

February Ninth
1 9 5 2

Mr. C. L. Byers
City Attorney
San Diego, California

My dear Mr. Byers:

You probably are aware that we got together on the price at El Capitan while you were absent.

The City council sent for me and brought up the subject.

Mr. Daniel drew up the agreement without showing it to me. I have no complaint to make but we can only deed such property as we own and the only difference of opinion as I understand between us is that Mr. Daniel insists upon a grant deed to the lands between the 160 and 200 foot contour. We have executed the grant deed but, first, we expected, and must have protection either from the city council by resolution satisfactory to our attorney to protect us in case the district should ever attempt to enforce its option, or,

Second, get a release from the district, or

Third, insert in the deed now with the Union Title Company the following exception - "Subject to the rights of the La Mesa, Lemon Grove & Spring Valley Irrigation District, if any" or words to that effect.

As our attorney's fees in the condemnation suits have amounted to over \$40,000, in making this sale we are only getting our money back which morally, if not legally, we are entitled to as costs of litigation, giving our land away and in addition giving up our hunting, fishing and boating rights which alone are worth the price, i.e. \$40,000, which the city are paying.

I have notified Mr. Daniel that the escrow expires on February 29th next, also the city council individually. After that new negotiations will be in order if the city is interested.

This letter is not written as a criticism or reflection on Mr. Daniel. He is looking after the city's interests

-2-

and I am trying to protect ours.

Glad to see you back again and if I can be of service in Washington directly or indirectly in helping along the El Capitan project do not hesitate to call on me.

Yours very truly,

EF:ASK



OFFICE OF
CITY ATTORNEY
CITY OF SAN DIEGO

SAN DIEGO, CALIFORNIA

C. L. BYERS, CITY ATTORNEY
H. B. DANIEL, ASSISTANT

DEPUTIES
M. R. THORP
GILMORE TILLMAN
HARRY S. CLARK
H. W. HACHE

Washington, D.C.,
March 2, 1932.

Colonel Ed Fletcher,
1020 - Ninth Street,
San Diego, California.

Dear Mr. Fletcher:

You will perhaps be interested in knowing that a favorable report has been obtained from the Bureau of Indian Affairs concerning the matter of the acquisition of the necessary lands to enable the City to proceed with El Capitan when the bill is finally enacted. It is my best judgment that the report in no way interferes with, or is inconsistent with, the City of San Diego's paramount right, as established by the Courts of California, and I am very well pleased with the entire matter so far.

I wish to express my appreciation of your aid and assistance to the City in this and other matters.

With sincere feelings of esteem,

C. L. Byers
C.L. Byers.

March Twenty-fifth
1 9 5 8

Mr. C. L. Byers
City Attorney
San Diego, Calif.

My dear Mr. Byers:

Confirming my statement to you I have already acquired options for a year on ten or twelve properties in San Pasqual Valley with the idea of getting them cheap, rendering a service to the city and a small profit to myself, if the city sees fit to take action, the idea being to acquire all the riparian rights and, at some future date, complete the Sutherland dam and build Pamo, with the right to pump the underground waters from the San Pasqual Valley which valley, in my opinion, is the greatest underground source of water supply in San Diego County.

Now, in that connection, Mr. Savage still has in his head the idea that a super Hodges Dam with all the lands to the 595 foot contour should be acquired. I consider any super Hodges dam as planned by Mr. Savage an evaporation pan and we will lose at least seven million gallons of water a day, net safe yield in perpetuity if the super Hodges dam is built.

However, I run against several people who would prefer to sell all their riparian rights and keep their ranch. These are above the 395 foot contour. One or two are below the 395 foot contour and prefer to sell their riparian rights and also give floodage rights to the 595 foot contour still keeping their ranches.

A very large amount of money can be saved by accepting such rights in lieu of buying the land. Over half the land flooded by Murray Reservoir when full are only perpetual floodage rights. We accomplish the same purpose for less money and I have in mind the property owners paying the taxes.

I write the above to you personally for your information.

