

May 10, 1917.

To the Honorable,  
The Secretary of the Interior,  
Washington, D. C.

Los Angeles No. 014683

While the privately-owned public utility has at times overstepped the mark and not treated the public fairly, yet another condition can exist, and in the writer's opinion does now exist, where a municipality, controlled by ambitious city officials desirous of making a record, has through misrepresentation to your honor attempted to secure a favorable decision in this case.

The time has now arrived when the Cuyamaca Water Company is in need of and has the right to ask your protection, in order that a grave injustice may not be perpetrated by a great municipality against a privately-owned public utility.

The Cuyamaca Water Company is 100% efficient, as per decision No. 4058 of the State Railroad Commission, of January 25, 1917, the case being heard by the President, Max Thelen. In addition, a contract has been let, and we are now building a concrete dam, known as Murray Dam, 112 feet in height, at La Mesa, within five miles of the limits of the City of San Diego, the capacity of said dam being 6000 acre feet.

In addition to our irrigation supply, we furnish domestic supply to the cities of El Cajon, East San Diego and La Mesa, as well as several thousand additional domestic consumers outside the incorporated limits of each of these cities. After

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the breaking of the Lower Otay Dam, for nearly three months, we supplied practically the entire consumption of the entire City of San Diego, as well.

We have invested in the system in actual cash, including 7% interest, over \$900,000. Since we purchased the system June 1, 1910, the total receipts for the sale of water to January 1, 1917 were \$325,929.63. The actual operating expenses during that period were \$343,788.65, making a net loss in operating expenses alone of \$17,859.02. In addition, we have out of our own pockets paid out for the repair of last year's flood damage \$33,671.61, and we have at least \$20,000 more to spend for flood repairs. We have kept our operating expenses at the very minimum, and part of the time neither the President, Mr. Murray, nor myself have drawn any salary whatsoever to pay for our services. At the present time the total salary of Messrs. Murray, Fletcher and Henshaw who own the system is only \$500 a month. This includes the management of the system.

We had sold our water system to the La Mesa Irrigation District, at a valuation set by the State Railroad Commission, but the City of San Diego intervened, brought suit to condemn, and at an expense to us of over \$20,000 before the State Railroad Commission a valuation was set on the property of \$745,000 by said Commission, in 1915.

Judge Boone, who had given to the City of San Diego the Hamilton Application, Los Angeles No. 014683 to flood the Indian lands, brought suit to test the validity of the



La Mesa Irrigation District, clouded the title to the bonds which were to be approved by Dillon, Thomson & Clay, and killed the sale to the District, as the question of the validity of the District was kept in the Supreme Court beyond the time limit in the contract of sale to the La Mesa Irrigation District. The price of \$745,000 put on our system in 1915 represented simply our money back and between seven and eight per cent interest -- no profit whatsoever to the owners of the system. Since then, we have developed our system to such an extent that it has brought up the actual expenditures including interest to approximately \$900,000.

If we were a soulless corporation, trying to hold up the City for a big profit, we could not come into court with clean hands, and ask your protection. But the facts are the reverse.

The City of San Diego had an opportunity to buy our system in 1914, based on the payment of \$50,000 down and \$10,000 a month until paid, without the necessity of issuing a bond. They brought suit to condemn and secured a judgment which gave us back simply our money and interest, but instead of buying they refused to accept the verdict of the State Railroad Commission, and after the contract with the District was off, the City then withdrew its condemnation proceedings. This is additional proof that the City of San Diego is not in need of additional water supply, or the entire proceedings were a matter of personal spite or a political fight of which I will speak later.

1917  
The January report of City Manager Lockwood of the City

of San Diego shows that there were 14,000,000,000 gallons of water in storage in the city reservoirs; that during the year 1916, the total consumption of the City of San Diego was 3,062,678,000 gallons; and that the total draft from the storage supply of the City of San Diego was only 1,175,400,000 gallons, the rest of the City's supply having come from the natural flow of the streams. Quoting from the City Manager's report of January, 1917, he says:

"San Diego's chief concern is for its water supply, and it is reassuring to know that never in the history of the City has the supply been so ample as at the beginning of the year 1917. Practically 14,000,000,000 gallons of water is stored; snow on the Laguna Mountains is lying three feet in level and eight feet in drifts, which assures us a sufficient diversion of water into the Pine Creek to fill Upper Otay."

With conditions as of the year 1916, it is shown that there is sufficient water now in storage controlled by the City of San Diego to last for more than ten years, based on present and normal rainfall. consumption/ In addition thereto, the City of San Diego is building the Lower Otay Dam, the bonds for that purpose having been voted in the sum of \$688,000. This dam will hold 15,000,000,000 gallons. As a reserve, the City of San Diego also has pumping plants ready for operation on twenty-four hour's notice, which will pump between 4,000,000 and 5,000,000 gallons daily, from the sands of the San Diego River.

