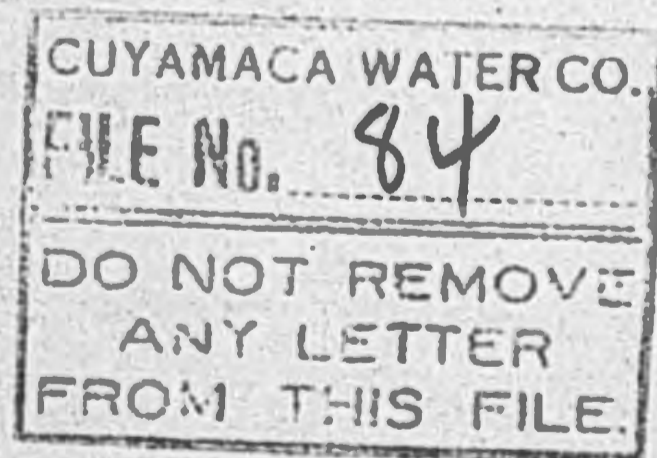


1/8/16.

You might mention, if you care to, that the testimony of Superintendent McCormick of the U. S. Indian Service yesterday was to the effect that it would cost from \$215,000 to \$250,000 to move the Indians.

Engineer Bower of the U. S. Indian Irrigation service testified as to the valuation.

Assistant Chief Engineer of the U. S. Indian Service Schank testified that it would require at least 10,000 acre feet of water to properly take care of the riparian owners below. He also said that City Hydraulic Engineer Cromwell's estimates of the net safe yield at the El Capitan Dam site was apparently greatly over-estimated, and in all probability the amount would have to be reduced at least 50%, with a corresponding increase in price per thousand gallons of water delivered.



1/8/16.

Col. Fletcher returned from Los Angeles Friday evening, and stated that he was very well pleased with the results of the hearing in Los Angeles the past week.

In regard to U. S. Government Lee's testimony, he said he saw by the papers that he is quoted as having stated that the net safe yield of the Cuyamaca system is 26,000,000 gallons daily, which is a mistake, as his figures are 6,000,000 gallons, with all the water east of the flume conserved by the construction of reservoirs in the mountains and at the Diverting Dam. The average daily use of the waters of the Cuyamaca system for the last 25 years has been between three and four million gallons. In other words, the Cuyamaca system is now putting to beneficial use in excess of fifty per cent of all the water that can flow by gravity into the system.

The San Diego Papers state that I own 70,000 acres of land in San Diego County. This is a joke. That is too much for any man to own, and most of the land I do own is mountain tops.

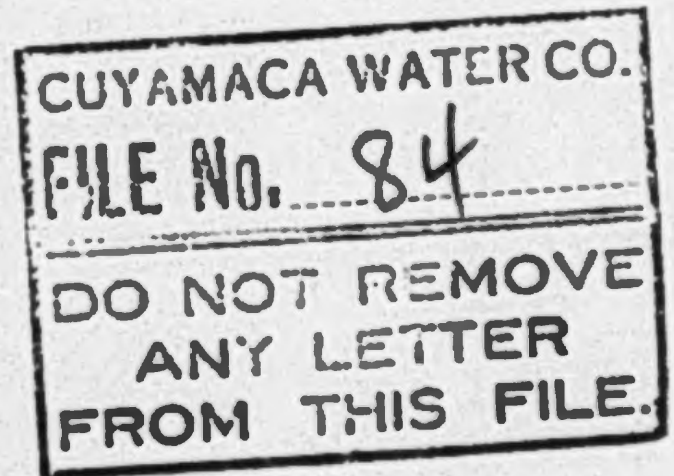
CUYAMACA WATER CO.
FILE No. 84
DO NOT REMOVE ANY LETTER FROM THIS FILE.

This letter sent to:

Senator Jas. D. Phelan,  
" John D. Works,

Rep. E. A. Hayes,  
" Julius Kahn,  
" John I. Nolan,  
" John E. Raker,  
" Denver W. Church,  
" W. D. Stephens,  
" Wm. Wettner,  
" J. A. Elston, (Sixth Dist.)  
" - - Kent.

All c/o Hall of Congress, Washington D. C.



**CUYAMACA WATER COMPANY**

SUCCESSORS TO  
**THE SAN DIEGO FLUME COMPANY**  
OFFICE: FLETCHER BUILDING  
916 EIGHTH ST., BET. BROADWAY AND E  
P. O. BOX 1412

ED. FLETCHER, MANAGER  
F. M. FAUDE, ASST. MANAGER  
LOU B. MATHEWS, SECRETARY  
C. HARRITT, SUPERINTENDENT

SAN DIEGO, CALIFORNIA.

700 16 1916 CUYAMACA WATER CO. FILE No. _____
DO NOT REMOVE ANY LETTER FROM THIS FILE.

Since our letter to you of January 25th, on the subject of the request of the City of San Diego, through a bill to be introduced in Congress, for floodage rights on certain lands within the El Capitan Indian Reservation, the Lower Otay Dam belonging to the City of San Diego has gone out, as you probably know, and the following is the situation today:

The City Manager has stated it will cost approximately \$800,000 to \$1,000,000 to rebuild Lower Otay Dam and make other necessary repairs to the Dulzura Conduit and Pipeline. As the city's bonding capacity is less than \$2,000,000, and it is admitted even by the city officials that it would cost between \$2,000,000 and \$3,000,000 to acquire the damsite and build the El Capitan Reservoir, the project at the present time is out of the question, from a financial standpoint.

