

[From whom ??]

July 18, 1951

280-12

July 26, 1922.

Mr. A. J. Maxwell, Auditor,
Santa Fe Land Improvement Co.,
308 Kerckhoff Bldg.,
Los Angeles, Calif.

My dear Mr. Maxwell:

Herewith copies of correspondence referring to Saito lease.

In our road construction we have been obliged to go through a part of the land under lease to Saito thereby detaching about 11.5 acres. I should be glad to have you advise me if you wish us to draw check in favor of Saito for \$188.50. It seems to me that since Saito is practically voluntarily abandoning 11.5 acres of his lease, and will pay no rent therefor, that the Rental Account should not be credited with full payment of the agreed price for the original acreage, nor should our budget be charged with the \$188.50 as damages to the Saito lease.

Of course it is quite true that I am making an effort to avoid this charge against our budget, and naturally Col. Fletcher, because of his interest in the Rental Account, desires to have full credit for the original sum due on the lease. If you care to arbitrate this rather delicate question, I shall be perfectly satisfied whatever your decision may be and will, of course, be governed accordingly.

Very truly yours,

Manager.

Board of Directors
Santa Fe Irrigation District
Rancho Santa Fe, California

Gentlemen:

Pursuant to your instructions, I have made a preliminary investigation of two matters which you referred to me:

First, the advantages and disadvantages which might accrue to the District through the acquisition of all or part of the Fairbanks Ranch; and,

Second, the advantages and disadvantages which might accrue to the District through the acquisition of the lands or water rights, or both, of Ed Fletcher, lying above Lake Hodges.

Fairbanks Ranch

I have not devoted as much time to the investigation as you probably contemplated the time I last met with you, since Messrs. Higgins and Arnold of the City of San Diego loaned me a copy of a report issued by the Union Title Insurance Company under date of September 11, 1924, which supplied much of the information I thought it would take some time to secure. This report, which was made at the request of Chickering and Gregory, Attorneys at Law, is entitled "Report as to Riparian Rights" and apparently was believed to include all lands below Hodges Dam. From the descriptions of the various parcels covered, however, I do not believe it does cover all the lands below the Dam, but that is immaterial, as it does cover the Fairbanks lands. These lands, or the portions that are involved in your present inquiry are described in Parcel 2 of said report as follows:

"The Southeast quarter of the Southeast Quarter and Lot Four (4) of Section Twenty-two (22), and fractional Section Twenty-seven (27) in Township Thirteen (13) South, Range Three (3) West, San Bernardino Meridian, and those portions of Rancho Santa Fe, as per map thereof No. 1742, filed in the office of the County Recorder of said San Diego County, December 28, 1922, contiguous to the bed of the San Dieguito River as said bed is shown on said Map No. 1742."

The report then states that by an agreement between the Santa Fe Land Improvement Company and San Dieguito Mutual Water Company, dated April 19, 1917, and recorded in Book 730 at Page 357 of Deeds, Records of San Diego County, the Land Improvement Company, which was then the owner of the property described agreed that San Dieguito Mutual Water Company should have certain rights, as

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as set out in said agreement, to wit:

"Whereas Santa Fe Land Improvement Company is owner of certain lands situated within the watershed of the San Dieguito or Santa Ysabel River, with respect to which lands the Land Company is vested with riparian rights in and to said stream and whereas the San Dieguito Mutual Water Company desires to construct and maintain the dam or dams hereinafter mentioned for the purpose hereinafter stated; now, therefore, in consideration of the promises and a valuable consideration moving it thereto, the receipt whereof is hereby acknowledged; the Land Company does hereby consent and agree to and with the San Dieguito Mutual Water Company, a corporation, that it may construct and maintain a dam or reservoir in Section 18, (Lake Hodges Dam) Township 13 South, Range 2 West, San Bernardino Meridian, and known as Carroll Valley, in the County of San Diego, State of California, and the Land Company consents and agrees that it may perpetually collect and impound in and by such dams and reservoirs any and all waters of the San Dieguito or Santa Ysabel River, and may perpetually divert any and all the waters so collected and impounded from the watershed of said San Dieguito or Santa Ysabel River into other watersheds and parts of said County of San Diego, State of California, and the Land Company does hereby waive all claims and rights of action which may or might hereafter arise or accrue to it because of its ownership of said lands within said watershed, by virtue of or arising out of the erection of said dams, or the impounding or diversion of said waters, or rights of action arising under or because of the above mentioned dams, save and except such as may accrue by reason of the breaking of any said dams and reservoirs and damages suffered in consequence thereof.