In addition thereto, the Cuyamaca Water Company is in position on one hour's notice to furnish 5,000,000 to 6,000,000 gallons of water daily to the City of San Diego, delivered at the



City's system, at a price of 10¢ per thousand gallons, the price set by the State Railroad Commission. This price is exceedingly low compared with the cost of water impounded by the City of San Diego. Attached hereto is report of City Manager Lockwood, under date of February 23, 1917, showing that the cost of all gravity water developed by the City at the city limits is 19¢ per thousand gallons.

The above shows an abundant water supply for the City, and that no emergency exists.

The City of San Diego, through the Hamilton Application No. 014683 is asking the Secretary of the Interior for permission to flood the lands belonging to the Indians within the El Capitan Indian Reservation, the Cuyamaca Water Company owning the damsite and approximately one mile of the reservoir site, as well, the lands within the reservation being needed by the City for floodage rights alone.

The granting of this application would be the greatest injustice possible to the Cuyamaca Water Company. It means continued expensive litigation. It puts a cloud on the water rights of the company on the San Diego River, thereby making it impossible to sell bonds for the development of the system, and thereby stopping the natural development necessary to protect our irrigation and domestic consumers, including three municipalities, whose right to the use of this water and to grow in population is equal to that of the City of San Diego. The cities of El Cajon, La Mesa and East San Diego are entirely dependent upon the Cuyamaca Water Company's supply, and have not the



advantage of securing another source of supply, as the City of San Diego.

When the time comes, the city of San Diego can develop its other water possibilities, including the Pine Creek, Barrett, and Marron Reservoir sites, which the city now owns, and when including Lower Otay now under construction will built these reservoirs ~~will increase by many millions of gallons of~~ unquestionably double or treble ~~water supply~~ the City's supply.

The City of San Diego refused to buy the Cuyamaca Water Company's system at practically cost and 7% interest, which shows that no great emergency exists.

The Secretary of the Interior demanded that City Attorney Cosgrove designate under what act the City of San Diego was proceeding, in asking for the right to flood the Indian lands. Attorney Cosgrove, without thoroughly investigating the law, answered the Act of 1801. It turned out afterwards, that this act gave the Secretary of the Interior the right to issue only a temporary permit revokable at the pleasure of the Secretary of the Interior or his successor, at any time.

The same mistake was made by the City of San Francisco, in the Hetch Hetchy case, where it was found that the bond attorneys would not approve the bonds voted by the City of San Francisco, owing to the fact that it was city money being spent on Government lands, and liable to cancellation at any time by any Secretary of the Interior. The Hetch Hetchy bonds were worthless, and it became necessary to get an act through Congress before San Francisco could proceed with its Hetch



Hetchy development. When Mr. Cosgrove found this out, he proceeded immediately to have a bill introduced in Congress covering the same points as in the application of the Secretary of the Interior. Attorney Cosgrove thereby jumped from the frying pan into the fire, for the following reason:

He was asking Congress, by granting the municipality of San Diego's request, to repudiate a former action of Congress.

The lands desired to be flooded by the City in the El Capitan Reservation were in 1894, by Act of Congress, set aside for the Mission band of Indians, in trust, with the condition in the act that the lands were to be deeded to the Indians in fee simple, free and clear of encumbrances, at the end of twenty-five years. That period expires in March 1919, when the Indians will secure title in fee simple.

Can you blame Congress for refusing to repudiate this or any agreement it had with the Indians? These Indians had divided up their lands, built their homes, fenced them, and I believe tribal patents had been issued. Instead of the story of Ramona, there would have been laid the foundation for a story of "The Infamy of San Diego," if this bill had ever passed Congress.

In an appeal to President Wilson, the Indians unanimously protested against being removed from their reservation.

The municipality of San Diego as a whole do not know of the acts of its city officials, and misrepresentations made by the City Attorney in presenting this case to the Secretary of the



Interior. It may be interesting to know that three of the five councilmen have been repudiated and defeated at the polls within the last thirty days, and it is questionable if the present City Attorney Cosgrove will hold his position.

The City Attorney filed with the Secretary of the Interior, July 26, 1915, a brief in this case, from which I quote from page 7, lines 9-14 inclusive, as follows:

"That the water shed of this city is approximately 370 square miles, and impounds the waters of the Cottonwood, Pine Valley and Dulzura Creeks, together with their tributaries; that the safe net yield of this system is estimated, on a five to twenty year period, at from 5,000,000 to 6,000,000 gallons daily."