We again call your attention to the fact that we have for thirty years or more lived up to our contract with the Government in the matter of furnishing water free of charge to the Indians; that we have diverted approximately 50% of the available water supply of the San Diego River which originates east of the Diverting Dam and the South Fork feeder; and that on June 1, 1910 we filed

on all the waters in the San Diego River at the Diverting Dam, and have spent \$500,000 or \$600,000 in perfecting our rights since that time.

Therefore, would it be fair for the U. S. Government to grant a permit to the City of San Diego for the use of the Indian lands for flooding purposes when the very act of granting that permit would jeopardise the rights of the Cuyamaca Water Co. to prosecute its development work, and probably put a cloud on the title to all our water rights, to say nothing of the extra expense of litigation in court? We feel it would be a breach of good faith on the part of the U. S. Government to grant this request to the City of San Diego after we have for thirty-odd years lived up to our contract with the U. S. Government, and have operated our water system during all this period at a loss.

We furnish to the cities of El Cajon and La Mesa all of their domestic supply of water, and practically all of the water supply to the City of East San Diego. The Cities of El Cajon and La Mesa are wholly dependent upon us for their water supply, and for their future development, as are certain portions of East San Diego as well. Therefore, the needs of these cities should be taken into consideration by you, as well as the needs of the city of San Diego.

We again ask you to reserve your judgement and take no action in this matter until a report is received from the U. S. Indian Service, for there has been a complete investigation of the facts

at a hearing before the U. S. Land Office in Los Angeles, during the last sixty days, in this matter -- the City of San Diego vs. James A. Murray and Ed Fletcher, owners of the Cuyamaca Water Co., and within a short time all the facts in the matter will be transmitted to Washington.

We enclose herewith clipping from the San Diego Union, of date January 31, 1916, showing that the City of San Diego has on hands in their reservoirs at present a five-years water supply. In addition thereto, two pumping plants are now practically installed, which will furnish <sup>an</sup> additional supply of ten or eleven million gallons of water daily, from the sands of the San Diego River. Therefore, there is not, according to the statements of the City's own officials, any urgency for additional water supply at the present time.

Yours very truly,

CUYAMACA WATER COMPANY

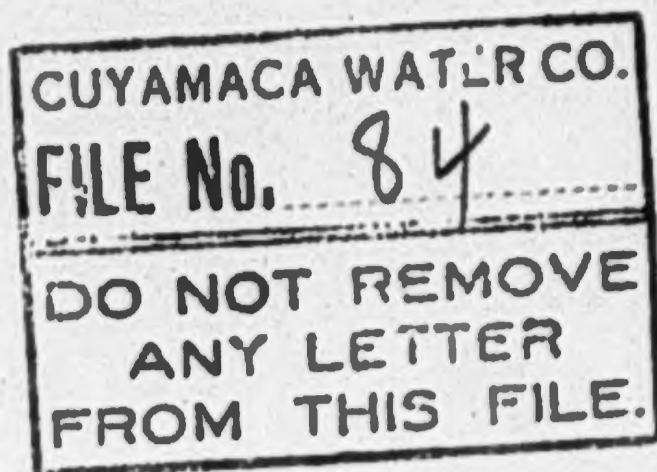
By

Ed Fletcher

Manager

*Jms*

Jan. 10, 1916.  
Prepared for San Diego Sun and Tribune.



FLETCHER ANSWERS COSGROVE  
San Diego Union, Jan. 10.

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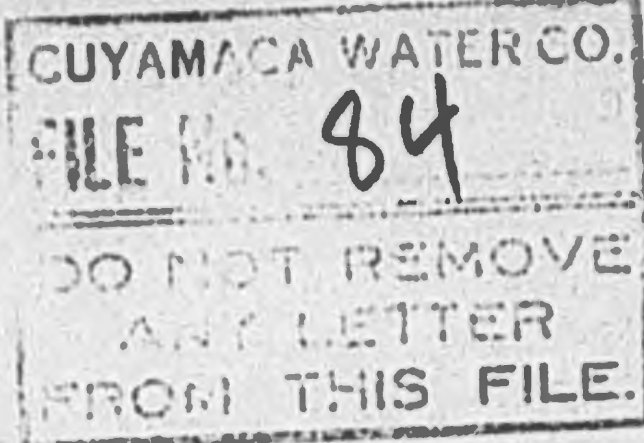
Cosgrove says: "It was well brought out in the hearing that the Cuyamaca Water Co. is not delivering a bit more water from the San Diego River now than it did twenty years ago."

My answer to that statement is: See the sworn testimony of U. S. Engineer Lee and Engineer Post, under oath, who testified that when Mr. Murray and I purchased the system on June 1, 1910 the capacity of our flume was 16 second feet; that we have completed the reconstruction of the flume and actually diverted to La Mesa 22 second feet; and by building the South Fork and Chocolate siphons, at a cost of less than \$10,000, our diversion will have been increased to 31 second feet.

It is laughable, any statement made by Cosgrove that we are keeping the City of San Diego off the San Diego River in order to club the municipality into purchasing the Volcan system. This statement needs no answer from me.

Cosgrove says: "Ed Fletcher and his partners are practically whipped."

Why I feel that this is only the first half of the first round, and the fight has hardly commenced. The City of San Diego can never make good that fake Hamilton-Boone water filing, and the city has already spent between \$20,000 and \$30,000 in its litigation with the Cuyamaca Water Co., before the State Railroad Commission and the Federal courts. The taxpayers of San Diego will find out eventually that it is money wasted.



Jan. 11, 1916.

I will answer only one statement of Cosgrove in this morning's Union, for this controversy is a waste of paper and ink. The results are what will count.

