

F. & W. THUM COMPANY  
123 COLUMBIA STREET  
PASADENA  
CALIFORNIA

January 27, 1919.

My dear Mr. Fletcher;-

We have just heard from Mr. Bach in regard to our fifth tentative agreement and he expresses satisfaction with it in all particulars but two. These two points we believe we could adjust in a short time by going down and talking the matter over with him and Mr. Sweet. We wish to have our proposition the same as theirs if possible. We believe our way is about as good for the riparian owner and better for the Water Company than theirs.

Don't you believe that our "fifth" tentative agreement is about the right thing? Your form, as prepared by Huber, we are quite sure the Commission will not endorse as fair. If the Water Commission will advise us that the agreement prepared by Mr. Huber is as fair as the last one we submitted, the F. & W. T. Co. will have nothing more to say and will gladly submit.

Yours sincerely,

F. & W. Thum Company,

By W. T.

To  
Mr. Ed. Fletcher,  
San Diego, California.

January 27, 1919.

Mr. William Thum,  
123 Columbia Street,  
Pasadena, California.

My dear Mr. Thum:

I am in receipt of your revised copy of the agreement and same has been sent to Mr. Huber urging him to take the matter up with the Water Commission and let us get a final expression from the Commission of what they will be satisfied with.

I have urged Mr. Huber to take it up as soon as possible for I feel like the quicker we get the thing in shape the better for all concerned.

I am glad you are out again and am sorry to have missed seeing you in Pasadena.

Yours truly,

F-F

JAN 27 1919

✓ 1/29/19

My dear Mr Fletcher:

In reply to your letter of the 27<sup>th</sup>. All the F. & W. T. Co. really wants is an agreement that the Water Commission will advise us is fair to both sides. Naturally we are very anxious to have its terms satisfy Mr. Finkeus. If the Commission can take the time to read your (Huber's) Proposal agreement #B, our fourth and fifth tentative agreement and our comments on S. S. & F. opinions in regard to them, they will get Mr. Finkeus' and our own attitudes in regard to the whole proposition, and easily frame an agreement satisfactory to themselves and at least acceptable to all parties in interest.

We shall try to interview Mr. Johnston on these lines as soon as he returns to L.A. which will be Friday or Saturday probably.

Yours sincerely  
F & W Thum Co

JAN 30 1919

San Diego, Calif.  
February 3, 1919  
(Feb. 1, 1919)

Messrs. F. & W. Thum Co.  
Pasadena, California.

Gentlemen:

Enclosed find copy of a letter received today from W. L. Huber, which is self-explanatory. Mr. Huber is on the staff of the State Engineer of California, and the State Engineer's Hydraulic Engineer as well. He is highly thought of by the State Water Commission, as well. Feeling sure Mr. Huber is fair, I have asked him to represent us in making the contract.

I am willing to sign any contract that the State Water Commission approves, and am sure Mr. Henshaw will, also. There has never been a time when Mr. Murray would not sign any contract that Mr. Henshaw and I would sign.

I think it is up to you to have Mr. Bennett write your final objections in definite form.

Yours very truly,

EF/bm

encl

C o p y

William Thum  
133 Columbia St.  
Pasadena, Calif.

February 5,

1 9 1 9

Mr. Ed Fletcher,  
San Diego, Cal.

Dear Mr. Fletcher:-

Received your letter of the third last night.

Ever since we submitted our fifth tentative agreement, in fact, for a considerable time before that -- the F. & W. Thum Company have been ready to leave all points of difference to the Water Commission. Hugh Thum is also ready now.

We only ask that in order to have our say, the Water Commission go over the following material, most of which has at one time or another been presented to them, ie.

F. & W. Thum Company's Fourth and Fifth tentative agreements.  
Ed Fletcher's (Huber) Proposal Agreement #B.  
F. & W. Thum Company's Comments on Ed Fletcher's Agreement #B.  
Copy of F & W Thum Company's letter to Hugo Thum, commenting on the criticisms of Timkin's interests on "Fourth Tentative Agreement."  
Any important facts (as far as available) brought out in the pending case 20096 between Cuyamaca Water Company and Riparian owners.

Mr. Timkin's attorneys see what they believe to be a serious defect in the arbitration clause; but we do not see any particular danger in it. In other respects they believe the "fifth tentative" would answer the purpose.

We have not yet heard from Mr. Bach in regard to the Huber agreement. Shall urge him to hurry and get into direct communication with Water Commission. As soon as W. T. feels a little better we may run down to see him.

Mr. Bennett advises us that there is no material objection to Mr. Huber's modifications of the "second right", which modification reads "would not benefit the party of the first part and the taking of which would cause no injury to the party of the first part."

Mr. Bennett does not object to Mr. Huber's insertion of "for beneficial use" and "riparian" in our form of the second right. In fact, he has approved of our letter throughout. But he thinks the fifth tentative form of agreement is the right one to adopt. We trust that all parties concerned will leave this question also to the commission

to decide.

Thought you told us Mr. Murray would not even read a long contract, much less sign one. Glad to hear that he will not stand in the way.

Yours sincerely,

(Signed) F & W. Thum Co.

WILLIAM THUM  
COLUMBIA ST.  
PALM BEACH, CALIFORNIA

2/6/19

Dear Mr. Fletcher:

Enclosed is copy of letter we sent to Water Commission. Thought it best to write them something to show that we are more than ready and that Mr. Tinkens is almost ready. We would like to see this matter concluded in order better to do our mighty little bit toward easing the Radical-Conservative clash that now impends. Thank you, but our "back country" trips must remain in the realm of dreams for a while yet.

Yours sincerely  
William Thum

FEB 8 - 1919

Copy

February 6,

1919

Mr. A. E. Chandler, Chairman,  
State Water Commission,  
Sacramento, California.

Dear Sir:-

We just received word from Mr. Fletcher requesting us to hasten the completion of our criticism covering the proposal agreement prepared by Mr. W. L. Huber. This we have done and our remarks will doubtless be forwarded to him by Mr. Fletcher.

We wrote Mr. Fletcher that the F & W Thum Company has been ready for some time to leave all points of difference between it and the Water Company for the Water Commission to decide without reserve. He writes that he is willing, and Hugo Thum is also ready now.

In order to get a hearing we ask only that the Water Commission go over the following material, copies of which, except as to the suit, are enclosed :

F. & W. Thum Company's Fourth and Fifth Tentative agreements.  
Ed Fletcher's (Huber) Proposal Agreement #B:  
F. & W. Thum Company's comments on Ed Fletcher's Agreement #B.  
F. & W. Thum Company's letter to Hugo Thum, commenting on the criticisms of Timkin's attorneys on the Fourth Tentative Agreement.  
Any important facts (as far as available) brought out in the pending case 20096, 9/35/13, between Cuyamaca Water Company and Riparian owners.

Mr. Timkin's attorneys object to one paragraph of the arbitration plan as proposed, but they have not yet commented on the Fletcher-Huber Proposal Agreement No. "B". We have suggested that they communicate with you or Mr. Fletcher, so as to save time.

What we all seem to want is an agreement that is as fair as practicable to the public, the Water Company and the riparian owners -- one that will serve as a model generally. Both our attorney, James S. Bennett, and we ourselves believe the "fifth tentative" agreement has the great advantage of making it easier for the opposing interests to get together, because it leaves more to the Commission to decide. We certainly would like to see something like it tried in a number of cases -- especially in the present instance. We don't have to be modest in our wants as long as there is a commission to which we may submit them.

Your services will surely be appreciated by all concerned and not least by

Yours sincerely,

(Signed) F. & W. Thum Co.

February 17, 1919

Messrs. F. & W. Thum Company,  
123 Columbia Street,  
Pasadena, California.

Gentlemen:-

I have just received word from San Francisco that the California State Water Commission have taken up the matter of riparian water rights agreement with Mr. Bohnett, the Commission's Attorney. It will be some few days before we will get any further action, I suppose.

Yours very truly,

EE/bm

February 17, 1919

Messrs. F. & W. Thum Company,  
133 Columbia Street,  
Pasadena, California.

I have just received word from San Francisco that

February 21, 1919.

F. & W. Thum Company,  
133 Columbia Street,  
Pasadena, California.

Gentlemen:-

Answering yours of the 20th, will say that our office force in checking over the old maps found a map which showed that we owned the riparian rights in a number of places along the San Diego River, acquired by the San Diego Flume Company long before we ever bought the system. The early records of the San Diego Flume Co., were never turned over to us. They tried to hold us up for \$1000 after we bought the system and paid them cash. We supposed we bought all the records when we bought the system and refused to <sup>be</sup>blackmailed for a thousand more.

I had Mr. King go down and get a copy of the records and mail some to you before I had a chance to read them myself; in fact, I have given it very little thought.

What is your opinion? I am checking up now to see just how far they extend. I don't think it affects the Gil-lons place, but I do believe it affects the Tinken ranch west of Lakeside.

