."

CROUCH, CHARLES C., December 30, 1920

FERRIS, SCOTT, (from Fletcher), February 19, 1918

HARRITT, C., January 5, 1921

JONES, H. H.:

to Fletcher from Jones, December 27, 1920

to Jones from Fletcher, January 6, 1921

STEVENS, HENRY J., (to TREANOR, JOHN), March 29, 1921



THIS AGREEMENT, made and entered into in duplicate this 1<sup>st</sup> day of March, 1921 by and between James A. Murray and Ed Fletcher and Wm. G. Henshaw as co-partners doing business under the firm name and style of Cuyamaca Water Company and hereinafter for convenience sometimes designated and referred to as Cuyamaca Company, first parties, and San Diego Consolidated Gas and Electric Company, a corporation organized and existing under the laws of the State of California, having its principal place of business in the City of San Diego, California, and sometimes for convenience hereinafter designated Electric Company, Second Party, WITNESSETH:

WHEREAS the Cuyamaca Company is the owner of a certain water system in the County of San Diego, State of California commonly known as the Cuyamaca System and on which said system it is believed a certain quantity of hydro-electric power can be developed by the erection and construction of a power plant or plants for that purpose; and

WHEREAS, Cuyamaca Company is willing to convey to Electric Company and Electric Company is willing to acquire any and all such hydro-electric power possibilities, together with the right to the use of the water of the Cuyamaca Company for the development of hydro-electric power and is desirous of building a plant or plants at some point or points along the system of said Cuyamaca Company and Cuyamaca Company is willing to grant such rights to said Electric Company upon and subject to the terms and conditions hereinafter set out,

NOW THEREFORE, for and in consideration of the premises and of the benefits and additional revenue to accrue to Cuyamaca Company from the use of the water of



its system for the generation of hydro-electric power, it is agreed between the parties hereto as follows:-

#### ARTICLE I

Electric Company agrees forthwith to commence an examination of the conditions of said system with a view of ascertaining the practicability of constructing such hydro-electric plant or plants and determining whether it will undertake the construction thereof under the terms hereof, and that it will complete such investigation and will on or before the 15 day of April, 1922, notify in writing the Cuyamaca Company of its decision and whether or not it desires to proceed with the erection of such plant or plants under the terms hereof.

If at any time on or before said 15 day of April, 1922, the Electric Company shall notify the Cuyamaca Company that it does not desire to construct such plant or plants under the terms hereof, or if on or before said date said Electric Company shall fail to notify the Cuyamaca Company that it desires to construct such a hydro-electric plant or plants, then this contract shall immediately thereupon cease and determine and shall no longer be of any force or effect. Time shall be of the essence hereof. If, however, said Electric Company shall on or before said 15th day of April, 1922, determine that it desires to construct such hydro-electric plant or plants, and it shall so notify in writing the Cuyamaca Company, then and in that event the grant of power rights as hereinafter defined by the Cuyamaca Company to the Electric Company shall be and become in full force and effect and be vested in said Electric Company subject however to and upon all the terms and conditions of this agreement and Cuyamaca Company agrees that it will, upon and subject to all the terms and conditions herein set



out and contained, grant to the Electric Company an easement in lands which may be owned or controlled by it or by any of the individuals composing the co-partnership known as Guyamaca Water Company required and necessary for the purpose of constructing such hydro-electric power plant or plants at such point or points as may be determined, as hereinafter provided, together with easements in such other lands which may be owned or controlled by said Guyamaca Company ~~or by any of the individuals~~ composing the co-partnership known as Guyamaca Water Company as may be required and necessary for the construction of all necessary conduits, fore-bays, penstocks, power houses, transformer stations, ditches, canals, pipe lines, cottages for housing purposes for employees, and all other appurtenances necessary to the building, construction, maintenance and operation of such hydro-electric generating plant or plants as may be constructed under this agreement, together with the right of way for ingress thereto and egress therefrom and rights of way at least forty (40) feet in width for all necessary transmission lines leading from such plant or plants for the purpose of carrying and conducting power generated thereat over and across all lands owned by Guyamaca Company ~~or by any of the individuals~~ comprising the said co-partnership of Guyamaca Water Company, (and upon which said plant or plants are situated or adjoining the same.)

