Volume III

Pages 794 to 1157 Inc

10 A.M. February 9,1916.

THE REGISTER: Pursuant to stipulation made January 7th,1916, we will now resume the hearing in the matter of the protest of James A. Murray, et al, against the City of San Diego, assignee of W. B. Hamilton, in regard to an application for right of way for canal and damsite. There are present in perspn the protestants represented by O.R.W.Robinson,Esq. and W.B. Mathews,Esq. The City of San Diego is represented by city atprney T. E. Cosgrove,Esq. The Government is represented by special agent H.H.Mancha and H.P.Dechant, Assistant to the Solicitor, Department of Agriculture.

THE REGISTER: What is the wish of counsel in regard to procedure, I have sort of lost track of it.

MR. COSGROVE: Why the protestants have completed their evidence, I understand it is now up to the City to introduce their rebuttal.

THE REGISTER: Is that the way you understand it, Mr.Robinson?

MR. ROBINSON: Yes.

THE REGISTER: You may proceed with your first witness.

The following witnesses were then sworn on behalf of the City of San Diego by the Register: Ben Hagar, C.T.Sackett, W. C. Earl.

BEN HAGAR, witness on behalf of the City of San Diego, being first duly sworn by the Register testified as follows

BY MR. COSGROVE:

Q What is your post office address? A Belgrade, Montana.

Q Mr. Hagar, do you know the protestants, Mr.Murray and Mr.Fletcher? A Yes sir.

Q How long have you known Mr.Murray? A I have known Mr.Murray for fifteen years.

Q How long have you known Mr.Fletcher? A About five years.

Q Have you ever been a resident of San Diego County California? A Yes

Q When, approximately, when were you a resident of San Diego County, California? A From September 1,1910, or about September 1,1910, until about the middle of March 1912.

Q In what were you engaged or what was your occupation during that time, if you had any? A Well, most of the time I was in charge of the Cuyamaca Water Company.

Q The Cuyamaca Water Company at that time was owned by whom? A Murray and Fletcher.

Q In what capacity were you so occupied?as in charge of the Cuyamaca Water Company? A Manager.

Q Prior to the assumption of the duties of manager of the Cuyamaca Water Company where had you been living?

A Montana.

Q Whereabouts in Montana? A At Belgrade.

Q Would you kindly explain the circumstances attending your removal to San Diego County and the purpose of the same? A Well, I went there with H. W. Turner of Butte, Montana, for the purpose of taking over a one-third interest in the Cuyamaca Water Company.

Q Had you had any negotiations with anybody to that end? A We had with Mr.Murray, yes sir.

Q You say you had known Mr.Murray for ?

A Fifteen years.

Q Now after your arrival in San Diego did you assume active duties as manager of the Cuyamaca Water Company?

A I did, as soon as Mr.Murray came he agreed to be there on September 1st and as I remember he didn't get there until the latter part of October.

Q Of what year? A 1910.

Q Then how long did you continue in the service of the Cuyamaca Water Company as the manager?

A Well, I don't remember the exact dates but I think it was in February of 1912 that I left.

Q As manager of the Cuyamaca water Company did you have access to the files and the maps and records and plans of the Cuyamaca Water Company? A Yes sir.

Q were you familiar with them at that time? A Yes.

Q Mr. Hagar a protest entitled In the Matter of tthe Protest of James A. Murray, William G. Hinshaw and Ed Fletcher against the application of Barney Hamilton and others, for

Right of Wate for Reservoir Site and Water Conduit across public land and lands of the United States, in the County of San Diego, State of California, was filed in the office of the Secretary of the Interior, signed by Mr.Murray and Mr. Winshaw and Mr.Fletcher, or rather signed with their names. This protest was verified or sworn to by Ed Fletcher under date of July 24,1915, before Lou B. Mathews, notary public in and for the County of San Diego. On page 6 of that verified protest and being paragraph 9, this allegation is found:

> "That as the protestanrs are informed and believe and therefore allege the fact to be, said Barney Hamilton did not present the proposed filing for the appropriation of water, nor is he prosecuting said application for right of way on his account or for his own benefit but in the interest of and for the benefit of one Ben Hagar and one C.T.Sackett"

I will ask you, Mr.Hagar, if you now or if you ever did have any interest,howsoever remote, in the filing made by Hamilton, assignee of the City of San Diego?

A None whatever.

Q In this same protest in this same paragraph Mr.Hagar is this allegation:

> Q That said Barney Hamilton came to the State of California at the solicitation and request of said Sackett a very short time prior to the filing of the notice of appropriation mentioned and referred to in said application of Hamilton for right of way, and that as these protestants are informed and believe and upon said information and belief alleges, that said Hamilton made said filing at the request and instigation of the said Hagar, and the said Sackett"

I will ask you, Mr.Hagar, if you ever either directly or in-

directly, howsoever remote the suggestion might have been, ever suggested or intimated to Mr.Hamilton that he make any filings on the San Diego river?

A No sir, I did not.

Q Have you now or did you ever have any hope of any reward or of any benefit to accrue to you from the successful or unsuccessful termination of the Hamilton filing?

A I had nothing to do with it, didn't know anything about it.

Q Whenwas the first time you ever knew of any filing made by W. B. Hamilton on the San Diego river?

A I can't give you the exact date, but Mr.Koebig, engineer of Los Angeles, told me that the first I knew of it.

Q Have you any idea how long after that? how long after the filing that information was conveyed to you?

A No sir, I could not tell you.

Q NI understood you to say that you left the service of the Cuyamaca Water Company in the early part of the year 1912 as you recollect it? A Yes.

Q were you at that time familiar with the proposed plans of development of the Cuyamaca Water Company for conserving the waters of the San Diego river?

A I was so far as I know, if there is anything other than what I knew I didn't know it.

Q Had you seen any reports and plans for development? A Yes.

Q Now again referring to this same protest and

the same paragraph of the protest, but page 7 thereof, I find this allegation, Mr.Hagar:

> "That the plans mentioned and described in the application of said Barney Hamilton for rights of way correspond with and are practically identical to the work contemplated by these protestants, and considered and discussed by these protestants; with said Hagarmnd Sackett, during the employment of the latter by these protestants"

Mr.Hagar, prior to the filings made by Hamilton did you know anything concerning the proposed El Cpitan damsite?

A No sir.

Q Did you ever discuss with either Mr.Murray or Mr.Fletcher anything concerning the erection of a dam at the El Capitan damsite? A No sir.

Q In this same protest, in this same paragraph contained this allegation, Mr.Hagar :

> "That at the time said Hagar and Sackett left the service of these protestants or shortly prior thereto, they removed from the office of the protestants certain records and papers relative to said water rights, and a plan of these protestants for the purpose of developing, storing and utilizing the system of flood waters of said San Diego river, pursuant to appropriation and claim thereof, and theretofore made and filed by these protestants. That the said records and files so removed by said Hagar and Sackett, showed the plans of these protestants for the construction of work very similar to the work mentioned and desc ribed in the plans of said Barney Hamilton"

I will ask you if while you were in the employ of the Cuyamaca Water Company or prior thereto or subsequent thereto you have seen or had in your possession, or seen in the

possession of anyone else, any plans or records of the Cuyamaca Water Company, or of the San Diego Flume Company, that touched upon or in any way referred to the construction of a dam at the El Capitan damsite? A No sir, I did not.

Q Have you ever seen any plans of the Cuyamaca Water Company for the development of the waters of the San Diego river, showing dams elsewhere? A Well, there were a number of drawings showing dams, I don't remember it has been so long ago, I can't name them either, I am not familiar with the names.

Q But you have seen such plans? A Yes.

Q In the same protest and in this same paragraph is contained this allegation:

> " That since the filing of said application for rights of way by said Barney Hamilton, said Hagar and Sackett have brought to the attention of these protestants certain purported and prospective purchasers of the entire interest and holdings of these protestants as successors in interest of the San Diego Flume Company, but that said Hagar and Sackett advanced as condition precedent to the serious negotiations for the purchase of said property, the contention and claim that these protestants pay to said Hamilton on account of alleged claim to waters belonging to protestants, the sum of at least two thousand dollars"

Mr. Hagar, did you ever directly state to Mr.Murray or Mr. Fletcher, or did you ever indirectly intimate to them or either of them that they should purchase the Hamilton filing for the sum of two thousand dollars or for any other sum?

A No sir, I did not.

Q Did you ever offer to sell the Hamilton filings to anyone for any sum?

A No sir, I did not.

Q Did you ever tell these protestants or anyone else that they could be bought for two thousand dollars, or any other sum? A No sir, I did not

Q Did you ever have any interest, have you any interest now in the sale or disposal of the Hamilton filings? A No sir.

Q Did you, Mr. Hagar, ever remove, or do you know anybody who ever removed from the files of the Cuyamaca Water Company any plans for the construction of the El Capitan dam? A No sir.

Q Mr. Hagar, there has been filed with the Secretary of the Interior, or in the office of the Secretary of the Interior, a document headed PROTEST OF JAMES A. MURRAY AND WILLIAM G. HINSHAW and ED FLETCHER IN THE MATTER OF THE HAMILTON DAM and RESERVOIR L.A.No.014685, Application for Easement for Reservoir site, bearing the names of James A. Murray, William G. Hinshaw, Ed Fletcher, the same having been verified by Ed Fletcher on the 13th of August,1915, before Lou B. Mathews, Notary public in and for the County of San Diego, state of California, to which was attached and accompanying the same, the affidavit of Ed Fletcher

on page 4 thereof contains this statement:

> " That affiant knows one Ben Hagar and one C. T. Sackett, that during the year preceding and shortly up to the time of the filing of the said application of said Barney Hamilton with the Secretary of the Interior for right of way, the said Ben Hagar was manager, and the said C.T. Sackett was the engineer of said copartnership in connection with water storage and distribution system, as owned and operated by said copartnership. That by virtue of said employment as aforesaid said Hagar and Sackett became thoroughly familiar with the system of said copartnership and with the plans of said copartnership for the extension and enlargement of said system; that one of the plans which said copartnership had for the extension and enlargement of said system consisted of erecting a dam at the location of the dam set out by said Barney Hamilton in his application; that said copartnership had discussed with said Hagar and Sackett their said plans for the erection of said dam, and said Hagar and Sackett were thoroughly familiar with the said plans and with all the other plans for the development and enlargement of the system of the said copartnership."

Mr. Hagar, did Mr.Fletcher and Mr.Murray, or either of them, ever discuss with you and Mr.Sackett, or with you prior to your knowledge of the Hamilton filing, any plan for the erection of a dam at the El Capitan damsite?

A No sir, they did not.

Q Did you ever know of any proposed work that the Cuyamaca Water Company, or the owners of the Cuyamaca Water Company had in mind at the El Capitan damsite?

A No sir, I did not.

Q Further down in this same paragraph in this same affidavit, is this: direct allegation:

> "That as affiant is informed and believes said Hamilton made said water filing at the request and instigation of said Hagar and Sackett"

Mr. Hagar, is that a correct statement?

A No sir, it is not.

Q Did you ever request Mr.Hamilton or anybody else outside of the Cuyamaca Water Company, to make any filings on the San Diego river?

A No sir, I did not.

Q In this same affidavit, on this same page is this statement:

> " That the plans mentioned and described in the application of the said Hamilton for rights of way correspond with and are practically identical with the plans contemplated by said copartnership for storing of additional flood waters of the San Diego River, which said plan said copartnership considered and discussed with said Hagar and Sackett during the time that they were employed by said copartnership"

Is that statement correct?

A No sir, it is not.

Q Did this copartnership or any member of the copartnership ever discuss with you or Mr.Sackett or with you alone, or with Mr.Sackett, to your knowledge, any plan for the building or erection of a dam at the El Capitan dam site?

A No sir, they did not.

Q Will you please tell us when was the first knowledge you ever had that the dam at the El Capitan was a possibility, or a site that was possible of development.

A Well, I never knew that it was possible of development to the benefit of the Cuyamaca water Company, nor I never knew there was a dam site at El Capitan until the present Mayor Capps of San Diego and the then Mayor Wadham of San Diego in company with Mr.Jones, manager of the Electric Light plant, and I think Mr.Fay, the pr

Q The present councilman Fay?

A Yes, I was in the car with them and they stopped at that point and showed me that dam site, I never knew it was there before, I don't think any of the Company, if they knew it was there it was no use to them, they would have to pump water from there.

Q Did you ever hear them speak about it.

A I never heard them say anything, no sir.

Q were you ever present at a conference at Los Angeles or San Diego, or anywhere else, at which Mr.Post of the Cuyamaca Water Company was present, or at which Mr. Sackett was present, when the proposition to sell the Barney Hamilton filing was made by you or by anybody else?

A No sir.

Q Mr.Hagar, I will show you a paper consisting of a number of sheets, the first page of which is headed Survey, upon the fourth page of which is the signature

William S. Post, or his name William S. Post typewritten, dated San Diego, California, July 26, 1910, followed by several typewritten pages, headed Tables and Capacities of Reservoir sites, showing fourteen constructed or proposed reservoir sites on the San Diego River and its tributaries, or on the tributaries of the San Diego River, followed by several typewritten pages, preceded by a page entitled Description of Reservoir sites, and ask you to state whether you have ever seen that or a document of similar tenor among the files of the Cuyamaca Water Company.

A Yes, I have.

Q what does this report contain or purport to be.

A It is supposed to be a report of the proposed construction of a number of different dams at different sites tributary to the San Diego river and the Cuyamaca Water Company's project.

Q The development of the Cuyamaca Water Company?

A Yes sir.

Q I will show you what purports to be a letter signed by W. S Post, directed to Ed Fletcher, under date of San Diego, California, January 23,1911, referring to a high line system, and mentioning a number of reservoirs constructed and proposed on the head waters of the San Diego river, and after examining the same ask you to state whether or not you ever have seen a copy of that document in the files of the Cuyamaca water Company, and if you have state

what it purports to be.

A Yes, I have seen this.

Q what does this purport to be, Mr.Hagar?

A This is a report of Mr.Post on the proposed reservoir sites that are of sufficient elevation to take care of the high line pipe line that was supposed to be constructed.

Q Is that a canal or line that would take care o of the S tract? A Yes.

Q I will show you a document consisting of four typewritten pages, -three typewritten pages, headed Supplemental Report on low line system, in which mention is made of several proposed or constructed dams and reservoirs on the headwaters of the San Diego river, and ask you to state whether or not you have seen the document of which that is a copy in the files of the Cuyamaca Water Company, and if you have I will ask you to kindly state what it is and what its purpose is?

A This is practically the same as the other, I have seen this on file.

Q Is it supplemental to the first report of the low line system? A Yes.

Q I will show you a typewritten sheet upon which is set forth certain reservoirs by number, showing the height of dams at the site, the capacity in acre feet, the cost, the cost per acre foot stored at different amounts per acre foot per million gallons, and ask you to state whether or not you have ever seen the document of which that is a

copy, in the files of the Cuyamaca Water Company"

A I could not say as to that, I think Mr.Post got this out for Mr.Turner.

Q Is Mr.Post of the Cuyamaca Water Company?

A Yes.

Q Who is this Mr.Turner of whom you speak?

A Mr.Turner of Butte, Montana.

Q what was the object of getting this out for Mr.Turner, if you know? A Mr.Turner was here looking into the plant with the intention of buying an interest in it.

Q Is that the same Turner you came down here with?

A Yes sir.

MR. COSGROVE: You may cross examine.

MR. ROBINSON: We reserve the right to cross examine this witness.

MR. COSGROVE: We will not consent to that, it has cost the City of San Diego a lot of money to get these men here.

MR. ROBINSON: We confess we have been greatly surprised at the appearance of this witness, and not being informed of his presence, not contemplating his presence, certain data which is necessary on cross examination of this witness is not in my hands at the present time, and I prefer to reserve the right to cross examine him until tomorrow morning.

MR. COSGROVE: I will say as counsel for the City

of San Diego I appreciate the position of counsel for protestant, and in view of the courteous treatment that he has extended to me throughout this trial I don't desire to put him in a position where he will be in any manner embarrassed, but with reference to surprise I am very frank to admit that it may have been a matter of surprise to have Mr.Sackett and Mr.Hagar here, but in view of the testimony of Mr.Post and Mr.Fletcher charging these men with conduct if not criminal very unbecoming gentlemen, professional gentlemen, I think that we have taken no undue advantage of them in giving these man an opportunity to deny these insinuations made by witnesses for the protestants and by the protestants themselves. I will agree to present Mr.Hagar tomorrow morning for your examination out of courtesy to you, Mr.Robinson.

MR. ROBINSON: I appreciate that, Mr.Cosgrove, and thank you for it.

C. T. SACKETT, witness on behalf of the City of San Diego, being first duly sworn by the Register, testified as follows

BY MR. COSGROVE:

Q What is your post office address? A Livingston, Montana.

Q What is your occupation or profession?

A Civil and mining engineer.

Q How long have you been engaged in that profession? A I have been actually practicing twelve years.

Q Where have your activities been confined to mostly, what state or states? A Principally the State of Montana.

Q Have you ever done any engineering work in the County of San Diego? A I have.

Q For whom, Mr.Sackett? A For the Cuyamaca Water Company and for W. B. Hamilton.

Q Did you perform services for the Cuyamaca Water Company prior or subsequent to your services for Mr.Hamilton?

A Prior.

Q If it is not a personal question would you mind informing us why you came to California from Montana?

A I came to California from Montana at the solicitation of Mr.Hagar, for whom I had done a great deal of work in Montana, who in conjunction with H.W.Turner of Montana, as I understand it, anticipated making an interest in the Cuyamaca Water Company.

Q Is the Mr.Hagar to whom you refer the Mr.Hagar

who has just been on the witness stand? A Yes sir.

Q Had you done any work for him prior to coming to California? A A great deal.

Q After coming to San Diego County, California, did you become affiliated with the Cuyamaca Water Company?

A I did.

Q In what capacity?

A As engineer.

Q Did they have any other engineers working for them at that time? A Not that I know of.

Q The Cuyamaca Water Company is the successor of the San Diego Flume Company, is it not? A I so understood.

Q Do you know whom the San Diego Flume Company had engaged as their engineer just prior to the conveyance to the owners of the Cuyamaca Water Company?

A I think it was William S. Post, I wish to say, Mr.Cosgrove, in speaking of an engineer of course there were numerous men under myself, and Mr.Post, in speaking of an engineer for the Company, I mean the engineer in charge.

Q You mean you were engineer in charge?

A Yes, of course there were various men at work but they were under me.

Q Did Mr.Post do any work for the Cuyamaca Water Company while you were with them?

A Not that I know of at all.

Q Do you know Mr. W. B. Hamilton? A I do.

Q Mr. Sackett, in a document entitled Protest, In the Matter of the protest of James A. Murray, William G. Hinshaw, Ed Fletcher, against the application of Barney Hamilton and others, for Right of Way for Reservoir Site and Water Conduit, across the public lands and lands of the United States and the County of San Diego, State of California, filed in the office of the Secretary of the Interior, purporting to be signed by James A. Murray, William G. Hinshaw, Ed Fletcher, bearing the verification of Ed Fletcher, and sworn to before Lou B. Mathews, under date of Jult 24,1915, Lou B. Mathews being a notary public in and for the County of San Diego, there appears this allegation:

> "That these protestants are informed and believe and therefore allege the fact to be said Barney Hamilton did not present the proposed filing for the appropriation of water, nor is he prosecuting said application for right of way on his own account, or for his own benefit, but in the interest and for the benefit of one Ben Hagar and one C.T.Sackett"

Mr. Sackett, have you now or did you ever have directly or indirectly any pecuniary interest or profit to be had from the successful or unsuccessful termination of the application of Mr. W. B. Hamilton ?

A Except for my salary.

Q Other than that did you have any?

A No sir.

THE REGISTER: Let him state what he means for his salary, is that for his per diem or for drawing up plans.

Q You explain what you mean by that.

A I was under salary from Mr.Hamilton of so much per month and my expenses.

Q How much did he pay you per month? A Two hundred dollars and my expenses.

Q For what period of time?

A No period of time was stated, the project had not progressed far enough,that was merely during preliminary work.

Q How long did you draw two hundred dollars a month?

A I went to work for Mr.Hamilton December 1911, I left San Diego the 1st of July,1912, and during all of this time I was in the employ of Mr.Hamilton.

Q As engineer in charge of the work of the Cuyamaca Water Company, did you have access to the engineering data on file in their office?

A I did.

Q Did you go thoroughly through that data in one or more times to ascertain what was there in the way of surveys and the like? A I did.

Q Were you familiar with all surveys, field notes and other engineering data they had on file in their office with reference to any proposed or constructed dam and reservoir site? A I was.

Q In the protest to which I have referred a minute ago, on page 7 thereof, being aapart of paragraph IX, is contained this allegation, Mr.Sackett:

> "That the plans mentioned and described in the said application of the said Barney Hamilton for rights of way correspond with and are practically identical to the work c contemplated by these protestants, and considered and discussed by these protestants with Ben Hagar and Sackett, during the employment of the latter by these protestants"

Are you familiar with the proposed dam mentioned in Mr.Hamilton's application for reservoir easement?

A I am.

Q Is this statement which I have just read from the protest to which I have just referred a correct statement?

A Absolutely not.

Q Did the protestants or any or either of them ever discuss with you and Mr.Hagar, or with you alone or with Mr.Hagar alone to your knowledge, the possibility or probability of the dam at the El Capitan damsite?

A They never did.

Q Did you ever hear them make mention of it in any way, shape or form? A Not in the least.

Q Was there ever in the files of the Cuyamaca Water Company a map, either profile or otherwise, any field notes or any surveys that referred directly or indirectly to

the proposed dam at the El Capitan damsite?

A Not to my knowledge.

Q Did you while in the employ of the Cuyamaca Water Company ever discuss with Mr.Murray and Mr.Fletcher and Mr.Hagar, or with any or either of them the project or supposed project for the development of the waters of the San Diego river by constructing dams and reservoirs at points other than the points where the prpposed El Capitan dam would be located?

A We did.

Q Did you have many s uch discussions?

A I don't know that we had many, we had several.

Q In these discussions were these proposed dams and reservoirs definitely known and described?

A Yes.

Q Referring to this same protest and to the same paragraph thereof I find this allegation, Mr. Sackett:

> "That at the time said Hagar and Sackett left the service of these protestants or shortly prior thereto, they removed from the office of the protestants certain letters and papers relating to the said water rights and to the plans of these protestants for the purpose of developing and storing and utilizing said flood waters of said San Diego river, pursuant to the appropriation and claim thereof, and theretofore made and filed by these protestants, that the said records and files so removed by said Hagar and Sackett showed the plans of these protestants for the construction of work very similar to the works mentioned and described in the plans of said Barney Hamilton"

Is that statement a correct statement?

A Absolutely not.

Q Did you ever see in the files of the Cuyamaca Water Company or elsewhere, plans similar to the plans for the development of the El Capitan damsite as contained in the application of Mr. W.B.Hamilton?

A In all of the engineers' reports to which I had access relative to the Cuyamaca Company I never saw any reference made to a dam on the San Diego river, as I was engineer of the Cuyamaca Water Company, I did no work in connection with a dam site that low on the river. In other words, I did a little work at the diverting dam, nothing below what is known as the Cuyamaca diverting dam, to the best of my knowledge and believe there were no such plans in existence at all.

Q In this same protest and in the same paragraph thereof to which I have been referring, is this allegation:

> " That since the filing of said application for rights of way by said Barney Hamilton said Hagar and said Sackett have brought to the attention of these protestants certain purported prospective purchasers of the entire interest and holdings of these protestants as successors in interest of the San Diego Flume Company, but that said Hagar and sackettadvanced as a condition precedent to serious negotiations for the purchase of said property, the contention and claim that these protestants should pay to said Hamilton, on account of the alleged claim of waters belonging to the protestants, the sum of at least

two thousand dollars?

I will ask you if you ever to the protestants, or either of them, or to anyone else, ever offered to sell or to secure the sale of, or to secure the transfer of the Barney-Hamilton water filings for the sum of two thousand dollars or for any other sum? A No sir, I had no right to, everything was Mr. Hamilton's, I was merely in his employ, I would not be foolish enough to make such an offer.

Q Some people do things without having a right to do, Mr. Sackett, did you ever do it?

A No sir.

Q Have you, Mr. Sackett, of your own knowledge any information, or have you any knowledge based upon hearsay or supposition that would warrant you in the belief that Mr. Hamilton, Mr. W. B. Hamilton, or that the City of San Diego as assignee, is prosecuting this application in anything other than the utmost good faith?

A Not the least.

Q At whose request have you appeared here in Los Angeles for the purpose of testifying?

A Mayor Capps and yourself, the telegram was signed by Mayor Capps and yourself.

Q Are you being paid your expenses and per diem for coming here? A By the City of

San Diego.

Q Other than that do you expect or have you any hope of any reward for your services?

A Not at all, sir.

Q Who made, who had charge of the making of all of the surveys, the gathering of the field notes and other engineering data that was used in the presentation before the Land Office of the application of W. B. Hamilton?

A I had entire charge.

Q Were you paid a salary for that work or did you expect to get something out of the successful termination of the application?

A I was paid a salary for the preliminary work I expected to be chief engineer of the plant during construction, but the work had not progressed sufficient that I had even taken that up with Mr. Hamilton.

Q Gathering field notes and the other engineering data which was gathered by you or any of your men for Mr. Hamilton did you make use of any data belonging to the Cuyamaca Water Company?

A Absolutely not, there was no data that would have been of any benefit whatever had I even wished to take advantage of it.

Q Did you take advantage of it?

A Not in the least.

Q Have you got here today your field notes that you made at that time?

A I have, sir. (Witness produces field notes and other engineering data.)

Q Are these two leather bound books which you have there and which are marked Field Book No.400, Field Book No.408-E, endorsed in ink W.B.Hamilton storage dam and reservoir, number on the book 34 and 35, your original field notes which you made while you were working for Mr.Hamilton?

A They are, sir.

Q Have you any notations in those books or any of your other data which you copied from anything which you took or that anybody else took to your knowledge from the files of the Cuyamaca Water Company?

A Not in the least, those are actual surveys made for Mr.Hamilton and paid for by him, the original field notes with the dates upon which the surveys were made, showing thmx everything and the assistants on the work.

Q They represent the actual surveys made upon the ground and not any copies from any other documents?

A They do, sir.

Q This work was paid for by whom?

A W. B. Hamilton.

Q And the assistants under your charge were paid by whom? A W. B. Hamilton.

Q The expenses connected with the taking of this

engineering data was paid for by whom?

A W. B. Hamilton.

Q Mr. Sackett, I will ask you, what purports to be a letter addressed by C. T. Sackett to Mr.Vandenhook an employee of the Land Office, a copy of which was introduced in evidence by the protestants herein, marked Exhibit Q and ask you to state whether or not it is a correct copy of the communication which was sent to Mr.Vandenhook?

A I have my original copy in there, I imagine this is a correct copy - yes, I would say this is a correct copy.

Q Did Mr.Vandenhook respond to that communication?

A He did.

Q By letter? A By letter.

Q I will show you a letter headed Department of the Interior, United States Land Office, Los Angeles, California, January 4,1912, reading:

My dear Chas.

Your letter received, I have been so crowded with work in the office and with friends at home that could not get a minute to write. The map and other papers were filed today by mail from Mr.Hamilton, but haven't examined them, will take it up tomorrow. I would suggest that you prepare your maps and all papers called for in the right of way circular as soon as possible, meanwhile misleading the people in the vicinity as to the purpose of the surveys, etc. as is customary. There is not much doing in

new filings in the vicinity you are working in, and feel you will not have any trouble to speak of, will be glad to do what I can to help you along and to see you soon.

In haste,

Louis Vandenhook."

THE RECEIVER: What is the date of that letter?

A January 4,1912.

MR. COSGROVE: I will ask you to state if this is the reply which you received to the communication addressed by you to Mr.Vandenhook?

A It is.

MR. COSGROVE: We offer in evidence at this time copies of the communication from Mr.Vandenhook to Mr.Sackett and respectfully ask that it be marked City of San Diego's Exhibit No.35.

Q At the time that this correspondence was passing between you and Mr.Vandenhook you have no knowledge or information that the matter was proceeding in any manner other than a regular one? A Not the least.