Yours very truly,

F-mk

2/24/19

Ed. Fletcher

San Diego

Dear Mr Fletcher:

We are in receipt of

yours of the 21<sup>st</sup> regarding riparian rights. That was queer kind of business, to ask you \$1000<sup>00</sup> extra for the regular records of the Flume Company.

Please substitute the name of the "San Diego Flume Company" for our name at end of sixth line in your letter. We would hate to have any one see a copy of your letter, which makes it appear as though the F. W. Thum Company held you up.

(over)

FEB 27 1919

On the face of things it surely looks as though the owners coming under the agreement have no riparian rights. We will take up this feature of the case before the week is out. In the meantime you may have the remainder of the data of the same nature compiled. Please send copies as soon as ready. Don't forget to erase our name and replace it with that of the Flume Company

Yours sincerely  
F. W. Thum Co

That San Diego-Yuma highway will doubtless be a success from a service point of view as well as in other respects.

WILLIAM THUM  
123 F. LUMDIA ST.  
SAN DIEGO, CALIFORNIA

3/4/19

Dear Mr. Fletcher:-

Mr. Johnstone set a date for a general meeting at your office on the 18th and 19th of this month if agreeable to you and Mr. Bach, on the matter of water rights. It will doubtless be all right for us. These dates were tentatively fixed subject to revision as the time draws near

Yours sincerely  
F. W. Thum Co

MAR 5 1919



March 5, 1919.

Mr. William Thum,  
123 Columbia Street,  
Pasadena, California.

My dear Mr. Thum:

I have been asked to be in Sacramento on legislative matter from the 16th to the 20th. It is just possible that I could meet you up there and get Bach to go up, but I don't see why there is any use in injecting Mr. Bach in this matter. He is only an employee of Mr. Timken and if the Water Commission will go ahead and draw up that agreement and it is satisfactory to you and to me, I know that I can make a similar agreement with Mr. Timken.

I am through trying to get anywhere with Mr. Bach and Mr. Sweet. However, if you want to make one more trial at it all is well and good. I do not see any use in it, as it will take a lot of time and get nowhere.

My understanding is that you and I have agreed to let the Water Commission draw up that contract and that both of us will go the limit to see that whatever the Commission draw up, we will put it through. Now why <sup>not</sup> let them do it?

I am positive that anything that the State Water Commission draw up and formally approve in writing, will

2#

March 5, 1919.

Mr. W. Thum,

be signed by Mr. Timken, so what is the use of monkeying with men of such small caliber. It is only a waste of time.

H Hoping this will be satisfactory to you.

Yours very truly,

F-F

WILLIAM THUM  
110 COL BIA ST.  
PASadena CALIFORNIA

Ed. Fletcher

San Diego

3/5/19

My dear Mr. Fletcher:

In reply to your letter of the 5<sup>th</sup>, I believe Mr. Johnstone said the Commission was coming down during the week beginning the 17<sup>th</sup> - any way - and would like to meet all interested parties again. We would like to have Mr. Timken know just what we are doing in the matter. Mr. Bach understands that we intend to accept the agreement as framed by the Water Commission. Will see Mr. Johnstone on Monday and write you again.

Yours sincerely

F W Thum Co

WILLIAM THUM  
123 COLUMBIA ST.  
PASADENA, CALIFORNIA

3/10/19

My dear Mr. Fletcher:

We saw Mr. Johnstone and he thought that possibly the proposed meeting at your office could be dispensed with. Will write again on the subject.

Later in the week or first of next week will send the Commission and you a copy of what I learned regarding the old agreement of 1888 between El Cajon Valley Company and the Flume Company.

If Mr. Timken is still in S.D. we will be there along the 20th it might be well to have the meeting

March 11, 1919.

F. & W. Thum Company,  
123 Columbia Street,  
Pasadena, California.

Gentlemen:

Answering yours of the 10th, do not misunderstand me. I am perfectly willing to meet Mr. Timken and I will be more than pleased to see the Commission here and appreciate the motive that prompted them to offer to come.

I am satisfied that Mr. Timken will sign any agreement that the Water Commission draw up and any agreement so

to make him acquainted  
with the personnel of the Commission.  
I think it would do a great  
deal to quiet any fears he  
may have.

By the way, Hugo could  
not sign any agreement that was  
not also offered to all others  
coming under the 1888 agreement,  
and he would want the same  
terms as Mr. Timken receives,  
that is, unless all of the  
complainants are treated the  
same by the Commission. If  
Mr. Timken doesn't care about  
the meeting we see no reason  
why it cannot be dispensed with unless  
the Commission itself thinks it best,  
Yours sincerely,  
H. W. Thum Co

sign up with you, Mr. Hugo Thum can count on it we will  
let the others sign who come under the 1888 agreement.

With kind personal regards.

Very sincerely yours,

3/20/19

My dear Mr. Fletcher:

We received a copy of agreement as prepared by Mr. Stearns. This as we understand it is the same as the one framed by the Water Commission, but having an additional clause eliminating the agreements of 1888 and one covering the El Monte Pumps. We shall see Mr. Johnston in regard to a couple of points and rewrite it accordingly, to suit our case. Unless you should come up (to L.A.) before, I could go, to S.D. Friday night and see you Saturday morning for the purpose of getting together on the agreement to a point where it can be signed by all.

San Diego, Calif.  
March 24, 1919

Mr. William Thum,  
123 Columbia Street,  
Pasadena, Calif.

My dear Mr. Thum:

I am in receipt of yours of the 20th and have noted contents. I think it is unfortunate to be compelled to put in that agreement the two clauses as suggested by Mr. Stearns after the Water Commission have drawn up the contract.

It will make it all the harder for me to get Mr. Murray to sign, and it is a mistake to bring in the question of pumping rights at this time, or at least to bring it in in that way, by specifically referring to it, for I am satisfied that Mr. Murray will never sign the agreement, although I will go the limit to get him to sign it.

What I wanted was a clean-cut agreement, eliminating everything excepting the consent to build the dams on the river, and then make a separate agreement later on the pumping proposition. Both you and I want to see these dams built at the earliest possible date. There is no telling when another flood will come down and do the same damage as heretofore. The action of the riparian owners in not getting together is delaying the development of San Diego County, and if Mr. Murray should die, it will for many years retard the development of water on the San Diego River and will eventually mean that you will have to do business with the City of San Diego, with El Capitan Dam within a few miles of Mr. Hugh's land. The only thing the City will do will be to go ahead and litigate, and you know the City always gets the benefit of any litigation. And it will mean expensive litigation to every riparian owner.

It does seem to me that the right thing to do is to immediately sign the agreement drawn by the Water Commission, as agreed upon in this

The boys and I will be in  
shape to take that back country  
trip on Saturday and Sunday  
but Ferdinand may not be  
able to go, and he ought to  
be along. After the fifteenth  
William, John and myself  
could leave for S. D. on the  
6 P. M. train <sup>about</sup> Friday if  
~~John~~ and be at your office  
Saturday morning provided John  
could start back on the 3:00 P. M.  
train Sunday. Doubtless Ferdinand  
could arrange to go along there.  
In any event let's get together  
on the old water agreement on  
Saturday this week, or Friday or Saturday  
next week.

Yours sincerely  
William F. Burr

-3- WT

office, so that I can get Mr. Murray to put up the money to build at least one dam immediately, and let the pumping proposition take care of itself if we ever attempt to pump at El Monte again.

I am perfectly willing to let the matter stand just as it is, with the suit pending, and if we cannot agree at that time, if the time ever comes that we have to start pumping again, then you are in a position to press your suit.

I never was more earnest in my life than when I tell you you are making a mistake in this matter if you desire to see water conserved in San Diego County, and quick results. I know Mr. Murray better than you do, and it is a condition that we must recognize, not a question of argument.

It is just possible I may have to go to San Francisco and Sacramento the last of the week, but let us leave it this way: Telephone me or my sister on Thursday afternoon or Friday morning for it will suit me fine to have you and the boys down Saturday, and if possible, Mr. Ferdinand, in case I am not called to San Francisco.

Yours very truly,

EF/bm

WILLIAM THUM  
1811A ST.  
PA. CALIFORNIA

✓  
3/25/19

My dear Mr. Fletcher!

I have just hurriedly read your letter of the 24th. I have my doubts about the riparian owners delaying the development of San Diego County. In some ways it is the water company that is the cause of delay. But lets fix it up next ~~that~~ Saturday if you are not called to Sacramento.

Yours truly  
William Thum

4/4/19

✓  
Dear Mr. Fletcher:

We will seek an interview with Mr. Johnstone of the Water Commission regarding the new water agreement, for the purpose of having him pass on it.

Received your letter of the first of April regarding water rights. It seems ambiguous and does not touch the point we were talking about. Will also talk this over with Mr. Johnstone to get his suggestions

APR 7 1919

✓  
April 14,  
1919.

Mr. Ea. Fletcher,  
San Diego, California.

Dear Mr. Fletcher:-

The Water Agreement now covers just what is mutually agreed upon; the Water Commission has offered to prepare the final draft for signature by yourselves and the F. & W. Thum Co., and we have turned it over to them.