## ARTICLE II.

Subject to and upon the receipt of the written notice hereinbefore provided for that Electric Company desires to construct such hydro-electric plant or plants and also subject to and upon all the terms and conditions herein contained, Guyamaca Company for itself, its successors and assigns and for the heirs, executors,



administrators and assigns of each and every member of the co-partnership comprising such company hereby gives and grants unto the Electric Company, its successors and assigns the sole and exclusive power rights which may be developed on the said water system of said Cuyamaca Company as it now exists and, or, as it may hereafter be developed, enlarged, improved or changed. The term "power rights" as herein used is understood to mean, and the parties hereto agree that the same shall mean and include the sole and exclusive right to use any and all water now developed in said Cuyamaca Water System and, or, that may at any time hereinafter be developed in said system for the purpose of generating therewith hydro-electric power. The said grant of power rights hereinabove contained is subject, however, to the condition that as to any hydro-electric power possibility which shall not be developed and utilized by Electric Company on or before five (5) years from the date hereof all rights thereto or in respect thereof shall cease and determine and the sole and exclusive power rights so hereby granted to said Electric Company shall from and after five (5) years from the date hereof be limited solely to such hydro-electric power possibilities as shall at that time have been actually developed and utilized by Electric Company. Time shall be of the essence hereof.

#### ARTICLE III.

If the parties hereto are unable to agree upon the location of such power plant or plants and the amount of land necessary therefor and the appurtenances aforesaid, then and in that event the question of such location and the amount of land required for the purposes aforesaid shall be submitted to the Railroad Commission of the State of California for determination and its decision in respect



thereto shall be final and conclusive upon each and all of the parties hereto, provided, always, however, that the obligation of Cuyamaca Company to grant easements shall be limited to only such land selected or determined upon by said Railroad Commission as may be now or then owned by the said Cuyamaca Company ~~or any of the individuals~~ composing the co-partnership known as Cuyamaca Water Company, and the Cuyamaca Company, upon such determination being made, either by agreement between the parties hereto or by said Railroad Commission, will grant to the Electric Company an easement in said land so selected for the purposes and uses aforesaid, such grant, however, to be upon and subject to the conditions in this agreement set out.

#### ARTICLE IV.

Immediately upon the grant of the easement in such lands for the uses and purposes as hereinbefore set out being made by said Cuyamaca Company to said Electric Company, said Electric Company shall commence the construction of the power plant or plants determined by it to be constructed upon the site or sites so determined upon and shall faithfully and diligently prosecute the work of construction and fully complete the same in a condition ready for operation on or before the 15th day of April, 1924, and time shall be of the essence hereof. The plant or plants so to be erected by said Electric Company shall be of such capacity and character as to develop as far as practicable all of the hydro-electric power which may be developed at the point or points where the same are so constructed and said plant or plants shall immediately upon completion thereof be operated and continue to be operated at all times to the full capacity of the water available therefor at the point or points where said plant or plants are so constructed.



## ARTICLE V.

Electric Company agrees to pay Cuyamaca Company for the use of the water used by it in the development of hydro-electric power, such rates as may from time to time be fixed and determined by the said Railroad Commission of the State of California. Either party hereto shall have the right to make application to the Railroad Commission for the fixing of such rates or for a change, increase or decrease at any time and said Railroad Commission shall also determine the times and manner of making such payment, provided, however, that no payment shall be made until such time as the Electric Company shall have actually erected and completed such power plant or plants and transmission lines and have commenced the actual operation of such plant or plants and provided further the quantity of water so used and to be paid for shall be fixed and measured by the electrical output of each plant; it being always understood, however, that payment shall be made by the Electric Company upon the basis of water available for use up to the maximum capacity of its plant or plants, which shall be constructed to develop as far as practicable all of the hydro electric power capable of development at the point of construction as above provided, whether or not such water shall have been actually used by said Electric Company in the development of power. In the event that if at any time said Railroad Commission should cease to exist or should refuse to fix such rates or time of payment, then the Electric Company agrees to pay the reasonable value of the use of said water, and of the said rights, privileges and easements aforesaid, the same to be computed on the basis of



the electrical output of each such plant or plants, to be determined as above set forth and provided.

#### ARTICLE VI.

It is understood and agreed that certain natural water courses, as for example Boulder Creek, constitute part of the said Cuyamaca Water System, through or in which the waters of said system, or a part thereof, run and that the waters flowing from the reservoirs of the said Cuyamaca Company, through said water courses are to a greater or less extent augmented from streams or surface waters tributary to such water courses.

It is understood and agreed, anything herein to the contrary notwithstanding, that the Cuyamaca Company has the right to use and divert for power development all of the waters running in said water courses from whatsoever source the same may come and whether impounded in any reservoir of said company or not; and that for all of the purposes of this contract all waters running in or through any such water course or courses and which may be diverted or used by the Electric Company for the development of hydro electric power in any plant constructed pursuant hereto shall be considered as water of the Cuyamaca Company and the use thereof paid for accordingly by the Electric Company, regardless of whether or not such water shall have ever been diverted by the Cuyamaca Company from any natural stream or stored or impounded in any of its reservoirs.