My statement was that "The city has already spent between \$20,000 and \$30,000 in its litigation with the Cuyamaca Water Company before the State Railroad Commission last spring and the Federal Courts. The taxpayers of San Diego will find out eventually that it is money wasted."

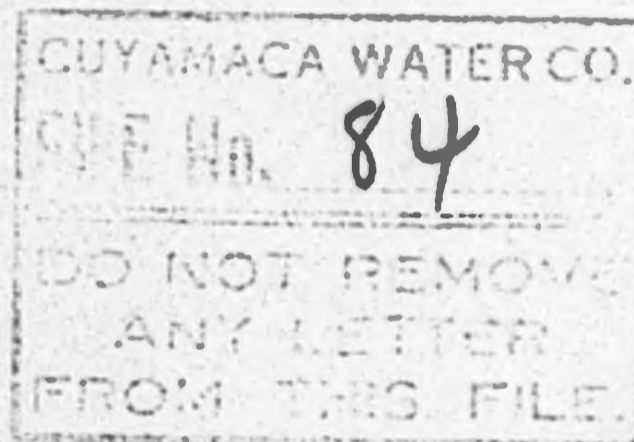
Cosgrove's answer: "Fletcher's assertion that the City has already spent between \$20,000 and \$30,000 in fighting the Cuyamaca Company is about as accurate as the balance of his statements. The city appropriated \$1000 for this matter, and has spent only one-half of that."

If the above is not a misleading statement to the citizens of San Diego, I don't know what is. It is a matter of official record, by ordinance, that approximately \$10,000 has already been paid out in cash by the city for the State Railroad Commission hearing last spring. In addition to that, for many weeks, the entire city force, including our \$6000-a-year attorney, worked on the case. What Cosgrove means is that the first appropriation toward the present hearing is an ordinance for \$1000 to pay traveling expenses and hotel bills at Los Angeles. The real bills have not come in yet. The transcript of the evidence alone will cost roughly \$600 or \$700. The city is paying its witness Duryea \$50 a day. It costs something to keep eight or ten witnesses in Los Angeles for two or three weeks. They have already incurred ten days' expense, and the end is not yet.



I want the citizens of San Diego to take note of Mr. Cosgrove's statement, and later on I will publish the ordinances showing the total amount of expenditures taken from the city treasury, covering the cost to the city of the two hearings before the State Railroad Commission and before the U. S. Land Office at Los Angeles.

I know of no more wasteful expenditures of public money than this senseless litigation.



Copies have gone forward  
to the heads of the Indian  
Rights Assns., as directed

LLIS

COPIES TO THE COMMISSIONERS

OF THE BUREAU OF INDIAN AFFAIRS

WASHINGTON, D. C.

1908

RECEIVED BY THE

INDIAN COMMISSION

WASHINGTON, D. C.

APRIL 15 1908

BY CHARLES COMBES

1908

WALTER LEROY HUBER  
CIVIL ENGINEER

HUBER to STEPHENS  
3  
✓

May 10, 1916.

Honorable John H. Stephens,  
Chairman of the Committee on Indian Affairs,  
House of Representatives,  
Washington, D. C.

Dear Sir:-

I wish to call your attention to a Bill (H.R.11,540) which has been introduced by Congressman Kettner of California and referred to the Committee on Public Lands. So far as I am aware, It has not been referred to your Committee, although its effect upon the Capitan Grande Indian Reservation should be disclosed, if not by an investigation of your Committee, then by a full report to the Public Lands Committee by the Office of Indian Affairs.

This Bill proposes to grant to the City of San Diego the use of certain lands, largely within the Capitan Grande Indian Reservation, for a reservoir. An application for the same lands for the same purpose is now being prosecuted before the U.S. Land Office by the City of San Diego as assignee of W. B. Hamilton. A protracted hearing before the Local Land Office at Los Angeles was recently completed on this application. X The transcript of testimony comprises some 1157 pages of typewritten matter and approximately 100 exhibits. In the evidence much technical engineering data was introduced, not only by the City of San Diego, but by Cuyamaca Water Company, protestants, and by the U. S. Office of

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Indian Affairs. The exhaustive record of this hearing, if it has not already been forwarded, will very soon be forwarded to Washington and will be available in the office of the Commissioner of the General Land Office. The Office of Indian Affairs also has much data available, particularly since its engineers appeared under the direction of a Special Agent of the U. S. Land Office at the recent hearing. The original Hamilton application, which has now been assigned to the City of San Diego, was rejected by the Department of the Interior on April 29, 1915, upon the recommendation of and for the reasons reported by the Commissioner of Indian Affairs, which were that the construction and maintenance of the dam and reservoir would seriously injure the Indians of the Capitan Grande Reservation, because, it would flood and deprive them of the use of the total irrigable area of the Reservation and would thus deprive them of their homes and other improvements and necessitate their moving to other lands. Hamilton has since assigned to the City of San Diego any claims which he may have by virtue of his former application, and it was upon the claims so assigned that the Land Office held the recent hearing. At the hearing it was developed that the application of Hamilton was not made in good faith with any idea of his carrying the project through to its ultimate completion, but was a promotion scheme absolutely speculative in its character as far as he was concerned (Transcript - p. 338).