It is too bad that it was necessary to give the Water Company, among other things, a present of the first right to such water as it may have developed etc. during the past five years.

In a few days we shall send you a sample draft or a letter in which the Water Company agrees to treat all riparian owners impartially. If you can sign this letter, I believe the majority of the owners will enter into the agreement in a better spirit. The letter you sent for this purpose would only make matters worse if we showed it to them.

Yours sincerely,

F. & W. Thum Co.

P.S. We shall remind the riparian owners of the value of the dam to check future floods. + + +



Concerning land for the  
proposed golf club, please  
write us your idea regarding  
conditions, such as true limits  
for building &c, or let us  
know next time you are in  
L.A. so we can meet you,  
and talk it over. We  
must be assured in advance that  
the undertaking will be a  
success.

Yours truly  
William Thorne

LAW OFFICES  
of  
JAMES S. BENNETT.

Los Angeles, Cal.,  
April 15, 1919.

Mr. William Thum,  
123 Columbia Street,  
Pasadena, California.

My dear Mr. Thum:-

Suppose you have Mr. Fletcher write you something along the following line:

In consideration of the F. & W. Thum Company as well as Mr. Hugo Thum entering into a contract with me and my associates holding a majority of the stock in the Cuyamaca Water Company, in respect to riparian rights along the San Diego river, I agree that if we enter into any water contract with other owners of the land on the San Diego river we will give them, and all other owners of land along the river who sign contracts with us similar to theirs, the right to exchange their respective contracts for water contracts in the form which we may enter into with other owners of land along the river.

This letter is for the purpose of securing to owners of land along the San Diego river who are associated with Mr. Hugo Thum and signed contracts similar to the one signed by him the right, at their option, to take advantage of any water contract we may hereafter make with other owners, and which any of them may consider more favorable than the water contracts they have entered into with us.

Very truly yours

(Signed)

James S. Bennett.

JSB-M

April 16, 1919.

Mr. William Thum,  
123 Columbia St.,  
Pasadena, California.

My dear Mr. Thum:

Answering yours of the 4th and the 14th will say I await the revised contract and your letter with interest.

Regarding the Golf Club, if anything is done, it will be an agreement made with the representative men of the City, and I will have a proposition to submit shortly.

I had a wonderful trip into Mexico with Mr. Timken. Saw the Gulf of California, mountains twelve thousand feet high covered with snow and more water than San Diego County can produce, wonderful timber, etc..

Hope to see you in a few days.

Yours very truly,

P-P

✓

4/19/19

My dear Mr Fletcher:

In reply to your letter of the 16<sup>th</sup>.

The Water Commission will write the final draft of Water Contract for both parties to sign. They will probably mail it to you first.

Enclosed is a copy of letter that we requested Mr. Bennett to frame in regard to giving similarly situated riparian owners the same deal in connection with riparian water.

Will await Golf Club proposition. Doubtless trip into Mexico was grand. A little more rain would make San Diego County pretty much the same.

Yours truly  
William Thum

APR 22 1919

San Diego, Calif.  
May 17th, 1919

Messrs. D. & W. Thum Co.,  
125 Columbia Street,  
Pasadena, Calif.

Gentlemen:-

Enclosed find copy of letter from our attorney in relation to the contract. I feel that this clause should be added to the contract, and will then be ready to sign it myself, and recommend that Mr. Henshaw and Mr. Murray sign it as well.

I have sent a copy of this letter to Mr. Johnson, together with a copy of letter from our attorney. An early reply at your convenience will be appreciated.

Yours very truly,

EE/bm

cc WAJ

encl

May 21, 19

Ed. Fletcher  
San Diego, Calif

Dear Mr Fletcher:

Just reached

your letter of the 17<sup>th</sup>.

Will think it over carefully  
and see Mr. Bennett, about  
it to-morrow. I do not see  
anything serious in Mr Crouch's  
letter, but do not understand  
how some of the things he  
writes are pertinent to the  
subject - so must see Mr. B.  
before answering your truly  
William Thum

MAY 1919

long  
3 envelopes

6/17/19

Mr. Fletcher  
San Diego

Dear Mr Fletcher:

In reply to

your favor of the 16<sup>th</sup>

Please get it into your  
mind as it was. Your atty  
Crouch suggested a new  
clause to the water agreement,  
and the consideration of his  
clause lead us to see a  
serious omission in the agreement  
and we suggested that the  
Water Commission frame a clause  
to cover the omission. &c &c.  
That dam on Deer Creek will be  
a great improvement. Yours truly  
William Thum

San Diego, Calif.,  
June 25, 1919.

F. & W. Thum Co.,  
123 Columbia St.,  
Pasadena, Calif.

Gentlemen:

Enclosed find letter from Huber, which is explanatory. I know that your lands are all riparian and am ready to recognize them, but I am not ready to recognize a lot of other lands, owned by others.

If this contract is simply between the F. & W. Thum Company and the owners of the Cuyamaca Water Company it is satisfactory to me, but in each case we must determine whether these lands are riparian or not before signing a contract with others.

Let me know if everything is satisfactory to you before I take it up with Henshaw and Murray, and please return the papers.

By the way, the following is an extract from a letter that I got from my daughter, Katherine, who is on her way East: "Med Haupt has his berth next to mine and fortunately enough we have had little to say to each other. I say fortunately, for I certainly would have been in a funny position if he had been coming and sitting in my seat. He was dragged down the aisle by the porter, tonight, and put to bed, as drunk as any man I have ever seen"

I am certainly sorry to hear this.

Yours very truly,

EF/VBS

WILLIAM THUM  
123 COLUMBIA ST.  
PASADENA, CALIFORNIA

July 5<sup>th</sup> 1919

Mr Ed. Fletcher  
San Diego, Calif

Dear Mr Fletcher:

We received your letter of the 25<sup>th</sup> ult. enclosing final form of Water Agreement between Cuyamaca Water Co and F. & W. Thum Co. We were extremely busy and did not notice the time passing, cannot blame anyone else this time - not even you. We are preparing a tentative agreement to cover cases like Hugo's. Will write you fully in a very few days. Will return all the letters you submitted at the same time. I believe the two forms of agreements will cover all cases and the work will then be practically completed. Yours truly  
F. & W. Thum Co

Medi case shows the awful uncertainties of life. Right road.

July 8th, 1919.

Re San Diego River Water Agreement

Mr. Ed. Fletcher,  
San Diego, Calif.

Dear Mr. Fletcher:

In reply to your letter of June 25th, enclosed, we return the copy of water agreement as prepared by the Water Commission.

In the sixth line from the bottom of the last paragraph on page one, the word "riparian", it seems to us, should be dropped, because the agreement now also covers acquired right to water "which they may have by virtue of actual diversion and use". This fact, according to our attorney, makes it necessary to broaden the meaning of the phrase "prior riparian rights" by eliminating the word "riparian". Thus both riparian and acquired water rights, if any, will be covered. It seems to have been a mere oversight to leave the word in. With this slight change the agreement is satisfactory for our case and we hope it will be a satisfactory form for all the others whose water problems are identical with ours. We believe most if not all of the owners are situated in regard to water rights, either like ourselves or Hugo Thum,--

Now, if the Water Commission will modify the contract to make it applicable to his case in a manner satisfactory to themselves, we shall be in a position to call a meeting of all riparian owners with a view to showing them agreements that will bring about as fair a solution of the San Diego River Water controversy as it is possible for the Water Commission to bring about.

The difference between our case and Hugo Thum's, as we understand it, is that his land comes under the old water agreements of 1888 and thereabouts, and ours does not. The validity and meaning of these agreements to be left to the Commission in case of dispute.

In order to make a start we enclose a tentative modification of our agreement to cover his case, with suggested changes and additions underscored in red. We shall submit same, together with a copy of this letter, to the Water Commission.

We trust you will take similar steps and submit your ideas, and at the same time request the Commission to prepare such a form of agreement as, in their opinion, will be best for all the cases like Hugo Thum's. This course will probably meet Mr. Huber's ideas as expressed in his letter of June 23rd, herewith returned.

JUL 1 1919

-2- July 8th -- Ed. Fletcher -- Re San Diego Water Agreement

Since the riparian nature of F. & W. Thum Co.'s lands is agreed to, the fact, if there is no objection and you want to do that way, might as well be established definitely in a direct statement by inserting in the first "Whereas" clause of F. & W. Thum Co.'s agreement, after the word "property", the phrase - riparian to the San Diego River -- Also a uniform date should be decided upon for all agreements that may be accepted by the land owners in the campaign for signatures that we will endeavor to make. We would suggest June 2, 1919.

If possible, please attend to this at an early date. We are so near the close of the problem that Time must not be given an opportunity to spoil it.

Yours truly,

*F & W. Thum Co*

Enclosures:

Copy of letter to Mr. Chandler 7-8-19.  
Tentative agreement to apply to cases like Hugo Thum's.  
Five assorted letters you sent with your favor of June 25th  
Copy of F. & W. Thum Co.'s agreement as prepared by  
Water Commission.