Would you recommend, where it is possible, the acquisition of the riparian rights outright for floodage rights also where necessary to the 595 foot contour rather than outright purchase. If you agree with me in this matter I would appreciate the necessary wording that would legally transfer all water rights and the right to flood reserving only to the property owner from whom we get the riparian rights to pump such water for his own land as may be available.

I would appreciate your point of view in this matter at an early date.

Yours very truly,

April Seventh
1 9 3 5

Mr. C. L. Byers
City Attorney
San Diego, Calif.

My dear Mr. Byers:

There is one very valuable water right covering 160 acres in the San Pasqual Valley. Way back in the 80's the owners of the property deeded all riparian rights to the Pamo Water Company reading as follows:

"I hereby grant and release all rights as riparian owner for myself, heirs and assigns and empower said company its successors and assigns perpetually to impound and divert and carry the waters of said stream."

The Pamo Water Company deeded their rights to the Linda Vista Irrigation District. For Henshaw and myself I purchased the Linda Vista Irrigation District holdings acquiring in that way all the Pamo Water Company holdings. I had a general deed from the Linda Vista Irrigation District made to the Volcan Land and Water Company as I remember it and dissolved the Linda Vista Irrigation District. The Volcan Land and Water Company then deeded to the San Diego County Water Company.

I assume that the San Diego County Water Company in selling to the city transferred all riparian rights in the San Pasqual Valley and on the San Pasqual, Santa Isabel and Bernardo River, all of which are one.

Do you think that this water right as worded to the Pamo Water Company is legal or will it be necessary to get a new deed, also, did you in your contract with the water company acquire all rights which the water company had on the river?

Very sincerely yours,

EF:ASK

P.S. The legal description of the property where the riparian rights were transferred to the Pamo Water Company and which you should have today is The s¹/₂ of Section 26, Township 15 South Range 1 West in San Pasqual Valley. If these rights are sufficient to protect the city it will save considerable money to the city eventually. E.F.

OFFICE OF
CITY ATTORNEY
CITY OF SAN DIEGO

San Diego, California

April 24, 1934.

Col. Ed Fletcher,
San Diego, Calif.

My dear Col. Fletcher:

As you know, The City of San Diego in 1925 voted the issued o \$4,500,000.00 of municipal improvement bonds, for the purpose of the construction of a water development project on the San Diego River. Subsequent thereto and after many years of delayed litigation, the City finally succeeded in commencing the construction of what is known as the El Capitan Dam. The contract for the construction of the dam was let in April 1932. Prior thereto the city had expended of the \$4,500,000.00 approximately \$2,000,000.00 in connection with the project. On said date we had remaining in the bond fund \$2,350,000.00 of El Capitan Dam Bonds. These bonds were sold and delivered to the Reconstruction Finance Corporation for the purpose of providing funds to complete the work. In addition thereto approximately \$999,000.00 of cash was made available by The City of San Diego for the same work. At that time the estimated cost of the project was such that the entire job could be completed with the proceeds of the sale of bonds to the Reconstruction Finance Corporation, together with the \$999,000.00 made available by the City.

As the work progressed it became apparent that the estimates of quantities made by our engineers was somewhat in error, and that no estimate whatever had been prepared and submitted to the State Engineer for approval for the construction of a spillway extension. The contract was let on a quantity estimate until price basis, and it has not developed that the total cost of the project will be increased to a point where the City of San Diego will lack approximately \$500,000.00.

In an effort to obtain aid from the United States, the City of San Diego filed an application with the Public Works Administrator under the terms of the National Industrial Recovery Act, requesting a grant from the United States of approximately \$500,000.00, this amount being estimated as approximately 30% of the cost of labor and material to complete the job from October 1, 1933.

The application was presented first to the State Advisory Board, remaining there some two and one-half months, then being forwarded to Washington, with recommendations. It appeared that the policy of the government was first to limit a grant to 30% of the cost of labor and material from the date of approval of the application. Consequently the three months' period elapsing between the filing of the application and its consideration by the Board in Washington reduced the amount for which the city might be eligible. In addition thereto, the United States apparently adopted a policy which in effect placed the City of San Diego on the ineligible list, the reason given

COPY

being that the project to date had been financed with the Reconstruction Finance Corporation moneys. I attach hereto copy of my communication addressed to the Administrator, and a copy of his reply relative to some of the questions which arose after the application had reached Washington.