"This instrument is not a waiver of, and is not intended to waive, the rights of the Land Company to any of the underground or surface waters which may flow over, under and across its property referred to herein, except as conveyed to said Water Company and which originate in the San Dieguito or Santa Ysabel Rivers, to the West of and below said dams and reservoirs after the same are constructed."

It will be noted that the Land Company agreed that the Water Company construct and maintain "a dam or reservoir" in Section 18, which is the location of Lake Hodges Dam, and that it collect and impound waters by such "dams and reservoirs", and that all waters "so collected and impounded" may be diverted to other watersheds and that the Land Company waived any rights of action which might accrue to it arising out of the erection of "said dams" or the diversion of water, or rights of action arising because of "the above mentioned dams", excepting such as may accrue by reason of the breaking of any said "dams and reservoirs". While the original agreement is for the construction and maintenance of apparently a single dam or reservoir at the Lake Hodges site, the rest of the section apparently refers to more than one dam and reservoir. Apparently the construction of this agreement was the subject of correspondence between the attorney for Douglas Fairbanks and the City, for, under date of January 9, 1929, H.W. Conkling, City Attorney of San Diego, wrote a letter to H.H. Savage, engineer in charge of the water development of said City, in which

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he refers to Mr. Savage's letter of December 17th enclosing a brief of the attorneys for Douglas Fairbanks relating to the City's rights under said agreement. Mr. Conkling said:

"The grant in this case is to build a reservoir, or reservoirs, in Section 18, and therein to impound all the waters of the river. To my mind this is not indefinite in any respect, and the use of the words 'reservoir or reservoirs' plainly contemplates that the right is not exhausted by the construction of one reservoir, and there is nothing indefinite about the right to impound and take to other watersheds all the waters of the river.

"For these reasons I am of the opinion that the City, under the agreement between the San Dieguito Water Company and the Santa Fe Land Improvement Company, acquired the right to build as many reservoirs as it saw fit thereafter, in Section 18, and therein to impound all the waters of the San Dieguito River rising above that point, as against the Santa Fe Land Improvement Company and its successors in interest."

It will be noted that Mr. Conkling's opinion related only to the construction of additional reservoirs in Section 18, and, while I do not agree that the instrument is entirely definite, I am of the opinion that the court would construe it as including the right to construct another dam in Section 18, which would include the Super-Hodges Dam. I do not think, however, that the instrument would cover the right to construct a dam or divert water at Sutherland, or at any other place above Section 18. In other words, it is my opinion that the rights of the City under this instrument are simply to impound and divert to other watersheds all the water than can be diverted by a dam at or about the Hodges site, and that the City does not have the right, under this instrument, to impound or divert more than could be so impounded or diverted at Hodges. I suppose that if the City could show that storage and diversion at Sutherland did not include more water than would have been stored or diverted at Hodges, the owners of the Fairbanks property would not be able to show any damage entitling them to injunctive or other relief by reason of the upper diversion. On the other hand, however, if such owners were able to show that the City was storing and diverting more water than could have been stored or diverted by the Hodges Dam and that, excepting for such storage and diversion, such water would have passed over the spillway at Hodges and into the channel of the river below Hodges, and that such water would serve to recharge the underground supply in the basin below Hodges, they would make out a case for injunction or damages, or both. In that connection, it will be noted that, by the instrument above referred to, the Land Company specifically did not waive its rights to any of the underground or surface waters which may flow across its property, excepting as conveyed to the Water Company and which originate in the San Dieguito or Santa Ysabel Rivers below the "dams and reservoirs" after the same are constructed.