F. & W. THUM COMPANY  
123 COLUMBIA STREET  
PASADENA  
CALIFORNIA

July 23, 1919

Ed. Fletcher  
San Diego, Calif.

Dear Mr. Fletcher:

In reply to your letter of the 21st inst., you must have received a copy of the agreement as finally prepared by the Water Commission (and approved all around) for us and all the others to sign who are similarly situated in regard to water rights as the F. & W. Thum Company. It was or should have been enclosed with our letter of the 8th of July. We are having a new copy prepared for you. In fact, with the exception of a couple of clerical errors it is the same as the one you sent us with your letter of the 25th of June. These errors haven't the slightest significance and are explained in our letter of July 8th. The Water Commission says these errors were made through oversight and should be corrected. Now, if you and your partners will sign the agreement, things will be in shape for all the riparian owners who are in the same class with us and who also wish to sign it.

We also enclosed in our letter of July 8th a copy of a tentative agreement applicable to all cases like Hugo's. You don't really need Mr. Huber or Mr. Crouch to review it. The changes are simply such as to make an agreement workable and signable at once in cases that may be effected by the water agreement of 1888. The Commission, we should think, could in preparing the agreement look out for both sides, especially since the F. & W. Thum Company's agreement shows the wishes of both sides. As a matter of fact, this tentative form would answer just as well for the F. & W. Thum Company as the one we have accepted. We can imagine no conditions in which it would not apply.

Let's have this other agreement for H. T. and his neighbors soon, if possible, and hold that meeting that all the land owners will have an opportunity to sign up.

You say that between Mr. Huber, Mr. Chandler and us, you do not know where you are. Where do you think we would be, between you, Mr. Huber, Mr. Crouch, etc., if we had as many other irons in the fire as you have? And we have several irons heating.

You enclosed a carbon letter addressed to Hugo from which we learn that the R.R. Commission has ordered you to pump water out of the sands at El Monte. Hope this will not

F. & W. THUM COMPANY  
123 COLUMBIA STREET  
PASADENA  
CALIFORNIA

Ed. Fletcher

July 23, 1919

-2-

cause any actual shortage. We would like to get the Valley to use cactus freely, - then less water will answer. Cactus and Sudan grass, generally planted for dairy purposes, it seems to us would reduce the water consumption very greatly. It takes a long time to break the prejudice against cactus.

Please get busy on Hugo's form of agreement.

Yours truly,

*F. & W. Thum Co*

*Will mail you three copies of accepted form of water agreement by next mail, (to-morrow).*



July 28th, 1919.

F. & W. Thum Company,  
123 Columbia Street,  
Pasadena, Calif.

Gentlemen:-

Answering yours of the 25th. I have signed  
the contract, and have sent it to Mr. Henshaw for his signature.

Yours very truly,

ET/LCW

WILLIAM THUM  
123 COLUMBIA ST.  
PASADENA, CALIFORNIA

7/25/19

My dear Mr. Fletcher:

Enclosed are the  
three copies of San Diego River  
Water agreement as approved  
by you, the Water Commission  
and the F. & W. T. Co.

Our Mr. Bennett is away  
on his vacation, has been off over  
two weeks but will return on  
July 1st. In the meantime we  
are acting on our own initiative  
altogether.

Please note that we  
have dated the agreement as  
of June 2nd, this is desirable for  
several reasons we believe.

We hope to hear from you soon

Yours truly  
F & W Thum Co

San Diego, Calif.  
August 11th, 1919

Messrs. F. & W. Thum Co.,  
123 Columbia St.,  
Pasadena, California.

Gentlemen:-

After signing the contract, I sent it  
up to Mr. Henshaw for his signature. He put it  
up to his attorneys and their letter of August  
6th is the result. Are you satisfied with the  
slight changes as suggested?

Yours very truly,

E/bm  
encl

AUGUST  
15  
1919

F. & W. Thum Co.,  
123 Columbia St.,  
Pasadena, Calif.

My dear Mr. Thum:

Answering yours of the 13th please redraw the contract and mail it to William G. Henshaw, 762 Mills Building, San Francisco, California, and I am sure it will be signed up immediately. I hate to give you so much bother but Henshaw and his attorney, Black, are simply snowed under.

Yours very truly,

EF/VBS

WILLIAM THUM  
123 COLUMBIA ST.  
PASADENA, CALIFORNIA

9/5/19

My dear Mr Fletcher,

At our request Mr Bennett met Mr Black's views in regard to the liability clauses in the Water Agreement to the latter's satisfaction, and in all probability the document will soon be signed.

Now let us hope that the Water Company will always be fair and never do anything in any way, shape or manner to annul or weaken the farmer's right to damages for losses sustained on account of shortage of water to which he may be entitled, and also that the company will do thoroughly every thing necessary to bind the successors in ownership of its works and water rights to meet such liability fully.

All this is not only the

company's duty but it is good  
business, and every one will  
look to you to see that the  
company does it. We were  
well impressed by Mr. Black.  
Yours truly  
William Thum

F. & W. THUM COMPANY  
123 COLUMBIA STREET  
PASADENA  
CALIFORNIA

September 12, 1919.

Mr. Ed Fletcher,  
San Diego, Calif.

Dear Mr. Fletcher:-

We are in receipt of your letter of the 8th inst., enclosing water agreement between F. & W. Thum Company and Messrs. Murray, Henshaw and Fletcher, the agreement being signed by Mr. Henshaw and yourself. As explained to you yesterday, we will sign the agreement, also, right after the proposed meeting with the other owners of riparian land.

Mr. Bennett mailed to Mr. Black a tentative form of agreement to apply in cases where there is difference of opinion in regard to riparian rights. We have not yet heard from him in regard to it. Possibly you have decided to use the same form as ours in all cases. Don't you think this would be the better plan?

If Mr. Black approves of the form submitted for use in disputed cases, all that will be necessary for you to do with it will be to note on the margin that you and Mr. Henshaw are ready to sign it and that you believe Mr. Murray will do likewise.

Enclosed is copy of agreement now under consideration by Mr. Black. We trust he will soon send you, or Mr. Bennett, a letter with suggestions, or with his approval, in order that we may proceed with the meeting. It will be necessary for us to have both forms of agreement at the meeting, unless one form will suffice.

Yours sincerely,

F. & W. Thum Co.

P.S. Enclosed is copy of letter sent by Mr. Bennett to Mr. Black with the form of agreement designed for disputed cases. In this letter Mr. Bennett by mistake said that he believed you would get the signatures of the land owners.

September 5, 1919.

Re E. & W. Thum Co.

P. C. Black, Esq.,  
% Henshaw, Black & Goldberg,  
Mills Building,  
San Francisco, California.

My dear Mr. Black:

Please find enclosed herewith two copies of form agreement in respect to water rights along the San Diego River. It is very desirable to have all of these agreements in the same form. You will notice that this is so drawn that the parties may agree what land is riparian and what land is not, and in case they cannot agree that the determination be left to the State Water Commission. Subject to the rights of the Water Company as of June 2d, 1919, it also reserves to the land owners their appropriations for actual use. In other respects it conforms to the Thum agreement. If you will obtain the approval of Mr. Henshaw and send to Mr. Fletcher I believe he will take the matter up with the individual land owners and, in co-operation with Mr. Thum, try and secure their assent.

Very truly yours,

(Signed) James S. Bennett.

JSB-M

Enc. Tentative form of agreement to cover cases like Hugo Thum's.

cc to E. & W. Thum Co.

September 19th, 1919.

E. & W. Thum Company,  
123 Columbia Street,  
Pasadena, Calif.

Gentlemen:-

I have received from Mr. Black his O. K. of the lease as agreed upon between Mr. Bennett and Mr. Black.

Personally my opinion is that the question of what constitutes Riparian rights should be left to the State Water Commission; however, I am ready to go ahead and try to get this agreement along these lines signed up, but it seems to me that as each particular case has to be treated differently and personally investigated on the ground before any lease can be signed, that it is a mistake to go at it this way. The thing to do is to get them all signed up, and let the question of what is Riparian be determined later.

When are you coming down?

Yours very truly,

EF/LCW

WILLIAM THUM  
123 COLUMBIA ST.  
PASADENA, CALIFORNIA

Re. Water Agreement  
O'Ked by Mr Black. 9/20/19

Dear Mr Fletcher:

In reply to your letter

of the 19<sup>th</sup>.

We were under the impression that the Water Agreement sent Mr. Black for criticism was so drawn that it might be signed at once and adjusted later by the Water Commission, in regard to all points of disagreement between the interested parties. We shall submit the matter to Mr Bennett without delay and send you the result.

Yours truly  
F. & W. Thum Co

P.S.

F. & W. THUM COMPANY  
123 COLUMBIA STREET  
PASADENA  
CALIFORNIA

September 24,  
1919.

Mr. Ed Fletcher,  
San Diego, Calif.