Q So far as you know it was a regular and business like in every particular? A Yes.

Q You don't think Mr.Vandenhook's reply to your letter was anything more than what would be expected from any employee of the Department to a man whom you had several years' acquaintance with?

A Absolutely what I thought he could put in an official letter.

Q I will hand you, Mr.Sackett, a document, consisting of several typewritten pages, the first of which is headed "Survey" upon the fourth page of which is the name William S. Post, typewritten, San Diego, California, July 26,1910, followed by heading of sheet "Tables of Capacities of Reservoir sites, followed by several pages referring to sites by numbers, 1, 2, etc. showing the elevation of water surfaces, height of dam,Flooded area, Capacity, Acre feet for each of twelve sites therein referred to, giving a slight data with reference to two sites, numbered 13 and 14 therein referred to, followed by a sheet headed Description of reservoir site, followed by several pages typewriting narrative form, description, some table description of dams and capacities, character of dam, etc. and ask you to state whether or not you ever saw the document of which that appears to be a copy?

A In the files of the Cuyamaca Water Company I did.

Q You made a careful examination of that while you were engineer for the Cuyamaca Water Company?

A I did.

Q What does it purport to be?

A It purports to be a report of W. S. Post, hydraulic engineer of the proposed extension of the Cuyamaca Water Company.

Q Did you ever discuss that report or parts of

it wit h Mr.Post?

A I don't think I ever had any discussion with Mr.Post.

Q That was part of the files of the Cuyamaca Water Company? A Yes.

Q I will show you a document consisting of four typewritten pages , which appears to be a form of letter signed by W. S. Post, and addressed to Mr.Ed Fletcher, bearing date San Diego, California, January 23,1911, referring to the high line system in which reference is made to certain proposed and constructed reservoirs for the high line and low line levels, and ask you to state whether or not you have ever seen a copy of this communication?

A I have.

Q Where? A In the Cuyamaca Water company's office.

Q Was that a part of their files at the time you were chief engineer there?

A Yes;

Q I will show you what is headed Supplementary Report on low line system, consisting of three pages, being certain engineering data narrative and tabluated, referring to proposed and constructed dams and reservoirs, and engineering data relative thereto, and ask you to state whether or not you have ever seen the document of which there appears

to be a copy? A I have.

Q whereabouts? A In the Cuyamaca Water Company's office.

Q While you were their chief engineer?

A Yes.

Q I will show you a table typewritten on one sheet of paper, dated Reservoirs, Cost per acre foot stored, referring to twelve sites, reference being by number showing the height of dam, capacity, acre foot, cost, and the cost per acre foot stored at different cost per million gallons and per acre foot stored, and ask to state whether or not you have ever seen that document of which this appears to be a copy? A I have.

Q Where? A In the Cuyamaca Water Company's office.

Q While you were their chief engineer?

A Yes.

Q And part of the files of the Cuyamaca water company? A Yes.

MR. COSGROVE: At this time the City of San Diego offers in evidence a copy of the report of tables and capacities of the twelve reservoirs to which the attention of the witnesses Hagar and Sackett have been called, the tables reporting to be the report of W.S.Post, being a part of the files of the Cuyamaca Water Company,and particularly

the one now being offered in evidence, being the largest of the three, accompanied by the tables and capacities of reservoir sites, and the description of the reservoir sites and respectfully ask that it be marked City of San Diego's Exhibit No.36.

MR. COSGROVE: On behalf of San Diego we now offer in evidence copies of t he report to which the attention of witnesses Hagar and Sackett were called, and which purport to be the Supplemental report of the low line system of W. S. Post, and which according to the witness a part of the files of the Cuyamaca Water Company, and respectfully ask that it be marked City of San Diego's Exhibit No. 37.

We now offer in evidence on behalf of the City of San Diego, copies of a letter under date of January 23, 1911, addressed by Mr.W. S. Post, to Ed Fletcher, referring to the high line system to which the attention of witnesses Hagar and Sackett were called, according to these witnesses was a part of the engineering data and files of the Cuyamaca Water Company respectively, and respectfully ask that it be marled City of San Diego's Exhibit No.38.

We now offer in evidence a copy of a table headed Reservoirs, Cost per acre foot stored, referring to twelve reservoir sites by number, to which the attention of the witnesses Hagar and Sackett were called, according to the testimony of which witnesses was a part of the files of

the Cuyamaca Water Company at the time testified to, and respectfully ask that this exhibit be marked City of San Diego's Exhibit No.39.

12 M. February 9, 1916. Recess until 1:30 P.M.

1:30 P.M. February 9,1916.

C. T. SACKETT, Direct Examination continued

BY MR. COSGROVE:

Q Mr. Sackett, you just explain when and where and under what circumstances you met W. B. Hamilton?

A As I remember it was about the 1st of December,1911, I had come back from Mexico and was stopping at the Grand Hotel, San Diego,with Mr.Brewster and Mr. Buck and several other Montana gentlemen that knew Mr.Hamilton, and I believe it was Mr.Brewster introduced him, I had never met him until the 1st of December, 1911, I don't know that I had ever seen him before.

Q When did you terminate your services with the Cuyamaca Water Company?

A September 1911.

Q What did you do and where did you go after you terminated your services with the Cuyamaca Water Company prior to the time you met Mr.Hamilton?

A I went to Chicago and I remember from there to New York and from there to Florida, and from Florida to Cuba, and from Cuba to Yucatan and Vera Cruz, Mexico, and then came here from Mexico.

Q How long were you gone?

A Three months.

Q During any portion of this time were you in touch with W. B. Hamilton?

A Not at all, I didn't know him at all.

Q Did you come back there to meet him?

A No sir, not in the least.

Q Do you know anything about his being there?

A No sir, I would not have known who he was, I would not have known his name.

Q Do I understand you have here present with you and that you have had since you were employed by Mr.Hamilton, all of the original notations and data that were made by you or under your supervision for Mr.Hamilton and compiled to be used in the application of Mr.Hamilton to the Department of the Interior?

A Absolutely.

Q Have you not anything in addition to what you have already testified to say that in your opinion would be

of interest to the parties interested in this litigation?

A Just a concise statement. Having left the Cuyamaca Water Company in September 1911 I was in no way connected with Mr.Hamilton and did not know him until the following December; that during my connection with the Cuyamaca Water Company I was never acquainted with any plans or estimates or surveys that had been made, and made none myself in connection with the proposed dam at the Capitan Grande damsite, that no information that I ever acquired through my connection with the Company was used in connection with the Hamilton plans, that I have absolutely my original field notes and records and data upon which the Hamilton application was based, and have them with me, and they were made after my introduction to Mr.Hamilton, and at his solicitation, and absolutely paid for in full by himself, and that at no time was Mr.Hagar in any way connected with me during my services for Mr.Hamilton, although throughout the testimony the names of Ben Hagar and C. T. Sackett have been linked togather, I might say that Mr.Hagar was often quite unfriendly to me.

MR. COSGROVE: That is all, you may cross examine.

MR. ROBINSON: I reserve the right to cross examine tomorrow.

MR. COSGROVE: It may be stipulated that Mr.Robinson, counsel for the protestant, may have the privilege of

examining the witness tomorrow at such time as he may desire, what I have said with reference to Mr.Hagar is true with greater force with reference to Mr.Sackett.

MR. COSGROVE At this time I desire to call the attention of the Register and Receiver and the counsel for the respective interested parties, ~~that~~ to the fact that in introducing my exhibits at the prior hearing I had failed to keep track of the numbers as I should have done, and inadvertently introduced two exhibits as Exhibit No.16, and two exhibits as Exhibit No.17. At this time I respectfully request the permission of the Register and Receiver and the consent of counsel to have Exhibit No.16, being picture No.7, of Mr. W. B. Hamilton and the notice of appropriation fastened to a tree, along which he is standing, marked City of San Diego's Exhibit 16~~a~~.

MR. ROBINSON: Very glad to stipulate that.

MR. MANCHA: No objection.

MR. COSGROVE: And the map of reservoir and private lands introduced and marked Exhibit No.16, I now respectfully ask that it may be marked City of San Diego's Exhibit 16-B, it is entitled a Map of Reservoir and Private Lands.

MR. ROBINSON: No objection.

MR. MANCHA: No objection.

MR COSGROVE: The exhibit which appears to be a picture of Mr.Hamilton standing beside the tree which is attached what purports to be a notice of appropriation

marked Picture No.8, and introduced as City of San Diego's Exhibit No.17, at this time I respectfully ask it may be marked City of San Diego's Exhibit 17-a.

THE RECEIVER: It is so ordered.

MR. ROBINSON: No objection.

MR. COSGROVE: And a section of tracings in colors marked Map Indian Location of Indian Lands which has heretofore been introduced in evidence, marked City of San Diego's Exhibit No.17, I at this time respectfully ask that it be marked City of San Diego's Exhibit 17-B.

MR. ROBINSON: No objection.

MR. COSGROVE: At the first hearing witness T.B. Cosgrove testified concerning the Public Utilities Act of the State of California, at this time pursuant to the statement then made I shall offer in evidence in behalf of the City of San Diego a printed copy of the public utilities act as printed under the authority of the Railroad Commission, and respectfully ask that it be allowed in evidence and marked City of San Diego's Exhibit No.28.

MR. COSGROVE: May it be stipulated it need not be certified by the Secretary of State?

MR. ROBINSON: We will so stipulate.

MR. MANCHA. Yes.

MR. COSGROVE: When the witness T.B.Cosgrove testified as to Section 19 of Article 11 of the Constitution

of the State of California, he promised to produce a certified copy of that section, at this time I offer in evidence a certified copy of Section 19 of Article 11, Constitution of the State of California, and respectfully ask that it may be marked City of San Diego's Exhibit No.29.

Witness T. B. Cosgrove testified as to the certain provisions of the city charter of the City of San Diego, and promised to produce certified copies of the same, and pursuant to that promise I now offer in evidence certified copies of certain sections, being two sections of the charter of the City of San Diego, and respectfully ask that it may be admitted in evidence and marked City of San Diego's Exhibit No.30.

MR. COSGROVE: A witness produced by the City of San Diego, Mr. H. A. Whitney, hydraulic engineer of the Railroad Commission of the State of California, and asked to outline upon a map certain lands owned by the City of San Diego, which the representative of the city suggested might be used as a possible location for the Indians on the Capitan Grande Indian Reservation, in the event it was determined by the Department it would be advisable to move these Indians; at the request of the city attorney and in order to save the expense of bringing Mr.Whitney back to Los Angeles, it was, as I understand, agreed by the counsel for the Government and counsel for the protestants, that Mr.Whitney might prepare his map and send it to the Register and Receiver of the Land Office at Los Angeles, with the understanding that it would be considered as a part of the record in this case. I understand that the same has been received as part of the records in this case.

This map which has been produced by the reporter for the Land Office and which appears to be a map prepared by the witness H.A.Whitney, is now offered in evidence by the City of San Diego, and the request is made that it be marked City of San Diego's Exhibit No.53.

MR. COSGROVE: In connection with that exhibit I desire to make the statement that testimony has been introduced by the City of San Diego to the effect that this land or a considerable portion of it is valley land which may be irrigated and tilled; the map, however, and similar contour maps show that this land if properly described lies on a side hill and is notvalley land, while the land which we believe we own, which we have been occupying and leasing is valley land, and the witness H. A. Whitney has written a letter to the city attorney of the City of San Diego calling attention to the variance or error, either in the City's deeds or in the topographic map. At this time I offer in evidence and respectfully ask that it may be marked City of San Diego's Exhibit No.52, a copy of the

letter from the hydraulic engineer to the city attorney of San Diego, in which this error is pointed out. The purpose of introducing this exhibit is simply to show that when we had offered to substitute this land we felt we were offering to substitute valley land, and we have actually been occupying valley land under the notion that we owned it, and the map prepared shows the land as described as hill land, so there is an error either in our deed or the topographic map.

WARREN C. EARL, witness on behalf of the City of San Diego, being first duly sworn by the Register, testified as follows

BY MR. COSGROVE:

Q What is your post office address? A San Diego, California.

Q Where do you reside? A San Diego, California.

Q What is your profession? A Civil engineer.

Q How long have you been engaged in that profession? A Eighteen years.

Q Will you detail in such a manner as will enable the interested parties to understand, your experience as an engineer.

A In the spring of 1898 I was employed by the Northern Pacific Railroad as rodman, prior to that for two school vacations I had been in the employ of the same company as chainman and rodman. I was engaged during 1898 in railroad location service in Minnesota and Dakota. In the fall of 1898 still with the Northern Pacific I was made level man, and in 1899, the early summer of '99 I was made transit man, all of the work which I had been engaged in up until the summer of 1899 was in railroad location work. In the summer of 1899 I was engaged in railroad construction between Little Falls, Minnesota and Brainerd, or, rather, Staples, Minnesota. In 1900 I was

assistant engineer of the Northern pacific Railroad, and during the spring, summer and fall had charge of the construction of the concrete coal dock, at Superior, Wisconsin, which at that time was the largest coal dock in the world. In the winter and spring of 1900 as assistant engineer for the Northern Pacific Railroad I made an inventory and appraisal of the property of the St.Paul,Duluth railroad, which was later purchased by the Northern Pacific. In 1901 as assistant engineer of the Northern pacific Railroad I had charge of the construction of the steel bridge across the Mississipi river at Brainerd, Minnesota.

In the fall of 1901 I left the employ of the Northern Pacific Railroad and during the winter of 1901 and all of 1902 I was superintendent of construction in the installation of water and sewer system of DeKalb,Ill. In 1903 I was superintendent of construction and installation of a gas plant main, buildings, etc. at the same place, DeKalb, Illinois. In the late fall of 1903 and all of 1904 I was resident engineer of the Missouri Pacific Railroad, in charge of construction of twenty-three miles of railroad in Arkansas in the White River Valley; in the construction of this railroad it was necessary to change the entire channel of the White river at two different places in order to eliminate a great deal of bridging,

and the residency of which I had charge of, there were two rock filled dams constructed by myself for that purpose. In 1905, during the spring and late winter, spring and summer of 1905, I was the resident engineer for the Wabash Railway at Delyira, Ohio, in the construction of about thirty miles of railroad from Lorraine to Wellington, Ohio. In the fall of 1905 or 1906, I was assistant engineer for the Chicago and Northwestern Railroad, the first work upon which I was engaged was track elevation in Chicago, then I had charge of surveys of a new line between Sterling, Iowa and Clinton, Iowa. I also made a survey for the erection of a double track steel bridge across the Mississipi River at Clinton, Iowa, and track elevation through the town of Clinton, Iowa, and a new railroad shop and lay out at Clinton, Iowa. In the summer and fall of 1906 I had charge of the inventory and appraisal of about one-half of the Chicago and Northwestern railroad mileage in the State of Minnesota. During 1907 and 1908 I was principal assistant engineer of the Railroad Warehouse Commission of Minnesota, and had charge of a great portion of the work, constituting principally the inventory, inspection and appraisal of all the railroad mileage in the State. In 1909 up until October 1909 from the 1st of January 1909 I was chief engineer of the DeSmults Land & Irrigation Company, head-

quarters Portland, Oregon; there were surveys and estimates made for the reclamation of some considerable tracts of land, the work, however, was never done. In the fall of 1909 I went with the Railroad Commission of Oregon as chief engineer and was chief engineer during 1910, 1911 and 1912, I had charge of all inspection service matters. In 1913 I was chief engineer of the Railroad Commission of California, it was similar but enlarged duties to what I had in Oregon. In January 1914, I was engaged by the City of Oakland as special engineer in preparing data and testifying in the Federal Court, I believe it was entitled the City of Oakland vs. Pless Water Company.

In the spring and summer of 1914 I was engaged in private practice as consulting engineer, and did some preliminary work for reclamation in the Imperial Valley for private interest. In December 1914 and during the spring of 1915, I was chief engineer for the La Mesa Lemon Grove & Spring Valley Irrigation District, and had charge of the inventory and appraisal of the property of the Cuyamaca Water Company. During the summer of 1915 I made some private investigations of the water conditions in the San Diego river, that is, for myself, a scheme that I had of my own.

Q You say you have been chief engineer of the Railroad Commission of the State of California?

A Yes.

Q Chief engineer of the Railroad Commission of

the State of Oregon? A Yes.

Q Assistant chief engineer of the Public Utilities Commission of Minnesota?

A I was principal assistant engineer.

Q You said that you were chief engineer of the Lemon Grove - La Mesa Lemon Grove & Spring Valley Irrigation District, and had charge of the work of making a valuation of the Cuyamaca systeem? A Yes.

Q Was that for the hearing before the Railroad Commission to which reference has been made during this case? A I suppose so, I haven't heard the testimony heretofore in this case before today, I don't know as it has been referred to today but it was a hearing held before the Railroad Commission, in February, one week in February and one week in April 1915.

Q For the purpose of placing a valuation on the Cuyamaca Water Company for the La Mesa Lemon Grove & Spring Valley Irrigation District, and for the City of San Diego, also for the purpose of establishing the rates for the Cuyamaca Water Company? A Yes.

Q Are you familiar with the San Diego river and its tributaties? A Yes.

Q Have you been over that ground?

A Most of it.

Q You have heard no evidence, you have read no

evidence that has been introduced in the case thus far?
A No sir, none whatever except that that has been introduced today.

Q I will show you a table marked Cuyamaca Water Company's table of run off of the San Diego river above El Capitan Reservoir site and utilization of the same by the Cuyamaca Water Company's system, when fully developed, which was introduced in evidence in this case and marked Cuyamaca Water Company's Exhibit W, and ask you to state whether or not you have seen that before?
A Yes, I have.

Q Have you made a careful examination of the figures given there? A Yes.

Q I will show you Mr.Earl, a mass curve chart, copy of which has been introduced in this case marked City of San Diego's Exhibit No.13, and ask you to state whether or not you have made a careful analysis and examination of this table and chart?

A I have, in fact I checked the computation that is there shown.

Q How ~~xxxxx~~ these two exhibits, being Exhibit No.13 of the City of San Diego and Exhibit W of the Cuyamaca Water Company, show total run off from one hundred and ninety-one square miles of drainage area of the San Diego river tributary to the El Capitan Reservoir in acre feet?

A Yes sir, it is a computation that is made by

the city engineer of San Diego on the one hand and the Cuyamaca water Company on the other hand.

Q Have you prepared a mass curve comparison showing the amount of water, the total amount of water being the run off at El Capitan as shown by the city and also as shown by the Cuyamaca Water Company, the protestants herein? A Yes sir, for the twenty year period, beginning June 30,1894 and ending June 30, 1914.

Q Is this the chart which you are now looking at that comparison of mass curves? A It is.

Q Was this chart prepared by you?
A Yes.

Q Does it represent your best effort in the matter? A Yes.

Q What does this chart show with reference to the estimate of the city of San Diego as shown in its Exhibit No.13 and the estimate of the protestants as shown in their Exhibit W with reference to the total run off at the El Capitan damsite? A It shows through each year of a twenty year period for the entire period that the estimate made by the Cuyamaca Water Company and the estimate made by the city engineer of the City of San Diego, or practically the same for the twenty year period, the total run off is estimated by the Cuyamaca Water Company is four hundred and seventy-four thousand three hundred and sixteen acre feet
the estimate of the City engineer of City of San Diego

being for twenty year period four hundred and seventy-one thousand eight hundred and eighty-one acre feet, being a difference of less than, it is less than one per cent, it is a fraction of one per cent of the twenty year period difference.

Q What is your judgment as to the correctness of both exhibits so far as the run off at El Capitan is concerned?

A I think they are both correct, either one of them.

Q You think they are as correct as human agency can make them for that period of time?

A I think so, with the data at hand.

Q What would you say as to the correctness of the statement that this estimate of the city engineer, being the city's exhibit No.13 is fifty per cent too high?

A I don't think that statement would be correct, I think that the city engineer's estimate is as near correct as can be obtained, it is also true of the Cuyamaca Water Company's estimate, practically the same.

Q Is it your judgment these exhibits, either of them, represent the successful and honest statements as to the total run off during that period of time?

A I do.

Q Could you improve on them? A No sir, not for this twenty year period.

MR. COSGROVE: We at this time offer in evidence and respectfully ask that this exhibit may be marked City of San Diego's Exhibit No.41.

Q Were you present at the hearing of the Railroad Commission of the State of California when Mr.Lee testified on behalf of the Cuyamaca Water Company, at which time a number of exhibits were introduced relative to the rain fall and run off and reservoir capacities and water diversions over a period of twenty or twenty-two years? A Yes.

Q Have you had access to copies of all of these exhibits? A I have.

Q Have you prepared an exhibit which will show the amount of water diverted by the San Diego Flume Company for the five years prior to the time that that company, to the time that the system owned by that company was acquired by the Cuyamaca Water Company and for the five years subsequent to the acquisition of that system by the Cuyamaca Water Company? A Yes.

Q I will ask you to examine that curve and state whether or not that represents such a table and is a table you prepared?

A It is a table.

Q By whom was it prepared? A Myself.

Q Have you a copy of it there? A I have.

Q For the five years preceding the acquisition

of this system by the Cuyamaca Water Company what was the average amount of water diverted in acre feet per year?

A Six thousand two hundred and ninety-four.

Q For the five years subsequent to the acquisition of this system by the Cuyamaca Water Company what is the amount of feet, the average amount in acre feet per year?

A Five thousand and twenty-six.

Q Now I notice on this table you have ~~double~~ headed Water passing Los Coches gauging station, what is the Los Coches Gauging station?

A That is the gauging station on the flume, that is, it is below the Monte pumping plant.

Q Is it below all points of diversion?

A It is below all points of diversion, below all the pumping plants in addition of all users of water except the Indians.

Q For the five years previous to the acquisition of this water system by the Cuyamaca Water Company or the partners composing the Cuyamaca Water Company, what was the average per year in acre feet passing the Los Coches gauging station?

A Average of five thousand one hundred and nineteen acre feet.

Q What was that same average for the five years subsequent to the acquisition of the system by the owners of the Cuyamaca Water Company?

A Average four thousand two hundred and thirteen acre feet.

Q Does this average include water that was pumped by the Cuyamaca Water Company?

A Well, during the year of 1905, the season of 1905 and 1906 to 1912 and 1913 inclusive, there was no water pumped into the flume, but during the season of 1913 and 1914 there were sixty-three acre feet pumped into the flume; during the year 1914 and 1915 there was one hundred and sixty-two acre feet pumped into the flume.

Q That is shown on the notation on the bottom of the schedule, is it? A Yes, and this exhibit is not shown from whence these figures were taken, but are taken from Exhibit 4-10 introduced in the hearing before the Railroad Commission of which mention has been made, Railroad Commission Application No.1482.

Q In that matter there were several applications heard at one time were there not? A Yes.

Q Now this column A I notice an explanation of Column A, Cuyamaca Water Company Exhibit 4-8, in Application No.1482 before the Railroad Commission of California?

A Yes.

Q Column B, Cuyamaca Water Company Exhibit No29 in the same case ? A No.29.

Q Do I correctly understand then these are

actual figures that were introduced in evidence by the Cuyamaaa Water company in the case before the Railroad Commission? A They are.

Q And they don't represent any estimates?

A Not on my part at least.

MR. COSGROVE: We offer this comparison in evidence and respectfully ask that it may be marked City of San Diego's Exhibit No.42.

Q Mr. Earl, in the exhibit heretofore introduced by the City of San Diego marked City of San Diego's Exhibit No.13, it was shown that the Cuyamaca water Company according to the figures of that exhibit had diverted seventeen and a half per cent of the total run off above the El Capitan damsite, are you familiar with that feature of the exhibit? A Yes.

Q In arriving at that estimate of seventeen and a half per cent the engineer who prepared the exhibit had as I understand the testimony, no actual record for the first four or five years, he approximated the average run off for those four or five years? A Yes.

Q That approximation, of course, might have been incorrect, might it not?

A Well, it might have been true the amounts that were put in for these years they were missing, it was an average for the sixteen years for which actual record was had.

Q But it is an approximation? A yes.

Q You think it is a fair approximation?

A I do.

Q Now have you prepared an exhibit based upon the sixteen years where records are available showing the per cent of diversion of the total run off above the El Capitan made by the Cuyamaca Water Company and the San Diego Flume Company during that period of time?

A Yes.

Q Over what sixteen year period does it extend?

A From the season June 30,1899 to June 30,1915, sixteen years.

Q Was this exhibit prepared by you?

A It was.

Q Are you looking at a copy of it now?

A I am.

Q What percentage of the total run off of the San Diego river and its tributaries above the EE Capitan dam site was diverted by the San Diego Flume Company and the Cuyamaca Water Company during this sixteen years?

A Average of sixteen and six-tenths per cent.

Q This is less than the amount that Mr.Cromwell in his Exhibit No.16 of the City of San Diego's Exhibit No.16 had given them credit for?

A Less in percentage.

Q I notice in hhis exhibit to which you have just been referring which has not yet been numbered, column No.1 is headed Total run off of drainage area tributary to El

Capitan reservoir site, at the bottom column figures I notice an explanation, Column No.1 from Cuyamaca water Company's Exhibit W? A Yes.

Q That is the exhibit that you were shown a few minutes ago as Exhibit W in this case, presented by Mr.Lee?

A Yes.

Q That represents the figures of the Cuyamaca Water Company, does not represent your figures or the city's figures?

A No, it is figures as shown on Exhibit W.

Q Your column No.2 I notice is headed Water diverted into flume by the San Diego Flume Company and Cuyamaca Water Company, at the bottom is your explanation Column No.2, from Cuyamaca Water Company's Exhibit 4-8 Application 1482 Railroad Commission of California, do I understand that that refers to the exhibit introduced by the Cuyamaca Water Company? A It does.

Q Then that also represents the figures of the Cuyamaca Water Company and they are not your figures nor the figures of the city?

A No sir, not mine.

Q Column No.3 is Column No.2 subtracted from Column No.1? A Yes.

Q Column No.4 is the percentage worked out?

A Yes.

Q prior to 1909 and 1910 water was diverted to the system owned by the San Diego Flume Company? A Yes.

Q subsequent to that time water has been diverted to the system owned by the Cuyamaca Water Company, to the gentlemen owning the Cuyamaca Water Company?

A yes sir, t hat is a fact.

MR. COSGROVE: At this time we offer this exhibit or schedule in evidence and respectfully ask that it be marked City of San Diego's Exhibit No.43.

Q I show you, Mr.Earl, a large map showing the Pacific Coast line, the location of the City of San Diego and of the various communities east of the City of San Diego the location of the San Diego river and the location of the different units of the Cuyamaca Water Company's system upon which is shown certain reservoirs or reservoir sites, this being a copy of the exhibit offered in evidence by the protestants herein, marked Protestants' Exhibit No. U, and I will ask you to state whether or not you have examined that exhibit carefully?

A I have, yes sir.

Q This map shows constructed the proposed reservoirs at several points on the San Diego river, and the head waters of the San Diego river, and I will ask you if you are familiar with all the locations as shown?

A I have been to every reservoir site except Dye Canon.

Q I desire to call your attention to the topographic map to which is attached a small sheet typewritten, headed Drainage areas of different reservoirs, and ask you to state by whom that was prepared?

A By myself.

Q What does it represent? A Well, the large heavy black line represents the drainage area tributary to the El Capitan damsite, and that of course the outline of a part of all of the other reservoirssites with the exception of the Conejos and other reservoirs, the drainage area is outlined in different colors and is entered in the tables, the explanation accompanying it.

Q This then is a contour map showing the drainage areas of certain reservoir sites which are marked on the contour map? A Yes.

Q Topographic map? A Yes.

Q Are these the same reservoirs that are shown on Exhibit U of the protestants?

A With the exception of the Cuyamaca which is not shown, and also the diverting dam which is not shown, and the reservoir at the lower end being the La Mesa, Murray Hill and Eucalyptus.

Q This then shows all of the reservoirs above El Capitan shown by the protestants' U, with the exception of the diverting dam and reservoir and the Cuyamaca reservoir? A Yes.

Q It shows the drainage area of the different reservoir sites? A It does.

Q And the outline is simply an engineering problem with a topographical map? A It is,- these two topographical maps are a part of the Cuyamaca Quadrangle and the Ramona Quadrangle.

MR. COSGROVE: We at this time offer this topographical map with the explanation attached thereto in evidence, and respectfully ask that it be marked City of San Diego's Exhibit No.44.