At the recent hearing Mr. Owen W. Bauer, as civil engineer,

employed by the U. S. Indian Service, testifying as a witness for the Government, introduced a table prepared by him (U.S. Exhibit IV) entitled "Estimated Damages Capitan Grande Reservation, Cal." with the statement that "Estimate includes amounts necessary to reimburse for relinquishment of lands, water rights and improvements, including removing Indians from Capitan Grande Indian Reservation, exclusive of burying grounds abandonment, and other indeterminable personal injuries to the Indians." The actual damage, as computed by this witness, and as verified by the testimony of Thomas F. McCormick, of the Office of Indian Affairs, amounted to \$216,516.00, no compensatory damage for personal injuries being included. At the conclusion of Mr. Bauer's testimony the record will show (Tr. 754) that the City Attorney of San Diego made the following statement: "I desire to say at this time on behalf of the City of San Diego, we consider this witness as fair in every particular, and that the figures he has given are, in our opinion, very reasonable and conservative approximates of the values of the land."

In the line of the above testimony by competent witnesses, together with the frank admission of the City Attorney of San Diego, I wish to call your attention to Section 5 of S.5081 which provided that under no circumstances will the City of San Diego, if the grant is made, be required to pay more than \$100,000. to compensate the Mission Indians located on the Reservation. This measure, if it should become a law, would amount

to a direct grant from the Mission Indians to the City of San Diego of \$116,516.00 and, in addition, would necessitate an Indian eviction such as was pictured by Helen Hunt Jackson in "Ramona".

There is no question but that the Reservation will have to be abandoned and the Indians moved elsewhere, if the lands in question are granted to the City either by grant of the Department of the Interior or by the enactment of Legislation such as was proposed by the two companion bills now before the 64th Congress, S.5081 and H.R.11,540. The statement of the City Attorney at the recent hearing (Tr. 37) indicates the position of the City in this regard when he says: "The City admits that the granting of this permit will flood, if not the entire tillable land of the Indians, such a large portion of it that the remaining portion would be uninhabitable from a sanitary standpoint, and we would not desire the Indians living on the rim of the reservoir, and we admit that the granting of the permit, for all practical purposes, will take from the Indians all of their tillable land, take from them all of their places of abode, and they would have to be moved from their location" \* \* \* \* \* "the position the City of San Diego takes is the granting of this permit would compel the Government to remove the Indians to some other place." Mr. McCormick of the Office of Indian Affairs states that he does not think it would be possible to remove these Indians without using force.

Appreciating the condition of the Mission Indians of

California and realizing the fact that in the past they had been oppressed and abused by the whites in the name of advancement and progress, Congress passed an Act, which was approved by the President, and became a law on January 12, 1891, (26 Stat.712), the title of which is indicative of the end sought: "An Act For The Relief of the Mission Indians in the State of California."

The Act in question provides, among other things, for the appointment of "three disinterested persons as Commissioners to arrange a just and satisfactory settlement of the Mission Indians residing in the State of California, upon reservations which shall be secured to them as hereinafter provided."

Section two of said Act states in part: "That it shall be the duty of said Commissioners to select a reservation for each band or village of the Mission Indians." \* \* \* \* "which reservation shall include, as far as practicable, the lands and villages which have been in the actual occupation and possession of said Indians, and which shall be sufficient in extent to meet their just requirements."

Section three provides: "That the Commissioners, upon the completion of their duties, shall report the result to the Secretary of the Interior, who, if no valid objection exists, shall cause a patent to issue for each of the reservations selected by the Commission and approved by him in favor of each band or village of Indians occupying any such reservation which patents shall be of the legal effect, and declare that the United States does and will hold the land thus patented, subject to the provisions of section four of

this act, for the period of twenty five years, in trust, for the sole use and benefit of the band or village to which it is issued, and that at the expiration of said period the United States will convey the same or the remaining portion not previously patented in severalty by patent to said band or village, discharged of said trust, and free of all charge or incumbrance whatsoever."

The provisions of this Act were complied with. The Capitan Grande Band of Indians, under patent issued March 10, 1894, are the owners of the equitable title to all of the lands within the Capitan Grande Reservation, which are enumerated in S.5081 with the exception of the E. 1/2 of S.E. 1/4 of Sec. 21, T. 14 S. R. 2 E., S.B.M. (an area of approximately 9.83 acres within the flood line).

The Government of the United States holds the legal title to said lands in trust for the Indians. The patent above referred to reads, in part, as follows:

"NOW KNOW YE, THAT THE UNITED STATES OF AMERICA, in consideration, of the premises and in accordance with the provisions of the third section of the said Act of Congress approved January twelfth, eighteen hundred and ninety one, hereby declares that it does and will hold the said tracts of land selected as aforesaid (subject to all the restrictions and conditions contained in the said Act of Congress of January twelfth, eighteen hundred and ninety one) for the period of twenty five years in trust, for the sole use and benefit of the said Capitan Grande Band or Village of Mission Indians, according to the laws of California, and at the expiration of said period the United States will convey the same or the remaining portion not patented to individuals, by patent to said Capitan Grande Band or Village of Mission Indians as aforesaid, in fee simple discharged of said trust and free of all charge or incumbrance whatsoever" \* \* \*

The language of this document is plain and unambiguous and, I think, is capable of but one construction, and that construction



absolutely precludes the allowance of the provisions of S.5081. I also wish to direct your attention to the testimony of Mr. Francis R. Schenok, Assistant Chief Engineer of the U. S. Indian Irrigation Service, who, as witness for the Government at the recent hearing, while testifying regarding the relative merits of the system proposed by the City of San Diego and that of the Cuyamaca Water Company, whose plans will ultimately utilize all of the waters of San Diego River for domestic and irrigation uses, made the following statement:

"Q. As the representative of the Indian Service is there any statement that you would like to make in reference to the effect it will have upon the Indians in El Capitan Reservation?