#### ARTICLE VII.

It is understood by the parties hereto that Cuyamaca Company is a public utility and as such is engaged in furnishing and delivering to its consumers water for domestic and irrigation purposes and that such use of said water is a paramount and superior use; that said Company is the owner of two reservoirs or lakes, the upper thereof being known as



Cuyamaca Lake, and the lower thereof being known as Eucalyptus Lake; that said Cuyamaca Lake is an impounding reservoir, the waters of which are from time to time as the necessities of said Company's business require, turned into a conduit partly natural and partly artificial and thereby conveyed to Eucalyptus Lake, from which by means of a proper distributing system it is conveyed and delivered to the consumers of said Company.

The Cuyamaca Company hereby agrees to allow to run through the power plant or plants of the electric company which may be constructed by it in the section of its system lying below and connected with said Cuyamaca Lake all the water which the necessities of its business require it to run from said Cuyamaca Lake to Eucalyptus Lake and in addition thereto such other water as may flow through said section of said company's system lying between said Cuyamaca Lake and whether coming from said Cuyamaca Lake or not; and further agrees that each day that water is released from said Eucalyptus Lake it will the following day release from Cuyamaca Lake an amount of water equal at least to the amount so released from Eucalyptus Lake. The Electric Company agrees on its part to install a power plant of capacity which will economically use the water so released from said Cuyamaca Lake and in addition thereto such other waters as may flow in said section of said Cuyamaca Company's system between said Cuyamaca Lake and said power plant or plants, whether coming from said Cuyamaca Lake or not; and said Electric Company agrees to take, use and pay for all such water at the rates as herein provided for up to the maximum capacity of its plant or plants installed as herein provided, and after using such water to return the same to the said system of the Cuyamaca Company without material diminution



and in as pure a condition for domestic consumption as the same shall be in when turned into the conduits or pressure pipes of the Electric Company at the point at which said water is delivered by the Cuyamaca Company to the Electric Company. ( Provided, however, that it is expressly understood and agreed, anything herein to the contrary notwithstanding, that the Cuyamaca Company reserved, and shall always have, the right to determine and regulate, both as to time and quantity the water which shall be turned out of said Eucalyptus, Cuyamaca or other reservoirs of said company; and said company shall not be required at any time to use water from said Eucalyptus, Cuyamaca or other reservoir for the purpose of supplying its consumers whenever in its judgment water may be diverted or obtained elsewhere from its said system for said purposes and it shall seem advantageous and to the interests of said consumers so to do, it being the general understanding throughout this agreement that the supply of water to the consumers of said company is as aforesaid a paramount use and that said Cuyamaca Company shall have the right in all respects to handle and deal with the waters of its system as shall seem best adapted to serve said use.)

It is further understood and agreed that the said plant or plants of the Electric Company will be so constructed that all the waters herein referred to may be conducted through said plant or plants without any cost or expense whatsoever to the Cuyamaca Company, and if construction of any dam or dams or other works or structures shall be necessary in order to divert or conduct said water to or through said plant or plants, such construction shall be undertaken by and at the sole cost and expense of



the Electric Company, provided, however, that in the event it becomes necessary for the Electric Company to acquire by condemnation or otherwise any water rights, dams, damsites or reservoir sites, the Cuyamaca Company will assist the Electric Company in securing such water rights and sites and at the request of the Electric Company will allow a condemnation suit or suits to be brought and maintained in its name without, however, incurring any cost, responsibility or liability in connection therewith, and Electric Company agrees in the event it should bring any condemnation suit or suits in the name of Cuyamaca Company that it will pay all costs and expenses including attorney's fees, and will pay any award made in such suits and will in all respects save Cuyamaca Company free and harmless of all judgments, awards, costs and expenses. The water to be returned by the Electric Company to the Cuyamaca Company shall be returned to the system of said Cuyamaca Company at a point below the tail race of the Electric Company power plant or plants, so that the same will be available for the other uses of the Cuyamaca Company.

#### ARTICLE VIII.

If the said Electric Company shall fail to commence the construction of its said plant or plants within the time hereinbefore provided or to diligently prosecute the work of construction, or to complete the same ready for operation strictly within the time as hereinbefore set out, or if it shall at any time fail for a period of One Year to operate said plant or plants in good faith and to the full capacity thereof, or to the capacity of the water available therefor, then and in such event all the rights and easements of every kind and nature whatsoever hereby granted or provided



to be granted to said Electric Company shall at the option of the Cuyamaca Company terminate and cease, provided, however, that in determining whether any such failure has occurred there shall be deducted the loss of time caused by the act of God, strikes, fires, shortage of water, floods or other unavoidable causes beyond the control of said Electric Company. Time shall be of the essence hereof. Electric Company to have, however, the right to remove all building<sup>^</sup> machinery, fixtures, poles, wires and other appliances.