Q Mr.Earl, the exhibit that we introduce in evidence marked Exhibit No.42, being a table of the comparison of water diverted for the five years, prior to the five years, subsequent to the acquiring of the water system of the Cuyamaca Water Company, if you will refer to that.

A Yes.

Q Are you familiar with the amount of water that there was in the river during the five years subsequent to the acquiring of the system by the Cuyamaca Water Company?

A Yes, that is shown on one of the exhibits that was introduced by the Cuyamaca Water Company in the hearing before the Railroad Commission.

Q Did you have access to that when you prepared this table? A I did.

Q Is it a true statement that in the five years

subsequent to the acquiring of the system by the Cuyamaca Water Company that there was no more water in the river than is shown by the exhibit?

A No, there was water in excess of that every year.

Q Was there plenty of water there to be diverted if they desired to divert it? A Yes

Q And other exhibits introduced before the Railroad Commission show that? A Yes.

Q What is the number of those exhibits?

A Exhibits 4-6 shows the monthly run off of the San Diego river at the diverting dam from the drainage area of ninety-two square miles, that is exclusive of Cuyamaca reservoir drainage area, it is based on observation by the Company and the United States Geological survey, it is so headed. Exhibit 4-7 shows the monthly run off of the South Fork of San Diego river at the South Fork flume, based on observation by the Company and the United States Geological Survey, these two exhibits show the monthly rainfall for the seasons 1894 and 1895 to 1914 and 1915 inclusive.

Q Basing your answer on exhibits introduced by the Cuyamaca Water Company before the Railroad Commission of the State of California, and the witness under oath, is it a true statement that your exhibit being Exhibit No.42 introduced herein shows all of the water that was in the

river during the five years subsequent to the acquiring of the system by the Cuyamaca Water Company, and there was no more water in the river to divert.

A I don't understand your question.

Q Read it, please. (Question read)

A There was more water in the river at the diverting dam alone for each and every year than the total water diversion upon the San Diego river and the South Fork river.

Q Referring to the Protestants' Exhibit U showing several constructed and proposed reservoirs on the San Diego river and the head waters of the San Diego river being tributaries, have you made an analytical comparison of that system as compared with the system consisting of one reservoir at the El Capitan with a one hundred and.fifty foot dam having in mind actual existing conditions?

A I have.

Q I notice that the Protestants' Exhibit W shows two reservoirs, one at Cuyamaca known as the Cuyamaca Reservoir, and one at the diverting dam known as the diverting dam reservoir, which you do not take into consideration in your computation, will you please explain why you did not take this into consideration?

A That is true, that exhibit is U instead of W, the record has it wrong there.

Q The record is corrected now. A I have

eliminated the Cuyamaca Reservoir and the diverting dam, the theory on which I proceeded was this, the City of San Diego needs more water, there are flood waters on the San Diego river, there is also at the present time a public utility that is operating on the San Diego river and is and has been diverting a certain amount of water which has been put to public use, and the city in going to the San Diego river for water I have assumed, cannot disturb the activities and the rights of public utilities now operating there, which is the Cuyamaca Water Company.

Q In other words the Cuya maca Reservoir shown on this exhibit is now and for several years has been an existing reservoir operated in connection with the Cuyamaca Water Company, which is a public utility?

A Yes.

Q And this public utility supplies the water to municipalities and supplies water to consumers along the line?

A It does.

Q The diverting dam is the main point of diversion, is it not, of the Cuyamaca flume? A Yes.

Q Any encroachment or infringement at that point would very seriously hamper if not entirely prevent the Cuyamaca Water Company from fullfilling its obligation to the people it serves?

A That is the theory upon which I made comparisons.

Q As I understand you have worked out your comparison based upon actual existing conditions and you haven't made a theoretical comparison or a theoretical development?

A No.

Q The other reservoir which you took or the other seven proposed reservoirs of the Cuyamaca Water Company as shown by their Exhibit U? A Yes.

Q None of the seven are developed?

A No.

Q No use being made of any of them at the present time? A Not for the purpose of impounding waters at any rate.

Q Now following up your exhibit No.44 which is a topographical map of the drainage area you have to start with as I understand it from your exhibit, the number of square miles of watershed of each of the seven reservoirs shown on the Cuyamaca Company's exhibit U, eliminating the diverting dam and the Cuyamaca? A Yes.

Q Now did you have to work with the run off figures for each of these watersheds standing alone?

A No sir, I did not.

Q How did you estimate the run off at the reservoirs marked Dye, Hoskins, Inaja, Boulder Creek?

A The Cuyamaca water Company introduced exhibits in Application 1482 before the Railroad Commission showing

the run off of the twelve square miles of the Cuyamaca, also the run off record showing the run off of the ninety-two square miles tributary to the diverting dam, I made comparison of the rainfall records of the Cuyamaca and Julian, and felt that that warranted me in making an average run off for those different reservoirs that average being based on the run off records of the Cuyamaca and the run off records of the diverting dam.

Q Did you also have for your assistance the table prepared by Mr.Lee and introduced in evidence before the Railroad Commission as part of that Exhibit No.4, being 4-30, as I recollect, showing the rainfall at the different points on this drainage area?

A Yes.

Q As I understand it you gave to Dye, Hoskins, Inaja, Boulder Creek watershed, the average or medium, or rather the mean, I guess you call it, between the Cuyamaca run off and the diverting dam run off?

A That is correct.

Q Now what is your opinion as to the fairness of that allowance?

A I think it is too high, but it is the best that I could do with the records available.

Q In considering the efficiency of these four watersheds you consider that it is a fair estimate to this

proposed system?

A I certainly do.

Q The run off at Cuyamaca is higher than the run off at any of these places? A Yes.

Q Very considerable, is it not? A Yes.

Q The run off at Cuyamaca is very considerably higher than this mean? A Yes.

Q And the run off at the diverting dam is lower?

Q Now in arriving at your run off in the Conejos and the Poverty Gulch watershed, how did you arrive at the allowance made?

A The run off records were available having been introduced in this same case Application 1482 before the Railroad Commission of California, showing the run off of the South Fork river, I allowed for Conejos Reservoir and Poverty Gulch reservoir the run off per square mile as determined by these run off records.

Q In other words, you allowed the same for Conejos and Poverty Gulch as the Exhibit of the Cuyamca Water Company introduced before the Railroad Commission showed for the South Fork drainage, and the Conejos and Poverty Gulch are part of the South Fork drainage?

A Yes.

Q How did youarrive at your figures for the El Capitann, simply the El Capitan?

A The total run off at El Capitan would be the same,

and the South Fork run off and the diverting dam run off gives the complete run off tributary to El Capitan for all but fifty of the one hundred and eighty-six square miles tributary to El Capitan, for that fifty square miles which is all of the territory west of the San Diego river between the divertingdam and El Capitan was estimated as the mean between the run off at South Fork and the diverting dam.

Q Practically the same manner in which Mr.Lee and Mr.Cromwell proceeded? A Yes.

Q Gives about the same results?

A Yes.

Q In proceeding with your analysis and capacities of these reservoirs at these different ~~points~~ sites, you took the capacities testified to by Mr.Post?

A Well, I didn't hear Mr.Post's testimony, but on Cuyamaca Water Company's Exhibit U was shown pencil notations, capacities at these different reservoirs, I believe it was you yourself told me that was the capacity that had been testified to.

Q Then the capacities that you used are the capacities shown on what appears to be a copy of the Cuyamaca or Protestants Exhibit U upon which is noted in pencil the capacity in acre feet of the several reservoirs ?

A Yes.

Q And those are the capacities that you used

upon the statement of the city attorney that they were the capacities testified to by Mr.Post? A Yes.

Q Did you prepare the mass curve of the run off of each of the seven proposed reservoirs shown on Cuyamaca or Protestants' Exhibit U?and based upon the reservoir capacity of the amount told you and as shown upon that exhibit, by the city attorney's notation?

A Yes.

Q Have you that exhibit with you?

A Yes.

Q Is this a copy of these mass curves?

A It is.

Q One for each reservoir? A Yes.

Q These mass curves show do they not in acre feet the run off of each individual reservoir after deducting or allowing for the Cuyamaca diversion? A Yes.

Q The amount of the Cuyamaca diversion you obtained from what?

A From the exhibit introduced in the application before the Railroad Commission.

Q By the Cuyamaca company? A Yes.

Q And your manner of allowing for that was by turning loose from this reservoir system enough water to meet these diversions? A Yes.

Q Each of these mass curves show reservoir

capacities as heretofore testified to and each of them starts off with a full reservoir?

A Yes.

Q What was the purpose of starting off with a full reservoir for each of these?

A The rainfall records for four or five years prior justified it, it assumes the reservoir is full beginning June 30,1894.

Q In addition to that starting off with a full reservoir is certainly giving the seven reservoir system a fair showing for efficiency, is it not? A Yes .

Q But at the same time it is justified by the prior run off records? A Yes, it is.

Q Each of these mass curves shows a net safe water crop over a period beginning season of 1894 and 1895 to the season of 1913 and 1914 inclusive? A Yes.

Q These mass curves were prepared by whom?

A By myself.

Q Do they represent your best efforts in this matter? A They do.

Q You think they show a fair condition of efficiency with reference to the seven proposed reservoirs?

A I think that they do.

MR. COSGROVE: At this time we offer in evidence and respectfully ask that it be marked City of San Diego's

Exhibit No.45, the mass curves of the seven proposed reservoirs.

Q Now have you tabulated any convenient reference and formed a result of your hydraulic study evidenced by the mass, cumulative mass curves just introduced in evidence so we may observe at a glance the amount of water conserved by the seven proposed reservoirs? A Yes..

Q And have you on this same exhibit shown as a comparison the amount of water that would be conserved by the proposed scheme of the City of San Diego being one reservoir at El Capitan one hundred and sixty feet in height ?

A I have.

Q Is this a copy of that? A It is.

Q By whom was this prepared? A Myself.

Q According to this exhibit what is the total safe reservoir draft in gallons daily of the entire seven reservoirs?

A For the period of June 30,1894 to June 30,1904, there would be a minimum safe draft of one million four hundred and forty-seven thousand gallons per day, or a maximum safe draft of one million seven hundred and five gallons a day that would be dependent, determined by the amount of water that was lost in creek channels.

Q I notice you have two columns headed Transmission loss in creek channels, minimum ten per cent, maximum twenty-five per cent? A Yes.

Q You have other exhibits showing the distance water would have to travel in open creek channels to get from each of the six proposed reservoirs in the upper or head waters of the San Diego river down to the lower or El Capitan?

A Yes.

Q Had you at your command and did you examine any actual records of transmission loss in this section of San Diego County in passing water from one to another reservoir?

A I didn't have access to records but tests were made on Boulder Creek by Mr.Lee for the Cuyamaca Water Company, testified to in the hearing before the Railroad Commission wherein he testified that the loss of water in Boulder Creek ranged from fifteen per cent to eighty-four per cent of an average of thirty per cent per annum, dependent upon the amount of water.

Q How how far did that water travel concerning which those tests of Mr.Lee was made?

A twelve and a half miles from Cuyamaca dam to the diverting dam.

Q Are you familiar with that creek bed?

A Yes.

Q Have you walked down it? A Yes.

Q What is the character of that creek bed?

A Bedrock until within about four miles of the diverting dam.

Q Then it is mountain,meadows,and sand,is it not?

A No meadows in there, it is a pretty precipitous gorge, it is mostly sand and boulders.

Q What per cent of this last would you say occurred in the first eight miles of the creek?

A I think there is none, gains if anything in the first eight miles.

Q why gains? A Bec use there is some springs.

Q It is practically a rock bed gorge?

A Yes.

Q It is that point the Cuyamaca Company have their proposed diversion for power? A yes, right near there.

Q You think the entire loss is in the last four and a half or five miles? A I think that is where all the loss occurs.

Q Do you think that ten as a minimum and twenty-five as a maximum transmission loss is a fair transmission loss to be considered?

A I think it is very conservative.

Q How the second page of this tabulation shows the same per cent for a period of time from 1904 to 1914, does it not? A Yes.

Q And th- same transmission losses are taken into

consideration? A Yes.

Q And during that period of time the seven reservoir system would have a maximum safe draft of how many gallons daily? A A little over seven million, seven million one hundred thousand.

Q And the City of San Diego's proposed El Capitan scheme with a dam one hundred and sixty feet in height would have?

A Sixteen million gallons per day.

MR. COSGROVE: This table of comparison of the safe daily draft of the seven reservoirs as compared with a large El Capitan we now offer in evidence and respectfully ask that it be marked City of San Diego's Exhibit No.46.

Q I show you a tabulation which is headed Distance water will have to be transmitted in creek channels for the different proposed reservoirs to proposed conduit beginning at El Capitan Reservoir and ask you if this exhibit was prepared by you? A Yes, it was.

Q It represents simply a mathematical computation of distance the water would have to travel?

A Yes sir, simply scaling the map, that is the way it was obtained.

Q That is the exhibit you referred to a little while ago in speaking of transmission losses?

A Yes sir.

MR. COSGROVE: At this time we offer this table

of distances in evidence and ask it be marked City of San Diego's Exhibit 47.

Q I show you a tabulation which is headed Tables showing water wasted under the two proposed systems to develop and conserve the surplus flood waters of the San Diego river above the El Capitan damsite, the seven reservoir systems and El Capitan one hundred and sixty foot dam reservoir, and ask you to state by whom that schedule was prepared?

A That was prepared by myself from actual records.

Q Well, then, it is based on actual records? A Yes.

Q The column under Seven Reservoir System is based upon the preceding exhibits we have introduced in evidence today?

A Yes.

Q Now this exhibit I observe shows that during two periods, the season of 1894 and 1895 and 1906 and 1907 there would be waste out of the proposed one hundred and sixty foot El Capitan dam? A Yes.

Q That is what is meant by that second column?

A Yes.

Q That would occur during those years?

A Yes.

Q In other words, your one hundred and sixty foot dam could not conserve all your water during those two years?

A It could not, there would have been the loss of the amount shown.

Q In making this estimate did you make allowance for diversion of Cuyamaca? A Yes.

Q That is always taken care of? A Yes.

Q During the same period of time the seven

reservoir system there would be a loss of water how many years? A Ten.

Q As shown in the third column? A Yes.

Q Down at the bottom I notice that you have what is known, under Available run off, three hundred and thirty odd thousand acre feet? A Yes.

Q Followed by these figures eighty-seven thousand eight hundred and two acre feet or twenty-six and five-tenths per cent wasted under El Capitan dam, one hundred and sixty-three thousand three hundred and twenty-five acre feet, or forty-nine and five-tenths per cent wasted under seven reservoir system? A Yes.

Q Roughly speaking then, your seven reservoir system would conserve fifty per cent of the water?

A Fifty per cent of the flood water.

Q Yes, fifty per cent of the flood water.

A Yes.

Q Your capitan at one hundred and sixty feet would conserve seventy-four per cent of the flood water?

A Yes.

Q There would be twenty-five per cent approximately waste under your El Capitan system and a fifty per cent waste under your seven reservoir system? A Yes.

MR. COSGROVE: We at this time offer this comparison of waste water, of water wasted under the two proposed systems in evidence and respectfully ask that it be marked City of San Diego's Exhibit 48.

Q I show you, Mr.Earl, a table marked Comparison of Capacities of proposed reservoirs to develop and conserve the surplus flood waters of the San Diego river above the El Capitan dam, seven reservoir system and the El Capitan dam one hundred and sixty feet high, and ask you to state by whom this exhibit was prepared?

A By myself.

Q The capacities for each of the seven reservoirs as I understand is the capacity which you were told Mr.Post gave in testifying concerning his Exhibit U?

A Yes.

MR. COSGROVE: We at this time offer this exhibit in evidence and respectfully ask it may be marked City of San Diego's Exhibit No.49.

Q This morning, Mr.Earl, there was introduced in evidence by the City of San Diego, three exhibits marked City of San Diego's Exhibits Nos. 36, 37 and 38 respectively, being the report, & supplemental reports of Mr.Post, hydraulic engineer for the Cuyamaca Water Company, upon the proposed development to some tgelve or fourteen reservoirs in the head waters of the San Diego river, showing the hydraulic engineering data relative thereto, and I will ask you whether or not you have had copies of these reports and have had an opportunity to examine the same? A I have.

Q Now attached to these reports and forming a part

of them I believe there was a table showing the capacity of the various reservoirs with dams of various heights?

A Yes.

Q You had access to that, did you not?

A I did.

Q Now did you prepare for this case a table showing the height of dams that would be requisite to impound at the respective reservoir sites the amount of water which you were informed by the city attorney Mr.Post, testified would be impounded at the various reservoir sites under their proposed development? A Yes.

Q Is this a copy of that tabulation? A It is.

Q By whom was it prepared? A Myself.

Q How does the report or any of the reports of Mr. post show the height of dam that would be necessary to conserve the twenty-hundred and three sixty acre feet at Boulder Creek?

A No, it does not.

Q Does it show the height of dam necessary to conserve four thousand acre feet at Inaja? A No sir.

Q Does it show the height of dam that would be necessary to impound six thousand acre feet at Hoskins?

A No sir.

Q Does it show the height of dam that would be necessary to impound two thousand acre feet at Dye Canon?

A It does.

Q It also shows the height of dam which would be necessary to conserve Conejos and Poverty Gulch and El Capitan the amount of water which you were told he testified, Mr.Post testified, would be conserved at those points?

A It does for Conejos and Poverty Gulch, in that report, but for El Capitan there is no mention in the report of that, as shown in Exhibit 4 which was introduced by the Cuyamaca Water Company in Application 1482 of the Railroad Commission of California.

Q Now referring to Mr.Post's report th at was introduced in evidence this morning, what is the highest dam which he shows at Inaja?

A One hundred and thirty feet.

Q What is the capacity of the reservoir as shown by Mr.Post, that one hundred and thirty foot dam?

A Eight hundred and thirty-four acre feet.

Q What was the capacity of Inaja which you were informed by the city attorney Mr.Post testified as the proposee capacity?

A Four thousand acre feet.

Q What would be the height of the dam at Inaja necessary to conserve four thousand acre feet of water in the reservoir?

A Approximately two hundred and thirty feet.

Q What would be the height of the dam necessary to conserve six thousand acre feet at Hoskins?

A Approximately one hundred and forty feet.

Q What would be the height of dam necessary to conserve twenty-three hundred and sixty acre feet at Boulder Creek?

A Approximately one hundred and sixty feet.

Q what would be the height of the dam necessary to conserve seventy-one thousand acre feet at El Capitan?

A One hundred and sixty feet.

Q The figures which you show for Boulder Creek and Inaja and Hoskins were obtained by projecting the dams as shown by Mr.Post in his report which has already been introduced in evidence? A Yes.

Q You made the projections yourself?

A I did.

MR. COSGROVE: The City of San Diego offers this table of height of dams of proposed dam sites in evidence and respectfully asks it may be marked City of San Diego's Exhibit No.50.

Q I understood you to say that you had been at each of the seven reservoirs concerned, which we are speaking of, with the exception of the Nye Canon Reservoir?

A I have, yes sir.

Q Are you familiar with the location, or I might better say the former location of railroads and roads in San Diego County in the vicinity of the proposed dams and reservoirs?

A yes.

Q Have you prepared an exhibit showing the distance by highway and the road conditions from railroad terminals to the different dam sites proposed by the City of San Diego and the Cuyamaca water Company?

A I have.

Q Is this document to which I am now directing your attention such an exhibit? A It is.

Q was it prepared by you?

A yes.

Q Under your direction? A It was.

Q Calling attention to the El Capitan damsite the same conditions would prevail whether you erected a fifty foot dam or a one hundred and fifty foot dam, would it not.

A It would except possibly that a larger dam it might warrant the construction of a railroad spur from Lakeside to the dam, I hardly believe a forty-five foot dam would.

Q Now I note on the topographical map a legend entitled Explanation of roads showing red or black line for good county roads, and a cross section black line for heavy mountain grade, and a dotted black line for heavy mountain trails.

A Yes sir.

Q Calling your attention to the narrative or explanation typewritten under heading " One Mi Capitan and Lakeside Railroad Terminal" now Lakeside is the railroad

terminal of all of these reservoir sites except one, is it not? A yes.

Q Which one is that? A Dye Canon.

Q What is the railroad terminal for that?

A Foster.

Q Do you know anything about the railroad between Lakeside and Foster at the present time? A Only from hearsay.

Q But this map was prepared prior to the flood conditions and gives the proposed reservoir sites a benefit of the roads and railroad conditions as they existed prior to the flood disaster.

Q This exhibit shows the number of miles of good county road and the number of miles of mountain grades, heavy mountain grades, the number of miles of mountain trails necessary to pass over, to reach the different reservoir sites?

A Yes,

MR. COSGROVE: The City of San Diego at this time offers this document in evidence and respectfully asks it be marked City of San Diego's Exhibit 51.

Q In addition to the road conditions delineated on the map just introduced in evidence and marked City of San Diego's Exhibit No.51, are there any other items that you could mention which have direct bearing upon the cost of constructing dams at the different dam sites which is not shown

upon the exhibit?

A well, it might be that El Capitan is more favorably situated as regards power, the San Diego Consolidated Gas & Electric Light Company have a transmission line up to - well, it is very close to Cape Horn.

Q How far is Cape Horn from the proposed dam site?

A I guess it is a couple of miles or so possibly, I don't believe it is a couple of miles, nearer one mile.

Q Well, is this transmission line of which you speak a high tension transmission line?

A I think that it is, it is extended up through there to use by the settlers principally in pumping water.

Q Is the question of a power wire you have a high tension transmission line an item of any importance to be taken into consideration in your cost of constructing dams?

A It might be, it depends on the type of dam to a great extent to be constructed there.

Q Give us a little more on that subject if you can.

A I don't know that power would be needed to any great extent for a rock fill for a concrete dam why of course you would need power.

Q How about a masonry dam?

A You might need power there.

Q Are there any other items of importance that haven't been mentioned in this connection that would have

any bearing on the cost of building any of these proposed dams which would be favorable or unfavorable to either of the projects?

A I don't know, I think that per foot of dam lengitudinally that is cross section of dam for a one hundred and sixty foot dam at El Capitan, or any of these other sites would be practically the same per foot of cross section.

Q Anything else in that connection?

A Not that I know of.

Q I notice, Mr.Earl, on the first page of the report of Mr.Post, the same being offered in evidence and marked the City of San Diego's Exhibit No.38, at the bottom of the page this item "For domestic use we find that the sale value of four cents per one thousand gallons would justify one hundred and forty dollars per acre foot expended in storage, and ten cents per one thousand gallons, three hundred and fifty dollars." Basing your computation upon this report of Mr.Post's that four cents a thousand gallons for water stored, what would the City of San Diego be justified in expending on the El Capitan dam proposition?

A Well, that is nine million nine hundred and forty thousand dollars.

Q Basing the further computation on Mr.Post's

report to the owners of the Cuyamaca Water Company, using his second figure of ten cents per thousand gallons, how much would the City of San Diego be justified in expending at the El Capitan if they erected a one hundred and sixty foot dam? A Twenty-four million eight hundred and fifty thousand dollars.

Q These conclusions that you have given are based upon figures contained in Mr.Post's report?

A No sir, it is not my estimate, it is based on his conclusions there.

MR. ROBINSON: Cross examination reserved on behalf of protestant.

MR. MANCHA: Also on behalf of the Government.

T. B. COSGROVE, witness on behalf of the City of San Diego, recalled:

MR. COSGROVE: I have gone through the exhibits introduced on behalf of the City of San Diego and have made a list of these exhibits referring to them by number, and incorporated in the reference enough to enable the counsel or any examining officer to intelligently ascertain the number of the exhibit. This list of exhibits includes all of the exhibits that we have introduced up to and including No.51. I will offer that in evidence and ask it be marked City of San Diego's Exhibit No.52, it may be of some assistance in running these exhibits down.

Considerable testimony has been introduced at the prior hearings in which reference was made to the report of Mr.Harroun on the Volcan system, and of Mr.Lippincott and O'Shaughnessey on the Volcan system, I have copies of both of these documents, have had copied from them the conclusions of these engineers. With reference to the development of the Volcan system by the City of San Diego showing the aggregate cost and the cost per thousand gallons for water delivered, based upon different capacities, the conclusion of Mr.R. E. Harroun is as follows:

"Finally it may be conceded that in the light of the inform ation available the following conclusions are justified: that on this basis the total cost of the complete

development of the system on the basis of permanent construction and such as to deliver to the City of San Diego twenty-three million gallons daily, will be seven million, seven hundred and twenty-nine thousand dollars, that upon a basis of four and a half cents interest on the value of the property, together with annual depreciation, maintenance and the operating cost, the delivery of twenty-three million gallons daily, this water will cost delivered into the distribution system of the City of San Diego per one thousand gallons, five and twenty-six one hundredths per cent,Respectfully presented,

R. E. Harroun."

From the report of Messrs O'Shaughnessey and Lippincott I read the following:

"REPORT ON THE VOLCAN SYSTEM

San Francisco,California,May 25, 1915.

To the Hon. City Council,

City of San Diego, California.

Gentlemen:

We have been asked to report upon,first,the reasonable value of said system in its present condition. We find its value to be two million eight hundred and eighty thousand six hundred and twenty-five dollars land and water rights. The cost of developing the system to a safe yield of nineteen and five one-hundredths million gallons daily, exclusive of

the Carroll Reservoir, is practically six million five hundred thousand dollars, or the cost per one thousand gallons of six and eight-tenth cents for structures.

Respectfully submitted

M. M. O'Shaughnessey

J. B. Lippincott."

At the bottom of this exhibit I myself have appended as a note "Referring to their valuation this statement which is not a part of the report, "two million five hundred thousand dollars is the purchase price fixed by the owners of the Volcan system," that is my understanding of what the owners at that time asked for the property, the valuation placed upon it by Mr.O'Shaughnessey and Mr.Lippincott was three hundred and eighty odd thousand dollars in excess of that. The purpose of this exhibit is simply to clarify the record on that subject concerning which there was some considerable testimony.

MR. COSGROVE: At this time I desire to introduce these extracts from these reports in evidence and respectfully ask it may be marked City of San Diego's Exhibit No.33.

Q Mr. Charles H. Lee, witness for the protestants herein was cross examined by the city attorney for the City of San Diego at this hearing concerning certain tes-

timony he gave before the Railroad Commission under oath, and not being satisfied with the answers of that witness I now testify that I was present at that time and followed the evidence very closely and have had copied from a certified copy of the reporter's xx transcript the testimony of Mr. Charles H. Lee in that particular, and that it is as follows: "Before the Railroad Commission of the State of California In the Matter of the Application of James A. Murray, Ed Fletcher, fixing the rates to be charged for water furnished and to be furnished in San Diego County, Application 1231, Copy of Reporter's Transcript.

CHARLES H. LEE, witness called in behalf of the Applicants in Application 1231, being first duly sworn testified as follows:

DIRECT EXAMINATION

MR. STEARNS:

Q I will show you a table headed Cuyamaca Water Company's comparative cost of water delivered to the edge of service Area from Cuyamaca and City of San Diego's gravity system, and this table which is now introduced represents your efforts in that respect?

A Yes, it does.

Q How in this you say the Cuyamaca system as it is at present and the Cuyamaca system fully developed, now

" by the Cuyamaca system fully developed what do you mean?

"A By that I mean developed so as to conserve and deliver for use the greatest amount of the flow of the San Diego river which is feasible.

Q That includes the building of what reservoirs?

A That includes the building of a reservoir at the diverting dam for regulation purposes, a reservoir at Conejos, a reservoir site on the south Fork for reservoir purposes, and the construction of the El Capitan dam to a height of one hundred and forty feet, and the raising of the La Mesa dam to a height of one hundred feet, and the development of the South Fork siphon to the capacity of the South Fork feeder."

MR. COSGROVE: At this time and on behalf of the City of San Diego, I desire to introduce in evidence this copy of the testimony of Mr.Charles H. Lee and respectfully ask that it may be marked City of San Diego's Exhibit No.34.

MR. ROBINSON: No cross examination, all cross examination at one time.

MR. MANCHA: I will wait until after Mr.Robinson cross examines.