Dear Mr. Fletcher:-

In further reply to your letter of the 19th regarding "Third" form of water agreement of "June 2nd":

This is the form approved by Mr. Black. From Mr. Bennett we learn also that Atty. Black wanted the three "Stipulations" in the form appearing in the agreement.

Atty. Bennett says that the agreement can be signed at once, if desired, without making either of the first two stipulations, by writing into the spaces reserved for the description of the land "No stipulation. All referred to State Water Commission". In this manner all agreements can be the same in form, and, in any cases where both parties want to conclude one or both of these stipulations, they can do so.

Does not this make the agreement in its present form seem more practicable to you? It seems O. K. to us. Perhaps you can suggest an improvement.

Awaiting your <sup>early</sup> reply, we remain

Yours truly,

F. & W. Thum Co

WILLIAM THUM  
123 COLUMBIA ST.  
PASADENA, CALIFORNIA

10/7/19

October 3, 1919.

F. & W. Thum Company,  
123 Columbia Street,  
Pasadena, Calif.

Gentlemen:--

Answering yours of the 1st together with copy of  
water agreement:

Do I understand that the agreement which Mr. Henshaw  
and I have signed is the one that you intend to sign, but the  
agreement, a copy of which you have sent me to-day, is the one  
form which all other riparian owners, in your opinion, will sign?  
Kindly let me know if I am right in this matter.

When do you and your brother plan to come down.

I wish you would send me the agreement which Mr.  
Henshaw and I have signed because Mr. Murray is liable to be in  
San Diego.

Yours truly,

F:K

Ed. Fletcher  
San Diego

Dear Mr. Fletcher:

Enclosed are the

three copies of Water Agreement  
signed by yourself and Mr. Henshaw  
as per your request of the 3rd. This  
is the form originally worked out for those  
property owners not subject to the old  
agreements of the 80's. It would not be  
good policy for us to sign until after the  
general meeting for reasons already explained  
to you.

We could just as well sign the later  
form, that is the one sent you on the 1st.  
We stuck to this form because it went  
the rounds and was accepted by all concerned  
and we did not wish to bother Mr. Henshaw  
to sign another paper.

If the other riparian owners do not like  
our having a different form from theirs, we  
shall express a willingness to ask you for  
the same as they are to have. If on Mr. Murray's  
account it is necessary that we sign first, please  
return the copies at once. But we hope it will not  
be necessary.  
Yours truly F & W Thum Co

C o p y

10/7/19

Ed Fletcher,  
San Diego.

Dear Mr. Fletcher:

Enclosed are the three copies of water agreement signed by yourself and Mr. Henshaw as per your request of the 3rd. This is the form originally worked out for those property owners not subject to the old agreement of the 80's. It would not be good policy for us to sign until after the general meeting for reasons already explained to you.

We could just as well sign the later form, that is the one sent you on the 1st. We stuck to this form because it went thr rounds and was accepted by all concerned and we did not wish to bother Mr. Henshaw to sign another paper.

If the other riparian owners do not like our having a different form from theirs, we shall express a willingness to ask you for the same as they are to have. If, on Mr. Murray's account it is necessary that we sign first, please return the copies at once. But we hope it will not be necessary.

Yours truly,

F & W Thum Co.

WILLIAM THUM  
123 CL MIRA ST.  
PASADENA, CALIFORNIA

10/17/19

Dear Mr Fletcher;

We are just sending a letter to Mr. Bach in answer to one he sent us the other day commenting on the "3rd form of water agreement of June 2nd", the latest one up to date. You have a copy, it is the one approved by Mr Black,

We do not feel at liberty, quite, to send you a copy of Mr B's letter, and S. S & F's letter which he enclosed. Possibly you can persuade them to accept this form of agreement after they have studied our letter, although we have presented no new argument.

Mr. Timken's attitude will have no effect <sup>on our</sup> staying with the agreement already approved by us. It is too late for us to turn back under existing circumstances. All we can ask is, that if you make

better terms with Mr. Timken than with the land owners for whom we are trying to act; you will eventually give them equivalent terms.

As soon as we have all the reasons for S. S. & F. objection to the pending form of agreement we shall try to hurry Hugo to close arrangements for that land-owner meeting.

To-morrow we shall send you a letter with quotations from our letter in answer to that of S. S. & F., it will give you the drift of their objections. I do hope we shall make a pretty clean sweep in closing this controversy pretty soon.

Yours sincerely  
F. W. Thum G

~~copy~~

Pasadena, Cal., Oct. 17, 1919.

Mr. George J. Bach,  
617 F. Street,  
San Diego, Cal.

Dear Sir:-

Enclosed is copy of letter we have just mailed to our brother Hugo. It explains our situation regarding the water agreement. The only real difference between us and Sweet, Stearns and Forward is due to our readiness to leave all matters of controversy to arbitration. Possibly your attorneys can devise improvements in the plan of arbitration that would make the agreement more satisfactory to you. We, however, see no way out at present but hope that they will.

Yours sincerely,



November 17,  
1919.

Dear Hugo:-

We are in receipt of Mr. Stearns' form of water agreement of June 26. The change he proposes is embodied in the second paragraph of page 4, which reads as follows:

"Provided, however, and it is hereby expressly understood and agreed that the provisions hereinbefore contained as to arbitration shall not nor shall any part or portion of the same be at any time construed or held to prevent the said parties of the first part from instituting and prosecuting in any court of competent jurisdiction any appropriate actions or legal proceeding to compel the said parties of the second part to release and allow to flow down the channel or bed of said San Diego River a sufficient quantity and amount of water to restore the sub-surface water plane at points riparian to the said lands of the parties of the first part to the level at which said water plane would have been had not the additional storage and diversion of water been made by the parties of the second part, or a sufficient amount of water to furnish said parties of the first part as much of the water of said San Diego River riparian to their said lands as may from time to time be beneficially used thereon or to supply their said lands riparian to said river with sufficient water to prevent injury or damage to said parties of the first part or to their said lands described in this agreement and the right of the said parties of the first part to so resort to the courts instead of to arbitration shall at all times continue to exist to the same extent and in the same manner as if the arbitration provision contained in this contract were not contained herein. Provided further, however, that if the said parties of the first part instead of resorting to the courts shall elect to submit any question of injury or damage to arbitration as herein provided then they shall be considered as having elected to have all matters involved in said arbitration proceedings determined by arbitration instead of resorting to the courts. It being the intention of this agreement that if the said parties of the first part shall elect to have questions arising under this contract as to injury or damage submitted to arbitration said arbitration proceedings must be carried through to a finish and the award therein made shall be binding and conclusive as hereinbefore provided and said parties of the first part after having submitted any matters to arbitration shall be held to have waived their rights to resort to the courts as to all matters so submitted to arbitration."

On account of the possible great waste of water that might result in filling the river sands if only one or a limited number of riparian owners needed an accelerated supply of water, and on account of other possible waste of water, the Commission

November 17, 1919.

Mr. Hugo Thum

-2-

may demur at Mr. Stearns' clause. If so, they may possibly suggest a modification in his clause that will be satisfactory to him. At any rate we shall be on Mr. Johnstone's trail tomorrow, Tuesday, and get his approval if we can. He is in the office Fridays and Tuesdays only, but not always even then.

For our purposes, if we feel we ought to have the Stearns' clause, it might be modified so that the part of it we have underscored is changed to read as follows:

" \* \* \* \* " channel or bed of said San Diego River or otherwise to deliver to the said lands of the parties of the first part riparian to said river the supply of water to which said first parties are entitled hereunder, or so much of said supply as may from time to time be beneficially used on said riparian lands, or so much thereof as may be required to prevent injury etc."

The Water Commission has no interest in this clause, unless it be on account of water conservation, because it does not affect the arbitration proceedings after they are once begun.

Of course, if the Commission and the Water Company will accept the clause in its present form, it will suit us C. K. Perhaps they will agree to it -- we hope so.

F. W. T.

WILLIAM THUM  
123 COL HIA ST.  
PASADENA, CALIFORNIA

Original contract signed by Fletcher and Henshaw  
delivered to James A. Murray for his signature  
November 19th, 1919

10/17/19

Dear Mr Fletcher:

The starred lines in  
enclosed typewritten letter  
represent S. & X. F.'s objections  
to the 3<sup>rd</sup> form of water agreement  
of June 2<sup>nd</sup>.

Please write us at once  
whether you still think it  
would be best to have the  
meeting of land owners before  
Mr. Murray signs our agreement  
or afterwards. The purpose of the  
meeting being to get an expression  
of approval of the "3<sup>rd</sup> form of  
June 2<sup>nd</sup>". Of before signing  
we want to get at it at once.

(over)

All we know at present  
in regard to the attitude of riparian  
owners (except Timken), is that Hugo  
is ready to sign, but he cannot  
sign until after the meeting.  
We have some reason to hope  
that most of the others will see  
the situation as we do.

Please do not forget -  
to write us whether to have  
the meeting before or after Mr.  
Murray signs.