Yet, before the State Railroad Commission, in the year 1915, the same City Attorney presented a net safe yield of the present city system, including pumping from the San Diego River, at between 10,000,000 and 11,000,000 gallons daily. Which statement is right? One would infer from the quotation above stated that the city of San Diego is acquiring all the water from the water shed of 370 square miles. ~~The city of San Diego has today approximately 4,000,000 gallons of water in its reservoirs without the construction of the lower San Diego and Harbor Dams and the Bureau of Reclamation water shed above referred to, and when these dams are completed the net safe yield will unquestionably be more than doubled.~~

The writer's contention is that in order to get justice the city of San Diego should first be compelled to develop completely its own system to its maximum; second, to acquire,



by purchase or condemnation, all the Guyamaca Water Company's system. If this is not done, and the Secretary of the Interior grants the City's application, the result will be that the City of San Diego will not for five or ten years complete the El Capitan Reservoir, first on account of the lack of finances; second because the emergency and necessity do not exist; third, because it will be cheaper by far to acquire our system than to build the El Capitan reservoir, cloud the title to our water rights and kill any bond issues that may be desired to place on our property for the development of the system, thereby stopping the growth of a section of the country lying Easterly from San Diego, that is just as much entitled to domestic and irrigation water as is the City of San Diego.

Exhibit No. 9 in this case, presented by Attorney Cosgrove, purports to show that on July 1, 1916, there were 118,000 people being served with water from the city system. This was misrepresenting the facts, as the population did not exceed 80,000 to 85,000 people, as an investigation will prove. There are fewer people in San Diego today than a year ago. One truck company renting the writer's property during the month of April, 1917, moved forty families out of San Diego.

Exhibit No. 10 in this case, presented by City Attorney Cosgrove, purports to show that the use of water on the entire city system for the year 1916 would average 11,300,000 gallons, and for the year 1917 12,300,000 gallons. This representation is entirely untrue, for the official records show that only



8,100,000 gallons of water daily was used during the year 1916, as per the records in the office of the City Manager; while 1917 to the present time is hardly up to the 1916 average.

The evidence given in this hearing by the U. S. hydraulic engineer, also by our engineer, shows that only a small amount of water can be conserved after the rights of the Cuyamaca Water Company and the riparian owners below are considered. Since the Los Angeles hearing in this case, the Cuyamaca Water Company has completed the enlargement of its flume, 32 miles in length, thereby increasing its capacity from 10,000,000 to 20,000,000 gallons daily, which will be diverted from the San Diego River at the Diverting Dam and South Fork and delivered to the 112-foot Murray Dam, which will be completed January 1, 1918, and is located five miles from the city limits of San Diego. The construction of Murray Dam completes our rights of diversion of an additional 4000 acre feet of water, making the proposed El Capitan Reservoir site, which lies below the point of diversion that much less desirable to the City of San Diego.

The writer is personally of the opinion that the acceptance <sup>by the City</sup> from Judge Boone of the Hamilton application No. 014683 free of charge, and the continued litigation is purely spite-work on the part of certain politicians who had influence with the city officials. This is amply proven by action of the City in spending \$20,000 in litigation, condemning our system when we had it sold to the La Mesa Irrigation District and afterwards withdrawing their suit.



Your attention is also called to the fact that it was only by resolution of the repudiated city council that the sum of \$350,000 was offered by the City to pay for the removal of the Indians to other lands. The payment of any such sum as this is entirely illegal, unless approved by a vote of the people at a regular election, and it is questionable if the present city council would even call an election for this purpose.

By granting the temporary permit asked for by the City of San Diego, the Secretary of the Interior makes it impossible for us to go ahead with our development work and in reality furnishes to the City of San Diego a club which it can wield to the detriment of the Cuyamaca Water Company at any time it suits the pleasure of the City, for years to come.

While operating our system at a loss, we are bled to death by continual litigation and respectfully petition the Honorable Secretary of the Interior, for the above reasons, to deny the application of the City of San Diego, ~~and to~~  
~~and to~~

Respectfully submitted,

CUYAMACA WATER COMPANY,



County water shed map to be mailed  
under separate cover to

Secretary of Interior

Saml. M. Brosius, McGill Bldg.,  
Washington, D. C. (?)

*Printed*

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SAN DIEGO, CALIFORNIA,

September 17, 1917

Honorable Secretary of the Interior,

Washington, D. C.

Los Angeles 014683

Dear Sir:

Referring to the application to flood the lands of the El Capitan Indian Reservation, afterwards assigned to the City of San Diego, without expense to the said city, the application having been rejected by the Secretary of the Interior, and re-hearing asked for by the City of San Diego, will say:

It is over fifteen months since the hearing in Washington. Since that time material changes have taken place, vitally affecting the case. The City of San Diego, instead of attempting to develop water on the San Diego River has voted bonds and will in a few days let a contract to build the Lower Otay Dam, with a capacity of 15,000,000,000 gallons of water, to cost roughly \$700,000., the bonds lately having been voted, and said dam will be completed, according to the City Engineer H. M. Savage, by January 1, 1919, in time to catch the waters that winter.