W. B. HAMILTON, witness on behalf of the City of San Diego, recalled

BY MR. COSGROVE:

Q Have you been sworn in this case?

A Yes.

Q Mr. Hamilton, I will show you what appears to be a copy of an agreement entered into between William J. Kuehner and W. B Hamilton, for an option on certain land located in San Diego County, and ask you to properly examine the instrument and state whether or not you have ever seen that or a copy of that heretofore?

A Yes, I have.

Q I note that the copy of the document which you have in your hand has not the blanks filled in but the blanks remain unfilled? A Yes.

Q was this agreement actually executed?

A It was, yes sir.

Q I note that the consideration for the option as specified in this contract at seven hundred and fifty dollars? A Yes.

Q And purchase price at four thousand two hundred and fifty dollars? A Plus the seven hundred and fifty dollars.

Q Was that amount of seven hundred and fifty dollars actually paid by you to Mr.William J. Kuehner?

A yes, it was.

Q Do you know where the original of that document is? A There is one copy in Mr.Kuehner's hands, I believe the other copy is among my papers in Utah.

Q Did you make an effort in San Diego to locate the original? A I could not make any efforts in Utah, there was no one I could get to put their hands on my papers, but I did in San Diego, I got this copy of the agreement in Judge Boone's office in San Diego.

Q With the exception of the blanks not having been filled in this is an exact copy is it of the option which was executed at that time? A Yes.

Q And you actually paid the amount seven hundred and fifty dollars? A Yes.

Q Did you afterwards exercise that option?

A I let it lapse.

Q Is that the option concerning which you testified on direct examination at the first hearing?

A It was, yes sir, except at that time I did not remember the price I had paid, this h as refreshed my memory, I know now it was seven hundred and fifty dollars, I think I testified before it was at least two hundred and fifty, I know know it was seven hundred and fifty.

THE RECEIVER: You never had it recorded?

A No sir.

MR. COSGROVE: The City of San Diego offers this copy of the option in evidence and respectfully asks it may be marked City of San Diego's Exhibit No.40.

MR. COSGROVE: That is all we have available, tomorrow morning we can introduce this last exhibit, with that we close the case on behalf of the City, then hold ourselves available for cross examination.

THE RECEIVER: 4:15 P.M. February 9, 1916, Recess until 9:30 A.M. February 10, 1916.

9:30 A.M. February 10,1916.

W. G. EARL, witness on behalf of the City of San Diego, being first duly sworn by the Register, testified as follows

BY MR. COSGROVE:

Q Mr. Earl, I show you a document headed Operative Cost per acre foot water stored in proposed reservoir, Figures furnished by the Cuyamaca Water Company, and ask you to state by whom that document was prepared?

A well, the figures for Poverty Gulch Reservoir and Conejos--

Q who prepared this particular document you are looking at? A myself.

Q This compilation of figures?

A I did.

Q Calling your attention to the first column headed Reservoirs, followed by column headed Heights of dam, Capacity per acre foot, Estimated Cost per acre foot stored, I will ask you where you got these figures?

A For the reservoir at Poverty Gulch, Conejos, Boulder Creek, Inaja, Hoskins, Dye, there is copies, there is a copy of the figures furnished in the report of Mr.Post of July 26,1910, to the City of San Diego, Exhibit No.38, the computation for El Capitan was an exhibit prepared and introduced

by Mr.Lee in the application No.1482 before the Railroad Commission of the State of California, and is Exhibit No.47 in that case.

Q This exhibit refers to six of the seven reservoirs that is mentioned in the seven reservoir proposed sites? A Yes.

Q And the El Capitan is the El Capitan dam of one hundred and forty feet, the figures submitted by Mr.Lee in the hearing to determine the value of the Cuyamaca system before the Railroad Commission? A Yes.

Q Under the six or seven proposed reservoir system what is the average cost per acre foot for water stored? A Forty-three dollars per acre foot.

Q Under the El Capitan at one hundred and forty feet height? A Nineteen dollars per acre foot.

Q These figures are all figures of the Cuyamaca Water Company? A Yes.

MR. COSGROVE: The City of San Diego at this time offers this exhibit in evidence and respectfully asks it may be marked City of San Diego's Exhibit No. 54.

Q Since the last hearing in this case has there been any material change in the water system belonging to the City of San Diego? A Well, yes, the Otay dam has been destroyed, washed out.

Q Which one is that, the upper or the lower

Otay dam? A The lower Otay.

Q It had an impounding capacity of how much?
A Approximately thirteen billion gallons.

Q Is that dam a complete loss? A Absolutely.

Q Are you familiar with the damage that has been done in the San Diego river valley below the proposed El Capitan damsite by the recent floods?

A Above the, I believe it is called the Old Mission Bridge or the bridge on the Escondido road, I am stating only by hearsay, after the first flood I went down Mission Valley from this bridge I speak of, the Old Mission Bridge I believe it is called, down the Valley towards the mouth of the river, and from there I saw the damage that was done, that, however, was prior to the second flood which I understand did a great deal more damage than was done by the first flood.

Q Would in your opinion the construction of a dam to a height of one hundred and sixty feet at El Capitan prevent the destruction and ravages wrought by floods similar to the flood they had this year?

A I think if a reservoir was properly regulated it would have prevented a great deal of it.

Q What do you mean by properly regulated?
A I think that probably the reservoir would have been fairly empty and would have taken the crest of the flood, the

first flood, and there yet remains a great deal of the rainy season, would yet be quite a heavy run off after the crest of the flood has passed, the dam in my opinion should be allowed to lose a good deal of water in order that it might be able to take care of the second flood such as obtained.

Q In other words, if the crest of the flood is held behind the reservoir there is no damage done below?
A No, if the crest of the flood is allowed to go over the dam this damage is done, it acts the same as though there was no dam there.

Q In other words, the dam would have to be properly regulated?

A Yes, it would.

MR. COSGROVE: I will say for the record as was agreed to yesterday, I have Mr.Hagar and Mr.Sackett here at this time for examination, these gentlemen are anxious to be allowed to proceed with their business elsewhere, and I am anxious to accomodate them and allow them to go.

THE REGISTER: You mean cross examine?

MR. CROSGROVE: Cross examine, yes, and Mr.Robinson has just asked if I would agree to submit to cross examination at this time myself, I will submit to cross examination at any time, but if they desire to cross examine me at this time it is only upon the stipulation that they will finish with me so they can finish with Mr.Hagar and Mr.Sackett this morning, I think it is possible, but I think not

hardly probably, the matter is entirely up to counsel for protestants, I must not disappoint these men again.

MR. ROBINSON: The office, I presume, is cognizant of the conditions prevailing regarding the roads between San Diego and Los Angeles, we confidently anticipated Mr. Post, our chief engineer would be here this morning with some data absolutely necessary to have before the cross examination of Mr.Hagar and Mr.Sackett can be proceeded with, we will not stipulate to finish with Mr.Cosgrove in time to take up the examination of Mr.Sackett and Mr.Hagar, for the reason of the condition of affairs that I have already stated. The counsel for protestants was very greatly surprised yesterday upon the appearance of Mr.Hagar and Mr. Sackett and was not prepared to cross examine these gentlemen at that time, and we shall endeavor to conclude the cross examination of Mr.Cosgrove, and in the interim I anticipate Mr.Post will be here with the data required, but in the event he is not here by the time that we finish with Mr.Cosgrove I will promise to immediately proceed with the cross examination of Mr.Hagar and Mr.Sackett.

MR. COSGROVE: At this time I desire to say that the proposition of surprise mentioned yesterday by counsel for protestants, is in my estimation wholly unworthy of consideration; these gentlemen, Hagar and Sackett, if your Honor please, have testified to nothing that is new,

they have simply denied the sworn statements and the sworn testimony of the protestants accusing them of unprofessional and criminal conduct, it is in my estimate absolutely ridiculous to say that there has been any proposition of surprise, they may be surprised because of these men being here but they can't say they are surprised by reason of the testimony given, they have done not h ing but simply deny what Iscontainded in their protest, denied the direct allegation filed with the Secretary of the Interior, some considerable time ago, and sworn to by witnesses presented at the first and second hearings, they have given no new evidence at all but denied criminal and unprofessional accusations made by these protestants, and I insist on the stipulation of yesterday being lived up to at this time.

MR. ROBINSON: I take it, your Honor, that the object of this hearing is for the purpose of enabling all of the parties to the hearing to produce testimony which will enlighten the Department with reference to the facts at issue here; We protest against being compelled at this time to proceed with the cross examination of these witnesses after having made the statement that we were not prepared, and that we cannot cross examine these witnesses intelligently without the data which Mr.Post is bringing with him from San Diego. The flood conditions which have prevailed in

Southern California as the office is aware, have rendered transportation facilities very unreliable, but I know Mr.Post is in San Pedro at the present time on his way to Los Angeles, and it is simply for the purpose of saving time, so to speak, that I ask Mr.Cosgrove to submit himself to cross examination at this time.

MR. COSGROVE: I submit the question is whether or not they have lived up to their stipulation, saying this matter shall be continued in order to produce a witness from San Diego. The City of San Diego has been compelled to produce witnesses from Montana, we had to come here, the idea of saying they should be allowed an extension of time to get one man from San Diego, it is baseless, it is groundless; we had themen here yesterday and I agreed to give them until this morning, and I insist on their stipulation being lived up to. Talking about this question of fact, I submitted evidence at the first appearance I made before this Land Office and asked for a continuance of the case, in order that I might prepare myself in order to properly present the facts, and it was based on a motion and the motion was denied and properly denied, and I insist on the stipulation of yesterday being lived up to at this time.

THE REGISTER: At the suggestion of the Register and Receiver, the City Attorney Cosgrove agrees to take

the stand with the understanding that upon Mr.Post's appearance he may vacate and his cross examination be continued.

MR. ROBINSON: A further agreement on behalf of counsel for protestant, that the cross examination of Mr. Hagar and Mr.Sackett will be continued today.

T. B. COSGROVE, witness on behalf of the City of San Diego,

CROSS EXAMINATION

on behalf of the protestants

BY MR. MATTHEWS:

Q You have been sworn and have testified, Mr.Cosgrove? A Yes, I have.

Q I wasn't here and I have to ask you that question. A Yes sir.

Q In connection with your testimony, in connection with the testimony ~~generally~~ was a copy of your opinion on the rights of the City of San Diego to the waters of the San Diego River filed in the record?

A yes, that was introduced, Mr.Mathews, in evidence, and was marked City of San Diego's Exhibit No.26.

Q How long have you been city attorney of San Diego? A November 1913 I was appointed first of November or the latter part of October.

Q The opinion referred to was filed according to its date January 5th, dated January 5,1914? A I will say, well, of course the opinion was in the form of a letter to the council, this is a printed copy, is dated January 5,1914, I antisipate it was within a few days, one way or the other from that.

Q Then this opinion was filed how long after you were appointed city attorney? A About ten weeks.

Q How long have you been a resident of San Diego County? A I went there in August 1911, the 14th day of August.

Q During all that time you have lived in the City of San Diego? A Yes, I have lived there.

Q I notice at the outset of the opinion you refer to a resolution as Resolution No.15,554, calling upon the city attorney for an investigation of the rights of the City in and to the waters of the San Diego river, will you state who framed that resolution, if you know?

A well, if I had the resolution I could tell, my best opinion is at this time that it was written either by myself or Major Fay, it is my recollection it is the first resolution I wrote as city attorney, it was written at the request of Major Fay, or perhaps written by him and shown to me, but I think I wrote it myself.

Q Was it prepared as the result of a conference between you and Major Fay in regard to the city's water rights?

A Yes, my recollection is that Major Fay and perhaps Mr.Adams, who was then a member of the council, came in and asked me to prepare a resolution, or sent a letter asking me to prepare a resolution calling upon the city attorney to render an opinion on the rights of the City of San Diego in

the waters of the San Diego river, and other streams, and there was incorporated in that resolution reference to other watersheds.

Q Mr.Fay also was a member of the council at that time? A Yes.

Q Will you state, Mr.Congrove, in a very general way as briefly as you would as a lawyer, just the scope of your inquiry into the facts and historical data underlying the opinion which you submitted?

A You mean by that just confining myself without any reference to the law?

Q Just in your own way without any limitations.

A Well, the gathering of the data was secured I presume in much the same manner in which you would prepare a brief for any case, as soon as I started to work on it, started making notations and every proposition of law or historical fact that I would run on to, that I thought would have any final bearing on the case, and very early in the investigation I made a plan of how I should proceed with reference to the facts. I figured that the difficult part of the investigation was determination of the actual historical facts connected with the establishment of the pueblo, and that the determination of the law once the facts were determined and settled upon, would be the easier portion of the work, and I at first did the work which I would call at

this time, or any time, determining the facts in my mind, a statement of facts, and then after that looked up the law the best I could.

Q What source of information did you refer to to determine the facts connected with the founding of San Diego?

A You mean by that the founding of the presidio, the pueblo or the city?

Q The founding of the community under the Spanish law?

A Do you mean the founding of the presidio or the founding of the pueblo.

Q Either one, was San Diego originally a presidio or was it originally a pueblo?

A It was first , sir, a presidio.

Q I understand by that it was first a military settlement? A Yes.

Q And the pueblo succeeded? A Yes sir, the pueblo followed, followed a very considerable time thereafter, the pueblo existed, of course, with the presidio but the presidio existed for some considerable time before the pueblo.

Q Was there a mission settlement also at any time at that point? A The Mission of San Diego which was built further up the river, just outside the pueblo limits, is a matter that I haven't investigated,

I have a pretty much hazy notion of it, but I know at the time they established the presidio that Father Junepero Serra who accompanied the expedition, raised a crop, where the Serra Memorial Cross now stands,dedicated a little mission within the presidio, but that is not the mission near the location of the mission that is now referred to as the mission of San Diego.

Q As you state that mission was the one established outside the easterly, from the eastern boundary of the city?
A yes, the ruins are still standing.

Q Evidence on the ground as to the existence at one time of that mission?

A Yes. However, I do not speak authoritively of the establishment of the big mission, I have never investigated it.

Q Where did you find your historical data in investigating the originals of this settlement at the point where San Diego is now located?

A Well, Mr. Matthews, I would rather not tell you for this reason, the gathering of this data has cost the city a very considerable amount of money, and the parties to be benefitted by divulging where it would be found are parties that have antagonistic claims against the City of San Diego, and they would benefit directly by the city's expenditure. I will say for you that I have here today present certified copies, certifiedphotographic copies of all these instruments, and I should be glad to allow you and

other counsel interested in this case, to take them and examine them upon giving me your word as professional gentlemen that you would not divulge to these protestants, or to Mr. Gottesburen, the place where these originals are found, they can be ferreted out at some considerable cost by an attorney of average ability, and if they are to be benefitted by obtaining these documents it should be at their expense; I have, however, here certified copies of the Spanish documents, photographic copies of the original map and certified copies of translations.

Q What was your idea in preparing this, was it for the use of counsel on the opposite side in this case here?

A No, I wanted this myself before I wrote this opinion.

Q well, now, I don't know how far I should insist on the matter in this proceeding, because of the facts you have submitted an opinion purporting to be based and which you say was based on original historical data.
A Yes.

Q I would not want to have the City of San Diego unnecessarily put to the requirements of divulging the material on which it relies to protect or substantiate its rights, but it would seem if the opinion stands in the case, the facts and data consulted in the preparation of the opinion might very properly be required for the cross ex-

amination.

A I am very glad to hand it to you and allow you to cross examine on it to any extent you wish, I am very glad to be cross examined on the contents of it, but I do not think it is fair to ask me where it is, where it can be found so that the protestants at the expense of two or three dollars can go and obtain it.

Q. Will the certificate divulge that fact?

A Yes, the certificate shows by whom it is certified to, what office it is in at the present time. I have no objection to allowing you to see these documents and Mr. Mancha, and the representative of the Forestry Department.

Q I could not take them unless my client can take them.

A Your clients can see them, what I object to is to showing the certificates so they will know where these documents are.

Q I think I probably know because I have had occasion to get similar ones.

A Yes, it cost considerable expense to get them.

Q I will not dwell on that opinion at this time longer, it may be we will get back to it, if it is unnecessary, if it turns out to be unnecessary, I will be glad to be considerate to the city.

A I thank you very much.

Q would you state, Mr.Cosgrove, what as the result of your investigation, you ascertained in a general way were the features, the usual features of a Spanish pueblo?

A what do you mean by that?

Q Well, what was its extent, its grant, its allotment of property, its method of government, and other matters that related to a Spanish settlement, created under the old Spanish regime.

A well, that is stated in the opinion probably, a great deal more accurately, a great deal more fully than I can state it now; the opinion has on page 1, Pueblos under spanish rule. Under page 2, Pueblos under Mexican law. Throughout the opinion, particularly discussing the rights of the pueblo under Spanish and Mexican laws and customs, beginning on page 11, there is a very exhaustive treatise or discussion of the peculiar rights of spanish and Mexican pueblos as distinguished from a town or village or city under the common law of England.

Q Did you find in your research whether under the spanish regime pueblos had any particular extent or territory assigned to them?

A Well, the investigations I made did not so much go into the question of the power of the pueblo under the Spanish law as it did under the Mexican law, for this reason, that a pueblo of San Diego was established under

Mexican sovereignty and not under Spanish sovereignty, while the ~~exp~~presidio of San Diego was established under Spanish sovereignty.

Q Then I will ask you this question, whether you ascertained in your examination the original source of information, anything pertaining to the extent territorially of Spanish presidios under Spanish law?

A I have no recollection now of ever seeing any statement which pretended to be authoritative, which had anything to do with the extent of jurisdiction of a Spanish presidio.

Q Is it not true that the territorial extent or the allotment of any given area of land was not that of the establishment of a Spanish presidio?

A I don't know but what I would be inclined, if compelled to express an opinion on that subject, that is correct, a presidio was a military organization, I presume the jurisdiction of a presidio was a matter that was determined by what they called the commandant of that province, it was not a civil organization .

Q Is that not true and di d you not find it to be the case in your investigation that the allotment of a defined area of land was a proceeding pertaining to the establishment of a pueblo, whether under the Mexican laws or under the former Spanish law?

A My investigation led me to believe that an allotment of land accompanied the establishment of a pueblo always, either under the Spanish or Mexican law, I have no knowledge of any allotment of land where they established a presidio.

Q You do state in your opinion here when the first steps were taken looking to the establishment of the pueblo of San Diego?

A Looking to the formation of what they called ayuntamiento or town council.

Q That event was something pertaining to the establishment of a community into a political organization with some form of Government, was it not?

A Well, I don't know whether that is substantially correct, I think the documents show that the citizens chafing under the exercise of judicial functions by the commandant of the presidio, who was a military man, and they wanted civil organization there.

Q When did that occur to your investigation that San Diego became an organized pueblo or local Government?

A The election of the officers of the pueblo was held the 21st day of December 1834, on the 1st day of January, 1835 they commenced the exercise of the duties of the different offices.

Q Were these proceedings taken in connection with the original organization of the community into a local

political government?

A Well, if you mean local political government pueblo, yes.

Q Yes, t hat is what I mean. What did you ascertain to be the fact regarding the territorial extent of the pueblo as originally formed?

A well, the extent of the pueblo of course is government by the general law enforced at that time for the organization of pueblos subject to this explanation, that where pueblos were organized in the interior they took the shape of a perfect right angle, while where they were organized on the banks of a large body of water or upon the shore of the ocean, then they took a triangular shape or trapezoidal shape, depending on the contour of the ground or the coast line, as to the extent.

Q The general law in force at that time provided that a pueblo have a certain defined acreage of land which was defined in leagues?

A It seems to me either four or eight leagues, I have forgotten which now.

Q Are you looking for a reference to the law under which San Diego became a Mexican pueblo in which the area or extent of the territory is prescribed for a pueblo?

A I was looking for the area or extent of the pueblo, yes, under the general law I do not seem to see it just now, but

as I recollect it it is either four square leagues or eight square leagues, it is shown here some place but it seems to me four square leagues, and was measured two leagues each way of the center of the pueblo or the presidio.

Q The territorial area of San Diego as to the boundaries existing under the Mexican regime was what?

A After they organized there the town council or ayuntamiento under the authority of the alcalde of the ayuntamiento they went out and ran their lines, of course the presidio or pueblo being situated upon the sea coast they ran in a sort of a triangular shape, in running these lines they started from the tip of point Loma and went in a southeasterly direction until they struck the National City grant, which was a private grant, then they followed in a northerly and slightly westerly direction across two or three land marks they had at that time one a large well down in Mission canon, for example, the San Diego River Canon; then up to the Soledad, then along the coast,

Q Those boundaries became what you understand to be the pueblo boundaries?

A They became the pueblo boundaries.

Q Embracing what area of land?

A I can't say how many acres.

Q I mean expressed in square leagues or square miles?

A I anticipate it was intended to include the number of square miles that was allowed under the general law.

Q You don't remember what that was?

A I would not like to state definitely, no. It seems either four or eight square leagues, I can't tell which.

Q Is it not a fact that the city of San Diego has thus laid out or surveyed has embraced substantially eleven square leagues?

A I would not be able to say, it might be and might not be, I don't know.

Q Did you in your investigations of the Mexican law pertaining to the founding of pueblos, come across any provision, authorizing the establishment of any pueblo or pueblos with territorial extent of eleven square leagues?

A The provisions of the general law in that regard is definite and determined, it does not as I understand it allow any variation; the pueblos were compelled to comply with that law, as I understand it they were not allowed, as I understand it, to take any more land, I presume, where they were established, on the sea coast there would be some slight variation, my opinion is they were not allowed to take the amount ~~here~~ stated in the general law, that amount I can't state what it is, I have forgotten, I think it is stated some place in my opinion.

Q You haven't referred to that general law prescribing the limit of territory in this opinion of yours, I believe, so far as I have examined it I haven't come across it?

A I can't put my finger on it myself, probably it is not in there, but my recollection of it it is mentioned in some of our Supreme Court decisions, it is either four or eight square leagues, I think, that is my best recollection of it.

Q Now when were the boundaries of the pueblo of San Diego officially confirmed?

A well, in 1845 there was a map made of this pueblo by order of the prefect, upon which the boundaries of the pueblo were designated, before that time they were only known by common acceptation, generally recognized by the people and the authorities.

Q previously the boundaries hadn't been established? A previous to that time, 1845, the map was made in 1843, it was signed by Pio Pico, who was governor of California at that time, it was signed by Mattias Morena who was his secretary and the map was made by a man named Harry G. Fitch, and he was accompanied at the time he made it by the officials of the ayuntamiento.

Q The map was approved by Governor in May 1846.

A I believe I have said 1845.

Q You look on page 6 of your opinion and see if

the figures you give there are correct according to the original certified documents you are consulting.

A I hadn't stated when Pio Pico signed it, I said the map was made in 1845, and in the latter part of May 1846 it was signed by the Secretary and the Governor of California.

Q Is it not a fact that under the Mexican law it was essential to the existence of a Mexican pueblo to have its boundaries determined and approved by the proper Mexican officials?

A I could not say whether that was essential or not, that seems to have been the procedure which they followed in the establishment of this pueblo.

Q In other words, the pueblo could not have a complete existence without a definite allotment of land to be bounded according to some survey officially ordered and officially approved.

A I would only be able to express an opinion on that, I think that is not a correct statement, for this reason; the pueblo was established under the general law under which they were allowed a certain amount of land, and the establishment of a pueblo at a certain point appears to me would not of itself determine the boundaries, if the pueblo was established in the interior, but where the pueblo was established as was the pueblo of San Diego on the sea coast

then probably such an actual delineation of the pueblo limits would be necessary.

Q Do you think under the Mexican law more than under the American law a political community organized and designed for local government could have any existence without definite boundaries territorially?

A No, I haven't said so, I said where the general law, as it did here, established the boundaries, where it is in the interior where there would be no question as to what the boundaries were, I take it running the lines would be a matter of course; but where as in the instance of the pueblo of San Diego it was established on the sea coast, then I should think they would have to run their lines, and until they did they would not know what the territorial limits were.

Q How could the general law of itself provide for the establishment of pueblos, define the boundaries of a given pueblo proposed to be established pursuant to the general law?

A As I have already explained where the pueblo is established in the interior my understanding of the general law is that the pueblo was entitled to a certain number of leagues of land, and the general law as I recollect it, specifically provided that it would be measured the same distance each way from the center of the presidio,

or the place where the pueblo was established, the center of the pueblo.

Q But as to a pueblo established on the coast? A I don't think that would apply, no sir.

Q Do you not think, particularly in that case, the boundaries other than the sea shore, would have to be officially ascertained and settled and approved, before the settlement could have a complete existence as a pueblo under the laws of the country?

A That is my opinion, it is based rather more upon what they actually did in this case, rather than what I know of the law in that regard.

Q You assume proceedings you refer to under my questioning in regard to the making and submission of a map and the approval thereof, were proceedings necessary under the general law for the purpose of completing a creation of a pueblo settlement?

A Of course I don't know whether they were or not, but the formality they observed and the regularity with which they went about running these lines would indicate that.

Q Did you ever come under any provisions of the Mexican law and general laws relating to the formation of pueblos, authorizing a territorial governor, such as I understand Governor Pico was, to give final effect to a survey

for the purpose of locating and fixing the boundaries of the pueblo?

A At the time that I wrote this opinion two years ago I investigated these original certified copies of the original proceedings in the matter of the establishment of a pueblo, and I satisfied myself beyond doubt of the regularity and validity of the proceeding.

Q How did you satisfy yourself on that point?

A By an investigation of the procedure which was followed and by an investigation of the law applicable thereto, which I had at my command.

Q Have you that at your command now?

A I have it at my command, yes sir, I presume.

Q Have you it here?

A Have I what here?

Q Have you the data or rule or provision which satisfied you at the time referred to, the territorial authority like the governor, could give final and official effect to a pueblo survey?

A I don't think any one particular provision satisfied me of that, but what they called the espediente or the transcript of the proceedings for the estab lishment of a pueblo, together with the reference, the excerpt from the decisions of Mexican and Spanish law, I had that, it con-

vinces me the law had been observed in that particular, I have no doubt about it whatsoever.

Q Have you those matters, papers or documents that you now refer to?

A I have certified copies of the espediente here which shows the different proceedingst hat were t aken in the establishment of the pueblo.

Q I assume that the papers you refer to was the submission of this map made by Fitch to Governor Pico for approval, and that he had approved the same?

A Well, it shows a great deal more than that.

Q Have you anything else which you could read or refer to which shows that the Governor of the territory had authority under any law to approve or give final effect to a map such as I have referred to, or to a survey at the boundaries of the settlement under the general law?

A I have no copies of any law here at all, I have nothing here only in that record, only a transcript of the proceedings.

Q Do you know whether these proceedings in any respect show anything of that kind?

A Yes, the proceedings do not make any provision or showing any provision of law, they are simply a recital of the facts.

Q Can you say whether you ascertained anything upon the question, whether it was competent for a territorial governor to approve or give legal effect to a map showing the boundaries of a pueblo settlement organized under the general law?

A Well, to begin with I don't know that the word territorial governor means anything, I think it is a misnomer, the word territorial governor does not appear in any of these proceedings, he was referred to in this document which came to make up the espediente as Governor Pico, Governor Pio Pico.

Q I do not mean that term was used, I mean that he was the same under the Mexican law as a territorial Governor is or would be under American law?

A I can't say whether he was or not, h

Q he was governor of one of the Californias was he not?

A seems to have been according to this document.

Q That is, of upper California? A Yes.

Q Upper California was a political subdivision of the territory of Mexico?

A At that time, yes sir.

Q The point I am getting at is this, was it not the law that a map or survey of a pueblo designed and set apart as a pueblo, a definite area of territory required to be approved by some central authority under the Mexican Govern-

ment rather than by some local authority such as a territorial governor?

A It is my opinion that the procedure that was followed in this case, as shown by the documents to which I have been referring, was an absolute compliance with the law in the premises, I believe that no officer of higher authority than Governor Pio Pico signed the original map, I think that opinion was necessary. I will say further that the actual number of leagues to which the pueblo was entitled was eight leagues, whether they were square leagues or not I can not say positively.

Q Are you now referring to something in a document that gives you the figure eight? A Yes.

Q What does that say, eight leagues square or eight square leagues?

A "I mean from the center two leagues outward in all directions.