A. I would like if possible to answer that question which I was not able to, I felt in the way in which it was propounded and this bringing in the effect upon the Capitan Grande Indian Reservation, I think I can answer it, that is, from the evidence I have seen and the testimony I have heard, and the knowledge which I had already of the facts and conditions, I believe I can say that I am not convinced that the benefit which San Diego would derive from the use of this water, being a smaller amount in my estimation, a smaller amount than they have estimated upon would be enough more valuable than the benefit that San Diego might derive from the development of the Cuyamaca Water system, and whatever water they might, the City of San Diego might be able to acquire thereby, to justify us yet in the abandoning of the Capitan Grande Indian Reservation." (Tr.774)

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Finally, I wish to urge you, as Chairman of the Committee on Indian Affairs, to cause a full investigation of this measure, which as shown above, would work a great and needless hardship upon the Capitan Grande Indians.

Yours truly,

WLH:EW

W. L. Huber

Copy

HOUSE OF REPRESENTATIVES  
Committee on Indian Affairs.  
Washington.

May 17, 1916.

Mr. Walter Leroy Huber,  
San Francisco, California.

Dear Sir:

I am in receipt of your letter protesting against taking certain Indian lands near San Diego for a reservoir site & etc.

The bill is not pending before this Committee, but your letter will be filed with the Public Lands Committee, as that Committee has jurisdiction over power sites & etc.

Do you represent these Indians, if so in what capacity, and will be glad to hear further from you on the subject.

I am, Very truly yours,

(signed) John H. Stephens.

July 12, 1916

Mr. J. J. Terrell,  
St James Hotel,  
San Diego, California

My dear Mr. Terrell:

I see by the papers that you are here in regard to the El Capitan case. I am Manager of the Cuyamaca Water Company, who are contesting this case, and hope to have the pleasure of seeing you before you leave town.

Very sincerely yours,  
CUYAMACA WATER COMPANY

BY \_\_\_\_\_

EF:B

~~President~~

Manager

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July 13, 1916.

Mr. J. J. Terrell,  
Special Agent Indian Affairs,  
St. James Hotel,  
San Diego, Calif.

My dear Mr. Terrell:

I stated to you that the City of San Diego at the present time, and for some years to come will not be financially able to build the El Capitan Dam, which will flood the lands of the El Capitan Indian Reservation, said application now before the Secretary of the Interior for his decision.

I enclose herewith Protestant's Exhibit "R", which was introduced in the hearing before the Los Angeles Land Office last February, and consists of a statement signed by the Auditor of San Diego City, showing that the assessed valuation of the City for the year 1915 is \$80,500,000, and that the present bonding margin of the city is only \$1,643,237.29.

I also enclose herewith a statement showing the assessed valuation of the property in the heart of the City of San Diego, and by investigation you will find that the assessments are practically the cash values of the property today, and there is no early possibility of increasing the valuations, so as to increase the bonding capacity of the city.

The City Council of San Diego has just authorized Mr. M. W. O'Shaughnessey, Chief Engineer of the City of San Francisco, to

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drawnup plans and specifications for the rebuilding of Lower Otay Dam that went out last winter; also the Barrett Dam, and a new pipeline to replace the old one from Lower Otay Dam to the City. In a short time a bond election will be called to complete the two dams mentioned above, and the pipeline. Unquestionably, this bond issue will carry, and you can readily see there will be left only \$300,000 or \$400,000 bonding capacity, by which the city can secure funds to build the El Capitan Dam, for years to come.

I contend that this proves that the City of San Diego is not financially able to undertake the El Capitan Project, which calls for the expenditure of at least \$3,000,000 -- and San Diego's City engineer admits it will cost \$2,000,000. If you will read his testimony, you will see that the City Engineer of San Diego has only "made a guess", while competent engineers, both Government and our own, have estimated that the cost of the El Capitan Reservation project will be between 3 and 4 million dollars.

San Diego contended before the Los Angeles Land Office and Secretary Lane that the City of San Diego is short of water, and that an emergency exists.

In answer thereto, I refer you to the report of the City Manager of Operations of San Diego, under date of June 1, 1916, showing that there is now contained in the present reservoirs of the City of San Diego 14,254,000,000 gallons of water. I also

refer you to the report of the City Auditor of San Diego for the year 1915, page 62, which reads as follows:

"The average daily consumption of the entire San Diego City system, inside and outside the City limits, is 8,420,825 gallons ; or 3,073,000,000 gallons a year."

There is at present a four-year's supply of water for the City of San Diego, if it does not rain another drop, and this estimate allows also over 2,000,000,000 for evaporation. San Diego, however, is using now 500,000,000 gallons more water per year than usual, on account of our Exposition, which closes January 1, 1917. The City of San Diego is also now pumping 5,000,000 gallons of water daily from its wells in the San Diego River, which is more than one-half of its daily consumption. In addition thereto, the Cuyamaca Water Co. has made a definite offer to furnish 2,000,000,000 gallons of water per year for the next ten years, at a price per thousand gallons to be set by the Public Utilities Commission of the State of California.

The gravity water of the City of San Diego last year cost 17½¢ per thousand gallons, delivered to the city reservoir. We furnished them 500,000,000 gallons this year, at 10¢ per thousand gallons, and glad to supply all they want up to 2,000,000,000 gallons per year, at 10¢ per thousand gallons.

Our large reservoir at La Mesa Dam, which you saw, is only seven miles from the San Diego city reservoir, and we have two

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pipelines already laid to the City of San Diego -- one a 20" line from La Mesa Reservoir; and the other one a 14" line from our flume direct; so we can furnish the city approximately 7,000,000 gallons of water daily, if needed. With this supply, together with the right to assume a normal rainfall to come, there is at least eight or ten years' supply of water assured for the City of San Diego today, and absolutely no emergency exists.