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I was furnished with a copy of the Judgment, dated November 3, 1930, in a suit in the Superior Court of San Diego County entitled Douglas Fairbanks vs. Santa Fe Valley Land Company (Case No. 56336), by which the water rights pertaining to the Fairbanks ranch and other lands in the "San Dieguito Basin", were adjudicated. While such decree does not definitely determine whether or not the underground waters in the area described as San Dieguito Basin constitute an underground stream, it treats such waters as the waters of a basin fed by the San Dieguito River, and holds that so long as Sutherland Dam remains uncompleted and the capacity of Lake Hodges is not increased, and no other upstream diversion is made, San Dieguito Basin has, and will have, a probably safe yield of 3500 acre feet per annum, available to the parties to the suit. Of such 3500 acre feet, it was adjudged that 1000 acre feet belong to Douglas Fairbanks, and that he is entitled to use such water on any part of his lands, as described in the Judgment. I understand that a part of the lands described may have been sold, but I have made no investigation to determine whether or not title to any portion of said 1000 acre feet of water was conveyed with any land sold.

It is interesting to note that said Judgment recites (page 8), that the parties owning Lake Hodges Dam and Reservoir assert the right to further upstream impoundings and diversions of the waters of San Dieguito River, either by increasing the height of Hodges Dam, or by another dam or dams in the vicinity thereof, or by a dam or dams upstream from Hodges, and that each of the parties to the Fairbanks suit disputes such right.

In view of these facts, it is my opinion that the owners of the Fairbanks Ranch will have to be dealt with by the City of San Diego before it can store water in Sutherland Dam, or, at least, before the City can store in the combined Sutherland and Hodges Dams more than the present capacity of Hodges. However, this would not be the case if Santa Fe Irrigation District should acquire the Fairbanks property, since, by the Supplemental Agreement between the District and the City of San Diego, dated February 26, 1945, it was agreed:

"Iv. In the event the City shall develop or seek to develop additional water on the San Dieguito River or its tributaries either at or above the present dam site of Lake Hodges or below said dam site but within a distance not exceeding 1000 feet therefrom the District will not oppose or object to such action because of any pumping rights it has now or may hereafter acquire below said dam."

Under that agreement, if the District should acquire the Fairbanks property, it would not thereby have the right to object to the diversion and storage at Sutherland by the City of San Diego.

Since the District would not, by acquiring the Fairbanks property, secure the right to use any of the 1000 acre feet of water appurtenant thereto elsewhere than on the Fairbanks lands, and since it would not thereby put itself in position to oppose or object to the storage of water at Sutherland,

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those aspects of the proposition cannot be given any weight in determining whether or not the acquisition of the Fairbanks lands would be advisable.

There are other aspects, however, which the Board might deem to offer sufficient advantages to justify such acquisition. The ranch now uses approximately 400 acre feet of District water per annum, and if fully developed might demand another 600 acre feet, or thereabouts. If the District owned the ranch, it could discontinue entirely the service of water from the District's system, and irrigate the ranch entirely from the San Dieguito basin, which doubtless would destroy the citrus trees. This would make an additional 400 acre feet immediately available for use on other lands and would eliminate the threat of being called upon for an additional 600 acre feet. My personal view is that this threat is not very serious, in view of the fact that most of the undeveloped land is probably not suitable for citrus fruits, and that the water which can be pumped from the basin, at less cost, probably, than the District could furnish water, would be suitable for such field crops as would be grown on these lands. Furthermore, if demand should be made on the District for water for these lands, in a period when a shortage existed, water rationing would affect those lands the same as others.

Instead of proceeding as just suggested, the District, if it owned the Fairbanks lands, might continue to operate the groves, with the possibility of making a profit, or it could sell the groves, and retain only the lands now undeveloped, which would eliminate the threat of the demand for more water.