Q What is the shape of pueblo lands in this case, as represented by the survey you have made?

A It is in a general or a triangular form.

Q State as near as you can the length of each of the lines you run?

A From Puento Loma to the Canada Des Choyas is about two leagues, from there to Paso is about two leagues, from there to the hill beyond the Canada Des Soledad about two leagues, and then to a post about one half league, and one

league from there to Puento Loma, the place of beginning, or about five leagues as near as I can guess."
That was the lines that they followed when they made this original map.

Q If San Diego was so surveyed that it contained eleven square leagues, do you find any warrant or authority in any paper you have, or in any law you have consulted, for such territorial allotment?

A I believe that the pueblo of San Diego as outlined at the time that the original map was made by Fitch under authority of the officers of the District and of the Territory, if that is a correct term, and of the pueblo as thereafterwards approved by the Governor, and as thereafterwards approved by the Land Office of the United States, is a correct description of the pueblo lands of the City of San Diego, and a correct description of the pueblo lands, the Mexican pueblo lands, and that the City of San Diego has title or did have title to all of these lands, that is a correct description of the lands, yes sir.

BY THE REGISTER:

Q Were there any adverse claims to this land that the City claimed?

A None whatsoever, and after the United States Government took possession of California and exercised

sovereignty over it the United States Government, pursuant to an Act of Congress confirmed in the President and Board of Trustees of the City of San Diego, all of the land which was included within the territory which I have mentioned here, which is delineated in these documents, and there appeared apparently no adverse claimants other than the United States Government at the hearing.

BY MR. MATHEWS:

Q On this question as to whether San Diego has certain alleged water rights, not on any question as to whether San Diego has any certain territorial extent or has lands of a certain extent, do you not think it a matter of consequence that we should be bound by the general law of Mexico or the general law of Spain, or the law of some country in which the general law it is asserted the water right claim had its origin?

A Why certainly, sir, in this opinion, sir, as set forth the law of Spain and the law of Mexico, and the law of the State of California on that particular item, setting forth the rights of the pueblo to the waters of the river flowing through its boundary, whether the City of San Diego as it is now limited, or whether the ancient Mexican pueblo extended its limits too far or not, would not have any particular bearing upon that question, because the pueblo and

the presidio were both situated on the banks of the San Diego river, and the original map shows the presidio and the pueblo situated on a hill, and the immediate south of the river bank.

Q Do you as an attorney think that the act of Governor Pio Pico in reference to the map of Fitch was essential to the complete establishment of the pueblo of San Diego under Mexican law?

A I do not know, sir, it has been two years since I read these authorities, and at the time I read them I did not have that particular thought in mind, I did satisfy myself that the act of Governor Pio Pico, together with the act of the city authorities, that is, the authorities constituting the ayuntamiento and the general law, and also in view of the orders that were issued by the military commandant of that district, which included San Diego, and included San Gabriel , to take the census of the people of the pueblo, and in view of the many other orders that were issued with reference to the establishment of the pueblo, I convinced myself at that time beyond any doubt that the establishment of the pueblo was regular and lawful in every particular, and after the running of the line and the exercising of sovereignty over that territory, and the confirmation by the United States Government of the title to the president and board of trustees, in and to that land, included within that territorial limit, and after the establishment by evidence before the Commissioner appointed for the purpose of determining this land grant, and the confir-

mation by the Government upon the determination of that board of commissioners, I felt that there was absolutely no doubt aboutit.

Q The question here involves the matter of San Diego's alleged claim, San Diego's claim to the waters of the San Diego river? A yes.

Q Do you find anywhere in the proceedings you refer to whether before the Mexican authorities or the pederal authorities of this Government, any reference to any water or water rights?

A In the document referring to the establishment of a pueblo there is no reference made to water rights, none at all, but of course in the decisions of the Supreme Court of the State of California the right of a pueblo to the waters of the river passing through its limits is very exhaustively set forth.

Q I am asking you the other question, you referred to certain proceedings for the purpose of supporting you in a certain position, I am asking you a specific question, whether in these proceedings any reference was made to any water or water rights?

A No sir.

Q what documents do you refer to in that answer?

A I had particular reference to what I have already termed the espediente, which is a transcript of the proceedings with reference to the establishment of the pueblo of San Diego.

Q You and I agree about what the supreme Court

hase said, we will also agree in the document or proceedings or records before t he Mexican authorities, or in charge of the Mexican authorities, or the authorities of this Government of the United States, but no reference is made to the water or water rights involved in this controversy?

A yes, I am certain your statement is correct, I think it is a fair statement of the situation, I think that in the establishment of the ayuntamiento or pueblo and the establishment of the rights of the city as successor to the pueblo, there is no mention made anywhere of water rights.

Q Now t h is further question and then I can dismiss that branch of the matter. Is it not true that unier the Mexican law and under the Spanish law similar lands in territories like Northern California, were like lands of the Government of the United States vested in a central government, that the alienation of title to such lands did not rest with the local officers like territorial governors, but rested with the central authorities, it was not competent for a governor by the approval of a map of a survey where he was simply a local governor, or a territorial governor, to sever the land from the national domain, is not that substantially correct?

A I think that your summing of it is, yes. I think, however, portions of that statement is misleading.

That statement is undoubtedly correct so far as a private grant is concerned, that is, a private grant like, for example, your National City grant, that emanated from a central government, but the general law which controlled the organization of pueblos, was very similar to our general law in this State at this time, providing for the organization of corporations. I think if you look in the State of Connecticut, if you want a special act created, a special corporation, you have to get the Legislature and get that special act, but the general law provides for the organization of pueblos, provides the territory that they shall be after they are organized, provides the manner of organization; in the organization of the pueblo of San Diego all of these provisions of the general law were complied with and have been complied with. I think that it was unnecessary to go to a centralized government in order to get a confirmation, that, I think we got all that was necessary when we got the confirmation of the Governor; when we proceeded in the organization as was provided for under the general law.

Q Will you, from your records obtained by you at the expense of the City of San Diego, and without disadvantage to the city, file in this case a slip or statement giving a reference to any Mexican law under which it was competent for a Governor like Governor Pico, by an approval act, to give local effect to a survey so as to set

off to a pueblo a territorial grant.

A I cannot give any more or better reference to Mexican, Spanish or American law than I have already given in this printed opinion, which I have written, if that does not cover your question I cannot cover it.

Q Is it not also true that while the organization of a municipal government as a political entity might be authorized under some local regime, as in this country, but where that political entity proposed, occupied and acquired lands bounded by and set apart to it, it was necessary to go to the authorities that owned and controlled the land which was some central government authority?

A I don't think that is logical, I don't think it is a legal conclusion. I think that I brought it out as squarely and as clearly as I can, that in order to prevent the necessity of doing just what you intimate they had to do, they passed a general law providing for the organization of these pueblos, providing the routine that has to be followed. It seems to me that was the purpose of the general law, every time they wanted to establish a pueblo in Lower California or in Upper California, or in the sparsely settled portions of Mexico, they did not want to be put to the necessity and the inconvenience and hardship of making trips back to Mexico City with the means of travel they had at that time. That was particularly so

with reference to the establishment of presidios and pueblos in the spanish Colonies and they passed a general law and this general law having been complied with your organization was perfected. That is my opinion of the law, sir.

Q We will stipulate in connection with your legal opinion , were you prepared to express an opinion based on the Mexican law, that you may in lieu of filing a certified document that you have in your possession, file here reference to any Mexican law, or translation of any Mexican law which authorizes a local Governor, a Governor like Pio Pico, to approve with legal effect a map or survey for the purpose of establishing the boundaries of a pueblo.

A I have not maintained and do not maintain now, and do not set forth in that opinion, that that approval constitutes the legal boundaries of the pueblo. I do maintain, however, that the steps taken by the town council of the pueblo of San Diego complied with the provisions of the Mexican law in that regard, and I further contend that the law in that regard is set forth as fully as I can set it forth in the opinion.

Q Mr. Cosgrove, for what distance does the river of San Diego run through the City of san Diego?

A It runs from the eastern boundaries in the canon across to Mission Bay.

Q What distance is that approximately?

A I would have to make a wild guess, I think it is probably six miles, five miles, but of course the river has been changed in its course by the United States Government; the river originally ran into San Diego Bay, it is so shown on the original maps; the United States Government in order to prevent the silting of the Bay obtained from the City of San Diego a transfer of certain pueblo lands and built a dyke across at some considerable expense, and diverted the water into False Bay.

Q Do the claims of the City of san Diego to the rights in the waters of the san Diego River, pertain to the river as now located or as it was originally located?

A The river strikes the city limits at the place it always did and continues on down in the original channel to a point about one mile or two miles east of Mission Bay, and then it turns off, the diverting was done inside the city limits.

Q As city attorney investigating the question s which you discussed in your opinion, did you go into the matter of the riparian lands along the river, either as it originally flowed or as the river now flows, particularly within the limits of the pueblo?

A Inside the city?

Q Yes. A I did not have in mind at the time I wrote the opinion any particular riparian lands, either within or without the city limits.

I had in mind always the proposition that seems to be settled by the Mexican law, and by the, particularly by the California law, that these rights of the pueblo applied to the use of the water by the pueblo for municipal purposes within what was the original pueblo, they cannot take it out beyond that, but in looking through adverse claims I had in mind simply the one question, and that was whether or not the grant to the party through whom the adverse claim was made antedated the establishment of the pueblo, if the party who should make a claim against the city can trace his chain of title back to a claimant who preceded the establishment of the pueblo, I think as against him that the pueblo claim would not be paramount.

Q Did you find out whether the lands along the stream passed in private ownership, I mean as distinguished from pueblo ownership or other public ownership?

A with reference to what time?

Q Any time?

A I don't believe I understand you;

Q Do you know whether the pueblo retained the ownership of the lands along the stream within its limits?

A You mean since the confirmation?

Q Yes. A They have sold great

portions of it, I think but I am not certain, but I think that the title to the land joining the San Diego river within the city limits is practically all held in private ownership, although I think there is some that is still held by the municipality over on the north side, I know in this Mission Valley through which the river runs that a great portion of the tillable soil is held in private ownership at the present time.

Q The surface of the channel stream is over privately owned land?

A Yes, I think that the riparian land is mostly all privately owned.

Q I am simply getting at the question whether the pueblo retained title to the riparian land or whether it granted them to private ownership?

A It certainly granted a great number to private ownership, I don't think they tried to make any attempt to hold the riparian land, they sold it as people wanted it, whether riparian or otherwise.

Q To what extent would you say that was true of this distance for which the river runs through the municipal limits?

A I am not qualified to answer that at all.

Q Did you go into that at all? A In writing my opinion?

Q No, in investigating the facts with a view of writing an opinion?

A No, when I wrote that opinion I did not investigate that at all.

Q And is it not true that the only lands owned by the City of San Diego riparian to or along the stream at the present time are lands that have been bought back by the municipality and are lands which the municipality formerly sold into private ownership?

A The land that Mr.Gottesburen is referring to now is land outside the city limits, the city recently, a couple of years back they bought a strip of land up the river and took in the river channel on both sides, that is outside the city limits, outside the old pueblo, but farther down in the pueblo we have some land upon which is situated the hospital.

Q Do you know whether that was pueblo land in the sense the municipality has never parted with the title?

A I don't know whether they parted with it or not. I know in investigating a case started by Mr.Gottesburen to enjoin the city from operating pumps in Mission Valley, I investigated the question of transfers of certain property, I noticed that in the conveying of title to the private owners that the city reserves in the deed the right to sink wells, and to enter upon the land, and to try for water on the land. I think that it is a fair statement and a fair assumption that the city has parted

with the majority of the lands riparian to the San Diego river within the limits of the City of San Diego and within the old pueblo limits. I think it is also a fair assumption that the city has made no endeavor, has indulged in no policy of retaining that land, they disposed of it the same as any other land.

Q Is not that also true as to any water rights that is so far as purporting to convey water rights where the land was concerned?

A I would not say positive but I think not, I notice in the investigation I have made of the transfer in the Mission Valley the city has reserved that right to go in and pump water.

Q Do you know of any case where the City of San Diego or the pueblo preceding it in connection with the conveyance, private ownership of lands or owned by the municipality along the stream, reserves in express terms any water rights?

A Yes sir, I have seen these deeds, that is what I am speaking of.

Q The deeds that you refer to are deeds where a reservation was made of a right to pump water from the land covered by the conveyance?

A Yes.

Q Now what lands are these you refer to?

A Those are lands inside the city limits, ripatan to the

river in the Mission valley, part of the old pueblo lands.

Q Do you know whose lands those are now, who owns them now?

A I know that one of the plaintiffs in this case that I spoke of a few minutes ago, in which Mr.Gottesburen was the plaintiff, he was inside the city limits, the other plaintiffs were all outside the city limits, the land he had held the city had the right to pump the water beneath it, the title to this property was in this man's name, his name was Slingsby.

Q You say that was inside the city limits?

A Yes.

Q You are not referring to Mr.Gottesburen?

A No, Mr.Slingsby.

Q You filed this opinion about January 5,1914? or it might have been a few days after that? A Yes.

Q Do you know whether the city of San Diego had ever obtained a similar opinion from any predecessor of yours on the same question, or were you the pioneer in going into this legal question affecting the city's alleged water rights?

A In my office, or in the office of the city attorney there is no opinion that I have been able to find I feel reasonably certain there is no opinion there touching this question, the reasonableness of my certainty in that regard is based on the fact that the stenographers, one of them has been there for six or seven years and is a pronouncedly efficient stenographer, and is

familiar with all of the opinions, and whenever a question comes into the office we always like to see if there is a former opinion on it, and I am certain there is no opinion on this question. The former city attorney Judge Andrews wrote an opinion on the rights of the City of San Diego to the tidelands between low and high tide, and some of the historical facts which are set forth in this opinion I think are also set forth in his opinion, I think probably I am indebted to him for some considerable assistance in that matter. I desire to say in this connection further that Judge Andrews, who was the former city attorney, who is a man of exceptional ability and a man who has had some forty years' experience in the practice of law, and a close student, and a man of analytical mind, has read this opinion of mine and is familiar with all of the facts which I set forth, and is much more able to intelligently set forth a legal opinion than I am; he is of the opinion that this opinion of mine is incorrect, and he has so expressed in my presence an opinion to the effect that there are certain facts in connection with the taking of water from the San Diego river by the City of San Diego that would justify a court in drawing a line between the Los Angeles case to which I refer and this case. I have heard him discuss the matter openly at conferences between the representatives of the city and the representatives of the

Irrigation District up the river, and he feels that I would not be able to succeed in a court if I were to attempt to establish the opinion which I have set forth here.

Q Is he now one of your Superior Court judges?

A No sir, there is a judge of the Superior Court by the name of Andrews, C.N.Andrews; the man whom I refer to is W. R. Andrews, but in my opinion he is a man whose ability would warrant his being on the Bench.

Q Now he is a predecessor of yours?

A Yes, had been city attorney for a great number of years.

Q what action if any has beentaken by the City of San Diego under your opinion?

A Nothing that I know of further than to have it printed.

Q Do you know whether the City of San Diego ever at any time prior to the filing of your opinion asserted in any form any right to the waters of the San Diego river under the so called pueblo rights or grants?

A I could not say yes or no, there is very conflicting statements on that, the people who are interested in the enforcement of the city's rights they say yes; the people who are ppposed to it they say no, I don't know whether they were or were not, I have looked into the question of lease of the right of the pueblo by adverse

possession, the only th ing I knowI have set it forth in my opinion there, I have discussed the matter, I could not determine these other things except from a personal standpoint and I did not make any attempt to.

Q Did you ever attempt to have any of the records of the San Diego city searched with a view of determining whether the City of San Diego or the pueblo ever asserted this water right which you claim pertained to the pueblo?

A I did, Mr.Matthews, I satisfied myself that if the City ever possessed the right which I maintained it possessed under the Mexican law, that it is of no significance whether they asserted it or not, if they ever had the right I think they still have it because I think the decisions hold squarely that the right that a Mexican pueblo exercised for the benefit of the people in common, cannot be lost by the city as its successor by adverse possession, and there are decisions that went up from the City of San Diego held that matter squarely, I myself have had the question in the courts in San Diego.

Q Do you think that is an answer to my question? Will you let me have the question read to you again.

(Question read.)

A I intended to answer it, Mr.Mathews, if I haven't answered it it is a failure of the mind rather

than the heart. I will say further along that line, that I have asked a number of old residents of the city, I have discussed with men who operated the old first pumping plants about these claims, as I told you a little while ago, those who seemed to want to establish the right of the city they all say yes, they did, claimed the city always maintained them, the present mayor of the city maintains that, I might say other gentlemen worthy of belief and credibility, and they say no.

Q What I am getting at is, what the City of San Diego, a corporation, a municipality, has done with reference to this so called water right, as evidenced by any official record of that municipality?

A None that I know of, if I correctly understand you. You mean did they ever pass an ordinance or resolution setting forth their claim.

Q Or take any other official action asserting this so called pueblo water right in the courts or in their own records or otherwise?

A They have had cases in court where they have asserted the existence of a former Mexican pueblo, cases have gone to the Supreme Court.

Q I am speaking of this so-called water right.

A The water right is based entirely on the establishment of the pueblo, if you haven't any pueblo you

haven't any water right, if you have a pueblo you have a water right.

Q Isn't that argumentative, I am entitled to an answer, your Honors, entitled to an answer as to whether the municipality claims this so called pueblo right in any prior proceedings, any record of the municipality in any form where they ever asserted title to the so called pueblo water rights.

A I have tried to answer that question fairly, I think it is fairly answered to say that the City of San Diego has in decisions, in cases which have gone to the Supreme Court of the State, attempted to have established the existence of the former Mexican pueblo, and the rights of the board of trustees as successor to the officers of the original Mexican pueblo, and the right of the city as successor to the Mexican pueblo.

Q You are referring to cases where that question extends to the pueblo under Mexican law?

A Yes.

Q You are not referring to cases as to where the pueblo or succeeding municipality asserted or had so called water rights that were involved?

A There is no case I know of, and I think I would know it if it had gone to the Supreme Court, there is no case in the Superior Court where the question involved was the rights of the municipality which I maintain it

has in these things.

Q You contend and say that the City of San Diego was a pueblo, and as such that the City of San Diego had pueblo water rights? A Yes.

Q I am asking you whether the City of San Diego itself ever asserted so called pueblo water rights specifically, either directly or indirectly?

A I have answered that as best I could, so far as I could ascertain by talking to people do you mean, or do you mean did they pass resolutions and ordinances on which they set forth this claim?

Q Yes, in any way, the municipality should properly evidence its action by resolution, ordinance, or any other form of expression"

A It seems to me that under the conditions as I construe them, that the municipality, not the officer that may have well or illy performed his duties for a short period of time, but the municipality itself, has always maintained its rights to the waters of the San Diego river.

Q How do you mean maintain? A By maintaining its existence of the municipality. My understanding of the law is determined by the Supreme Court, that a city of the State of California, successor to a Mexican pueblo, cannot lose by the lack of diligence of its officials a

right which is vested in the people, which it holds in trust for the people, I think that matter is clearly decided in two recent decisions of the Supreme Court, and the City of San Diego as successor of the Mexican pueblo of San Diego it has been so decided by the Supreme Court of this State, the failure or negligence of its city officials who hold office for the time in asserting that it or allowing that right to appear to lapse, cannot be set forth or cannot be passed as an argument against the rights of the people which were held in trust by the municipality itself.

Q In this proceeding as I understand it, the City of San Diego has set out its so called pueblo water right, has it not?

A In this proceeding the City of San Diego is seeking to secure an easement from the United States Government to flood a portion of the Cleveland National Forest and a portion of the Capitan Grande Indian Reservation. They are proceeding as assignee of W. B. Hamilton, who in my opinion has a valid legitimate water filing on the San Diego river. In this proceeding the City of San Diego to verify its position, is showing or attempting to show, that it is the successor of the ancient Mexican pueblo, in order to show what the rights of the ancient Mexican pueblo were in the waters of the river flowing through its boundaries, and what the rights of the municipality is as its successor, we have introduced in evidence

an opinion written by the city attorney of that city.

Q That is for the purpose of meeting some legal requirement in the Department as you viewed it, that the claimant or party should show some prima facie way at least some water rights?

A It is to verify our position as assignee of W. B. Hamilton. I think your statement is correct.

Q Anyhow what you claim to be the water right of the City of San Diego in this proceeding? A Yes.

Q Will you state whether the City of San Diego directly or indirectly in any other proceeding that it has ever been a party to before the Land Office or in any court or any other tribunal, has ever asserted as the so called pueblo rights of the City of San Diego in the waters of the San Diego river?

A So far as I know the City of San Diego as a municipality when properly represented by qualified and authorized officials, when the question has arisen has always asserted its rights as successor to the Mexican pueblo, and the land of the pueblo, and all of the incidental rights following that, I know of no instance where any qualified official of the City of San Diego authorized to make any such statement has ever in any proceeding either in court or out of court, admitted that the City

of San Diego did not have the prior and paramount right to waters of the San Diego river, I know from speaking to the oldest officials with whom I could talk that it has always been an open question with them, it has always been an open question concerning which certain officials asserted the rights which I now assert for the municipality.

Q with all respect to you and your views it seems to me that my question is not answered so that the Land Office can be informed as to what the facts are, to which the question is directed, and if agreeable to you and the officials I should like to have that question repeated and answered.

A No necessity for repeating it. I understand exactly what the question is, I understand exactly what you would like to have me say, but I can't answer it the way you would like to have it answered because I think that is not the fact.

Q I want you to answer it truthfully as you generally answer a question.

A Yes sir, I will say the question of the right of the municipality to the waters of the San Diego river, as successor to the Mexican pueblo of San Diego, so far as I know has never been waived and has always been asserted by the municipality that there have been certain cases

which have gone to the Supreme Court of this state in which the question of the existence of the Mexican pueblo of the certain incidental rights belative thereto were concerned, and it is my contention that in this case the question of water rights was always involved, because if I correctly understand the law, it is incident to the establishment of the Mexican pueblo on the right of the city authorities as successor to the Mexican pueblo, and certain cases have gone to the supreme Court of this state involving the question of the existence of the Mexican pueblo of San Diego, in which certain incidental rights were considered, for example: the question of lands held in trust for the common use of all the people, the same as I understand the law to say that the waters are held in use, or held in trust for the common use of all the people, and the Supreme Court has laid down the rule squarely that where the title to lands is in the city authorities as trustees for the people, or land to be used in common by all the people that that title cannot be lost by adverse possession, and I understand that is the same law that applies to waters.

Q I would like to have my original question repeated, so that I may avoid a repetition of your explanation. I wish the question that started this immediate

controversy shall be repeated so now we will understand fully what you meant by the answer you gave, if the reporter can go back, if it is agreeable I would like to have it read.

Q (Question read.)

A I have answered that question as best I can, and covered it from every angle that I know of, I can't say anything further that can enlighten the counsel or any other parties interested, if the counsel desires to know of any proceeding in which the single question of the rights of the city as successor to the Mexican pueblo in the waters of the San Diego river is concerned, I haven't made any investigation which would enable me to answer the question accurately, but since I have been city attorney it has only arisen in one case which has gotten into the court which is now pending in the court, but has arisen many times before the city council, all of the ordinances and resolutions pertaining to the purchase of water from the San Diego, or the obtaining of water from the San Diego river has always contained provisions which showed that the city did make that claim, now what the condition was before I became city attorney somebody else would have to answer.

Q Do you know of a single provision of the kind

where the City of San Diego, outside of this particular proceeding, definitely asserted the so-called water rights in the San Diego river?

A They have always asserted it since I was city attorney.

Q In what way?

A It is always incorporated, it is inserted in the law suit we have pending in the superior Court in San Diego County in which they are attempting to enjoin us from operating a pumping plant in the river, it has been asserted in a number of resolutions that the council have passed, pertaining to taking water from the San Diego river, purchasing water from Fletcher and Murray.

Q Were those resolutions or suits all subsequent to the filing of your opinion?

A Yes, all subsequent to the time I became city attorney.

Q What I am getting at, I appreciate that you have been active about this matter is this, whether prior to the filing of your opinion the City of San Diego ever formerly asserted their claim to the so called pueblo water rights in the river, except possibly in so far as the city of San Diego has asserted that it is the successor of the former Mexican pueblo.

A I think there has been a number of instances, as I told you I have talked to a number of city officials who have been city officials years ago, when the city used to pump and obtain water from the San Diego river, and they told me about the assertion of this right, that it was always maintained. I have also told you that I have talked to other people who denied it.

Q How would you as city attorney ascertain for yourself whether the City of San Diego had asserted or not asserted any claim to any respective property, would you go to somebody on the street of San Diego or would you go to the records of the City of San Diego?

A Did you mean, Mr. Mathews, if I wanted to find out about a title owner of property I would go to the records?

Q That is what I am getting at when I asked you before what the City of San Diego has asserted or not asserted I am asking you as an attorney, showing your unsupported expression, it is due you to a certain extent, I asked you whether, prior to your opinion, the City of San Diego ever asserted so far as you know or found out, a claim that the so called pueblo water rights in the San Diego river except in so far as the City of San Diego is claiming to be the successor of the former Mexican pueblo.

A In addition to that I have never read a resolution,

or I have never read an ordinance wherein this claim was made, other than the resolutions and ordinances which I have prepared, I have never hunted for any of them, whether or not there are any such I don't know because it is, according to my opinion, of no consequence, the question is if the City of San Diego is entitled to the paramount rights in the waters of the San Diego river in my opinion depends on whether or not there ever was a Mexican pueblo, and whether or not this city is the successor to it.

Q I am not seeking to prevent your opinion from being read and understood and given the worth and value that is due to it, but I am seeking to get from you certain facts, and those facts are, the facts as I regard the case properly relating to the subject of the city's water rights, and as you, before preparing and submitting this opinion, must have ascertained or attempted to ascertain, all the relative facts.

A That is not true, because I told you I did not investigate that feature of the case, because I consider that in view of these two recent decisions it is inconsequential.

Q will you answer my question by saying you do not know of any case where the City of San Diego prior to the filing of your opinion about January 5,1914, ever asserted directly or indirectly any claim to the so called

pueblo water rights of the San Diego river, except that the City of San Diego may have asserted, and probably has asserted, that it is the successor of the former Mexican pueblo?

A No sir, I will not answer the question that way, I think it is an incorrect statement, I think the City of San Diego always asserted when it was represented by qualified authorized authorities, always asserted its rights as a successor to the Mexican pueblo, and the best information I have on that subject is hearsay from former officials. I know of no ordinance, I know of no resolution other than the ordinances and resolutions which I have drawn myself, wherein that particular claim is set up, I have never looked for any.

THE REGISTER: Q Do you know of any specific act that the City of San Diego made such as securing letters of patent to the water, or any act such as Mr.Mathews hints at having been taken?

A Of course they never acquire letters of patent.

Q I mean of that water, I don't mean exactly letters of patent,- do you know of any assertion made by the City?

A I only know it by talking with the former city officials, what they told me, I have never read resolu-

tions, I have never read ordinances other than the ones I have drafted myself since this opinion was written.

Q In your opinion, as far as your knowledge reaches and basing such an opinion upon the common law as it refers to municipalities and water rights was such specific action necessary by the City of San Diego?

A No sir, it was not necessary according to the recent decisions of the Supreme Court of California, if we once had it we never could lose it.

BY MR. MATHEWS:

Q What I am getting at, and I insist we have the right to bring into this record apart from any question of law, it is a question of law, is whether the City of San Diego which now in this proceeding is asserting for the purpose of this proceeding that it has the pueblo water rights in the river of San Diego ever in any other proceeding asserted that it had these pueblo water rights in this stream?

A It is my opinion, which I have said several times, based upon---

Q I don't think it is fair to give an opinion, I am asking you a plain question, you may or may not.

A Other than what I have already stated I am unable to answer anything further on that question.

Q Did you ever hear anybody say that the City of

San Diego by resolution, ordinance or by any formal official act, entered on its records prior to the filing of your opinion, ever asserted the title to the so-called pueblo water rights in the San Diego river?

A I don't know whether I have or not.

Q You referred to a suit pending in San Diego County, involving some question as to whether the City of San Diego has a pueblo water right?