The City Attorney of San Diego claims that we have approximately 100,000 people in San Diego today, and his exhibits show that he claims we shall have 155,000 people in this city within three and a half years, or in 1920, and his exhibits try to prove that San Diego will be using approximately 16,000,000 gallons daily, or double our present consumption, on January 1, 1920.

These exhibits are misleading. San Diego today has fully 10,000 people less than it had at the commencement of the depression, a year or so ago, and with the closing of our Exposition, I am satisfied we shall have 5000 people less than we have today. My estimate of the population of San Diego today is between 75,000 and 80,000 people.

We have lately annexed Encanto, with several hundred people; but, as we have always supplied them with water, it makes no increase in the demand for water. To substantiate my statement,, while you are here let me take you over the

city and show you the empty houses here at the present time, as well as the empty store buildings. I have always been considered a booster for San Diego, but when such false representations are made, it is only justice to the Cuyamaca Water Co. that they be corrected.

~~In closing~~, I call your attention to the fact that the City of San Diego asks the Department of Indian Affairs and the Secretary of the Interior to pull chestnuts out of the fire for the City of San Diego, and recommend to Congress that these Indians be removed from their reservations. I am satisfied Congress will never repudiate its agreement with the Indians, as Congress by act itself agreed to furnish a deed to the Indians "two tribal patents having already been issued," giving to these Indians this land free and clear of all encumbrances, excepting rights of way not to exceed 100 feet in width, at the end of 25 years. The 25 years will expire in March, 1919. The Indians to a man have unanimously protested against being removed, and a representative of the Indian Service has testified that it will take force to move them.

I sincerely trust that the Department of the Interior and the Department of Indian Affairs will not take sides in this controversy between the Cuyamaca Water Co. and the City of San Diego, by recommending the removal of the Indians. And, may I suggest that the proper procedure is, in my opinion, to ask the City of San Diego to go into court and prove that it

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has a water right, and show its title to any water of the San Diego River before granting the application of the City of San Diego, as your favorable action on the city's application means many years' of litigation and needless expense to the Cuyamaca Water Co., which in good faith has lived up to its obligations with the U. S. Government for nearly thirty years; has furnished these Indians with water free of charge to the U. S. Government; and we feel that at least a moral obligation exists on the part of the Secretary of the Interior, the Office of Indian Affairs, and Congress to protect us against the attempts of the City of San Diego until such time as an emergency exists and the City of San Diego is financially able and can prove its ownership to water rights on the San Diego River that will warrant the construction of the El Capitan Dam.

There are five other sources of supply that the City can go to for water, at less cost per thousand gallons, than they can secure it by building the El Capitan Dam. I am in a position to prove this statement at any time you desire to have me so do, and it is a matter of record among the archives of the City of San Diego, investigations having been made by engineers at the expense of the City of San Diego.

~~In closing,~~ please remember that the cities of El Cajon, La Mesa, East San Diego; also the towns of Lemon Grove and Spring Valley, with the exception of a small portion of the

City of East San Diego is entirely dependent upon the Cuyamaca Water Co. for their present and prospective needs of water. Owing to the elevation of these cities and towns mentioned above, the water of the San Diego River, through the system of the Cuyamaca Co., is their only available source of supply, and their future growth is entirely dependent upon our ability to increase our storage for their increased demands.

It does seem a crime that the City of San Diego will attempt to take what surface waters there may be now from the San Diego River, which if successful would kill the growth of these towns; particularly so when San Diego has available many other sources of supply, which in no way affects any municipality or suburban towns.

Very sincerely yours,

CUYAMACA WATER COMPANY

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Manager.

F-8

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**CUYAMACA WATER COMPANY**

SUCCESSORS TO

**THE SAN DIEGO PLUMB COMPANY**

OFFICE: FLETCHER BUILDING

916 EIGHTH STREET, BETWEEN BROADWAY AND E

P. O. BOX 1412

ED FLETCHER, MANAGER

LOU B. MATHEWS, SECRETARY

C. HARRITT, SUPERINTENDENT

SAN DIEGO, CALIFORNIA.

May 27, 1918.

To the Members of the  
Committee on Indian Affairs,  
House of Representatives,  
Washington, D. C.

Gentlemen:

I wish to call your attention to H.R. Bill No. 10587, Senate Bill No. 3646, which is an application of the City of San Diego to acquire certain lands within the El Capitan Indian Reservation, San Diego County, California.

All of the lands involved, including 2000 acres for which the City is asking, are within the said El Capitan Indian Reservation, yet this bill has never been referred to your committee. With two or three exceptions, all the Indians on the reservation signed a petition of their own free will and accord asking that they be not driven away from the lands which they have occupied for these many years.

By act of Congress, the lands of the El Capitan Indian Reservation were set aside for these Indians, to be deeded to them, free and clear of encumbrance, at the end of twenty-five years, and these lands have since been held in trust by the Secretary of the Interior. Is the Government going to repudiate this agreement with the Indians and move them onto other lands? Should not the Government first get the written consent of the Indians to the proposed exchange and transfer, simply as an act of justice to the Indians?

There is other opposition to the bill being passed. I refer to the clipping herewith attached. The cities of La Mesa and El Cajon, also mass meetings held in the towns of Bostonia, Lemon Grove and Spring Valley, as well as the Merchants Association of La Mesa, have all unanimously protested against the passage of this bill, for other reasons.