If the ranch could be purchased at a price which would make the cost of the water rights thus attained or protected, as distinguished from the land, reasonable and attractive, it might be a good move for the District to make, but I doubt that this could be done.

Moreover, there must be balanced against any advantages, the fact that if the District acquired these lands it would lose the tax revenues it now receives and that the elimination of such lands from the tax rolls would affect, to some extent, the total assessed valuation, upon which the District's right to Colorado River water depends.

The question as to whether the District, under all the circumstances, should assume the indebtedness necessary to acquire the Fairbanks property, or a portion of it, is not strictly a legal question, but is, rather, a matter of business judgment for the Board to decide. However, it occurs to me that the following information may be of value to you if you consider seriously such acquisition.

Under Section 24252 of the Water Code, an irrigation district may contract for or lease property. Under section 24253, as amended in 1947, if the largest payment in any year under such lease or contract exceeds one-fourth of one per cent of the total value of the land in the District, such a lease or contract is not valid unless either:

1. The district has appropriate funds on hand at the time the lease or contract is made sufficient to meet all payments to be made thereunder

and

and in excess of the district's normal requirements for the period in which the payments are to be paid; or

2. A particular purpose or emergency assessment sufficient to meet all the principal payments to become due under the lease or contract is authorized (neither the emergency nor particular purpose assessment would be practical for use in a situation of this kind); or

3. The lease or contract is approved by the District Securities Commission.

If the District could agree with the owner upon a price for which the property could be purchased, it might be possible, under the foregoing provisions of the Code, to secure the consent of the District Securities Commission and make a contract under which the District would acquire the land.

From examining maps of the Fairbanks property, it appears that there are about 325 acres of land lying along the stream which are not in cultivation which conceivably might be placed in cultivation. I do not know whether the owner of the ranch would be willing to sell these parcels separate from the rest of the ranch or not. If not, if the District decided that its best interests required that such parcels be acquired, the District could condemn them under its right of eminent domain, but, in that case, of course, the provisions for partial payments under lease or contract probably could not be used and it would be necessary for the District to issue bonds. In that connection, the provisions of Section 20045 of the Water Code are important. That section provides that no bond issue shall be approved for certifications by the District Securities Commission which, together with other outstanding bonds and bonds authorized but not issued, exceed sixty per cent of the aggregate value of the property owned by the District or to be acquired or constructed with the proceeds of the bonds proposed to be issued and the reasonable value of the lands within the district.

Sections 21933 and 21925 provide that bonds may be authorized by two-thirds vote, or by a majority of the vote if the election is called pursuant to petition signed either by a majority in number of the holders of title to land who are also holders of titles to a majority in value of all the land, or five hundred or more persons, each of whom is either an elector or holder of title to land, and which petitioners include holders of title to not less than twenty per cent in value of all the land.

Fletcher Property

In the lease and option to purchase dated October 5, 1925, between San Dieguito Water Company and City of San Diego, the City was given the option to purchase certain specified parcels of property, and I understand