A That would be only a question that would come up, an injunction to prevent the City from operating a pumping plant which it has in the valley, we, of course, own the land which is riparian to the river; in addition to that, if we were compelled to we would assert our pueblo rights in the event we were compelled to.

Q In that case the City is asserting or has a right to assert as a part of its case these claimed rights? A Yes.

Q It is also asserting in this proceeding here its so-called pueblo water rights?

A Subject to the explanation I have already given.

Q Can it be understood, so far as you have learned or ascertained, the City of San Diego has never so far as any ordinance, resolution or record, [illegible] suit or conveyance, [illegible], asserted this pueblo water right

in the San Diego river?

A I will not say yes to that, I have answered that question several times, it is my opinion the city has always asserted this right, I will say I have never read either a resolution or ordinance covering it other than the ones I have written myself.

Q (question read.)

12 M. February 10,1916. Recess until 1:30 P.M.

February 10,1916.

1:30 P.M. February 10,1916.

1:30 P.M. February 10,1916.

BEN HAGAR, witness on behalf of the City of San Diego, called for cross examinationby protestants BY MR. ROBINSON:

Q Mr. Hagar, what is your occupation?

A I am at present the general road supervisor of Gallatin County, Montana.

Q Have you any profession or trade or other occupation other than that?

A None other only as a contractor.

Q You were once employed by the Cuyamaca Water Company, were you not? A yes.

Q By whom were you employed?

A By Mr.Murray.

Q In whatcapacity? A As manager.

Q What were your duties as manager of the Cuyamaca water Company?

A well, my duties consisted all the time I was there in reconstruction mostly in repairing the old flume, in fact anything I could do to facilitate getting the water down through it.

Q When did your term of service begin with the Cuyamaca Water Company? A As to the exact dates I could not say but it was some time in the fall of 1910, I think in, I think Mr.Murray agreed to meet us in San Diego September 1st, I know he didn't get there at that time,

I don't remember exactly how much later it was when he came but when he came I went to work.

Q Who do you mean by "us"?

A Mr.Turner and myself were there together.

Q State if you will in a concise way just how your employment with the Cuyamaca Water Company came about.

A I came from Montana with Mr.H. W. Turner through a previous understanding that I had with Mr.Murray to purchase a one-third interest in the Cuyamaca Water Company, and it was owing to that that I was made manager of the Company; after Mr.Turner had looked into the matter thoroughly he concluded that he did not care to take any part in the purchase of the one-third, so he withdrew, and Mr.Murray said to methat I might go ahead up to the time, I think there was some kind of a contract, I am not sure of that, but I think it was dated March 1,1912, when we were either to pay over the money or let it go, one or the other, for the one-third interest.

Q Did you remain in the employ of the Company during that period of time?

A Yes.

Q During all that period of time?

A well, I don't remember how long I was out of the employ of the Company before I left there, but it was only a short time afterwards that I left and went back to Montana.

Q In other words the termination of your employment with the Cuyamaca Water Company was the result of the expiration of the contract, a private contract?

A Practically so.

Q It was not due to any other reason?

A None other than Mr.Murray stated to me, no sir.

Q When did you first become acquainted with W. B Hamilton?

A Well, I met Mr.Hamilton in Montana, I did not become acquainted with him but I was on the train with him going to the Democratic National Convention in Kansas City when Bryan was nominated, my recollection is he had charge of that train for W. A. Clark, but I never met him.

Q When did you first meet him in San Diego?

A I didn't see him in San Diego until after it was discovered that his filing had been made, in fact I never knew he was there until after that.

Q During the time of your employment as manager of the Cuyamaca Water Company were you ever a party to any discussion with the officials or other persons interested in the Company, with reference to a proposed dam at El Capitan dam site"

A Not of my recollection, no sir.

Q Is it not possible that such a discussion might have been had and that you don't now recollect it?

A I hardly think so.

Q But you are not saying positive that such a discussion was not had?

A No, I do not, because I do not remember the parties who were in the car when we were up there, there might hav been such a discussion take place at that time, I don't know.

Q Of what particular visit are you speaking of, Mr.Hagar?

A When I went with the present mayor, Mr.Capps, who was then city engineer of San Diego, and Mayor Wadham of San Diego, and Mr.Fay councilman, and Mr.Jones of the Electric Light Company of San Diego, and the object of their visit as I understood through the San Diego River canon and over the system of the Cuyamaca Water Company, w as whether or not the City of San Diego had better buy or enter into some arrangement to buy the Cuyamaca Water Company instead of the Spreckles' water Company, that as I supposed was the object of the trip.

Q Can you give us approximately the date of that trip?

A No sir, I could not.

Q Did you ever make any other trip up there?

A Yes sir, I did.

Q with whom? A with Mr.Helm

and Mr.Koebig and the other gentlemen's names I have forgotten, one of them was Wade, one of the names was Wade, I think the other name was Schuster.

Q Was Joe Ruiz with you at that time?

A Yes sir -- I don't know.

Q You know Joe? A Yes.

Q He was an employee of the Cuyamaca Water Company at that time? A He was then.

Q Were you an employee of the Cuyamaca Water Company at that time? A Yes.

Q Now what was the object of that visit?

A That was to sell the Cuyamaca Water Company, I don't know who but it was through these brokers here.

Q On that trip did you stop at the El Capitan dam site? A I don't remember whether we did or not.

Q You might have done so? A Yes.

Q would you say that you probably stopped there?

A No sir, I would not.

Q Now you say that the object of your visit at that time was the furtherance of some scheme to sell the system? A Yes.

Q To whom was the system to be sold?

A I understood to Bert Kohler of New York.

Q were you to share in the profits of that sale?

A I was with the Cuyamaca Water Company, to what interest I should have had if I had taken over my interest.

Q Were you to secure any other profits from anyone else in the rest of that deal? A Yes.

Q To what extent? A I don't remember that, but the broker in the Story Building who was supposed to promote this sale told me, I think he agreed to give me a certain amount of his proportion, which was over and above, that he charged over the amount that Mr.Murray wanted for the plant.

Q was that to be paid you for some service rendered?

A No, that was to be paid me for the expense I had been to here in trying to get the deal started.

Q But you were an employee of the Company during that period, were you not? A Yes.

Q And they were paying you for your time, were they not?

A Yes, but they were not paying the expenses.

Q What was the nature of these expenses that you speak of that were not paid by the Cuyamaca Water Company?

A Expenses at the Alexandria Hotel was considerable, they had no part in that.

Q were you visiting the Alexandria Hotel or were you stopping there? A I was stopping there.

Q In the interest of the Cuyamaca Water Company?

A No sir, I was stopping there in the interest of Ben Hagar.

Q But that was during the period of time that you were employed by the Cuyamaca Water Company? A Yes.

Q Did you ever enter into any agreement express or implied with any personar persons by the terms of which you were to share in any profit which might be made in the sale of the Hamilton water filing?

A No sir, none whatever.

Q Were not the Hamilton water filings included in this deal with the broker in the Story Building whom you have mentioned? A Not that I know anything about.

Q You were a party to the agreement? A Of the Hamilton water filings?

Q Were the Hamilton water filings included in the property which was to be disposed of by the broker in the Story Building, whom you have spoken of?

A Not that I know of.

Q You were a party to the agreement with the broker, were you not? A Not in the Hamilton filings that I know of, no sir.

Q The Hamilton filings, however, may have been included in the deal and you not have known that?

A I think the filings were made as I understand after that deal was started.

Q Can you give us the approximate date of that deal when it was started?

A No sir, I could not.

Q Do you know when the Hamilton filings were made?

A No sir, I do not, I never did know.

Q Did you ever do any work for Hamilton?

A Never in my life, no sir.

Q Did you ever make a statement to any person that Mr.Hamilton would not have known where the San Diego river was if Mr.Sackett hadn't told him?

A I think I have, yes.

Q Who did you make that statement to? A Mr.Murray.

Q When did you make it? A Well, I have made it several times.

Q As manager of the Cuyamaca Water Company were you instructed by the owners of said Company to have Mr.Sackett who was then your engineer, make the necessary surveys to find the best reservoir sites on the San Diego river?

A well, I don'tremember of ever having it put that way, no sir.

Q How was it put?

A Well, Mr. Sackett was instructed from time to time through Mr.Murray to me, that he should do certain

work at certain times and when Mr.Murray told me then I told him what to do.

Q Can you tell us just what surveys were made by Mr.Sackett under your direction by order of Mr.Murray?

A I think it is the Poverty Culch, then he made a survey, it is the Helena damsite, any more than he located a dam where Mr.Murray and I thought best for that system, that it should be just below the diverting dam. I can't give you the exact distance below the diverting dam.

Q Then he did survey a damsite below the diverting dam? A Yes.

Q That is known as the Helena damsite?

A Yes.

Q Do you know whether or not he made any other surveys below the diverting dam?

A yes.

Q what were they? A I think the other one was purely preliminary, but he went to the Indian school at my direction and made a survey farther back to the foot of the present diverting dam.

Q Did he make any other preliminary survey or any survey below the diverting dam?

A Not that I know of.

Q what was the object of this preliminary survey you speak of, which was started at the schoolhouse?

A That in my opinion is the best damsite on the San

Diego river for any purpose.

Q It was a preliminary survey for a damsite, is that correct? A Yes.

Q Do you know whether or not any survey was ever made for a tunnel on the reservoir on the S-tract? A Yes sir.

Q Who made that survey? A Mr.Sackett.

Q Where is that with reference to the El Capitan dam site? A Well, that would be I would say two miles down the river from the El Capitan damsite.

Q Below the El Capitan damsite? A Yes.

Q Do you know whether or not Mr.Sackett ever made a preliminary survey as to the El Capitan damsite? A No sir.

Q He may have done so? A Yes sir, he didnt do it under my management, or under my supervision that I know of.

Q During the course of these surveys which you have spoken of, it was necessary for Mr.Sackett to have access to certain records of the office, was it not? A Yes sir.

Q Did he have such access? A Well, he did in a measure, he would go to the office and ask for them

and get them from Mr.Mathews.

Q Was it necessary for Mr.Mathews to obtain your authorization to give Mr.Sackett these necessary papers? A No sir, I don't think it was.

Q Now after Mr. Sackett left the employ of the Cuyamaca Water Company, do you know whether or not he ever had access to any of the papers or records of the office? A I think he did at one time, yes.

Q Didn't you telephone to Mr.Mathews at one time directing him to permit Mr.Sackett to have access to certain papers?

A At what time?

Q At that particular time? A If I did I did it under the order of Mr.Murray, those papers were to go to Helm and Wade, and these people who were there to look over the Cuyamaca system, Mr.Sackett went and got those papers, now I don't know that he delivered them, he said he did, he said he took a receipt for them and handed me the receipt and I handed the receipt to Mr.Murray sitting on one of these mushroom branches in the Grand Hotel.

Q Do you know whether or not those records have ever been returned to the Cuyamaca Water Company? A I don't know a thing about them, no sir.

Q Did you ever enter into any agreement ,express or implied, with any person or persons by the terms of which you were to share in any profit which might be made in the sale of any rights which Hamilton might have acquired by reason of his dam and reservoir application at the El Capitan?

A No sir, I did not.

Q Did you ever converse with Mr.Sackett with reference to the proposed dam at the El Capitan?

A No sir, I have never spoken to Mr.Sackett until just now since this trouble come up.

Q During the term of your employment by the Company did you ever discuss the matter with him?

A No sir, not that I know of.

Q You might have done so?

A I might have but I didnt know it was there, I don't know why I would talk about it.

MR. ROBINSON: That is all.

REDIRECT EXAMINATION

BY MR. COSGROVE:

Q This bunch of papers that you telephoned in and told Mr.Mathews to give to Mr.Sackett, concerning which you gave the receipt to Mr.Murray, did Mr. Sackett get these papers, do you know?

A I never seen the papers, all I seen was the

receipt and I handed the receipt to Mr.Murray.

MR. COSGROVE: That is all.

Q This survey that was made just below the diverting dam that you spoke of made by Sackett, was a distance of one hundred or one hundred and fifty feet below the diverting dam?

A yes, that is the Helena project.

Q That is the project at the diverting dam?

A Yes.

Q Now the Indian school proposition, isn't it a fact that you did so point out where that location was to Mr.Sackett and discuss it with him, as a matter of fact he never did run any surveys there?

A He didn't run it out as he would run a survey, to make a drawing, he run it out for me, I wanted Murray to buy that forty acres there because I felt that some time I could convince some engineer that was the point to put a dam.

Q Did he ever make a topographic map or survey?

A No sir.

RECROSS EXAMINATION

on behalf of the protestants

BY MR. ROBINSON:

Q He, however, did make a preliminary survey at your direction and request?

A He gave me the quantities of water it would

impound, so that I could tell Mr.Murray that this dam would hold say ten or twelve billion gallons , it was the elevation that it made a perfect gravity system of the Cuyamaca system, that was what I was trying to get at.

Q You were unable to give that information to Mr.Murray without the necessary data obtained from Mr. Sackett, isn't that so?

A I could not guess at what it would hold, no sir.

MR. ROBINSON: That is all.

C. T. SACKETT, witness on behalf of the City of San Diego, recalled for cross examination on behalf of the protestants:

BY MR. ROBINSON:

Q Mr. Sackett, where do you reside? A Livingston, Montana.

Q Have you ever been a resident of San Diego?

A Not a legal resident, I have resided there.

Q When did that residence begin? A I think it was the 1st of May, 1911.

Q When did it end?

A The 1st of September, 1911, for a period of several months, was resumed in December of 1911, again terminated in the latter part of June or 1st of July, 1912.

Q How did you happen to go to work for the Cuyamaca Company?

A Mr. Hagar had been down in California for some months, prior to my coming I at that time had done considerable work for him in my commercial engineering office in Livingston for Hagar in the way of building the Conrad water works, of which he was three-quarters owner, I built the Conrad sewers for him, and done various other work with his plant at Belgrade,- anticipating the purchase of the Cuyamaca plant and having done considerable engineering work for him, he desired that I would report

on the Cuyamaca Company for him, and come down and do certain work, thinking at that time he might take over his interest and hold it, together with H. W. Turner.

Q In other words Mr.Hagar was responsible for your employment by the Company? A Yes.

Q When did that employment begin?

A I think it was the 1st of May that I reached there.

Q You are now referring to a memorandum?

A I am referring to a telegram which I received from Mr. Hagar.

Q Will you please read that telegram.

A It is not relative to the work but I have no objection.

"Dated San Diego, Cal. April 22,1911 S.T. Sackett, Conrad, Montana. Wire received accept thanks. How soon will you come. Better ship those tents you speak of would like to have Mike Alla's mother. will leave for Montana in seven days so Mewill be better off to stay there as she wants him with her.

(Signed) Ben Hagar."

I was preparing to leave at that time and that was dated the 22nd of April, so I think I came here about the 1st of May.

Q That is the information upon which you base

that answer? A Yes.

Q You started in to work immediately for the Company? A You might say so, yes.

Q By whom were you employed, who did you make arrangements with for employment?

A There never were any arrangements made whatever.

Q Did you receive any compensation?

A I did, but it was never fixed upon until I believe the end of the third or fourth month period, and Mr.Murray decided he was not going ahead with any work, or at least so informed me and I left, not knowing at that time I was ever coming back to California, under amicable arrangements we agreed upon a compensation, Mr.Fletcher and Mr.Murray gave me a check for it.

Q Did you receive your employment after that?

A No sir.

Q How many months were you employed by the Cuyamaca Company?

A I left San Diego the 1st of September, now it was between the 1st of May and the 1st of September, 1911 that I was in the employ of the Cuyamaca Water Company.

Q State if you will just what service you made in the watershed, on the watershed of the San Diego river

below the diverting dam during the term of your employment by the Cuyamaca Water Company?

A The only surveys that were made of reservoir sites were at the diverting dam or within one hundred or one hundred and fifty feet of the diverting dam, practically at the old dam site, and a reservoir for what has been referred to as the S-Tract, there were no other surveys made.

Q Of reservoir sites?

A Of reservoir sites.

Q Were any other surveys made of any other kind or description?

A I made a survey of Cedar Creek reservoir site and several reservoir sites, the Poverty Gulch and the Murray Hill reservoirs, and those are the only reservoirs that I remember I actually made a topographic survey of.

Q Did you ever make a preliminary survey at the schoolhouse as testified by Mr.Hagar?

A No, Mr.Hagar is mistaken, I remember very distinctly he pointed out the schoolhouse what he thought might be a damsite. In explanation of those figures I wish to state I remember having stated for an approximation for the basis of the cost per acre foot of storage, got an estimate of the same storage at the Indian school slightly below the diverting dam, that I had determined from my topographic survey at the diverting dam, it was never contemplated we would do any work there whatever.

Q Then you considered the better damsite of the two was at the diverting dam?

A I did no work at the Indian school to determine whether it was a fit damsite at all, I made no surveys whatever.

Q Did you ever make any tracing or maps or plats of these surveys you speak of?

A They were probably done under my direction, yes sir.

Q Do you know where those papers are now?

A I could not say where they are now.

Q Do you know whether or not they are in the possession of the Cuyamaca Water Company?

A I haven't the least idea, sir.

Q Do you know whether or not they were ever removed from the possession of the Cuyamaca Water Company?

A There were some that were referred to in Mr.Hagar's testimony that I was asked as a favor to take from the Cuyamaca Company's office and to turn over to Helm and associates at the Grand Hotel, under telephone instructions from Mr.Hagar, who at that time was manager of the Water Company, they didn't even have to ask me for a receipt at the office for these maps, and I wished to protect myself and I immediately asked Mr.Helm and his associates to give me a receipt for them, which I immediately turned over to Mr.Hagar, who was still manager of the

Water Company.

Q You say that was done as a favor to whom?

A To Mr.Hagar absolutely.

Q Do you know what became of those papers?

A I haven't the least idea, sir.

Q Did you ever give them to Mr.Heisler?

A I don't know whether or not MrHeisler was in the room at the hotel, I took them to room 512, in the U.S.Grant Hotel and turned them over to a gentleman, I have forgotten which one gave me the receipt, Mr.Helm or MrHeisler.

Q Were they ever returned to you?

A No, I had no further connection with the Company, had no further interest.

Q Did you ever give any person an order on Mr. Heisler for these maps or papers?

A No sir, feeling my province had terminated when I handed the receipt for the maps to Hagar who was manager of the Company.

Q Can you tell us what maps and just what papers were delivered to the people in the Grant Hotel?

A I can't tell you exactly, I would not undertake to say, I am under the impression it was Poverty Gulch reservoir and Cedar Creek reservoir.

Q And the diverting dam reservoir?

A I would not be certain.

Q When did you first meet Mr.Hamilton?

A some time after december 1911.

Q You never met him prior to that time?

A No sir, never had known him at all.

Q How did you come to get acquainted with Mr. Hamilton? A I believe I have testified to that before on direct examination, to the effect that through E. H. Brewster, who was connected with a San Diego Securities firm, a Montana man, and Mr.Bock, a former banker of Lewiston, Montana, and also the San Diego Securities Company, and other Montana gentlemen who had a habit of lunching at the Grant Hotel, through them I became acquainted with Mr.Hamilton who was also spending some timethere.

Q when did you first enter the employment of Mr. Hamilton?

A It was some time in December 1911, I say some time, I remember he paid me for the month of December.

Q Did you go to Hamilton and solicit your employment or did he go to you?

A Through Mr.Brewster Mr.Hamilton and I were brought together, and after talking things over Mr.Hamilton decided that he would employ me.

Q What did you talk over with Hamilton?

A The chances of developing water on the San Diego river

Q Did he broach the subject to you or did you broach it to him?

A I don't remember.

Q When did you first become cognizant of the fact that there was a dam site at El Capitan.

A some time after december 18,1911.

Q Who called your attention to the site?

A I determined it myself.

Q You had never previous to that time given the matter any consideration?

A No sir, not that I remember.

Q Do you know anything about the filing of any water appropriation by Mr.Hamilton?

A Yes, I was present when Mr.Hamilton filed on the water.

Q Do you know when that was done? A I could not say off hand, I think the appropriation notice would give the date.

Q Did you ever discuss the water filings with Mr.Hamilton ~~or~~ Mr.Hagar at any time? A I think that I did.

Q Can you give us the approximate date?

A No sir, it was after the Hamilton filing after Mr. Hagar found out that Mr.Hamilton had made a filing, he asked me what it was if it was a hold up, and I said not at all.

Q Was the dam site at El Capitan ever mentioned to you by anyone during the time of your employment by the Cuyamaca Water Company?

A Absolutely not, no sir.

Q Mr. Murray never discussed the matter with you?

A Not to my knowledge.

Q Mr. Fletcher never discussed the matter with you? A No sir.

Q Mr. Hagar never discussed the matter with you?

A No sir, in fact I knew nothing of the dam site until after my return from Mexico.

Q Did you ever make a preliminary survey or any survey of the El Capitan dam and reservoir for any person or persons other than Hamilton?

A The only survey that was ever made by me was one madefor me subsequent to the 28th day of December,1911, when I took the field.

Q Did you ever enter into any agreement express or implied, with any person or persons, under the terms of which you were to share in the profits which might be made in the sale of the Hamilton water filing?

A No sir.

Q Did you ever make, did you ever enter into an agreement of that kind with any person or persons with reference to any rights which Hamilton might have acquired by reason of his reservoir and dam site filing?

A It might have been implied, sir, in answer to this conversation which Mr.Hagar had with me, upon obtaining information that Mr.Hamilton had made filings on the San

Diego river he asked me if we intended it as a hold up, or to prevent the sale of the Cuyamaca Water Company, I told Mr.Hagar over the telephone that it was not in the way of a hold-up, that it was a bona fide proposition, and assured him that it in no way conflicted with the Cuyamaca project, He at that time not even knowing where the filing was. Well, he said, in the event of the Cuyamaca being sold, Charlie, would there be any trouble in obtaining the Hamilton rights, or would they attempt to hold us up. I told Mr.Hagar I was satisfied they could be procured upon a strictly business basis for a reasonable sum, in other words, not a hold up. Mr.Hagar said, will you draft me a note to that effect; as I remember it I told him well I didn't have authority to, but I would give my opinion; he said he would like to have a note to show to Mr.Murray, it was not done in the way of a hold up, and after Mr.Hagar became acquainted with it he realized it did not conflict with the Cuyamaca plan, it was not thought at that time there would be all this protest and trouble, we supposed there was plenty of room for another plant below the Cuyamaca.

Q You have heard the testimony of Mr.Hagar with reference to a deal made with a certain broker in the Story Building in Los Angeles?

A I think I was the man that started the deal.

Q Can you tell us something about that?

A when I left to go East in September 1911, in talking with Mr.Hagar or with Mr.Murray, everything being perfectly amicable, very friendly, it was suggested, I have foegotten whether by Mr.Murray or Mr.Hagar, that an option could be had for a reasonable figure upon the Cuyamaca Water Company, and knowing a good many influential people back East who had plenty of money to put into projects of that kind I suggested to Mr.Hagar if he would obtain a written option on the Cuyamaca that I would endeavor to interest some of my friends back East to the extent of purchasing the Cuyamaca plant, that being prima facie evidence that I had no conception whatever of the Capitan Grande damsite or anything else other than the Cuyamaca plant on which I worked.

A gentleman from Minneapolis wired me at Mexico City to come at once, that he had some friends he could interest in the Cuyamaca and I returned here, that being strictly private work with no connection with the Cuyamaca but purely for Sackett, and these friends I might interest. I came down here presumably at their expense which was never advanced by them except in small amounts, and entered into negotiations with them and found out that they had no money at all, that they were

merely brokers that wished to hawk the plant to somebody else and make money themselves, they agreed to give me a certain percentage of what they would make above the price asked by Murray; negotiations were dropped for some months and I heard nothing whatever of these gentlemen. In the meantime I had become acquainted with Mr.Hamilton, and I might even then have suggested that Mr.Hamilton take over the Cuyamaca plant if he had the money, but Mr.Hamilton said, I want to build a plant on the San Diego river, are you free to do such and such work, I said, I am, my employment ~~xxxxxxxxxx~~ with Mr.Hamilton then began; that is briefly my story in connection with Mr.Hamilton's plans.

Q Do you remember the name of the broker in the story building?

A I think it was Heisler.

Q Was that a written or verbal agreement that you had with him?

A The agreement was originally made with one Joseph Hohman, who was friendly or had business relations with Heisler, I could not say, there was nothing drawn up except a note which Mr.Heisler, Mr. Hohman, Mr.Helm and someone else sent me relative to the percentage or the partition of the profits that would accrue in the event of the Cuyamaca being sold.

Q Those parties all signed that note?

A I believe they were signed by one man, one man signed for the entire five or six that were interested in the deal.

Q Was any other written memorandum ever made with reference to this deal?

A Not that I recollect.

Q Is it possible that such a memorandum might have been? A It is certainly possible but I don't recollect it.

Q Now were these operations conducted under an option secured from the Cuyamaca Water Company?

A Not at all, sir.

Q You had no option from the Cuyamaca Water Company?

A Not at all, I endeavored several times to get Mr.Nagar to attempt to persuade Mr.Murray to put in writing some figure on the plant, we were never able to get an option on the Cuyamaca plant so far as my connection with Mr.Heisler, I mean an option was never given, that probably was the stumbling block all the way along.

Q Prior to your employment with Mr.Hamilton did you ever broach the subject of the dam and reservoir at El Capitan to any individual?

A Not that I remember, sir.

Q Might you not have done so and your recollection be faulty at this time?

A I think not for this reason, the Capitan damsite survey was based on a line of levels which I run beginning December 18,1911, from Lakeside, from the elevation determined from the railroad track at that point up the San Diego river, I had no idea whether I would run one mile, , ten miles or one hundred miles, I started from Lakeside to determine what dam site would be available on the San Diego river, between certain altitudes, it must have been prior to that survey they obtained any actual information relative to the Capitan damsite.

Q You didn't try to interest anyone else in that damsite?

A Any one else than whom?

Q Than Mr.Hamilton? A No sir, Mr.Hamilton as I stated, had suggested to me rather than the Cuyamaca plant that he wished to do something with the water of the San Diego river.

Q You are quite positive about that?

A To the best of my recollection, sir.

Q Directing your attention to Protestants' Exhibit Q, which has heretofore been introduced in evidence, I will ask you to read the first paragraph of that letter, in view of what you have said do you desire to make any explanation with reference to the language which you used in that letter?

A why no explanation is necessary, except for the records, that first paragraph reads: "My dear Van" This letter being to Mr.Vandenhook of the Land Office. "Finally have a man that I think will be able to take up this matter. Have made a water appropriation and am now in the field making surveys of reservoir sites for filing of map."

A That paragraph was occasioned by the fact that I had come to the Land Office to look at the records relative to what lands were open along the San Diego river, I had explained to Mr.Vandenhook whom I have known a great many years, that it was anticipated that someone might go ahead with a water project on the San Diego river, and I wished to get these records of the Land Office which was the only place which I knew where I could obtain them.

Q That is the only explanation you desire to make?

A Yes.

Q Did you ever make any survey of the La Mesa reservoir?

A You mean hydraulic fill.

Q with the idea of raising or increasing the capacity? A No sir.

Q Did you ever make a survey of the reservoir at the S-tract? A Yes, I think that was one that I made.

Q And of the tunnel?

A Is that what might be termed the Los Chosos?

Q The Los Chosos, yes sir. A yes sir.

Q Then as a matter of fact you did when you were employed by the Cuyamaca Water Company make surveys both above and below the El Capitan dam?

A I made surveys as far above as the upper end of the Helena[illegible] damsite and at the diverting dam as far below as Grossmont, but I made no surveys at the Capitan Grande damsite at the time, for a number of months subsequent to my employ with the Company I had no knowledge whatever of the possibilities of a damsite at the El Capitan site, I was not sufficiently familiar with the Company, I had not had the time.

Q You are the actual discoverer of the El Capitan damsite?

A I thought I was until later I found out it had been proposed for a good many years.

Q By whom?

A Mr. Henderson informed me years ago there had been a survey made of what is known as the El Capitan dam site, my crew at that time were camped at the Henderson ranch. I was quite chagrined to find anybody else had ever suggested even a damsite at the El Capitan, but at that my understanding was that the old Capitan Grande dam site was a quarter of a mile or some distance below the

Hamilton damsite, and in making my surveys I turned that down for the reason that it appeared to me to be sloping and geologically not favorable to a dam site, and while it was the two reservoirs were practically identical as I even understand it today, the location of the El Capitan damsite and the original location of the Hamilton dam site are not identical the Hamilton damsite is up a considerable, a short distance from El Capitan damsite.