On the first day of August, 1917, according to the report of the City Manager of San Diego, there was on hands in the reservoirs of the city 14,237,879,000 gallons of water. The daily consumption for the year 1917 will not be in excess of 8,500,000 gallons. During the year 1916, the total consumption from the San Diego City system was 3,025,511,996 gallons. In addition thereto, the City of San Diego has its pumping plants in the San Diego River completely installed ready for service on twenty-four hours' notice, from which can be pumped into the



city system direct between 4,000,000 and 5,000,000 gallons daily. These pumping plants have not been used by the city to any extent, if at all, for the last year or two. The above facts should demonstrate conclusively, in my opinion, that no emergency exists, as claimed by the City; that it is unquestionably the City's intention to develop water elsewhere, and the general consensus of opinion is that the city will build its other dam, Barrett, as soon as the Lower Otay is completed, which will materially increase the city's supply of water.

The City of San Diego has issued bonds almost to its limit, there being approximately \$1,000,000 excess bonding capacity at the present time. The City's own testimony in this case shows that it will cost approximately \$2,000,000 to \$3,000,000 to build El Capitan Dam and a pipeline to the city, and the testimony shows that no one knows how far it is to bedrock at El Capitan Dam. We have satisfied ourselves, at the expense of several thousand dollars, that bedrock is at least 150 feet, if not more, and in our opinion a conservative estimate of the cost of building El Capitan Dam alone will be \$1,500,000, to which is to be added the cost of acquisition of 22 miles of riparian rights on the river or the furnishing of 6,000 acre feet (U.S. Government engineer's estimates) to the riparian owners below; the cost of building 22 miles of pipeline, estimated at \$800,000; the condemning of the damsite and nearly a mile of the reservoir site, which we own in fee simple; together with the cost of \$200,000 or \$300,000 for moving the Indians. All the above makes the proposition prohibitive



from the city's standpoint as the city has only a bonding capacity of approximately a million dollars while it will cost three or four million at least to complete the project.

At the hearing in Los Angeles, the testimony of the Government engineers, as well as our own show that the net safe yield with the El Capitan built is not to exceed 3,000,000 or 4,000,000 gallons daily. This was based on conditions as they were at the time of the hearing. Since then the Cuyamaca Water Co. has commenced construction, and nearly completed Murray Dam. This dam is built of concrete, is 117 feet in height and has a capacity of 2,200,000,000 gallons. It will be completed by January 1, 1918. We have put our flume in condition to carry 20,000,000 gallons of water daily, and each year hereafter we will divert from the San Diego River approximately 1,500,000,000 to 2,000,000,000 gallons of excess water which was not included in the figures given at the hearing of this case in Los Angeles. In other words, the net safe yield is reduced to the extent of our new diversion, which makes the El Capitan plan absolutely unfeasible as we can prove the cost of the water developed from the El Capitan will be prohibitive owing to the excessive cost of the work compared with the net safe yield.

In addition thereto, the President of the Chamber of Commerce of San Diego appointed a committee of twenty of the most prominent citizens of San Diego to make an investigation into the matter, and that committee has unanimously recommended that instead of building El Capitan Dam the first dam to be built shall be in the



San Diego River at a point known as the San Diego Gorge, nineteen miles below the so-called El Capitan dam site. At the San Diego Gorge dam site, bed rock is exposed, the engineering problems are simple, and here will be caught not alone all the waters that would be caught at El Capitan Dam site, but in addition thereto 186 sq. miles of water shed below the El Capitan Damsite. The value of this additional water shed cannot be over estimated when one considers that the entire water shed of the Cuyamaca system is only 104 sq. mi.

Morena . . . . .	119	"	"
Otay . . . . .	98	"	"
Sweetwater . . .	186	"	"
Carroll . . .	196	"	"
San Diego Gorge.	375	"	"

all as per map I am sending under separate cover.

In addition thereto, the Chamber of Commerce Committee has recommended the purchase of 5,000,000 gallons of water daily from the Volcan Co., at 10¢ a thousand gallons, all as per clipping herewith enclosed. This is remarkably cheap water as compared to the water now developed by the City of San Diego, every drop of which costs 19¢ per thousand gallons, according to the report of the City Manager of San Diego, said reports being herewith attached. Please note that said City Manager in making his report did not include additional costs, which bring the cost of every drop of water delivered in the city to more than 27¢ per one thousand gallons against the Volcan Co's offer of 10¢;



and in all sincerity I make the solemn statement that I can prove to any disinterested engineer that the cost of every drop of water ever developed from the El Capitan will be in excess of 20¢ per thousand gallons delivered at the city limits. We have offered the surplus water of the Cuyamaca system to the city at 6¢ per thousand gallons but the city has refused to buy to date.