I was required to return to the City of San Diego from Washington prior to obtaining any final decision in the matter, and I am now informed that the application was amended after I had arrived home to the extent that the city now requests a grant of 30% of the cost of labor and material in connection with the construction of a pipeline from the damsite to a connection with the city's pipeline at Lakeside, and in connection with the construction of a highway around the dam and reservoir site; the grant to be further limited apparently to not to exceed 30% of the amount for which we are short.

I cannot give you accurate figures at the present moment upon the amount of money which we expect to have remaining in the fund after the completion of the dam and spillway extension. The uncertainties of quantity estimates do not permit of accurate estimates. It is my belief and hope that after completion of the dam and spillway extension there might remain in the fund approximately \$200,000.00, to apply on the cost of the pipeline and road. The cost of the pipeline has been estimated by our engineer at approximately \$550,000.00, and the road at \$137,000.00, which if correct, would require us to raise approximately \$487,000.00. It is my personal belief that the estimate for the cost of the pipeline is too small, inasmuch as it was made several years ago, and inasmuch as it since then the cost of steel had gone up considerably. I understand it is contemplated using electric welded steel pipe.

However, that may be, it appears from the ruling written by Philip B. Fleming, Acting Deputy Administrator, that the city at the present time may expect a grant only on condition that we secure funds from some other source than the Reconstruction Finance Corporation to provide for our share of the cost of the additional work yet to be performed. That would mean that the city would raise the funds in either one of two ways - by calling a special election and voting the funds necessary, or by entering into a contract with the United States under the provisions of section 99 of the City Charter, for a period of five years, under the provisions of which we would agree to repay to the United States a sum to be loaned in an amount sufficient to furnish the funds necessary to complete the job. Another method which perhaps is possible would be to seek a loan from the United States, to be repaid strictly out of water revenues, under the terms of a contract between the United States and the City of San Diego. This latter possibility conflicts with other charter provisions, and would take some considerable study before such agreement could be prepared. However, I am sure that a contract for five years could be entered into, the only question being in the necessity for levying a tax each year to provide funds for repayment to the United States.

The matter of issuing bonds is uncertain, for the reason that the taxpayers at present look with disfavor upon ~~proposition~~ any proposition of incurring additional indebtedness. If we are going to be required to vote bonds, steps should be taken in the immediate future so that the proposition could be submitted at the August election.

The matters herein noted require a discussion in quite some detail, and in the event that you are further interested, I shall be glad to spend more time in the preparation of a communication which would be more comprehensive than the information contained herein.

CLB/S

Yours very truly,

C. L. BYERS City Attorney

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DAY LETTER	DEFERRED
NIGHT MESSAGE	NIGHT LETTER
NIGHT LETTER	WEEK END LETTER

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J. C. WILLEVER, FIRST VICE-PRESIDENT

Send the following message, subject to the terms on back hereof, which are hereby agreed to

C. L. BYERS CITY ATTORNEY
SAN DIEGO CALIFORNIA.

WASHINGTON D. C. MAY 8, 1934

A.M.FEREBEE SIXTY THREE TWELVE DEPARTMENT INTERIOR BUILDING REQUESTS AIRMAIL COPY LEASE AGREEMENT LAKE HODGES SUSTEM INDICATIONS POINT THEY WILL DEMAND LESSORS SIGN CONTRACT FIVE YEAR REVENUE WARRANTS OF CITY AS SUGGESTED IN YOUR LETTER ARE SATISFACTORY TO BOTH RFC AND PWA IF LEGAL SEND ME TUESDAY AIRMAIL LETTER WILLARD HOTEL THE FOLLOWING INFORMATION ARE WARRANTS ONLY AGAINST WATER REVENUES OR BOTH REVENUES AND GENERAL OBLIGATIONS OF CITY GIVE FULL INFORMATION AS TO LEGALITY SUCH WARRANTS STOP HAVE CONTACTED EXECUTIVE LEGAL AND FINANCIAL DEPARTMENTS PWA EVERYTHING FAVORABLE COLONEL E W CLARK REPRESENTING EXECUTIVE SUGGESTS AMENDING APPLICATION AND ASK FOR SIX HUNDRED EIGHTY SEVEN THOUSAND FOR NEW PIPE LINE AND ROAD ONLY AND SECURING GRANT OF THIRTY PERCENT BALANCE PAID BY CITY REVENUE WARRANTS RFC BILL PASSED SENATE LAST WEEK WILL PASS HOUSE AND BECOME LAW PROBABLY THIS WEEK APPROPRIATING FIFTY MILLION FOR UNFINISHED PROJECTS LIKE ELCAPITAN PWA ABSOLUTELY WITHOUT FUNDS TODAY BUT LARGE APPROPRIATIONS UNDOUBTEDLY WILL BE AVAILABLE BEFORE CONFRESS ADJOURNS BOTH URGE EARLY AMENDED APPLICATION WRITING FULLY