Yours truly  
F. W. Timken Co

P.S. When we are down at S.D. we  
ought to see about the lime deposit and,  
if valuable, to plan its proper development.

Pasadena, Cal., Oct. 17, 1919.

Dear Mr. Fletcher:

The following is quoted from our letter to Hugo  
in reply to certain objections made to Mr. Bach by Messrs  
Sweet, Stearns and Forward.

We omitted only the quotations from their letter  
for reasons stated in ours of yesterday. We wrote Mr. Bach  
yesterday enclosing a copy of our letter to Hugo.

"Dear Hugo:

"In review of letter dated 10-7-19 addressed to Mr.  
Bach by Sweet, Stearns and Forward in regard to Water  
Agreement, Third Form, June 2, 1919. We shall quote and  
take up their four consecutively numbered objections.

\*\*\*\*\*

"The agreement is so drawn as to make it convenient  
for the contending parties to record any mutual understanding  
they may reach in regard to riparian areas or to leave the  
matter in whole or in part for the Water Commission to de-  
cide. There is nothing, however, to prevent any riparian  
owner from holding out for the purpose of having all of his  
land acknowledged as riparian. If the parties cannot come  
to terms the situation will remain as before and must be  
settled in some other way before the relative status of the  
two parties can be determined.

\*\*\*\*\*

"When Mr. Timken was at the meeting in Mr. Fletcher's  
office (with the Water Commission present), he stated, if  
we remember correctly, that all he wanted was a short agree-  
ment granting him a right to so much water as he would get  
if no additional impounding and diverting works were built.  
He did not care what additional works were built so long  
as he had the right to just as much water (so far as he had  
use for it) as though the water system were to remain just  
as it now is. He expressed a willingness to leave the  
question of releasing water for his sands and the question  
of damages to the Commission.

Mr. Fletcher #2 10/17/19

"We do not think Mr. Timken was aware of the fact that his plan would give away his right to all of the increase in the use made of water by the company during the five years immediately preceding, to which he is legally entitled. It may be that this increase was but slight.

"We have been working on the line laid down by Mr. Timken at that meeting ever since and long ago promised that the F. & W. Thum Co. would sign up on that basis, if satisfactory details could be agreed upon.

"The way we understand this matter, is that under the water agreement in question the Water Commission is given the right to determine the money damages to improvements, crops, &c.; also the reduction, if any, in selling value of the land on account of impaired reliability of water supply, or for any other cause. Of course this will largely have to be guess work on the part of the Water Commission.

\*\*\*\*\*

"They are right in stating that the owner would be precluded from relief in the courts to enjoin the diminution of water supply. The agreement we believe provides that the Water Commission shall determine when water shall be released to prevent damages. The clause covering this point in the agreement is here quoted for your convenience:

*ns. Here the stenographer should have copied the first paragraph on pg 4 of the Water Agreement 3rd form of June 2nd*

\*\*\*\*\*

"This fourth objection doubtless has its merits just as the second and third ones have. The first one is advice to Mr. Bach rather than an objection to the agreement. But we have gone on record so often about taking our chances with the Water Commission as to make it almost an accomplished fact."

Sincerely yours,

*F. & W. Thum Co*

SWEET, STEARNS & FORWARD  
Attorneys and Counselors at Law

November 21, 1919.

Mr. William Thum,  
123 Columbia St.,  
Pasadena,  
California.

Dear Sir:

Your favor of November 18th in regard to contract between Murray, Fletcher and Henshaw and the riparian owners on the San Diego River duly received. If the agreement does not cover the amount of water to be released by the court to an amount not in excess of that covered by the water company's prior right, I certainly see no objection to such a limitation being put in although I consider it useless because the law itself would cover that and any water which the water company had acquired by prescription could not be affected by an order of the court nor would the court make any order affecting such water. However, if the company or the water commission desire such a provision in the contract I would have no objection to the same.

Truly yours,

(Signed) Frederic W. Stearns

WILLIAM THUM  
123 COLUMBIA ST.  
PASADENA, CALIFORNIA

11/22/19

Dear Mr. Fletcher:

We are glad to hear that Mr. Murray has signed the F&W T Co's water agreement. We shall sign it right after the proposed meeting of the riparian owners.

If you and Mr. Timken do not get together soon, we will prepare a copy of the newer form of agreement (designed for any special cases and already accepted by Mr. Black in behalf of Mr. Henshaw)

With these two forms all cases can be covered and it will be feasible to call the proposed meeting of riparian owners.

I do not believe that Mr Stearns' clause, with alterations such as the Water Commission is likely to suggest, will alter the effect of the agreement perceptibly, and it may prove acceptable all around.

Yours sincerely  
William Thum

12/23/19

Dear Mr Fletcher;

I called on Mr. Johnstone of the Water Commission to day. He had been at San Francisco consulting with the other members and the attorney of the Commission also with Mr. Chandler. After full discussion it was agreed between them that the commission would, if desired, work under the agreement known by us as "Water Agreement of June 2nd, 1919 (as corrected 10/1/19)" plus a modification of the Stearns clause to be inserted on page 4 as indicated in lead pencil.

The modification that they suggest is to allow the company, in case of an adverse court decision, the right to supply by any means the amount of water awarded to the riparian owner.

If you desire we will have Mr. Bennett prepare, for your information, a clause that will cover this feature as explained by Mr. Johnstone.

When first prepared we sent you a copy of the third form of agreement above referred to, but for your convenience we enclose our copy (without the Stearns clause). Please return when through with it. This form of agreement is superior to the one prepared for the F & W. Thum Co. It is a refinement of our form. All the changes on the first page were made to meet your expressed wishes. The

12/23/19

Dear Mr Fletcher;

Unless I wrote you to the same effect within a few days, this is to remind you to send us the F & W, Co agreement (water) for our signature - if you want it to show Mr. Vinkens when he returns.

We wish you all the happiest kind of holidays, weddings &c.  
Yours sincerely  
William Thum

other changes are for a better and clearer expression of the ideas intended to be conveyed. Yourself, Mr Black, the Water Commission and ourselves have already approved of it.

Kindly read the agreement over again and let us know whether you wish us to submit, for your inspection, a modified Stearns clause, such as we have every reason to believe the Water Commission will approve and that we think will meet Mr. Stearns requirements. This might put you into better shape to discuss the matter with Mr. Timken.

Yours sincerely,  
William T. Allen



290-1

12/20/19

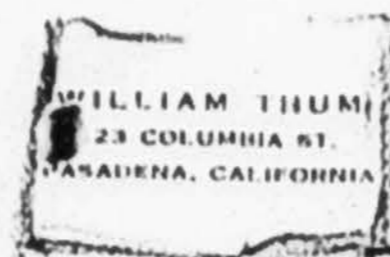
Dear Mr. Fletcher

Received yours of the 22<sup>nd</sup> enclosing letter from Mr. Timken we shall have Mr. Bennett get up a clause for the latest water agreement as nearly like that of Mr. Stearns in form and spirit as we believe the Commission will be pleased to act under.

This clause is quite immaterial to us except that we would like to see the controversy ended entirely. We will submit the revised clause to you and Mr. Stearns soon. The Commission suggested so little change that we have reason to hope Mr. Stearns will be satisfied to accept it.

Yours truly  
William Thum

Mr. Timken's letter herewith enclosed.



1/4/19.

E. D. Fletcher  
San Diego

Dear Mr. Fletcher:

31  
Beg your pardon for being so slow. Have been a bit sick and do not gain strength as fast as I expected. But am doing better now.

The Water Commission would accept the position of arbitrator under the Stearns' clause or under the shorter form herewith submitted, if agreeable to the Water Company.

To possibly save a lot of time, we took the liberty to suggest the shorter and more simply worded clause (prepared by Mr. Bennett for us). Mr. Bennett and Mr. Johnstone of the Water Commission both say that this clause would answer every purpose of the Stearns' clause. And we believe the shorter form will be easier for Mr. Murray to agree to.

We have sent copies of both clauses to Hugo to pass to Mr. Stearns and shall doubtless hear from him shortly. We shall then prepare copies of the agreement with the clause ~~prepo~~ preferred by Mr. S. and

forward them to you to submit to Messrs. Henshaw and Murray.

If you believe Mr. Murray would decidedly favor the shorter as against the longer form of clause, would you try to get him to adopt it?

If you are in a great hurry to submit the revised agreements Mr. Stearns' office can just as well rewrite a set for you with whichever clause he prefers. It seems to make no difference to the Water Commission which clause is selected. If three or four days of extra time makes no difference to you, we can attend to making the copies just as well.

Will write about the Sanatorium a little later we supposed you were anxious for it and it bothered me on this account that I could not go down to S.D. before this.

Yours sincerely  
William Stearns

It is, of course, immaterial to us which clause is selected.

November 17,  
1919.