In conclusion, I can only again call your attention to the fact that this Hamilton application was made either wholly or in part from records deliberately taken from our office without the consent of any of the owners and never returned by Hamilton's engineer one C. T. Sackett, who was in our employ. We paid \$1500. for the data that said Sackett took from our office. We brought said Sackett from Montana, and any information he secured on the San Diego River was while in our employ, particularly the El Capitan dam site and reservoir site.

We could have settled this case at one time and eliminated the Hamilton application for \$3,000, although the original offer to us was \$25,000. We considered the Hamilton application was born in infamy, and we refused to be held up, although it has cost us today \$25,000 in litigation. Only the Supreme Court of the United States will ever settle this question, for we feel certain of our position that it is only an attempt on the part of political enemies to punish us or to hold us up, and by granting the application of the City of San Diego, which paid nothing for this Hamilton water filing, the City of San Diego will be playing into the hands of a clique of men who are determined to



cloud the title to our property and block the legitimate development of San Diego County.

I desire to call your attention to the following facts: That the Secretary of the Interior can only give a temporary permit, revokable at any time; that the City of San Diego cannot vote and sell bonds based on any temporary permit, as has been proven in the Hetch-Hetchy case, by the City of San Francisco; that the Indians have unanimously protested against being removed, and that their removal will lay the foundation for another case such as described in Ramona; that the removal of these Indians violates the terms of the U. S. Government, when the Government by act of Congress, in 1894, set these lands aside for the Indians and agreed to deliver them to the Indians free and clear of all encumbrance, at the end of twenty-five years, or in March, 1919, Acting on this pledge of Congress, these Indians have subdivided their property to their own satisfaction, and have a right to demand a deed in March 1919. I do not believe the U. S. Government will ever repudiate this action; and I urge the Secretary of the Interior to take all these matters into consideration, and render a decision in our favor, against the City of San Diego, as he has already done in the application of said Hamilton.

I sincerely trust for an early and favorable decision.

Respectfully submitted,

CUYAMACA WATER COMPANY

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Manager



( Copy )

June 14, 1921.

Secretary of the Interior,  
Washington, D. C.

Sir:

As a citizen of San Diego, also as a party interested, I wish to protest against the decision of the court in the condemnation case of the City of San Diego vs. United States of America, No. 31799, held in San Diego California, May 27th, 1921, wherein Nineteen Hundred (1900) acres of land in the El Capitan Indian Reservation; including all improvements, such as houses, churches, school, water system and water rights, were condemned and judgment rendered for \$75,000.00, in conformity with Senate Bill No. 3646, an Act of Congress Granting to the City of San Diego certain lands in the Cleveland National Forest and the Capitan Grande Indian Reservation for dam and reservoir purposes for the conservation of water, and other purposes.

This valuation is ridiculously low. The United States District attorney who prosecuted the case, in behalf of the Indians, informed our Superintendent, Mr. C. Harritt, that it was a friendly suit and so far as I can see no real attempt was made to protect the Indians.

It is common knowledge that the lands are to be used for a special purpose - the conservation of water. Lands flooded for reservoir purposes have a value of their own, irrespective of any agricultural value. As proof of this, I submit the following:

The State Engineer of California who has jurisdiction over all irrigation districts, in his report to the La Mesa, Spring Valley and Lemon Grove Irrigation District, on August 12, 1919, made the following valuation per acre for sale purposes for the different reservoirs in the Cuyamaca System: in San Diego County, California:

Cuyamaca Reservoir	1074 acres @	\$100.00	per ac.	\$107,400.00
Miles Reservoir No. 1	3.42 "	200.00	" "	684.00
Miles Reservoir No. 2	.42 "	400.00	" "	168.00
Grossmont "	15.7 "	100.00	" "	1,570.00
Eucalyptus "	4.71 "	150.00	" "	706.00
Eucalyptus lands condemned	2. "	688.00	" "	1,376.00
Murray Res. lands owned	119.71 "	200.00	" "	23,942.00
Conejos Res. rights				4,000.00



The following statement is made in the report:

"In valuing lands occupied by reservoirs or other structures, I have not been unmindful of the principle that lands peculiarly valuable for reservoir purposes or some other special purpose must be valued for that particular purpose not necessarily for some other less important use. This principle was established as early as 1879 by a decision of the United States Supreme Court in the case of Boom Company vs. Patterson (98 U.S.403). This was a case in eminent domain for the condemnation of certain small islands in the Mississippi River peculiarly adapted for the construction of a boom. The jury rendered a general verdict assessing the value of the land at \$9,358.33 but accompanied it with a special verdict assessing its value aside from any consideration of its value for boom purposes at \$300.00, and, in view of its adaptability for this purpose a further and additional value of \$9058.33. The Court reduced the verdict to \$5,500. The Plaintiff brought the case on writ of error to the Supreme Court of the United States where the judgment was affirmed. The following is quoted from the decision of the United States Supreme Court.