ED FLETCHER

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ED FLETCHER

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OFFICE OF
CITY ATTORNEY
CITY OF SAN DIEGO

SAN DIEGO, CALIFORNIA

May 8, 1934.

C. L. BYERS, CITY ATTORNEY
GILMORE TILLMAN, ASSISTANT

DEPUTIES
H. B. DANIEL
JAMES J. BRECKENRIDGE
HARRY S. CLARK
ALVIN BARANOV

Mr. Ed Fletcher,
Hotel Willard,
Washington, D. C.

Dear Col. Ed:

Your telegram relative to both Hodges and El Capitan applications received, and I hasten to reply in so far as I can at the present moment.

First, with reference to Hodges. Just yesterday, during a discussion in the Council, it appeared that a more satisfactory arrangement for the repair of Hodges Dam can be accomplished through the SERA. The City now has on hand \$20,000 in cash, John Treanor is providing \$25,000 worth of material, the city is to transfer \$30,000 from another fund over to this repair work, thus providing approximately \$75,000 which will be used for material and engineering superintendence. The balance of the cost of the project represents labor, and through conferences here with John Bacon it appears that the labor may be furnished through the SERA.

The above arrangement is progressing, and I expect something definite within a day or so on it. It will permit us to start work within the next couple of weeks, and will be more satisfactory than either transferring Sutherland bond money or voting new bonds.

I am convinced that the PWA will not consider making us a loan based on contracts between the City and the San Diego County Water Company unless the San Diego County Water Company can be made a direct party to the agreement to repay the amount to the government. Perhaps you do not know it, but I have several times in the past endeavored to make such an arrangement with the Water Company. You may take it from me that no such contract can be negotiated, so that there is no use of your wasting any time in Washington on the Hodges project.

In so far as El Capitan is concerned, as I sometime before stated to you, it might be possible for the City to use warrants over a five-year period, the war-

Mr. Ed Fletcher - 2.

rants to be paid from a special fund, being the proceeds from revenues received from the El Capitan project. The city has no authority to issue any warrants which will be general obligations of the city, nor which will represent proceeds from revenues received from the entire water system. The case of Garrett v. Swanton, 216 Cal. 220, settled the proposition that a city in California may not incur a debt exceeding the income and revenue for any fiscal year, without submitting the matter to a vote of the electors. Further, that a contract to deliver warrants out of revenues of the entire water system for the purpose of purchasing additional equipment will be considered a debt. The only escape from such decision is that the El Capitan project be considered as a self-liquidating project entirely separate from the balance of the water system. As a matter of fact we were able to convince the RFC officials that such was the case. We did set up for the RFC, when obtaining our loan two years ago, the El Capitan project as a separate unit. In other words, the picture given was that the dam and reservoir would be constructed at the El Capitan site, a separate main pipe line from the damsite to a connection with the University Heights reservoir; that a separate account be kept of the water conserved, sold and delivered from the El Capitan reservoir.