Q Mr. Sackett, is that your signature on the last line of that document?

MR. COSGROVE: In looking at an exhibit of that character you are entitled to examine the entire paper before you answer.

A I could not tell you, it is written with a carbon pencil, it is similar to my signature, it may be traced, it may be my signature, I don't know.

Q You will examine the paper, please.

A I do not believe that is my signature, I would not be sure.

Q You have no recollection of having signed a document of that kind? A No sir, I have a document, the original, which was sent to me, and that was signed by the other gentlemen, I do not believe, sir, that that is mine, although I would not like to swear

to it, and as I stated before, that was in no connection with the Cuyamaca water Company's business, was not paid for in any way by them, it was absolutely a private affair of my own, relative to a deal to be consummated to take over the Cuyamaca system.

Q You have no recollection of ever having seen that paper?

A I do not remember, it may be as I see it is there my signature, I notice the rest of them are in ink, that is with indelible pencil, it approximates a partition of the profits which was noted in a letter to me.

Q Do you know Mr. D. F. Mansfield, whose signature is appended to that document?

A I don't know that I would know him, I remember there was a gentleman named Mansfield connected with the Heisler and others.

Q Do you remember ever having had a conversation with Mansfield with reference to the signing of a document of similar character to this?

A No sir, I do not.

Q Did you ever have any conversation or any dealings with one J. W. Hohman, with reference to this matter?

A I stated it was at Mr.Hohman's solicitation by wire to me in Mexico City that I come to Los Angeles, that he had people that he thought he might interest in the pur-

chase of the Cuyamaca Water Company, that was the reason and the occasion for my return to Southern California.

Q Were the Hamilton filings, the Hamilton water rights included in this deal?

A Not at all, I don't know whether I knew Mr.Hamilton at that time, I was going to say I did not even know Mr.Hamilton, but I would not make that statement, the dates are so close together, I might have known him.

Q This document is dated the 18th of December, if that would tend to refresh your memory?

A The letter I have from them was dated the 28th of December, being the original of the same note.

Q You were, however, paid by Mr.Hamilton for the entire month of December,1911?

A As I remember it Mr.Hamilton paid me for the month although I did no wwork in the field until the 28th day of December, I think it was, 1911.

Q Now, Mr. Sackett, you have testified that in severing your rel ations with the Cuyamaca Water Company you did so in a friendly and amicable way, is that cor rect?

A yes sir, when I left Mr.Murray suggested that he anticipated doing no more work that year, I stated there is no occasion for my staying in California, and he said, not in the least. He said, I am too old. I endeavored to show him how we could renovate the Cuyamaca

system, being quite familiar, and make a thorough and efficiant plant of it, but Mr.Murray said he was too old to have any fun out of it and God knows he didn't need the money, consequently he would do no further work.

Q Did you ever have any difference of opinion with Murray and Fletcher with reference to the cost of the Murray Hill reservoir?

A I don't remember, sir.

Q Do you remember what you estimated the cost of that reservoir to be?

A I kept no copies at all of that work which I done for the Cuyamaca Company, I think that I turned over the originals, did not even keep office copies of a great portion of my work, I could not tell you.

Q Did you know whether or not that reservoir came within your estimate?

A I haven't the least idea at this time.

Q Did you leave copies of the field notes with the Cuyamaca Water Company of all the surveys that you made during your term of employment by them?

A Absolutely, and the voucher itself was a receipt for these field notes, they were specifically noted when the final check was given in payment for my services, just what was being paid for.

Q Was the tracings made by you in accordance with

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these field notes left in the custody of the Cuyamaca Water Company at the time you left their employment?

A Absolutely.

Q Were any of these tracings included in the papers which you stated you took as a favor to Mr.Hagar over to the Grant Hotel?

A I think they were only tracings that I took over to him, whatever I took I believe were tracings.

Q You have no recollection of taking any field notes?

A I am certain I did not.

Q What compensation did you receive from the Cuyamaca Company during the time of your employment by them?

A I do not remember, sir.

Q What compensation did you receive from Hamilton during the term of your employment by him?

A As I remember it Mr.Hamilton paid me two hundred dollars a month and all my expenses during the preliminary work.

Q Have you ever had any correspondence with any person or persons in San Diego since you ceased to be in the employ of Hamilton in relation to the Hamilton water filing, or anything pertaining to it?

A I have corresponded with Hamilton up until I should think two years ago, I don't believe that the last two years I have had much correspondence with him.

W. B. HAMILTON, witness on behalf of the City of San Diego, called for cross examination on behalf of the protestants

BY MR. ROBINSON:

Q Mr. Hamilton, in your previous appearance as a witness in this case you were asked to produce certain memoranda with reference to your expenditures in connection with your application for dam and reservoir site, and at that time you promised to make a search of your papers at San Diego, with a view to producing those papers, have you made such a search? A Yes.

Q Have you been able to secure those papers?

A The only things I found were some checks that I issued in payment of this work, covering a term of about six weeks to two months, that refreshed my memory as to the amounts I paid the various people, I did not find the full amount of checks.

Q In connection with your expenditures in prosecuting this application for a dam and reservoir site, what additional expenditures, what expenditures in addition to those you have already testified to can you now testify regarding?

A I did not find many additional expenditures except my estimate of those that I gave to you as everything was based on estimates as near as my memory serves me, I

wanted to be sufficiently safe in everything, and I was guessing pretty well. I find for instance, I remember, I believe I stated I thought it was one hundred and seventy-five dollars a month I was paying Sackett and expenses, I remember now and have information to the effect that I was paying him two hundred dollars a month.

Q During what period of time did that cover, how many months?

A I paid him that two hundred dollars a month and expenses over a term of eight months as near as I remember.

Q Can you approximate the amount of the expenses during that term that you paid?

A I would judge the expenses would have run in that time from twenty-five to fifty or seventy-five dollars a month.

Q Not to exceed seventy-five dollars?

A No, not to exceed seventy-five dollars, I figured I paid him approximately two thousand dollars in that time.

Q You directed my attention this morning to the fact you had testified previously regarding certain amounts you paid for an option on the Kuehner property?

A Yes.

Q Do you desire to correct that evidence as previously given? A I paid Kuehner seven hundred and fifty dollars, instead of, I think I said at least two hundred and fifty dollars, I was sure I paid him

two hundred and fifty dollars.

Q Do you wish to make any other corrections of your testimony as previously given?

A I think the estimate of the field man was low, I think the expenses on the field men must have run in the neighborhood of twenty-five hundred dollars. I employed a draughtsman at one hundred dollars a month, all the time until Sackett left, in fact I have one or two checks in my possession, showing I paid him during the month of May, these checks only run to the month of May.

Further, I paid Judge Boone, I don't remember the first payment, I think I paid him five hundred dollars for preliminary work, then one hundred dollars a month, showing I paid him probably altogether in the neighborhood of twelve hundred and fifty dollars, I have checks showing I paid him one hundred dollars a month, as far as these checks go, the last check paid is May 31st for one hundred dollars -- April here is one, Judge Boone One hundred dollars April 30th, would you like to see this?

Q It might simplify matters if I were to ask you one question. You have produced some canceled checks?

A Yes.

Q Do the amounts of these canceled checks represent expenditures made by you for the benefit of your

application for a dam and reservoir site here under consideration?

A Yes.

Q Will you enumerate the amount of each check, the name of the party to whom it was made payable, and the services which it represents,?

A Well, approximately I would say I paid, here is a check for the month of April 23rd, I paid Mrs.Henderson twenty-four dollars and fifty cents, that was for board of some men, perhaps Sackett or some of his assistants checking up the work, along in April on the reservoir work.

Q What other expenditures did you make in April that you haven't enumerated in your previous examination?

A I have one check in here for eighty odd dollars for automobile expenses.

Q Anything else?

A All the different checks I have here board of the men, I first stated, except first I stated in my estimate they were from memory, I was guessing at a good deal of it, guessing on the safe side, guessing very low, but these checks and other information I have gained since I left here I would be able to make a closer estimate on the amount of the expenditure without giving the full amount of my expenditures for small items, I haven't got in mind, for instance, a check for Rodney Stokes, fifteen dollars and seventy-five cents, paid in the month of May, engineer-

ing expenses; then I had office expenses.

THE RECEIVER: You didn't keep books?

A No, check stubs, that is all. As I stated before my estimate of Sackett's expenses was one hundred and seventy-five dollars a month, I know now I paid him two hundred dollars a month, I paid him approximately two thousand dollars; I paid him a month's wages for July after he quit me, and paid him for the full month of December to start; my field man's expenses must have run twenty-five hundred dollars. I paid Judge Boone approximately twelve hundred and fifty dollars, I paid Mr.Kuehner seven hundred and fifty dollars. I figure that my automobile expenses over a term of one year I was engaged and the expense of keeping up the machine and depreciation would run close to two thousand dollars.

Q The original cost of the automobile was included in the ten thousand dollars?

A No sir, as I stated before we figured there was a certain amount of depreciation on the machine,I figured probably one thousand dollars expense on that, besides the expense of upkeep. I have a memorandum of the boarding expense at Henderson's I would judge run four hundred and fifty dollars that I paid Mrs.Henderson; blue prints and engineering supplies and office rent, etc. probably one hundred and fifty dollars, these are the amounts as near as I can estimate them.

Q Are there any other items of expense that you

recollect at this time that you did not enumerate at the time of the first hearing?

A No, I think not, I think these figures will run approximately about nine thousand dollars; there were other checks issued but I don't remember what they were, simply guess work on my part to try to do it.

MR. ROBINSON: That is all.

GEORGE R. CROMWELL, witness on behalf of the City of San Diego, called for Cross Examination on behalf of the United States

BY MR. MANCHA:

Q Mr. Cromwell have you ever---

MR. ROBINSON: Let the record show the protestants have no desire to cross examine this witness.

Q Have you ever examined the El Capitan damsite with a view to its power possibilities closely?

A I don't think that the power possibilities at El Capitan are of any value.

Q Have you ever given that information as an engineer?

A I don't think as I have because I don't think I ever have considered any power possibilities at the El Capitan.

Q Why in your opinion does it not have any power possibilities? A Well, the elevation of it is, the El Capitan particular is rather low, it is for that purpose the water could be stored there, we would need that elevation for a head in delivering water by gravity to the user and consumer.

MR. MANCHA: That is all.

REDIRECT EXAMINATION

BY MR. COSGROVE:

Q You have attended hearings of different tribunals wherein the value of different units of the Cuyamaca system has been presented, have you not? A Yes.

Q And you have heard the testimony of recognized and successful engineers on the power possibilities of the different units of the Cuyamaca system, have you not?

A I believe I have, I don't know just what you mean, I have discussed them various times.

Q Did you ever hear anyone advance any valuation on the power proposition with reference to the El Capitan?

A I don't think I ever did, I don't remember of it.

MR. COSGROVE: That is all.

ED FLETCHER, protestant, recalled

BY MR. ROBINSON:

Q Mr. Fletcher, you are the same Ed Fletcher who has heretofore testified in this case? A Yes.

Q You are one of the protestants herein?

A Yes.

Q Directing your attention to the pumping plant in the bed of the San Diego River above the diverting dam and above the El Capitan damsite, was any permission ever received from the Department of the Interior to install this pumping plant? A Yes.

Q In what shape was that permission secured?

A A permit dated September 25,1913, signed by C.F.Hauke, second Assistant Commissioner.

Q I hand you herewith what purports to be a certified copy of that permit and I will ask you to examine the same and state whether or not that is the permit to which you refer?

A Yes, it is.

MR. ROBINSON: We ask this certified copy be admitted in evidence and marked Protestants' Exhibit Y.

MR. ROBINSON: In this connection we also desire to offer in evidence a certified copy of a certain letter dated september 12,1913, and signed by C. F. Hauke, Assistant Commissioner Indian Affairs, approved september 15,1913

by A. A. Jones, First Assistant Secretary of the Interior, and we ask that this be admitted in evidence and marked Protestants Exhibit Z.

Q Referring to the matter of the South Fork siphon, Mr.Fletcher, will you state whether or not any right of way was ever granted by the Department of the Interior for that siphon?

A Yes sir, that is my recollection.

Q Do you know whether or not the right of way of the flume as it is existed prior to the granting of this additional right of way, was abandoned by you as to any portion thereof?

A Only the portion that was abandoned that on the north side of South Fork, the south side of south Fork river is still used as a means of diversion of water from our diverting dam in South Fork, and the main flume a distance of about one mile, I believe the siphon for which we secured a permit lately is to take the water diverted from the diverting dam across South Fork to the main flume.

Q I hand you herewith what purports to be a certified copy of your application to the Secretary of the Interior, dated March 25,1911, which purports to be signed by James A. Murray and Ed Fletcher, and I will ask you to state whether or not that is a copy of the application for that right of way?

A Yes sir, this is a copy of the permit that we asked for, certified to by the Department of the Interior.

MR. ROBINSON: We ask that this certified copy of the application be admitted in evidence and marked Protestants' Exhibit AA.

Q In pursuance to that application that you have just examined was the permission granted or not?

A My understanding is that it was.

Q I hand you herewith what purports to be a certified copy of a letter dated June 30,1911, signed by F. H. Abbott, Assistant Commissioner of Indian Affairs, Approved July 6,1911, by Samuel Adams,First Assistant Secretary of the Interior, and I will ask you to state whether or not that is a copy of the right of way or permit which you have heretofore referred to?

A I believe it is, yes sir.

MR. ROBINSON: We ask that this document be admitted in evidence for the purpose of identification, and marked Protestants' ExhibitBB.

Q Now accompanying that permit, Mr.Fletcher, there was a tracing or a blue print showing the new right of way as approved and the old right of way as it was abandoned. I am handing you herewith what purports to be a certified copy of that tracing or blue print, and ask you whether or not that is a correct copy? A Yes sir.

Q This bears upon its face the endorsement

DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C. There is what is apparently a date line and apparently what purports to be a date, is that date legible?

A I can't make it out.

Q Below the date line are the words "Approved subject to the provisions of section 8 of Act January 12, 1891. (26 Stat. L.712,716.) And also subject to the same conditions as imposed upon and accepted by the San Diego Flume Company when original right of way was acquired. (signed) Samuel Adams, First Assistant Secretary" is that statement correct?

A Yes.

MR. ROBINSON: We ask that this certified copy of plat or right of way be admitted in evidence and marked for purposes of identification Protestants' Exhibit CC.

Q I hand you herewith two typewritten sheets, the first one headed Cuyamaca Water Company, Consumers on the system during the year 1915; and the second sheet headed the same, with the word Continued in parentheses at the top thereof, and I will ask you to state, Mr.Fletcher whether or not that document was prepared under and by your direction in the office of the Cuyamaca Water Company?

A Yes.

Q I will ask you to read the first column of this paper, read number of Irrigation Consumers served direct and the total as shown at the bottom of the second sheet,

which is a continuation of the first sheet is what?

A One hundred and fifty-four.

Q The second column is the number of domestic consumers served direct, I will ask you to state the total at the bottom of the second column in the second sheet?

A Six hundred and ninety-four.

Q The third column shows the number of combined irrigation and domestic consumers served direct, and the total at the bottom of the third column on the second sheet is how many? A Thirteen.

Q The fourth column shows the number of subsidiary irrigation consumers not served direct, and the total at the bottom of the second sheet in the fourth column is how much?

A Sixteen hundred and ninety-three.

Q Now the sixth column shows the grand total of all the consumers served direct and the total of that column as shown on the second sheet of this exhibit is how much?

A Eight hundred and sixty-one.

Q And the grand total of all the consumers as shown in your last column on this exhibit is how much?

A 2820 taps.

Q Is that document a correct showing as to the number of consumers served by the Cuyamaca Water company

during the year 1915?

A Yes sir, to the best of my knowledge and belief excepting the City of San Diego requirements.

MR. ROBINSON: We ask this document be admitted in evidence and marked Protestants' Exhibit DD.

Q I hand you herewith, Mr. Fletcher, a typewritten sheet which is headed Cuyamaca Water Company consumers on the system during the year 1905, and I will ask you whether or not that document was prepared under your supervision, by your direction, in the office of the Cuyamaca Water Company? A Yes sir.

Q This exhibit shows three columns does it not?

A Yes sir.

Q Or four columns I should say? A Four columns.

Q The first column is marked District, what does that represent?

A The Flume.

Q Just roughly. A Represents our system.

Q The different subdivisions of the system?

A Yes sir, different subdivisions.

Q And the second column represents what?

A The number of irrigation consumers.

Q And the total of that column is how much?

A Two hundred and seventy.

Q What does the second column denote?

Q You mean the third .

Q The third column? A The number of domestic consumers, total twenty-eight.

Q And the last column?

A The total number of consumers.

Q And that number being? A two hundred and ninety-eight.

Q This exhibit was compiled from the books of the Company, Mr.Fletcher ? A Yes.

Q And represents accurately the condition of affairs which it purports to represent?

A Yes sir, to the best of my knowledge and belief; our office force got it out under my direction.

MR. ROBINSON: We ask that this exhibit be admitted in evidence and marked for purposes of identification Protestants' Exhibit EE.

Q Mr. Fletcher, I hand you herewith a certified copy of a document, which is headed "UNITED STATES OF AMERICA" and on the last page thereof appears the words "By the President, U.S.Grant, By S.D.Williamson,, secretary , and the seal of the United States General Land Office appended to this, attached thereto is a tracing which is marked "Plat of the pueblo lands of San Diego finally confirmed to the president and trustees of the City of San

Diego, and surveyed under instructions from the United States Surveyor General by John C. Hays, Deputy Sur. July 1858, and amended in conformity with the survey of the United States Mil.Reservation at San Diego Harbor, By M. G. Wheeler, Deputy Surveyor, in June 1872, containing forty-seven thousand three hundred and twenty-three and eight-one-hundredths acres (23.08) Scale eighty chains to one inch. Variation 13 degrees 15 minutes East." I will ask you, Mr.Fletcher, whether or not that document was prepared at your special instance and request?

A Yes.

Q Who prepared it?

A I had Mr.Makin, instructed Mr.Makin to secure it, he is one of our employees.

Q Did he actually do the work or was the work done by others, if you know?

A We got the County Recorder to make the map, I believe, or one of his deputies.

Q It bears the certification "John H. Perry, County Recorder, H. H. parsons, Deputy Recorder, San Diego. A Yes.

MR. ROBINSON: We ask this document be admitted in evidence and marked Protestants' Exhibit FF.

Q You were present this morning and heard Mr.Hagar and Mr.Sackett testify in this hearing? A Yes.

Q You heard Mr.Gackett state that the termination of his employment with the Cuyamaca Company was a perfectly amicable and friendly one? A Yes.

Q What is your present recollection with reference to the circumstances attendant upon the severance of his employment with your Company?

A One of the principal reasons was, if my recollection is what started it, he made an estimate on the cost of the Murray Hill Reservoir at approximately twenty or twenty-five thousand dollars, but when we got through with it it was forty-five thousand dollars.

MR. COSGROVE: I object to that and respectfully ask it be stricken out on the ground it is not sur-rebuttal, nor is it rebuttal of Mr.Gackett's testimony, it is simply a restatement of a matter that Mr.Fletcher has already testified to, as I recollect it it is in practically the same words, it is nothing more or less than a reaffirmation of what he first testified to, we would go on endlessly if witnesses were allowed to go on the stand one after another and repeat what they formerly said.

Q As to the termination of the employment of Mr.Nagar, what is your recollection with reference to that?

A Mr.Murray saw fit to discharge him in which I acquiesced.

Q What were the reasons of that discharge?

A His work was not satisfactory.

Q Was Mr.Gackett's work satisfactory in any other degree aside from this Murray Hill reservoir?

A It certainly was not, we hired another engineer immediately thereafter to take his place.

Q A report has been introduced in evidence signed by Mr.Post, by the City of San Diego with reference to a high line, so-called; can you tell us just why that report was made and the circumstances attending upon the rendering of the same.

A The question came up and Mr.Post put it right up to us in this light. Should the waters of the San Diego river be conserved by one large dam on the river or by smaller dams in conjunction with La Mesa dam, neither Mr.Murray nor I were at that time posted, in fact, we do not claim to be now, as to what is the right thing to do; not being engineers we were undecided, so we asked Mr.Post to make us a report on what his opinion is on the high line reservoirs, the idea being to build, to get an estimate of the cost of location of the reservoirs in the mountains; we always, we all of us conceded that La Mesa dam was a vital factor in our system,for it could be raised to an elevation if necessary of one hundred and forty feet, and hold six billion gallons of water approximately.

Q At that elevation ?

A Yes sir, and Mr.Post's idea was and opinion, and it has certainly been verified by these storms, we ought to have our main reserveirs, if possible off of the main stream, with very little if any of the watershed on account of cloudbursts and the breakage of dams built on the main stream, so Mr.Post's idea was to build these smaller reserveirs in the mountains where we have bed rock in each particular case, that being the vital factor in the construction of a dam, holding back practically all the flood waters, hold them back sufficient to, so as to let out gradually the water to the capacity of our flume, and put it through our flume into La Mesa reservoir and stored it there close to our consumers, for that reason Mr.Post, at our request, made this survey of the so called high line of these reserveirs. That was simply a sort of a tentative report which the city has introduced or has referred to, and does not do Mr.Post justice, because it does not take in the La Mesa reservoir, and its relation to the reserveirs in the mountains, working the two together.

Q Did you or anyone connected with the Cuyamaca Water Company furnish the City of San Diego with a copy of that report?

A No sir, I have no knowledge and don't know how

it got out of our office, I have no record of it, it was simply a preliminary report to me and was not, I don't think it is fair to Mr.Post to have a report presented without a statement from Mr.Post in that regard.

Q You consider this an informal report?

A To me, personally, yes sir, and was in line with our discussion on the question of the advisability of building reserveirs in the mountains or one big reservoir on the San Diegoriver.

Q Referring to the work which Mr.Sackett did for you and your company in the matter of surveys and other engineering employment, have you at any time made an examination of the records of the Cuyamaca Water Company with a view to ascertaining whether or not there is a record in said office of Mr.Sackett's work?

A I saw practically if not all of Mr.Sackett's work, and it included surveys of the dam right there at the diverting dam, it included surveys of Poverty Gulch and several other surveys in the mountains, preliminary surveys, I think one of them was on Inaja dam, in fact Mr.Sackett I believe testified as to that, in addition I have, I at one time saw a preliminary survey of the El Capitan dam site, what I supposed to be the El Capitan damsite at that time, and also a survey of a tunnel through the known as

El Monte tunnel and a survey of the g-tenack reservoir, a survey of Murray Hill reservoir, one or two pipe lines, all of those records I have seen but none of them to my knowledge are in the office of the Cuyamaca water Company today.

Q Have you made a search for those records?

A we certainly have.

Q How recently?

A Well, Mr.Post made a survey and made a search, of course I didn't do it individually but I have asked Mr.Mathews and Mr.Post for these records and surveys and the only thing that we have is a blue line print of the diverting dam survey, I think one of Poverty gulch, that was a copy of the original, we have none of the originals to my knowledge.

Q Mr. Fletcher, are you positive with reference to the survey at El Capitan?

A I am positive that the survey of that was made and that the matter was discussed between us, a preliminary survey, we ordered, Mr. Murray and I discussed the matter and the instructions to Mr.Hagar and Sackett were to make a survey on the San Diego river from Lakeside up to the diverting dam, at any point where they thought it possible to get a reservoir, to use their judgment as to what dam site to recommend to us, with the idea of our building a dam there;

those are our general instructions.

Q Now, you say that Mr. Murray and yourself discussed the matter, with whom did you discuss that natter?

A With Mr.Hagar.

Q Did you discuss it with Mr.Sackett?

A I believe so, he was generally in the conference, Mr. Murray had generally more to do with that matter than I but I was consulted by Mr.Murray in all matters pertaining thereto, and I am positive that the El Capitan damsite was one of the reservoir sites under discussion.

Q Would it be possible for you to give us approximately this discussion, or information of them at this time?

A It was between, it was during the summer of 1911, in other words, in a general way they had, it was up to them to use their judgment to determine the best reservoir site on the San Diego river and the buck was up to them to find out, and they spent, we spent something like two thousand or twenty-five hundred dollars in surveys in four months, in attempting to, in paying the bills; you can understand it is perfectly natural we wanted the best reservoir we could find, we had a large investment there and it was up to them to give the best there was, and Mr.Sackett to determine which was the best reservoir site for us to

acquire and build, and it certainly looks very remarkable that within a very short time after he ceased employment with us he encourages this water filing and he get his---

MR. COSGROVE: I object to all this argument, he is not answering the question, he is talking at random.

A He got his knowledge of that country there through us, at our expense in surveying the San Diego river from Lakeside to the diverting dam.

MR. COSGROVE: I object and respectfully ask it be stricken out; to preserve the objection I state the objection is made on the ground it is not responsive to the question.

Q Do you wish to make any other statement?

A No sir.

CROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q Did you hear your man Lou Mathews testify here before this Register and Receiver that this map that you accused Sackett of stealing, was part of the records turned over from the San Diego Flume Company, yes or no?

A I heard all.

Q Did you hear him testify to that effect?

A I would like to refresh my memory but I am certain

that Mr.Mathews has complete knowledge of the situation, because he had complete control of all these maps.

Q You answer my question.

A Repeat the question.

Q Please read the question. (Question read,)

A Yes, I heard all of Mathews' testimony.

Q I will ask you if you heard these witnesses who testified here today, testify to the effect that these maps which were turned over to Sackett by Mr.Mathews were the original tracings?

A Did I hear that testimony?

Q Yes. A yes sir.

Q Mr. Fletcher, you stated here that you saw a survey made by Mr.Sackett of the El Capitan damsite, I will ask you why don't you produce the surveyors that made that survey with Mr.Sackett?

A They are all Mr.Sackett's employees, I don't know who one of them were.

Q Did you pay them? A The Cuyamaca Company did.

Q Haven't you got the warrants? A Mr.Hagar was manager and paid all of these men.

Q Doesn't your records show the amount of money paid to him, if it was paid? A Unquestionably it does.

Q Why don't you produce these men that made that

survey?

A That never entered my head until this minute.

Q I want to know why you don't produce the field notes that were made on that survey you were speaking of?

A I believe Mr.Sackett has them today.

Q You think in addition to stealing the map he stole the field notes?

A I am not using the vulgar word stealing.

Q He took them and has not returned them?

A I believe he has both the field notes, originals, we have nothing but duplicates of two maps.

Q Why don't you produce the duplicates?

A Because they are the same -- you mean the duplicates of the diverting dam?

Q You just answer the question.

A we can produce the duplicates, I will perhaps have them here to-morrow, a duplicate of the diverting dam and Poverty Gulch.

Q Have you ever had in your office a survey of the El Capitan damsite, I want to know why you don't produce it for this Land Office, for the officials of this Land Office, copies of your pencil tracing, copies of your field notes, copies of ~~xxxx~~ the warrants that you paid to the men that made the survey, why don't you produce the men themselves that run the line?

A We can't produce the originals because we haven't them, they are not in our office, after Mr.Sackett

was gone Mr.Mathews delivered practically all if not all of the records that we had in our office and they never have been returned.

Q Did you hear Mathews testify what he delivered was a map that looked much like the contour map I showed him?

A we referred to a lot of maps, there were a number of them, not one.

Q Do you contend that he delivered to this man Sackett the field books that surveyors use for making notes?

A we testified to the records, I didn't see Mr.Sackett take them myself but we haven't them to my knowledge, as I understand Mr.Mathews to testify.

Q I am not asking anything about your understanding of Mr.Mathews' testimony, I haven't asked you any question that elicits this answer.

JAMES A. MURRAY, protestant, called in rebuttal

BY MR. ROBINSON:

Q Mr. Murray, will you state whether or not you ever had any consultation with Mr.Hagar or Mr.Sackett or with both of them in the presence of Mr.Fletcher during the course of which conversation the subject of the dam and reservoir site at El Capitan was brought up?

A Being discussed?