"In determining the value of land appropriated for public purposes, the same considerations are to be regarded as in a sale of property between private parties. The inquiry in such cases must be what is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied but with reference to the uses to which it is plainly adapted; that is to say, what is it worth from its availability for valuable uses? Property is not to be deemed worthless because the owner allows it to go to waste, or to be regarded as valueless because he is unable to put it to any use. Others may be able to use it, and make it subserve the necessities or conveniences of life. Its capability of being made thus available gives it a market value which can be readily estimated.

'So many and varied are the circumstances to be taken into account in determining the value of property condemned for public purposes, that it is, perhaps, impossible to formulate a rule to govern its appraisalment in all cases. Exceptional circumstances will modify the most



carefully guarded rule; but, as a general thing, we should say that the compensation to the owner is to be estimated by reference to the existing business and wants of the community or such as may be reasonably expected in the immediate future.'

"There are numerous later decisions of the Courts which uphold all the principles of law stated in this leading case (Minnesota rate case 232 U.S. 352 etc.)".

The State Engineer of California on September 3, 1918, made the following valuation, for sale purposes, for lands for reservoir purposes in San Diego County, in his report to the Cardiff Irrigation District:

Lake Hodges:

Ownership 1197 acres at \$250 per acre	-----	\$299,250.00
Floodage rights 120 acres at \$65	-----	7,800.00

San Elijo Reservoir:

Ownership 262 acres at \$200 per acre	-----	52,400.00
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San Dieguito Dam:

Ownership 75 acres at \$100 per acre	-----	7,500.00
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The State Engineer of California, in his report of November 4th, 1918, to the San Luis Rey Irrigation District, made the following valuation per acre on reservoir sites in San Diego County:

Warner Reservoir Site:

6050 acres at \$150 per acre	- - - - -	\$907,500.00
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Merriam Reservoir Site:

200 acres at \$100 per acre	- - - - -	20,000.00
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In the case of the Sweetwater Company, or rather the San Diego Land & Town Company vs. George Neale and others, case 1189, docketed March 4, 1891, of San Diego County in condemning lands to be flooded by the construction of Sweetwater Dam, there was a verdict rendered by the Jury of \$350.00 per acre, amounting to \$122,657.50, plus cost.



Mr. John E. Boal, Vice-President and General Manager of the Sweetwater Company in a letter, December 31, 1917, stated that this case was later settled out of Court for \$84,000.00, plus attorney's fees, their cost amounting to about \$7500.00, making an aggregate of \$91,500.00.

The suit of the San Diego Flume Company vs. Waterman was brought in 1888 but the records of the County Clerk appear to show no judgment rendered and the case was dismissed, it being settled out of court, and there is no record in the County Clerk's office of the amount per acre paid. The records of the Company show, however, that in excess of 250 acres cost \$200.00 per acre.

The State Railroad Commission of California, which has jurisdiction over all public utilities, in Decision No. 536, dated March 28, 1913, gives \$144,000.00 as value of 1675 acres of land at Cuyamaca Reservoir, as a rate fixing value. In the same decision they allow \$112.00 per acre on 96.7 acres at La Mesa Dam and the same value on 4.36 acres at Encalyptus Reservoir also \$168.00 per acre for 26.2 acres at Murray Hill.

All the above represents the valuation of raw land, made either by the courts or state authorities who had the legal right under the law to determine valuation for sale purposes, and these valuations are irrespective of any other valuations.

In addition, the Government has put in a complete water system, concrete pipes, etc.; on the Indian land just condemned by the City of San Diego, all of which materially increases the value of the land and must be replaced.

Another angle to this case is that heretofore the Indians, in consideration of a right-of-way thru the Indian Reservation have been securing, free of any cost whatever, from the Cuyamaca Company, formerly the San Diego Flume Company, their total supply of water by gravity, and at an elevation sufficient to irrigate all of their farming lands without any expense whatsoever. Following is a record of the consumption of water by the Indians by years, for which we have any record:

1914	3,490,460	cubic feet
1915	4,786,891	" "
1916	8,712,100	" "
1917	7,185,102	" "
1918	6,705,968	" "
1919	6,397,740	" "
1920	7,658,610	" "



I am interested in seeing that the Indians get a square deal. I am also interested in this matter as the Manager of the Cuyamaca Water Company, which Company, and its predecessor, the San Diego Flume Company, has for 40 years or more been occupying a 50 foot right-of-way thru the El Capitan Indian Reservation granted by Act of Congress, and which has been furnishing, free of charge, water to the Indians from its system. We control a diverting dam on the San Diego River within the El Capitan Indian Reservation, and maintain, as well, a flume line the entire length of the El Capitan Indian Reservation.