It is my belief that in order to secure funds for the main pipe line that warrants of the city might be issued, payable solely out of revenues received from the sale of water from the El Capitan reservoir. This will be a very difficult proposition to put over, for the reason that, as you know, it may be five years before there is sufficient runoff to provide water for sale, and it is very problematical if the revenues for the first few years of operation will exceed the operation and maintenance cost. As you further know, there is no great rush about constructing the main pipe line; first, it may be several years before any water is impounded; second, we have sufficient cash on hand to fully complete the dam, reservoir and spillway extension, so that early this coming winter the by-pass tunnel may be plugged and water may be impounded, in the event that there is any heavy runoff; third, in the event that we are fortunate enough to have a flood season, and the reservoir becomes filled, we may still utilize the water without the pipe line by simply spilling the same into the subsurface basin below the dam. Our pumping equipment at Riverview Farms has sufficient capacity to utilize some five or six million gallons a day. So you see it is not vital that the pipe line be immediately constructed. However, it is no doubt advisable to initiate proceedings before the United States so that we may take advantage of the next appropriation. No one knows how long the administration will continue its present policy in aiding the financing

Mr. Ed Fletcher - 3.

this type of project; consequently we should use due diligence in the matter.

In my opinion no proposition to vote bonds or transfer any cash from the Sutherland Fund should be submitted until perhaps next November election. Meantime, our application is still pending, and our best efforts may be used to secure a loan to be repaid from warrants. At the end of October we will know definitely the amount of cash left in the El Capitan Bond Fund after the completion of the dam, reservoir and spillway extension. At that time we can amend our application to secure a one-third grant of the cost of the pipe line and road, and if we do not have sufficient funds remaining to pay for our 70% of the cost we can then vote new bonds for the balance.

I trust this information will be of some assistance to you, and I thank you on behalf of the city for your efforts in the matter.

Yours very truly,

C. L. Byers

C. L. Byers
City Attorney.

CLB/S

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FIRST VICE-PRESIDENT

1207-A

79 DL=1

ACCT'G INFM.

TIME FILED

Send the following message, subject to the terms on back hereof, which are hereby agreed to

To C L BYERS=

May 10th 19

Street and No. CITY ATTNY=SANDIEGO CALIF=

Huston

Place

LETTER EIGHTEEN RECEIVED THANKS BOTH PWA AND RFC OFFICIALS
 URGED IMMEDIATE APPLICATION SUCH DEMAND FOR MONEY CAN YOU NOT
 APPLY TOO BOTH SOON AND TAKE BEST OFFER LATER COULD NOT
 REVENUES FOR WATER SOLD FROM MISSION VALLEY PIPE LINE WHETHER
 WATER CAME FROM EL CAPITAN DAM OR PUMPING TO SWEETEN IT UP BE
 CONSIDERED ONE SELF LIQUIDATING PROJECT AND MAKE A GOOD SHOWING
 IN MAKING APPLICATION WIRE ANSWER TODAY IF POSSIBLE NEWYORK
 TOMORROW NIGHT BILTMORE HERE TUESDAY WILLARD=

ED FLETCHER=

Sender's address
for reference

WESTERN UNION GIFT ORDERS SOLVE THE PERPLEXING
QUESTION OF WHAT TO GIVE.

Sender's telephone
number

The Willard, Washington, D. C.
May 11, 1934

Honorable C. L. Byers, City Attorney,
City of San Diego,
San Diego, California.

My dear Mr. Byers:

Referring to your letter of April 24 to me, re El Capitan financing. On my arrival in Washington, after attending to my own business, I called on Mr. Schram of the R.F.C., who recently visited El Capitan Dam with me, as you know. He called into conference the Legal Department, Mr. Whitaker, also Mr. Faber. It was the opinion, unanimously, that the warrants, if legal, covering a five year period, would be fully as acceptable as long term bonds, particularly if they were revenues warrants, an obligation on the water revenues of the city. So I wired you for the information and hope to receive it before I leave for the West next Tuesday. The R.F.C. will have plenty of money to finance the completion of El Capitan on a 4% basis, with revenue warrants as security if desired. Mr. Schram is my authority that the new bill which has passed the Senate will pass the House, giving at least fifty million, and probably a hundred million, to clean up the financing of projects the R.F.C. have heretofore helped.

I then called on Major Oldberg and Mr. Sherman, of the Engineering Department of the PWA. They immediately with me contacted Mr. B. W. Thoron of the Finance Department, who saw no reason why revenue warrants could not be accepted if these moneys were secured from PWA.