Any instrument or instruments granting, transferring or assigning any right or easement to be transferred, assigned or granted hereunder shall be in form an indenture executed by both of the parties hereto and shall contain appropriate provisions whereby any such transfer or assignment shall be upon condition that all of the terms and conditions hereinbefore in this article set out shall be fully and faithfully performed and observed in the manner and at the time as hereinbefore provided, and that in the event of any failure or default in respect of such performance of any of said terms or conditions all rights or easements so granted shall cease and determine and no longer be of any force or effect. Said instrument or instruments shall also, by appropriate provisions, set forth all the obligations and covenants of the Electric Company herein contained, and shall provide that in the event of any transfer by the Electric Company of any of the rights or easements herein provided to be transferred to the Electric Company all of the covenants, obligations<sup>^</sup> and undertakings of said Electric Company herein contained shall constitute a charge upon and run with such easements and any such grantee, transferee, successor or assign, whether immediate or remote, shall assume and undertake



to fully and faithfully carry out all of the covenants and obligations of the said Electric Company herein and in said instrument or instruments to be contained.

#### ARTICLE IX.

Cuyamaca Company shall not be liable in damages or otherwise for any failure to allow water to run to or through the power plant or plants of the Electric Company, nor for its failure to release each day from said Cuyamaca Lake and to allow to run through said plant or plants an amount of water at least equal to the amount released from ✓ Eucalyptus Lake each preceding day, where such failure is caused by the act of God, damage to its impounding system, shortage of water, or any other act beyond its control and not due to its negligence, provided, however, that if any such failure to allow water to run through said power plant is due to any damage to its impounding or carrying system which reasonably can be repaired, said Cuyamaca Company shall proceed with all due diligence to make such repairs.

#### ARTICLE X.

The Electric Company, on its part, shall not be liable for any damage caused to Cuyamaca Company by its failure to take water nor shall it be required to take and pay for the use of any water when it is unable to use such water for the purpose of generating hydro-electric power in its said plant or plants due to any act of God, strikes, damage to its power plant or plants, transmission line or lines, penstocks or other conduits used in conveying such water through such power plant or plants or by any other act or acts beyond its control and not due to the negligence of said Electric Company, provided, however, that in the event of its inability to take and use water being caused



by any damage to its said power plant or plants, transmission line or lines, penstocks or other conduits used by it to convey water through its said power plant or plants, said Electric Company shall proceed with all diligence to make such repairs as will enable it to resume the taking and using of such water.

#### ARTICLE XI.

It is understood and agreed that the entire cost and expense of any kind or nature whatsoever of, or, incident to the construction of said plant or plants with all appurtenances of every kind and the entire cost and expense of, or incident to the operation or maintenance thereof, shall be paid and borne by the Electric Company, and the Cuyamaca Company shall have no expense or charge for the installation, operation or maintenance of said plant or plants and appurtenances of any kind whatsoever or in any way incidental thereto or connected therewith.

#### ARTICLE XII.

In the event of any dispute as to the construction or meaning of this agreement the parties agree that the matter in dispute shall be referred to the Railroad Commission of the State of California, and that its determination as to such matters shall be final and binding upon the parties, provided that said Commission is then in existence and willing to undertake such determination. This contract shall at all times be subject to such changes or modifications by the Railroad Commission of California as said Commission may from time to time direct in the exercise of its jurisdiction.

#### ARTICLE XIII.

THIS AGREEMENT SHALL inure to the benefit of, and shall be binding upon the parties of the first part and their and each of their heirs, executors, administrators and assigns, and upon the party of the second part and its successors and assigns.



IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands, and the party of the second part has caused this agreement to be executed in its corporate name by its president and its corporate seal to be hereunto affixed and attested by its secretary the day and year in this agreement first above written.

*James A. McInnes*  
*Ed Fletcher*

*Wm. G. Manslow by Luffit Manslow*  
Co-partners doing business under  
the firm name and style of Cuyamaca  
Water Company, HIS ATT'Y IN FACT

First Parties

San Diego Consolidated  
Gas and Electric Company

By \_\_\_\_\_  
Its President.

Attest:

\_\_\_\_\_  
Its Secretary.



**Ed Fletcher Papers**

**1870-1955**

**MSS.81**

**Box: 56 Folder: 18**

**Business Records - Water Companies -  
Cuyamaca Water Company - Building a  
power plant for San Diego Power Company**



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