Dear Hugo:-

We are in receipt of Mr. Stearns' form of water agreement of June 2d. The change he proposes is embodied in the second paragraph of page 4, which reads as follows:

*Stearns' Clause*

"Provided, however, and it is hereby expressly understood and agreed that the provisions hereinbefore contained as to arbitration shall not nor shall any part or portion of the same be at any time construed or held to prevent the said parties of the first part from instituting and prosecuting in any court of competent jurisdiction any appropriate actions or legal proceeding to compel the said parties of the second part to release and allow to flow down the channel or bed of said San Diego River a sufficient quantity and amount of water to restore the sub-surface water plane at points riparian to the said lands of the parties of the first part to the level at which said water plane would have been had not the additional storage and diversion of water been made by the parties of the second part, or a sufficient amount of water to furnish said parties of the first part as much of the water of said San Diego River riparian to their said lands as may from time to time be beneficially used thereon or to supply their said lands riparian to said river with sufficient water to prevent injury or damage to said parties of the first part or to their said lands described in this agreement and the right of the said parties of the first part to so resort to the courts instead of to arbitration shall at all times continue to exist to the same extent and in the same manner as if the arbitration provision contained in this contract were not contained herein. Provided further, however, that if the said parties of the first part instead of resorting to the courts shall elect to submit any question of injury or damage to arbitration as herein provided then they shall be considered as having elected to have all matters involved in said arbitration proceedings determined by arbitration instead of resorting to the courts. It being the intention of this agreement that if the said parties of the first part shall elect to have questions arising under this contract as to injury or damage submitted to arbitration said arbitration proceedings must be carried through to a finish and the award therein made shall be binding and conclusive as hereinbefore provided and said parties of the first part after having submitted any matters to arbitration shall be held to have waived their rights to resort to the courts as to all matters so submitted to arbitration."

On account of the possible great waste of water that might result in filling the river sands if only one or a limited number of riparian owners needed an accelerated supply of water, and on account of other possible waste of water, the Commission

F. & W. THUM COMPANY  
123 COLUMBIA STREET  
PASADENA  
CALIFORNIA

January 2,  
1920.

Mr. Ed. Fletcher,  
San Diego, Calif.

Dear Sir:-

I am forwarding the two copies of Water Agreement enclosed in yours of December 27th. We have signed and sworn to both of them. Please have our copy recorded -- the one marked original and which bears all the signatures, including Mr. Murray's, and which also contains notaries' certificates. Please charge cost of recording to our account and have recorded agreement mailed to us here.

Originally we sent you four copies of this form of agreement, one each for you, Mr. Henshaw, the Commission and ourselves. None of these copies were in spick and span shape, although they were passable. We did not actually believe they would be used for signature without some change here or there. We expected finally to furnish a set of really fine agreements from the standpoint of workmanship. We have compared the two enclosed copies of agreement and they read exactly the same; but they were typewritten separately. We probably had more copies made than the machine would write at one time. This is indicated by the fact that all the lines do not end with the same words.

The copies were opened and revised, and pages inserted several times during the process of development of this particular form of agreement; but, knowing the difficulties you must have had to contend with in obtaining Mr. Murray's signature to any lengthy document, we knew it would be best to use the agreements in their present condition. Later on, if it seems best to all concerned, new copies can be made with the improved phraseology of the "3rd form of June 2nd as corrected", and recorded as a substitute.

We trust that the fact of our agreement being concluded will in some way induce Mr. Timken to give his personal attention to the subject long enough to wind up matters in regard to his land.

Yours sincerely,

F & W Thum Co

P.S. We saw Mr. Johnstone of the Water Commis.  
to day in regard to the Stearns' clause. Will  
write you all about it to-morrow.

WILLIAM THUM  
123 COLUMBIA ST.  
PASADENA, CALIFORNIA

1/6/19

My dear Mr. Fletcher:

Enclosed is copy  
of a letter sent us by Mr. Stearns  
some time ago which may be of  
interest to you now. It gives his  
reasons for the needlessness of  
making any changes in his  
clause to the water agreement.  
Mr. Bennett, also the water  
Commission, agree with Mr. Stearns.  
I personally still believe the  
simpler form will please Mr. Murray  
better and as far as we up  
here can see it gives Mr. Stearns  
all he asks for.

Yours sincerely  
William Thum.

15 January 1920

Mr. William Thum,  
123 Columbia St.,  
Pasadena, Calif.

My dear Mr. Thum:

Am very sorry to get your letter of the 4th and to know that you have been sick. I do hope by this time you are on your feet again.

I do not think we can do anything in this water business until you come down. I am filing the lease of record within the next day or two, as soon as I can get to it, and will see that a signed copy is mailed to you after I receive same from the recorder's office.

Yours very truly,

EF:KIM

26 January 1920

F & W Thum Co.,  
123 Columbia St.,  
Pasadena, Calif.

Gentlemen:

I return you herewith recorded contract. I am still of the opinion that Messrs. Scripps and Timken will sign an agreement similar to the one that you have signed. They have a copy in their possession at the present time.

Yours very truly,

EF:KIM

F. & W. THUM COMPANY  
123 COLUMBIA STREET  
PAGADENA  
CALIFORNIA

February 11,  
1920.

Dear Mr. Fletcher:-

We had a final talk with Mr. Bennett (our attorney) regarding the F. & W. Thum Company's form of water agreement, and came to the belief that this would be just as good a form for you after all, and just as effective for the landowner as the newer form.

Mr. Bennett carefully considered the effect of the paragraph next preceding the heading "Arbitration" and came to the conclusion that it would in every case cause a reference to the Water Commission of all disputes regarding the limits of the riparian area on the landowner's property. Any questions concerning the legal status of the landowner's riparian rights, as well as the quantity of water, would also be referred to the Water Commission by reason of the paragraph referred to.

The newer form of agreement (that is, the third form of June 2d) is just the same as the F. & W. Thum Company's (the signed copy), except that it begins differently, as you will see by enclosed copy. This newer form is the one that was strongly advocated by Attorney Black when he was at Bennett's office with us. We believe, however, that he has long since forgotten all about it.

The possible trouble with this new form is that it may at once bring up the questions of actual riparian area and of the legal status of the riparian rights on each individual ranch for you to thrash out personally, whereas the F. & W. Thum Co. will by reason of the paragraph next before the heading "Arbitration" refer all such questions to the Water Commission to be taken up and decided by them as occasion arises.

Mr. Ballantyne has a copy of the newer form and he is taking it up with the Scripps and Dupees. If these three will just as willingly adopt our form, I believe it will work more smoothly for all concerned and I do not think Mr. Black will care very much.

As far as we are concerned, you can have either form printed for the proposed meeting.

In all cases where there is no question of a possible cloud on the riparian rights you could enter into a second agreement, for record, with each such owner, acknowledging this fact. Such a proceeding would be of advantage to the owner, to the Water Company and to the Water Commission.

I have been studying the old (1888-1892) water contracts and will write you later.

Yours sincerely,

To  
Mr. Ed Fletcher,  
San Diego, Calif.

William Thum

Contract handed to Mr  
Hugo Thum to look over  
with Mr. Simken  
2/12/20

Also shorter clause

Prepared by Thum Bros

2/13/1920

Dear Mr. Fletcher:

In partial explanation

of the enclosed typewritten letter, I will say that although the "3rd form of June 2nd" refers the questions of extent and of legal status of the riparian rights to the Water Commission in all cases where the Water Company and the land owners do not agree, it is likely that the effort of getting these opposing interests together will in some cases start bad feeling. The F & W T Co's form is better in this regard, for it refers these questions directly and wholly to the Water Commission without requiring a preliminary effort on the part of the farmer and the Company to settle the questions in whole or in part.

If you intend to adopt the F & W T Co's form of agreement you will find a copy intact enclosed herewith all ready for the printer. If you decide in favor of the ~~newer~~ newer form you will find directions written on the extra typewritten sheet.

Yours sincerely  
William Thum

16 February 1920

Mr. Wm. Thum,  
123 Columbia St.,  
Pasadena, Calif.

My dear Mr. Thum:

I am in receipt of your letter of Feb. 11th, and I cannot thank you enough for the interest you have taken in this water matter on the San Diego River. I hope sometime to show my appreciation in a way that will be satisfactory to you.

I assume you have sent copies of this agreement to Mr. Ballantyne. If not, wish you would send a copy to him, and let him take it up with the Dupee's and Mr. Scripps. I have had a very nice letter from Mr. Scripps saying he will sign up a contract, but that his attorney is drawing up the contract, as he never lets anyone draw up his contracts for him. Very unfortunate. I have not as yet seen a copy of the contract which Mr. Scripps is willing to sign.

I wish that Ballantyne would see Mr. Scripps immediately - if you would only write and ask him to. Anything you can do will certainly be appreciated.

Yours very truly,

EF:LEM

2/18/1920

Dear Mr. Fletcher;

In reply to yours of the 16<sup>th</sup>. We called on Mr. Ballantyne and left a copy of the water agreement when I was at San Diego recently.

He said he would have Dupree's stenographer make a copy for Mr. Dupree and Mr. Scripps. He will or has seen both of these men and will discuss the matter with them on the lines we talked over with him.