We then contacted J. A. Newton of the Legal Department and tentatively he approved. With Mr. Ferree we contacted Col. E. W. Clark of the Executive Department and it was he who suggested that the application be amended re PWA financing for El Capitan along the following lines: Make application only for new work; the construction of the pipe line \$550,000 and highway \$137,000; total \$687,000. Ask for as much money as you want up to \$687,000. 30% of it will be a grant, the balance to be in the form of a loan with five year revenue warrants. If you reduce the amount of the loan you reduce the amount of your grant. Ignore any funds on hand after the spillway is paid for; also dam itself. In other words, make no mention of any surplus you might have on hand. If you only want \$400,000, 30% of that would be a grant; the balance a loan. In other words, you don't have to make application for the full amount, i.e. \$687,000.

Colonel Clark definitely stated he would approve this procedure if approved otherwise. The engineers, financial and legal departments, want a detailed estimate of the cost of the project for which a loan and grant are desired; statement last five years of operating expenses, revenues and stress the future estimate of revenues after completion of works. A clean cut exposition showing the City's authority to issue and pledge these revenues; they want to know if they are just water revenue warrants, or are they, in addition, an obligation of the City, irrespective of water revenues? They suggest our stressing the point that

the point that you should mention the added necessity of completing this work owing to its beneficial nature to the La Mesa District as well. There is no money available now, but before Congress adjourns there is every reason to believe there will be at least \$1,300,000,000 more put in the hands of the PWA for loans; yet there is such a demand for money, the quicker the application is made to one or the other, of the Government's agencies, the better. It might be advisable to make the application to both; you are the better judge. Naturally, the PWA is more advantageous, with the grant.

The Hodges matter is certainly a PWA matter, if you cannot handle it through Mr. Bacon.

Please inform Mr. Savage that all the dead Indians have been removed from the El Capitan Reservoir site excepting 11, the Piper family, deceased. If the Piper family will not allow their dead to be removed, they will be encased in concrete as is. Temporary shelters will be provided for the three families who refuse to move; the location will be nearby, so when the water comes up they will have a place to go to for temporary shelter until they make up their minds where they are going to go permanently.

My address will be Willard Hotel until next Tuesday night, if I can be of any further service.

A copy of this letter has been sent to each of the Councilmen.

Sincerely yours,

Ed Fletcher

1020 9th Ave.

September 8th, 1934

Mr. C. L. Byers
City Attorney
San Diego, Calif.

My dear Byers:

Mr. Cosgrove made a statement publicly that irrespective of the Paramount right on the San Diego River the secondary rights were valuable. Can you write me a letter confirming this?

It will not in any way be used against you or Cosgrove under any conditions but I want to convince a certain party that below El Capitan Dam there are certain rights which the city do not own. I would gratefully appreciate this.

Yours very truly,

EF:ASK

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OFFICE OF
CITY ATTORNEY
CITY OF SAN DIEGO

SAN DIEGO, CALIFORNIA

October 13, 1934.

C. L. BYERS, CITY ATTORNEY
GILMERE TILLMAN, ASSISTANT

DEPUTIES
H. S. DANIEL
JAMES J. BRACKENRIDGE
HARRY S. CLARK
ALVIN BARANOV

Col. Ed Fletcher,
1020 9th Avenue,
San Diego, Calif.

My dear Mr. Fletcher:

I hope you will pardon me for such a long delay in answering your letter of September 8th relative to certain secondary rights on the San Diego River. Your communication became misplaced some place in the shuffle, and I just now unearthed it.

However, I did have a talk with Mr. Cosgrove about the matter, and he said that he would be very glad to join with me in a public statement to the effect that there are certain valuable rights along the river in addition and separate from the City's paramount rights. I will attempt to dictate a statement on the subject shortly and secure Mr. Cosgrove's signature to it.

Yours very truly,

C. L. Byers
C. L. Byers,
City Attorney.

CLB/M

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Ed Fletcher Papers

1870-1955

MSS.81

Box: 3 Folder: 15

General Correspondence - Byers, C.L.



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