The City of San Diego has included within its 1900 acres of El Capitan lands the right-of-way which our main flume line occupies by consent of Congress. I refer you to the 8th Section of the Act of Congress, approved January 12, 1891 (26 Stats, 714.) approved by the President December 29, 1891. Our flume extends for nearly six and one-half miles thru the 1900 acres above described. We furnish not alone irrigating water to many hundred consumers, but furnish the domestic supply of water for the City of El Cajon, East San Diego and La Mesa, as well.

We were not made a party to this suit and had no opportunity to present our case in court. Judge Andrews in rendering his decision said that his action in this condemnation proceeding was merely perfunctory, in that he was not seeking the actual value, and had not gone fully into the question.

I suggest that the Government ask that the case be re-opened, that the Cuyamaca Water Company, an interested party be allowed to present its case, for I am convinced, from the information I have at hand, that all of the facts were not presented to the court to show the value of the property being acquired from the Indians, and I am sure you desire and will see that their interests, as well as those private individuals interested, will be properly safeguarded.

Yours very truly,

ED FLETCHER

EF:KLM

P. S. Attached hereto is map showing the lands condemned by the City, also showing location of our Cuyamaca flume and pipe line that will be covered with water.



*Originals filed under U. S.*

( Copy )

DEPARTMENT OF THE INTERIOR

Washington

Jun 25 1921

Mr. Ed Fletcher, Manager,  
The San Diego Flume Company,  
Fletcher Building,  
916 Eighth Street, Between Broadway and E,  
P.O. Box 1412. San Diego, California.

Dear Mr. Fletcher:

Receipt is acknowledged of your letter of June 14, 1921, protesting against the decision of the court in the condemnation case of the City of San Diego vs. United States of America No. 31799, affecting the El Capitan Indian Reservation in California.

By letter dated June 20, 1921, the Department of Justice advised that on May 27, 1921, the case was tried and resulted in an award of \$75,000 in behalf of the Government and the Indians of the El Capitan Reservation for the lands to be taken, and that it is understood that the findings of fact and conclusions of law are being forwarded to this Department for approval before judgment is entered.

The statements presented in your protest will be carefully considered so that when the said findings of fact and conclusions of law are received, appropriate action thereon may be taken promptly.

Respectfully,

F. M. Goodwin

Assistant Secretary.



June 14, 1921.

Secretary of the Interior,  
Washington, D. C.

Sir:

As a citizen of San Diego, also as a party interested, I wish to protest against the decision of the court in the condemnation case of the City of San Diego vs. United States of America, No. 31799, held in San Diego California, May 27th, 1921, wherein Nineteen Hundred (1900) acres of land in the El Capitan Indian Reservation, including all improvements, such as houses, churches, school, water system and water rights, were condemned and judgment rendered for \$75,000.00, in conformity with Senate Bill No. 3646, an Act of Congress Granting to the City of San Diego certain lands in the Cleveland National Forest and the Capitan Grande Indian Reservation for dam and reservoir purposes for the conservation of water, and other purposes.

This valuation is ridiculously low. The United States District attorney who prosecuted the case, in behalf of the Indians, informed our Superintendent, Mr. C. Harritt, that it was a friendly suit and so far as I can see no real attempt was made to protect the Indians.

It is common knowledge that the lands are to be used for a special purpose - the conservation of water. Lands flooded for reservoir purposes have a value of their own, irrespective of any agricultural value. As proof of this, I submit the following:

The State Engineer of California who has jurisdiction over all irrigation districts, in his report to the La Mesa, Spring Valley and Lemon Grove Irrigation District, on August 12, 1919, made the following valuation per acre for sale purposes for the different reservoirs in the Cuyamaca System: in San Diego County, California:

Cuyamaca Reservoir	1074 acres	@ \$100.00	per ac.	\$107,400.00
Miles Reservoir No. 1	3.42 "	" 200.00	" "	684.00
Miles Reservoir No. 2	.42 "	" 400.00	" "	168.00
Grossmont "	15.7 "	" 100.00	" "	1,570.00
Eucalyptus "	4.71 "	" 150.00	" "	706.00
Eucalyptus lands condemned	2. "	" 688.00	" "	1,376.00
Murray Res. lands owned	119.71 "	" 200.00	" "	23,942.00
Conejos Res. rights				4,000.00



The following statement is made in the report:

"In valuing lands occupied by reservoirs or other structures, I have not been unmindful of the principle that lands peculiarly valuable for reservoir purposes or some other special purpose must be valued for that particular purpose not necessarily for some other less important use. This principle was established as early as 1879 by a decision of the United States Supreme Court in the case of Boom Company vs. Patterson (98 U.S.403). This was a case in eminent domain for the condemnation of certain small islands in the Mississippi River peculiarly adapted for the construction of a boom. The jury rendered a general verdict assessing the value of the land at \$9,358.33 but accompanied it with a special verdict assessing its value aside from any consideration of its value for boom purposes at \$300.00, and, in view of its adaptability for this purpose a further and additional value of \$9058.33. The Court reduced the verdict to \$5,500. The Plaintiff brought the case on writ of error to the Supreme Court of the United States where the judgment was affirmed. The following is quoted from the decision of the United States Supreme Court.