this option subsequently was exercised. Among the parcels are some which refer only to the right to flood certain lands. If the City had acquired only rights to flood, it would not have any riparian rights. However, it appears certain that the City does have fee title to a considerable part of the land in the Hodges Reservoir, and that portions of such land, at least, are riparian to the San Dieguito River. As such, the City is a lower riparian owner and has the same right that any lower riparian owner has to prevent an upper riparian owner from diverting water from the stream for use on non-riparian lands, whether the non-riparian lands lie within the watershed or not. The right of the lower riparian owner to prevent the diversion of water from the stream by the upper riparian owner is subject to the limitation that in order to be entitled to an injunction, he must show that the diversion constitutes, or threatens to constitute, an interference with his riparian right, which is essentially the right to make a reasonable use of the water from the stream on his riparian land. The riparian right is a correlative right, that is, each owner has the right to make a reasonable use on his riparian land of his proportionate share of the water available. Prior to the amendment of the Constitution in 1938, the riparian owner had the right to have the water flow down to and past his land in its normal course, subject only to the reasonable uses of riparian owners above him, but since the amendment of the Constitution, the State does not recognize such an unlimited right, but now limits the riparian owner to the right to make beneficial use on his riparian land. Under the present doctrine, the riparian owner does not have the right to prevent a diversion above him, unless such diversion would interfere with the full exercise of his riparian right on his lower land. Thus, it would be necessary for the City, if it relies solely upon a riparian right, to show that a diversion on the Fletcher land would prevent the City from obtaining sufficient water for irrigation and other proper uses on its lower riparian land. Such uses would not include the right to store water for transportation to other lands, but only the right to use the water on the riparian land. I have made no examination as to what appropriative rights, if any, the city may have below the Fletcher land. It may be that the City has permits for diversions below Hodges Dam, which would give it a right to object to an upper diversion. Permits for diversions above the Dam would not affect the riparian rights of the Fletcher land until they had been exercised for a period sufficient to acquire a prescriptive right against Fletcher.

While the City may not have an absolute right to prevent diversion of water from the Fletcher land, it is certain, from the conversation Mr. Bakewell and I had with Mr. Higgins and Mr. Arnold, that the City is sure it can present such a diversion, and that it would take every step within its power to do so.

A further question, which is more practical than legal, is the question of how water would be delivered to the lands in the District, even if the right to divert them from the Fletcher land were established. I do not think it can be expected that the City would agree voluntarily to transport water through its existing facilities. The District could condemn a right of way and construct its own ditch or pipe line, but that would involve a considerable expenditure, the amount of which I cannot estimate and the wisdom of which would be the function of the Board to decide.

October 22, 1929.

Santa Fe Irrigation District,
Rancho Santa Fe, California.

Gentlemen:

Please turn off the following meters,
but leave them installed as they will be needed a little
later on.

S. B. - 100 - 3 - 2" - # 3640672

S. B. - 100 - 1 - 4" - #1692

Yours very truly,

ED FLETCHER COMPANY

By

KLM

Walter Lease

Meters Santa Fe

S. B. - 100 - 3 - 2" - # 3640672

S. B. - 100 - 1 - 4" - # 1692

Arrocaho Axis #3

L - 4 - S - 1026 - 2" I

San Diego

November Eighteenth,
1 9 2 9

Santa Fe Irrigation District,
Rancho Santa Fe,
California.

Gentlemen:

We are returning your bill No. 437 as Lot 1,
Block 5 and the east 50 feet of Lot 7, Block 5
was deeded to Mr. E. P. Kincaid some months ago
and the balance of Lot 7, Block 5 was deeded
to U. L. Voris.

Also, will you kindly check the description
in Lot 10, Block 10, as we have sold to Mr.
Lank the S 50 feet of the west 100 feet instead
of the N. 50 feet.

I think this possibly an error in copying
the bill.

We shall appreciate receiving this corrected
bill as soon as possible from you.

Yours truly,

ED FLETCHER COMPANY

MEF:AK

July Seventeenth,
1 9 2 9

Board of Directors,
Santa Fe Irrigation District,
Rancho Santa Fe, California.

Gentlemen:

Enclosed find copy of letter that is explanatory
and for your information.

Yours truly,

EF:AK

July 20th, 1929.

Santa Fe Irrigation District
Rancho Santa Fe,
California.

Gentlemen:

The pressure in Keoney Gardens, particularly our 20 acres of avocados, is so low that instead of irrigating it in five days as we should, it is taking us twenty to thirty days.

We are a great handicap on account of your not putting the water thru the old 20 in. line. We need water so badly. Our trees are suffering and we will have to go to the expense of putting in a booster pumping plant on the lower gravity line and irrigating from this source if something is not done immediately.

Is there water in the old gravity line down at the old pumping plant on the Walker Grove?