The copy we left with Mr. B. is of the latest form, that is the ~~latest~~ "3rd form of June 2<sup>nd</sup>" whereas the copy signed by F & W T Co is the "2nd form of June 2<sup>nd</sup>".

If all of the land that each of the three (Ballantyne, Dupree & Scripps) claims for himself to be riparian is actually riparian there will be no dispute even if the newer form of agreement is used. But if any of the three claim more riparian area or a larger right to riparian water than you can concede, and if they are not willing  
over

You had better get this type written before trying to read it-

to leave these questions for final decision to the Water Commission, you will have to negotiate the dispute before getting their respective names on the agreements.

The newer form at once suggests a dispute over the exact riparian area and the legal status of the riparian rights, while the F. & W. Co's form suggests arbitration of these questions by the Water Commission. For this reason we believe that if the newer form had not been used at all and the F & W form had been left with Mr. Ballantyne there would be less chance of a dispute arising in regard to this matter between these owners and the Water Company. However,

(2)

WILLIAM THUM  
123 COLUMBIA ST.  
PASADENA, CALIFORNIA

(3)  
This is borrowing trouble - the whole matter may proceed without a hitch. Don't mention appreciation of our little work in this matter. It is not finished yet and it is merely one of the little jobs, ~~that fate~~ a part of which, fate put into our hands for the purpose, probably, of checking economic discontent - just a bit. We only hope that the agreement will operate with sufficient success to further stimulate the growth of arbitration of controversies over Water Rights in other parts of the State.

Yours sincerely  
William Thum

I have written Hugo suggesting that he call on Mr. Ballantyne again to get action if necessary.



WILLIAM THUM  
123 COLUMBIA ST.  
PASADENA, CALIFORNIA

3/12/1920

Mr. Ed. Fletcher  
San Diego

Dear Mr. Fletcher;

Under separate cover, I am sending you 50 printed copies of the FFWTC. Water agreement. Hugo, who is here at present, will take 50 copied down to Mr. Bach next Monday and get them distributed with a letter calling a meeting of the riparian owners who were parties to the suit. This meeting will probably take place early in April.

We had 300 copies of the Agreement printed, which leaves 200 copies in our hands. It does not seem that we can possibly use more than 50 copies additional at the meeting. This will leave 150 copies for you to use with other riparian owners, who were not involved in the suit. If

February 27, 1920

Messrs. P. & W. Thum Co.,  
123 Columbia St.,  
Pasadena, Calif.

Gentlemen:-

I consider that your agreement is much preferable. If any of these people thought we were trying to determine, at the time we were negotiating the contract, the question as to whether the proposed lands are riparian or non-riparian, it might introduce an element which would result in our not getting the desired contracts. I feel that our negotiations are more apt to be successful if matters of this kind are kept in the background and any differences of opinion referred to the State Water Commission.

For that reason, will you please have printed your form of contract, and send me the bill for the printing? I am sure our people will accept that form.

Yours very truly,

WT/DM

this quantity is not enough,  
kindly advise me soon, as I  
am having the printer hold  
the type.

We trust the meeting  
will result in a large share  
of the agreements being signed

Yours sincerely  
F. W. Thum Co

March  
Twenty-second  
Nineteen  
Twenty

Mr. Wm. Thum,  
123 Columbia St.,  
Pasadena, Calif.

My dear Mr. Thum:

It is a shame to bother you, but  
enclosed find letter which is explanatory, also  
contract. Would you kindly look the contract  
over and give me your opinion of it, and let me  
know wherein you think it differs from your  
contract.

I shall appreciate this courtesy.

Yours very truly,

EF:KIM

letter from Geo. Bach - F. W. Thum Co - 3/17/20  
also contract -

WILLIAM THUM  
123 COLUMBIA ST.  
PASADENA, CALIFORNIA

3/30/1920

My dear Mr. Fletcher:

I carefully read the El Monte Ranch Water Agreement and believe it the same in effect as ours except that it reserves to the "first party" the right either to go to the court or to the Water Commission at its option of the "first party" to settle any question of damages. But once having taken up the matter with the Commission the first party is bound to stay with it and accept the decision as final. Will have our Mr. Bennett also look the agreement over when he returns to-morrow.

Yours sincerely  
William Thum

March 23rd, 1920

Messrs. F. & W. Thum Co.,  
123 Columbia Street,  
Pasadena, Calif.

Gentlemen:-

Answering yours of the 19th: I certainly appreciate what you are doing about the riparian rights agreement. You know as well as I, that if you or Mr. Ingo or Mr. Scripps take the initiative with the rest of the people, it will be much better than for me to go chasing after them. I do hope Mr. Ingo will take the initiative.

Yours very truly,

W/tn

4/1/1920

Dear Mrs Fletcher:

Enclosed we return the water agreement as desired by the El Monte Ranch Co. We have underscored everything in this agreement that does not appear in the F.V.W.T. Co's form.

Mr. Bennett has read it carefully and advises us that, in form and effect it is the same as our agreement, excepting that the Ranch Company reserves the right at its option to go either to Court or to the Water Commission for relief. However, the Ranch Company agrees that in case they start with the Water Commission or later change from Court to Commission the latter body must be permitted to finish the arbitration and its decision will ~~be~~ be accepted as final.

Some months ago the Commission

J.S.B.  
At your convenience!  
Please look over the attached water agreement. This is the alternative form in which provision for fighting is reserved by the riparian owner.

The underscored material is stuff added to F.V.W.T. Co's form and the insertions are in our form but not in this

F.V.W.T. Co  
OK J.S.B.

expressed its willingness to act under such an agreement.

I think the idea of the Water Commission in standing for the El Monte agreement is to encourage the land owners generally to enter into arbitration agreements more freely. Permitting the alternative of going to court will accomplish this purpose I believe.

At the time the Commission did not seem to doubt that soon no one would prefer the court to arbitration by them.

Am sorry this matter took us so long but it could not be helped this time.

In the second line of page 2 the word "riparian" was substituted for "prior," evidently by mistake. In line 3 of

page 2 the phrase "riparian to said lands" were omitted. I do not think the Ranch Company wants them left out.

I hope sincerely that the agreement will be found satisfactory to your Company.

Yours sincerely  
William Thum.

P.S. We have not yet heard the date set for the general meeting. Will write for the information to-night.

WILLIAM THUM  
123 COLUMBIA ST.  
PASADENA, CALIFORNIA

4/9/1920

Ed. Fletcher  
San Diego

Dear Mr. Fletcher:

Enclosed is

bill from Star-News Publ Co  
for 300 copies of printed  
Water Agreement some of  
which were sent to you  
and some will be used  
at the meeting of the riparian  
owners. The remaining  
copies will be sent to you -  
they may be of use elsewhere  
on the River.

Yours sincerely  
William Thum.

Just received the letter telling how  
well you are getting along. Thank  
you for the good news.

April 7th, 1920

Mr. William Thum,  
123 Columbia St.,  
Pasadena, California.

My dear Mr. Thum:

I thank you kindly for your letter in  
regard to the contracts. We have decided to sign  
them, and they have been sent up to Mr. Henshaw  
for his signature.

I am feeling fine. Am bruised up very  
badly, and have a silver plate on my right leg, but  
I hope to be up on crutches in six weeks. My pulse  
and temperature are normal, and I have not had a  
headache, even on the day of the accident. My blood  
is in such condition that I have not had one flaster.  
The doctor says my physical condition is perfect.  
Once a day I go over my mail, and so keep things  
going.

Yours very truly,

ET/DR

4/10/1920

just a caveat or set off from your position that you are  
infringing say by say. In fact enough.

My dear Mr. Fletcher

The final Timken agreement is very different from what they first proposed and by accepting it I believe you have done your full share toward inaugurating a form of agreement destined to come into common use. In time it will be superseded by one like ours, but in the meantime it will render a large number of riparian owners and the State at large a very great service. With Timken's agreement closed we will be in good shape to call the Water agreement. If you wish to propose the same form of agreement to Mr Dupree and Mr Ballan tyne we will present it to them if you will send us a copy. - or would it be better to wait

Yours sincerely William Thum

T.M.C. ✓

1996/10/12 ✓

- 10, 16, 20, 24 ✓



# Ed Fletcher Papers

1870-1955

MSS.81

Box: 29 Folder: 31

General Correspondence - Thum, William - 1919 - 1920



**Copyright:** UC Regents

**Use:** This work is available from the UC San Diego Libraries. This digital copy of the work is intended to support research, teaching, and private study.

**Constraints:** This work is protected by the U.S. Copyright Law (Title 17, U.S.C.). Use of this work beyond that allowed by "fair use" requires written permission of the UC Regents. Permission may be obtained from the UC San Diego Libraries department having custody of the work (<http://libraries.ucsd.edu/collections/mscl/>). Responsibility for obtaining permissions and any use and distribution of this work rests exclusively with the user and not the UC San Diego Libraries.