The Cuyamaca Water Co. is trying to render service to the back country, and the proposed bill if passed blocks any further development of our water system. We, in good faith, have invested over a million dollars, at a time when no one else would do it, in conserving the flood waters of the San Diego River. We are under the jurisdiction of the State Railroad Commission of California, which makes all rates at

which we shall sell water, and we are in position to furnish water to the City of San Diego at a less price than they can develop it. We would gladly sell our water system to the City of San Diego, but after the city condemned our system in the courts they refused to buy.

We urge that these bills be referred to your committee, and that an investigation be made of the facts, before allowing this bill to become a law.

Very truly yours,

CUYAMACA WATER COMPANY.

By

*Ed Fletcher*

Manager.

*M*

*Letter to Senate Committee*

May 27, 1918.

To the Members of the  
Committee on Indian Affairs,  
House of Representatives,  
Washington, D. C.

Gentlemen:

I wish to call your attention to H.R. Bill No. 10587, Senate Bill No. 3646, which is an application of the City of San Diego to acquire certain lands within the El Capitan Indian Reservation, San Diego County, California.

All of the lands involved, including 2000 acres for which the City is asking, are within the said El Capitan Indian Reservation, yet this bill has never been referred to your committee. With two or three exceptions, all the Indians on the reservation signed a petition of their own free will and accord asking that they be not driven away from the lands which they have occupied for these many years.

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We urge that these bills be referred to your committee, and that an investigation be made of the facts, before allowing this bill to become a law. Yours very truly,  
Cuyamaca Water Co. By \_\_\_\_\_

May 26, 1916.

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Reverend Father Ketchum,  
c/o Catholic Indian Rights Association,  
Washington, D. C.

Dear Sir:

I wish to call your attention to a Bill (HR 11,540) which has been introduced by Congressman Kettner of California and referred to the Committee on Public Lands. So far as I am aware, it has not been referred to the Committee on Indian Affairs, although its effect upon the Capitan Grande Indian Reservation should be disclosed, if not by an investigation of the Committee on Indian Affairs, then by a full report to the Public Lands Committee by the Office of Indian Affairs.

This Bill proposes to grant to the City of San Diego the use of certain lands, largely within the Capitan Grande Indian Reservation, for a reservoir. An application for the same lands for the same purpose is now being prosecuted before the U. S. Land Office by the City of San Diego as assignee of W. B. Hamilton. A protracted hearing before the Local Land Office at Los Angeles was recently completed on this application. It is now up finally to the Secretary of the Interior Lane for decision, and the hearing is set by Secretary Lane for June 7, at 3:00 p.m. for oral argument, after which Secretary Lane will make his final decision.

The transcript of testimony comprises some 1157 pages of typewritten matter and approximately 100 exhibits. In the evidence

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much technical engineering data was introduced, not only by the City of San Diego, but by Cuyamaca Water Company, protestants, and by the office of Indian Affairs. The exhaustive record of this hearing, if it has not already been forwarded, will very soon be forwarded to Washington and will be available in the office of the Commissioner of the general Land Office. The Office of Indian Affairs also has much data available, particularly since its engineers appeared under the direction of a Special Agent of the U. S. Land Office at the recent hearing. The original Hamilton application, which has now been assigned to the City of San Diego, was rejected by the Department of the Interior on April 29, 1915, upon the recommendation of and for the reasons reported by the Commissioner of Indian Affairs, which were that the construction and maintenance of the dam and reservoir would seriously injure the Indians of the Capitan Grande Reservation, because, it would flood and deprive them of the use of the total irrigable area of the Reservation and would thus deprive them of their homes and other improvements and necessitate their moving to other lands. Hamilton has since assigned to the City of San Diego any claims which he may have by virtue of his former application, and it was upon the claims so assigned that the Land Office held the recent hearing. At the hearing it was developed that the application of Hamilton was not made in good faith with any idea of his carrying the project through to its ultimate completion, but was a promotion scheme absolutely specula-

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tive in its character as far as he was concerned (Transcript - p. 338).

At the recent hearing Mr. Owen W. Bauer, as civil engineer, employed by the U. S. Indian Service, testifying as a witness for the Government, introduced a table prepared by him ( U. S. Exhibit IV) entitled "Estimated Damages Capitan Grande Reservation, Cal," with the statement that "Estimate includes amounts necessary to reimburse for relinquishment of lands, water rights and improvements, including removing Indians from Capitan Grande Indian Reservation, exclusive of burying grounds abandonment, and other indeterminable personal injuries to the Indians." The actual damage, as computed by this witness, and as verified by the testimony of Thomas F. McCormick, of the Office of Indian Affairs, amounted to \$216,516.00, no compensatory damage for personal injuries being included. At the conclusion of Mr. Bauer's testimony the record will show (Tr . 754) that the City Attorney of San Diego made the following statement: "I desire to say at this time on behalf of the City of San Diego, we consider this witness as fair in every particular, and that the figures he has given are, in our opinion, very reasonable and conservative approximates of the values of the land."

In the line of the above testimony by competent witnesses, together with the frank admission of the City Attorney of San Diego, I wish to call your attention to Section 5 of S. 5081, which provided that under no circumstances will the City of San Diego, if the grant is made, be required to pay more than \$100,000

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There is no question but that the Reservation will have to be abandoned and the Indians moved elsewhere, if the lands in question are granted to the City either by grant of the Department of the Interior or by the enactment of Legislation such as was proposed by the two companion bills now before the 64th Congress, S. 5081 and HR 11,540. The statement of the City attorney at the recent hearing (Tr. 37) indicates the position of the City in this regard when he says: "The City admits that the granting of this permit will flood, if not the entire tillable land of the Indians, such a large portion of it that the remaining portion would be uninhabitable from a sanitary standpoint, and we would not desire the Indians living on the rim of the reservoir, and we admit that the granting of the permit, for all practical purposes, will take from the Indians all of their tillable land, take from them all of their places of abode, and they would have to be moved from their location" \*\*\*\*\* "the position the City of San Diego takes is the granting of this permit would compel the Government to remove the Indians to some other place." Mr. McCormick of the Office of Indian Affairs states that he does not think it would be possible to remove these Indians without using force.