Please let me hear from you immediately what relief you can give us. We shall hold you responsible for any damage in relation thereto.

Yours very truly,

EF:GMF

June Fourteenth,
1 9 2 9

Santa Fe Irrigation District,
Rancho Santa Fe,
California.

Gentlemen:

Will you kindly mail to us the second installment of taxes in the name of Fred Yeager, No. 65 and the Monarch Bulb and Nursery Company No. 75?

Also, will you kindly mail to C. W. Murfin, Route 1 Del Mar, his bill for the second installment of taxes under No. 146?

Thanking you for your attention to this matter, we are

Yours very truly,

MEF:AK

Santa Fe Land Improvement Company

KERCKHOFF BUILDING

Los Angeles, Calif., June 23, 1920.

SFLI #8

Miss M. E. Fletcher,
920 Eighth St.,
San Diego, Cal.

My dear Miss Fletcher:

I am enclosing Coast Lines invoice in favor of the Neptune Meter Company \$384, for meters furnished.

Will you please refer to Mr. Faulkner's letter of June 11th to Mr. McFadden, carbon of which you received, and let me know if it is all right for me to voucher this bill? With that letter we sent voucher in favor of your Company for \$278.32, covering meters, please advise.

Yours truly,

J. D. Leimbacher

L-B

1892791 Makins
1880494 "
1791112 Makins

1880494 Reserve
1791181 Reserve

W. A. SMART, PRESIDENT
D. M. BAKEWELL, SECRETARY-MANAGER
ROBERT J. LONGFELLOW [ASSESSOR
TREASURER
COLLECTOR
JOHN H. CHASE, ENGINEER

TELEPHONE
RANCHO SANTA FE 2851

BOARD OF DIRECTORS
W. A. SMART
HARRY L. PORTER
H. G. LARRICK, SR.
R. M. CLOTFELTER
GEORGE DOSE

SANTA FE IRRIGATION DISTRICT

RANCHO SANTA FE - SAN DIEGO COUNTY
CALIFORNIA

October 22, 1946

Colonel Ed Fletcher
1020 Ninth Avenue
San Diego 1, California

Dear Colonel Fletcher:

At a meeting of the board of directors held March 21, 1946, they agreed to sell to you the narrow strip belonging to the District and lying directly East of your 15 acres which is roughly described, from the bluff line on the East to the Easterly boundary line and from the bluff line on the North to end of bluff on the South containing approximately .80 acres. The purchase price is as follows:

- (1) \$500 for Districts quit-claim plus cost of survey; you to settle delinquent County taxes.
- (2) Grant Deed for \$700 plus cost of survey; the District to settle delinquent County taxes.

If these terms are agreeable to you and you wish us to proceed with the sale we will require a down-payment of \$300, the balance to be paid on completion of escrow.

Yours very truly,

SANTA FE IRRIGATION DISTRICT

D. M. Bakewell

Secretary-Manager

DMB:1

October 23, 1946

Santa Fe Irrigation District
Rancho Santa Fe
California

Attention: Mr. D. M. Bakewell

Gentlemen:

Answering your letter of October 22, will say that it is our intention to accept your offer, but all we ask is that we get some idea of what we are going to get for our money.

Will you kindly have the engineer send us a red pencil sketch. What I particularly want to know is: how far South this .80 of an acre goes. Does it take in the old shacks now occupied by a tenant, Mr. Wilhite? I want to get rid of it; it is an eyesore and a nuisance. If it doesn't take the old shacks in, what would it cost to buy the land that does take the shacks in. Also, I would like to see a stake in the ground as to where the South line of the .80 acre is.

Thank you for your early attention to this matter, and I will send you a check on account for \$250.00 just as soon as I get the information and it is satisfactory. Will you please follow this up at your earliest convenience.

Very sincerely yours,

EF:mg

Ed Fletcher Papers

1870-1955

MSS.81

Box: 24 Folder: 20

**General Correspondence - Santa Fe
Irrigation District and Rancho Santa Fe**



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