"In determining the value of land appropriated for public purposes, the same considerations are to be regarded as in a sale of property between private parties. The inquiry in such cases must be what is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied but with reference to the uses to which it is plainly adapted; that is to say, what is it worth from its availability for valuable uses? Property is not to be deemed worthless because the owner allows it to go to waste, or to be regarded as valueless because he is unable to put it to any use. Others may be able to use it, and make it subserve the necessities or conveniences of life. Its capability of being made thus available gives it a market value which can be readily estimated.

'So many and varied are the circumstances to be taken into account in determining the value of property condemned for public purposes, that it is, perhaps, impossible to formulate a rule to govern its appraisalment in all cases. Exceptional circumstances will modify the most



carefully guarded rule; but, as a general thing, we should say that the compensation to the owner is to be estimated by reference to the existing business and wants of the community or such as may be reasonably expected in the immediate future."

"There are numerous later decisions of the Courts which uphold all the principles of law stated in this leading case (Minnesota rate case 232 U.S. 352 etc.)".

The State Engineer of California on September 3, 1918, made the following valuation, for sale purposes, for lands for reservoir purposes in San Diego County, in his report to the Cardiff Irrigation District:

Lake Hodges:

Ownership 1197 acres at \$250 per acre	----	\$299,250.00
Floodage rights 120 acres at \$65	----	7,800.00

San Elijo Reservoir:

Ownership 262 acres at \$200 per acre	----	52,400.00
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San Dieguito Dam:

Ownership 75 acres at \$100 per acre	----	7,500.00
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The State Engineer of California, in his report of November 4th, 1918, to the San Luis Rey Irrigation District, made the following valuation per acre on reservoir sites in San Diego County:

Warner Reservoir Site:

6050 acres at \$150 per acre	- - - - -	\$907,500.00
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Merriam Reservoir Site:

200 acres at \$100 per acre	- - - - -	20,000.00
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In the case of the Sweetwater Company, or rather the San Diego Land & Town Company vs. George Neale and others, case 1189, docketed March 4, 1891, of San Diego County in condemning lands to be flooded by the construction of Sweetwater Dam, there was a verdict rendered by the Jury of \$350.00 per acre, amounting to \$122,657.50, plus cost.



Mr. John E. Boal, Vice-President and General Manager of the Sweetwater Company in a letter, December 31, 1917, stated that this case was later settled out of Court for \$84,000.00, plus attorney's fees, their cost amounting to about \$7500.00, making an aggregate of \$91,500.00.

The suit of the San Diego Flume Company vs. Waterman was brought in 1888 but the records of the County Clerk appear to show no judgment rendered and the case was dismissed, it being settled out of court, and there is no record in the County Clerk's office of the amount per acre paid. The records of the Company show, however, that in excess of 250 acres cost \$200.00 per acre.

The State Railroad Commission of California, which has jurisdiction over all public utilities, in Decision No. 536, dated March 28, 1913, gives \$144,000.00 as value of 1675 acres of land at Cuyamaca Reservoir, as a rate fixing value. In the same decision they allow \$112.00 per acre on 96.7 acres at La Mesa Dam and the same value on 4.36 acres at Eucalyptus Reservoir also \$168.00 per acre for 26.2 acres at Murray Hill.

All the above represents the valuation of raw land, made either by the courts or state authorities who had the legal right under the law to determine valuation for sale purposes, and these valuations are irrespective of any other valuations.

In addition, the Government has put in a complete water system, concrete pipes, etc.; on the Indian land just condemned by the City of San Diego, all of which materially increases the value of the land and must be replaced.

Another angle to this case is that heretofore the Indians, in consideration of a right-of-way thru the Indian Reservation have been securing, free of any cost whatever, from the Cuyamaca Company, formerly the San Diego Flume Company, their total supply of water by gravity, and at an elevation sufficient to irrigate all of their farming lands without any expense whatsoever. Following is a record of the consumption of water by the Indians by years, for which we have any record:

1914	3,490,460	cubic feet
1915	4,786,891	" "
1916	8,712,100	" "
1917	7,185,102	" "
1918	6,705,968	" "
1919	6,397,740	" "
1920	7,658,610	" "



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**Ed Fletcher Papers**

**1870-1955**

**MSS.81**

**Box: 58 Folder: 16**

**Business Records - Water Companies - Cuyamaca  
Water Company - Case Resulting From Hamilton Filing  
on Mission Gorge, through El Capitan Reservation -  
Correspondence with United States Secretary of the Interior**



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