Appreciating the condition of the Mission Indians of California,

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and realizing the fact that in the past they had been oppressed and abused by the whites in the name of advancement and progress, Congress passed an Act, which was approved by the President, and became a law on January 12, 1891. (26 Stat. 712), the title of which is indicative of the end sought: "An Act for the Relief of the Mission Indians in the State of California."

The Act in question provides, among other things, for the appointment of "three disinterested persons as Commissioners to arrange a just and satisfactory settlement of the Mission Indians residing in the State of California, upon reservations which shall be secured to them as hereinafter provided."

Section two of said Act states in part: "That it shall be the duty of said Commissioners to select a reservation for each band or village of the Mission Indians," \*\*\*\*\* "which reservation shall include, as far as practicable, the lands and villages which have been in the actual occupation and possession of said Indians, and which shall be sufficient in extent to meet their just requirements."

Section three provides: "That the Commissioners, upon the completion of their duties, shall report the result to the Secretary of the Interior, who, if no valid objection exists, shall cause a patent to issue for each of the reservations selected by the Commission and approved by him in favor of each band or village of Indians occupying any such reservation, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus patented, subject to the provisions of section four of this Act, for the period of twenty-five years, in trust, for the

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sole use and benefit of the band or village to which it is issued, and that at the expiration of said period the United States will convey the same or the remaining portion not previously patented in severalty by patent to said band or village, discharged of said trust, and free of all charge or incumbrance whatsoever."

The provisions of the Act were complied with. The Capitan Grande Band of Indians, under patent issued March 10, 1894, are the owners of the equitable title to all of the lands within the Capitan Grande Reservation, which are enumerated in Senate Bill 5081, with the exception of the E $\frac{1}{2}$  of SE $\frac{1}{4}$  of Sec. 21, T. 14 S., R. 2 E., S.B.M. (an area of approximately 9.83 acres within the flood line).

The Government of the United States holds the legal title to said lands in trust for the Indians. The patent above referred to reads, in part, as follows:

"Now KNOW YE, THAT THE UNITED STATES OF AMERICA, in consideration, of the premises and in accordance with the provisions of the third section of the said Act of Congress approved January twelfth, eighteen hundred and ninety one, hereby declares that it does and will hold the said tracts of land selected as aforesaid (subject to all the restrictions and conditions contained in the said Act of Congress of January twelfth, eighteen hundred and ninety one) for the period of twenty five years in trust, for the sole use and benefit of the said Capitan Grande Band or Village of Mission Indians, according to the laws of California, and at the expiration of said period the United States will convey the same or the remaining portion not patented to individuals, by patent to said Capitan Grande Band or Village of Mission Indians, as aforesaid, in fee simple discharged of said trust and free of all charge or incumbrance whatsoever."

The language of this document is plain and unambiguous and, I think, is capable of but one construction, and that construction absolutely precludes the allowance of the provisions of S.5081. I also wish to direct your attention to the testimony of Mr. Francis R. Schenck, Assistant Chief Engineer of the U. S. Indian Irrigation



Service, who, as witness for the Government at the recent hearing, while testifying regarding the relative merits of the system proposed by the City of San Diego and that of the Cuyamaca Water Co., whose plans will ultimately utilize all of the waters of San Diego River for domestic and irrigation uses, made the following statement:

"Q. As the representative of the Indian Service, is there any statement that you would like to make in reference to the effect it will have upon the Indians in El Capitan Reservation?"

"A. I would like, if possible, to answer that question which I was not able to, I felt in the way in which it was propounded and this bringing in the effect upon the Capitan Grande Indian Reservation, I think I can answer it, that is, from the evidence I have seen and the testimony I have heard, and the knowledge which I had already of the facts and conditions, I believe I can say that I am not convinced that the benefit which San Diego would derive from the use of this water, being a smaller amount in my estimation, a smaller amount than they have estimated upon would be enough more valuable than the benefit that San Diego might derive from the development of the Cuyamaca Water system, and whatever water they might, the City of San Diego might be able to acquire thereby, to justify us yet in the abandoning of the Capitan Grande Indian Reservation." (Tr. 774)

I urge you to fully investigate this matter, for I am sure you will find that favorable action on the part of Secretary Lane or Congress will work a great and needless hardship upon the Capitan Grande Indians, as well as do a great injustice to us.

I shall be in Washington about the fifth of June, and hope to get in touch with you immediately upon arrival.

Yours very truly,

CUYAMACA WATER COMPANY,

\_\_\_\_\_  
Manager.

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May 26, 1916.

Reverend Mr. Lusk,  
Secy. Protestant Indian Rights Assn.,  
Washington, D. C.

Dear Sir:

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**Ed Fletcher Papers**

**1870-1955**

**MSS.81**

**Box: 58 Folder: 17**

**Business Records - Water Companies - Cuyamaca  
Water Company - Case Resulting From Hamilton  
Filing on Mission Gorge, through El Capitan  
Reservation - Correspondence with the members of the  
Indian Affairs Committees of the House and Senate**



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