Q Yes. A Never did with Sackett but with Hagar on different occasions, I don't recollect, in fact I didn't talk to Sackett very much, he wasn't my man exactly, Hagar had him.

Q Have you any personal knowledge with reference to the facts in connection with the severance of the employment of the Cuyamaca Water Company with Hagar and Sackett? A Oh yes sir.

Q Did you hear Mr.Sackett testify that when he left the Company, left the employ of the Company he left it in a perfectly amicable friendly way?

A I heard him say so.

Q Is that correct with your knowledge of the facts? A No, it might be from his.

Q Will you state what your recollection of the facts was?

A His work was not satisfactory, I think his salary was more than he was worth a good deal.

Q In what respects were his services unsatisfactory? A Loafing around town too much in the first place.

Q Was there any other reason?

A None while he was in our employ; the mistake he made in the Murray Hill was after, that cost fifteen or eighteen thousand dollars by his nonsense, he didn't put the core within twelve feet of the top and as soon as the water got up to the top it ran through like a sieve.

Q What are the circumstances with reference to Mr.Hagar? A Mr. Hagar is a good fellow, that is another natural fool, he boozed a good deal, you understand, and was not reliable, it was not his fault.

Q Were his services satisfactory or unsatisfactory?

A I didn't know the man when I got him, of course if I had it would have been different, you have to know a man.

Q Have you ever employed Mr.Hagar or Mr.Sackett since they left the employ of the Cuyamaca Water Company?

A I would not give either one a canceled postage stamp for their services.

Q You have never employed either one of them?

A Certainly not.

Q At any time since they left the Cuyamaca Water Company?

A I had a law suit in Livingston and while I hadn't spoken to Sackett since his severance with the Company he went to my attorney and said he would make a good witness for me, I didn't acquiesce but he made a very good witness for me.

Q Have you ever employed him in his professional capacity?

A No sir.

CROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q You know where they are driving tunnels at the El Capitan damsite?

A There is no tunnel being driven there, there is a cut run into the hill, I don't call that a tunnel, that is an open cut.

Q Neither do I, but Mr.Fletcher has been calling it a tunnel.

A Call it what you please.

Q You know where that dam site is?

A Yes.

Q You know where the Indian schoolhouse is?

A Yes.

Q wasn't it up where the Indian schoolhouse is that Mr.Hagar talked about building a dam?

A We talked about that particular forty acres.

Q Wanted to buy it?

A Yes, and I differed with him.

Q with regard to putting a dam there?

A I would like to put it in the canon. We didn't own the El Capitan, I didn't consider purchasing, I was in favor of going near the diverting dam.

Q You and he used to speak about two proposed dams, one at the diverting dam or immediately below, and he wanted one down here at the Indian school?

A Yes, above Henderson's.

Q And that is a subject you have discussed about very frequently with him?

A Yes, as a matter of fact we spoke about reservoirs all the way from Old Mission, but not seriously, we would speak about them but I was not very enthusiastic about putting in four or five hundred thousand dollars for the Railroad Commission to tell me what I should do after I got it in there.

4:30 P.M. February 10, 1916. Recess until February 11,1916.

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9 A.M. February 12, 1916.

ED FLETCHER, protestant, recalled

BY MR. ROBINSON:

Q Mr. Fletcher, directing your attention to an exhibit previously introduced in this case by the City of San Diego, marked City of San Diego's Exhibit No.55, and directing your attention to the paragraph on the second sheet of the exhibit, the last paragraph on the second sheet of the exhibit, reading: Cost of Development of the Entire System to a safe Yield of Nineteen and five one-hundredths (19.05) million gallons daily (exclusive of Carroll Reservoir) is practically six million five hundred thousand dollars, or a cost per thousand gallons of six and eight-tenths cents for structure - Mr.Fletcher, is that the price which you asked the City of San Diego for the system?

A No sir, the price is two million and a ahlf.

Q What was the proposition submitted to the city as to the payment and the length of time within which payment was to be made?

MR. COSGROVE: I object to the question on the ground the proposition is in writing and the best evidence, all he can state is his recollection, that proposition can be easily secured.

A I was manager of the Volcan system at that

time and am now, and I signed the written proposition to the city; the terms were a payment of one million and a half down and the balance on time, within, an option of forty years in which to pay the balance, with a price to be agreed upon per thousand gallons for the water until final payment on the property was made. We afterwards modified that by---

MR. COSGROVE: Before you go further the City of San Diego objects to the answer and asks it be stricken from the record on the ground the witness himself has testified as to the contents of a statement in writing signed by himself, the writing being the best evidence, therefore no evidence whatsoever thus far introduced that he is unable to procure it.

A we afterwards modifiedthe proposition verbally by agreeing to accept one million in lieu of one million and a half asked as first payment, this would enable the city on, on account of its bonding capacity, to be able to take, accept the proposition if they cared to do so.

MR. COSGROVE: I object to the answer and ask it be stricken from the record as entirely irresponsive to the question, having no bearing whatsoever on the question asked.

A We didn't know this exhibit was going to be

introduced in evidence for this reason as our papers are in San Diego it is impossible for us to get them here in time before the closing of the hearing.

MR. COSGROVE: I object to that statement as being irresponsive to anything asked, has no bearing on any question asked.

Q In previously testifying in this case it is my recollection that you said that the ultimate capacity of the La Mesa reservoir when enlarged would be eighteen billion gallons, is that statement correct?

A I have no recollection of making that statement, if I did it should be changed to eighteen thousand acre feet, or approximately that, between eighteen and nineteen thousand acre feet.

MR. ROBINSON: You may inquire.

CROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q Mr. Fletcher, you say the proposition you submitted to the city with reference to the sale of the Volcan system, that the price of the water was thereafter to be agreed upon, that statement is incorrect, is it not?

A Originally the proposition was fifteen cents one thousand gallons, but we afterwards modified that verbally.

Q Did you afterwards modify it in writing?

A I don't remember after, if the records--

Q You stated here not over two minutes ago, in your written proposition you stated the price of the water was to be thereafter agreed upon, that is not correct, is it because in your written statement the price was specifically stated at ten cents one thousand gallons?

A We made two or three propositions, I don't know which one you refer to.

Q I don't know which one you refer to either, that is all.

A since then we agreed---

MR. COSGROVE: You haven't been asked any question I object to your making any volunteer statement.

MR. ROBINSON: Protestant rests.

MR. MANCHA: Your Honor, in view of the voluminous tables and statistics and figures introduced by both the protestants and the City of San Diego on account of the considerable conflict between the two sides, and as part of the landsinvolved in this controversy comprise the Indian Reservation and also part of the Forest reserve, we believe it incumbent upon us to introduce testimony of an engineer of the Indian service, giving his compilation of statistics upon the vital points of the case, which we believe primarily to be acquainted of run off which is available at the proposed Capitan damsite, we have one witness to call in this matter.

It was the intention of Mr.Oldberg, chief of Irrigation, to testify in this case, but I understand that he and Mr.Bonner, who has previously testified, were called away on account of the floods, so Mr. H. K. Palmer, a civil engineer of the Indian service is now called.

H. K. PALMER, witness on behalf of the United States, being first duly sworn by the Register, testified as follows

BY MR. MANCHA:

Q What is your post office address? A 528 Federal Building, Los Angeles.

Q Your occupation? A Civil engineer,

Q Employed by whom? A United State Indian service.

Q How long have you been so employed?

A six years and three-quarters.

Q What are your duties in that connection?

A supervising the construction of irrigation work, making of surveys and reports on future work, such as investigation as come up in irrigation work.

Q Been employed as a civil engineer for the Indian Service for how many years? A Nearly seven years.

Q What qualifications have you had for that work? educational and practical, briefly?

A Had a complete college education, University of California three years graduate work, several years scientific work, eight years in making investigations.

Q Have you compiled any data with reference to the run off at the proposed Capitan damsite?

A I have.

Q What area did you take into consideration in

compiling that data?

A For the damsite I took in the whole of the area above the El Capitan damsite, the whole area of the watershed of the San Diego river,

Q Did you also compile any data in reference to the watershed below the damsite? A I did.

Q Between there and San Diego? A Yes.

Q You have before you a plat designated watershed of the San Diego river January 1915, please state what that represents?

A This represents the entire watershed of the San Diego river and its tributaries from the mountains to the ocean.

Q By whom was this made? A It was made by Mr. Bauer and myself.

Q Under whose supervision? A Under my supervision.

Q State how many watersheds did you divide this into? A Six.

MR. MANCHA: I believe that the City of San Diego's Exhibit No.12 divided the watershed above the El Capitan into four watersheds for the purposes of comparison?

MR. COSGROVE: Yes.

Q Witness, what part of this plat corresponds to the watershed of the El Capitan dam? A The part of the watershed marked in large letters SAN DIEGO RIVER.

Q The watershed which you have indicated further to the east on this map as the large watershed marked San Diego river watershed, includes all of the drainage watershed of the San Diego river east of the El Capitan proposed dam site, is that correct? A It does.

Q And the other five smaller watersheds which you have arbitrarily designated for purposes of comparison represent what? A They represent watershed tributary to the San Diego river, below the proposed El Capitan dam, contributing to the water supply for the riparian lands below El Capitan.

Q Please name these five watersheds below the proposed Capitan, beginning to the west with the Mission Valley watershed?

A At the lower end of the river there is the Mission, what is designated as the Mission Valley watershed, just east of that what is designated as El Cajon, east of that are three watersheds, that on the north bank designated as San Vicente creek, the center the Monte, the south as the Los Coches creek.

Q What does the green represent on this diagram?

A The green represents approximately the location of the riparian lands.

Q Approximately how many acres of riparian lands in the Mission Valley watershed?

A Approximately three thousand five hundred.

Q Approximately how many acres of riparian lands in the El Cajon watershed? A Approximately four thousand eight hundred.

Q In the Monte? A Approximately fourteen hundred.

Q Los Coches? A One hundred and fifteen.

Q San Vicente Creek? A Five hundred and eighty-two.

Q Now what did you take, witness, as the basis in compiling your statistics as to the run off at the proposed El Capitan damsite? A From the year 1898 and 1899 to 1912 and 1913 inclusive I used the measurements submitted by the Cuyamaca Water Company in the hearing before the State Railroad Commission, giving the amount of water available at the diverting dam, and for the rest of that San Diego river watershed I used the records of the Cuyamaca Water Company, which I verified by comparison with the run off of the rest of the areas would seem to assumable for the previous years, that is, from 1890 to 1891 to 1897 and 1898 inclusive, where the records above the diverting dam were incomplete, being confined to the Cuyamaca dam and the Cuyamaca reservoir run off alone, I used a comparison with the rainfall records for the entire watershed.

Q What was your object in dividing this drainage

basin to the west of the proposed El Capitan into five watersheds?

A In order to make a proper study of the amount of run off available on different portions of the riparian lands it was necessary to compute separately the run off from the upper areas which these five watersheds represent.

Q Did you take into consideration the character of the land, the soil, the slope, evaporation and transmission loss? A I did.

MR. MANCHA: We offer in evidence as United States Exhibit No.V, to be marked in Roman numbers the plat just identified by this witness.

Q You heard considerable testimony, witness, did you not in this case, in reference to the run off at the proposed Capitan damsite?

A I heard the testimony on the part of the City of San Diego.

Q Did you take into consideration any other matters which were not taken into consideration by the City of San Diego?

A I took into consideration the amount of water required to irrigate the riparian lands below the El Capitan damsite, and the total amount of run off which could be depended upon from the adjacent area below the damsite, in order to find out how much must be allowed to pass the El

Capitan dam in order to give them enough water to satisfy their rights.

Q Now referring to United States Exhibit No.V Roman numbers V in other words, and the riparian lands in Mission Valley which you say are indicated in green, if any water were pumped out of the bed of the San Diego river by the City of San Diego for municipal purposes, in your opinion would there be sufficient run off in the Mission valley watershed to take care of the land in that watershed?

A I believe there would.

Q How about under present conditions with the city pumping there?

A If a large amount is pumped in all probability those sands would have to be replenished from the river itself in order to satisfy the irrigation and the city as well, both.

Q Then as I understand you, the watershed which you have indicated as the Mission Valley watershed, the run off there would take care of these lands if the City of San Diego didn't pump any water, is that correct?

A In all probability.

Q But with the city pumping water then what?

A Approximately an equivalent amount of water would have to be turned down through the river to replenish those sands.

Q Now taking up the next watershed which you have designated the El Cajon, how many acres of irrigated riparian lands are in that watershed indicated in green?

A Thirteen hundred and sixty-four.

Q Are these lands affected by any other run offs, those as confined in the arbitrary line you have designated as El Cajon?

A Affected by the San Vicente creek and the Los Coches creek.

Q In reference to this land in the El Cajon watershed what consideration have you given if any in compiling your statistics, are they in the same class as the riparian lands in Mission valley, if not why not?

A No, they will require water from the river, for the reason that the surrounding watersheds are of a different formation, the watershed of Mission Valley is largely composed of a clay and gravel plateau, cut up by very steep canons largely denuded of plants and the run off from that region will be very large in comparison with the a small rainfall; on the other hand, in the El Cajon and San Vicente and Los Coches Creeks the soil is more open and the side hills are not so steep, so that the run off will more nearly correspond with the run off from the other sections of the watershed, taking into account the lower elevation.

Q Have you compiled, witness, a table of statis-

ties to be used in connection with this United States Exhibit No.5?

A I have.

Q Have you the table before you?

A I have.

Q Please state, witness, just what this table represents.

A This represents the general data in regard to the various sections of riparian lands below the El Capitan dam, giving the areas in acres, the amount of water for evaporation in acre feet.

Q This is entitled what?

A Data regarding riparian lands.

Q And the titles to the various columns are headed how?

A Above Lakeside, corresponding to the riparian lands in what is designated on the map as Monte watershed, below Lakeside corresponding to the riparian land in what is designated El Cajon watershed, Mission Valley corresponding to what is designated as riparian lands in Mission Valley watershed; San Vicente Creek, or the riparian lands along said San Vicente Creek; Los Coches Creek, the riparian lands along Los Coches Creek.

MR. MANCHA: We ask to have this marked United States Exhibit No.VI Roman numbers.

Q In this United States Exhibit No.VI Roman numbers, the first tier of figures running to the right of the designation ""Area Irrigated" is in what unit?

A Acres.

Q Then the seventy to the right of the area irrigated, means seventy acres?

A It does.

Q All the figures on that line across to the right mean acres?

A Yes.

Q Under the designation Total Area susceptible of irrigation, running to the right what is the unit there?

A Acres.

Q All below the first two designations beginning with this title "Total Amount of water required for Full Development" what is the unit there?

A Acre feet.

Q 3410 is acre feet?

A Yes.

Q And everything immediately below that on the line to the right of it is acre feet?

A Yes.

Q Now state briefly, witness, just what this United States Exhibit No.6 is intended to represent in your own words.

A It is intended to give in a concise form the general requirements of the riparian lands below the El Capitan dam.

Q In compiling this table you have taken into consideration first the number of acres now irrigated; second, the number that can be irrigated, the future development of these riparian lands, is that correct?

A Yes.

Q And that is something that the City of San Diego did not take into consideration, did they in submitting their statistics?

A Only in very general terms.

Q Now please explain, witness, beginning with Area Irrigated, just what this whole exhibit represents running down the line briefly.

A The Area Irrigated represents the number of acres irrigated at the present time, the total area susceptible of irrigation represents the area within the watershed of lands which would likely be considered to have a riparian right to the water, and also which lie as to make irrigation feasible, the total amount of water required for the full development would be the number of acre feet per year required to irrigate the land, designated under the Total Area Susceptible of Irrigation, at the rate of two and a half acre feet per year, the evaporation represents the natural evaporation from the sands, both from the surface of the ground and through vegetation along the river beds, which can be expected if the water plane is allowed to lie close to the surface of the ground; the total water requirement would be the sum of the total amount of water required for full development and evaporation and storage or capacity of sands, represent the probable amount of water which could be stored in the sands under these basins within the reasonable pumping limit; the underground water received from

the basin above represents the amount of water flowing under ground from the basin above the one in question, to the underground water basin, and the basin below represents the amount of water flowing underground out of the basin in question.

Q Now in this title, evaporation figures 4052575 what does that mean?

A It means that the amount of the evaporation from the river bed, what is designated as the Monte watershed, would normally amount to 2575 acre feet per year, but as was recommended by Mr. Lee that can be easily reduced to four hundred and five, by building a concrete line by-pass along the upper sands so as to avoid flooding the area which is covered with heavy vegetation, and also supply a sink near the Monte pumping plant for the uses of the immediate riparian owners, it would be possible to avoid this excessive evaporation of 2175 acre feet in the computation of the amount of water required for these riparian lands, I have considered that the City of San Diego if they built the El Capitan reservoir would supply this by pass and would have used the evaporation of 405 instead of 2575.

Q What do you mean by the total water requirements, the figures being 3815-5985?

A If the by pass is built it will take 3815 acre feet to supply the irrigated lands and the soil evap-

eration; on the other hand, if this by-pass is not built it will take 5985 acre feet to supply the evaporation and the irrigation.

Q Of what? A Of the riparian lands.

Q As they are now irrigated? A For the full development.

Q Now the storage capacity five thousand seven hundred, explain that.

A That means that five thousand seven hundred acre feet of water can be stored in the sands to be withdrawn by pumping, and stred within a reasonable distance from the surface of the ground, it has been estimated that the sands in the upper part of that basin are about one hundred and twenty-five feetdeep, diminishing towards the lower part, and any such lift as that would be unreasonable for pumping purposes, so that the storage basin has been limited to fifty feet below the surface of the ground.

Q In this four hundred and five and the ciphers to the right thereof, what does that mean?

A It means approximately so far as we can tell at present, means about four hundred and five acre feet of water passes yearly over the riparian land above Lakeside to the riparian land below Lakeside, this quantity would probably be reduced, however, by lowering the water plane by pumping.

Q Now the first two rows of figures on this sheet represent acres, do they? A They do.

Q And the last six rows or tiers of figures represent acre feet, is that correct? A It is.

Q Now why have you used the designation Above Lakeside, with your first table of figures here it is observed that the other one, with the exception of the first two, correspond to the basins or the watersheds that you have marked here, but you have no watershed marked above Lakeside, why do you call that above Lakeside?

A In previous statements on that subject, especially by Mr.Lee before the California Water Commission, these basins have been designated usually with that distinction of Lakeside and El Cajon, or above Lakeside and below Lakeside, thedesignation which I have placed on these watersheds have been arbitrary, merely for the purpose of designating in this case the different watersheds in consideration, and to avoid confusion I have considered it better andhave considered them, these above Lakeside and these below.

Q What watersheds, referring to United States Exhibit No.5 does this designation Above Lakeside include?

A It includes the Monte watershed.

Q Is that it? A Yes.

Q And Below Lakeside includes what?

A Those riparian lands lie entirely in what is designated

as the El Cajon watershed.

Q Now referring to the next sheet on this table designated Annual run off in various watersheds in acre feet, what are those figures, 1, 2, 3, 4 represent?

A Those refer to the explanation given on the third sheet, Column No.1, as the run off of the San Diego river at El Capitan dam, after deducting fifty-six hundred acre feet for the Cuyamaca diversion. Column No.2 is the run off from the Monte watershed. Column No.3 is the run off of the San Vicente Creek after deducting the amount required on riparian lands along the San Vicente Creek. No.4 runs off from Los Coches Creek, after deducting the water used on riparian land along Los Coches Creek. No.5 run off from that portion of the El Cajon watershed on the north side of the river. No.6 geological survey gauging at Lakeside including the flume.

Q Where did you get that fifty-six hundred feet for the Cuyamaca diversion?

A The basis of that was derived from the decision of the State Railroad Commission No.536, which called upon the Cuyamaca Water Company to supply waters for its present consumers amounting to a continuous flow at the land served by the Company of two hundred and fifty-six miners' inches, with a probable transmission loss of this two hun-

dred and fifty-six miners' inches would be assumed fifteen per cent, making the total amount required at the diversion dam three hundred and one miners' inches. In case El Capitan dam is built it will not be necessary to divert the forty inches which are now diverted for the benefit of the Indians, consequently three hundred and one miners' inches at the diverting dam would be a sufficient equivalent number of acre feet annually would be four thousand three hundred and sixty-two, however, in order to provide this throughout the year and to hold over dry years at least seventy-five per cent of the water must be stored, I have assumed loss due to storage at forty per cent, assuming that seventy-five per cent is stored with a storage loss of forty per cent is equivalent to storing the whole with a storage loss of thirty per cent, this will be equivalent to the total amount diverted of six thousand two hundred and thirty acre feet, however, this measurement includes water which has passed through the Cuyamaca dam and therefore includes those storage losses on that water; the average amount of water from the Cuyamaca dam has been assumed at nine hundred acre feet, and the storage loss of this amount six hundred acre feet, approximately, which can be deducted from the above gross amount, leaving approximately five thousand six hundred acre feet, which should be deducted from the run off

of the river.

Q You understand that the State Railroad Commission would require a diversion of five thousand six hundred acre feet for the Cuyamaca water Company, is that correct? A Yes.

Q You have stated the basis for these figures.

A Yes.

Q Have you examined Plaintiff's Exhibit No.15, which is a mass curve submitted by the City of San Diego to show the run off at the proposed damsite, El Capitan?

A I have.

Q Have you prepared a mass curve to show the run off at the same place? A I have.

MR. MANCHA: Before proceeding with this we offer in evidence as United States Exhibit No.VI a table which has previously been identified by this witness and present three typewritten sheets securely fastened together.

Q Now referring to the blue print before you, by whom was that made? A By myself.

Q what does it represent? A It represents a mass curve, two mass curves showing the amount of water available for storage in the El Capitan dam, El Capitan reservoir after deducting water for the Cuyamaca water Company and for the riparian lands below the dam.

Q It is noted that there are three brown lines

running crossways, running nearly parallel with them are three other lines, what color would you designate that?

A Red.

Q It resembles purple somewhat too, does it not?

A Yes, a combination.

Q The brown lines are distinct? A Yes, purple will do.

Q We will take the purple or red lines first, three of them, what do they represent?

A The upper purple line represents the total amount of water flowing into the reservoir after the water for the Cuyamaca water Company has been diverted and also enough water to irrigate the present acreage of riparian land below the dam.

Q Well, now generally speaking, these three purple or red lines represent one thing, don't they, what is that?

A Theyrepresent the condition at the water diverted from the river for the Cuyamaca water Company and for the irrigation of the riparian lands below the dam which are irrigated at present.

Q These three lines then represent that now, then the three brown lines represent what?

A They represent the same except that the area irrigated below the dam is the full amount of land which can be irrigated.

Q In other words, the three purple or red lines take into consideration the irrigation of the riparian lands which are now irrigated, and the three brown lines take into consideration the safe development of the riparian lands, is that correct?

A Yes, it is.

Q Now referring to the figures on the left of this blueprint, on the lefthand note of it, what do those figures represent, beginning with zero, 50,000, 100000 etc.?

A Those represent acre feet.

Q Then from sero to fifty thousand is fifty thousand acre feet, is it? A Yes.

Q Each one of these little squares between zero and fifty thousand represents how many acre feet?

A Five thousand acre feet.

Q Then there are ten squares from zero to fifty thousand? A Yes.

Q The little subdivisions in these sections represent how many acre feet?

A One thousand acre feet.

Q Now referring to this capacity of reservoir on the lefthand side of this blue print, where did you get that severty-four thousand six hundred acre feet, that is larger than the City of San Diego made it, is it not?

A It is.

Q was that based upon the proposed one hundred

and sixty foot dam? A It is.

Q Now referring to the description opposite the one hundred and fifty thousand net annual evaporation curve and evaporation, please explain what that means?

A That is a subsidiary diagram attached, in order to facilitate the computation of the evaporation of various stages of the water in the reservoir, it is drawn to scale, to the same scale as the mass curve so that the capacity can be laid off with dividers and the annual evaporation can be taken in the same way.

Q Now the table, the big table near the top in the upper left hand corner of this blue print, what does that represent?

A The data from which the average mass curve was drawn.

Q In other words that represents the data from which this blue print was made? A Yes.

Q The table to the right of that larger table represents what?

A The summary of results obtained from this blue print.

Q In other words, that is these mass curves put into figures into a table, is that right? A Yes.

Q Let us take up this big table so there won't be any question about your being understood. First you have the year beginning with 1890 running to 1913, that is about

twentytwo or twenty-three years? A Yes.

Q Do you mean to say you have compiled statistics covering a period between twenty-two and twenty-three years? A I have.

Q To show the run off at the proposed El Capitan damsite? A I have.

Q Taking into consideration the factors which you have mentioned which have heretofore been proposed, hamm been taken into consideration? A I have.

Q State witness, under the first column to the right of the figures in the big table, the upper lefthand corner of the blue print, what you mean by the total run off at the dam?

A That is the run off at the river at the dam, after the fifty-six hundred acre feet have been diverted by the Cuyamaca Water Company, but no water has been deducted for the riparian land below.

Q Running down the column it is self-explanatory, is it not, that is up to the year 1913? A Yes.

Q Under the following: Total Amount of Riparian land, the word Required, column under Required; column under Available, what does that mean?

A Column headed Required by riparian land is the total amount of water which must be drawn from the San Diego river in order to supplement the run off of the lower watershed in order to supply these riparian lands for the

full development. Column Available for Storage, is the amount left in the river after making this deduction, in other words, column headed Available for storage is equal to the column headed Total Run Off at Dam, less column headed Required by riparian lands.

Q In other words, Column No.2 subtracted from column No.1 gives column No.3? A Yes.

Q Under Irrigated limited to Present Area, what do you mean by that?

A If the irrigation of the riparian lands below, is not allowed to increase wthenn the requirements will be less than they are for the full total amount, the columns 4 and 5 have the same significance as 2 and 3, under those other conditions; in other words, Column No.5 is equal to Column No.1 minus Column No.4.

Q And this corresponds to the other plat having in your mind there the taking care of the riparian lands as they are now irrigated, as is shown by the columns, the last two columns in this table, is that right? A Yes.

Q And the columns counting the years, Column No.1 and Columns 3 and 4, then taking into consideration the full development of the irrigated land? A yes.

Q Now taking these mass curves, witness, starting from here at zero, I wish you would take up this purple or red curve and explain just what it means.

A The upper purple line represents the total amount of water which has entered the reservoir from July 1st,1890 up to November 1,1913, after deductions have been made for the Cuyamaca Water Company and full development of the riparian lands, in other words, it is based on Column No.4 counting the year column as No.1, the middle red or purple line represents the total amount of water which has passed out or left the reservoir from the 1st of June,1891, up to November 1,1913, and the distance between these two lines corresponds to the amount of water in the reservoir at that time under consideration . The lowest red or purple line represents the amount of water which has passed out from the reservoir through the gates or designated as a safe draft, and the distance between this lower line and the line above indicates the amount which has been lost by evaporation up to that time.

Q Now before we leave these three blue or purple mass curves let us be sure that we are understood, this upper one is marked here mass Curve for riparian irrigation, limited to present area; as a matter of fact your testimony shows that it means more than that, it means if the Cuyamaca Water Company's five thousand six hundred acre feet has been diverted also, does it not? A It does.

Q And the second blue or purple curve represents

after the evaporation is added, is that correct?

A Yes, that is the total amount which has left the reservoir.

Q And the distance at any point running from left to right between the upper blue or purple line to the second blue or purple line represents the water in the reservoir, is that correct?

A The vertical distance between the two lines?

Q I mean the vertical distance up and down.

A yes, represents the amount of water.

Q And the distance, the vertical distance between the second blue or purple line to the bottom blue or purple line represents what?

A The total amount of evaporation sime the beginning of the period.

Q And this covers a period of between twenty-two and twenty-three years, does it not? A Yes.

Q Now taking up the third brown line, please state again with the No.1 just what that represents.

A A The upper brown line has the same significance as the upper red or purple except that in this case it shows the total amount of water received in the reservoir after sufficient water has been diverted for the CuyamacabWater Company, and for the irrigation of all the irrigable lands below the riparian river, below the dam; the middle brown line

represents the total amount of water leaving the reservoir both through the gate by evaporation, and the distance between the, vertical distance between the middle line and the upper line at any time represents the amount of water in the reservoir at that time, the lowest brown line represents the amount of water drawn out through the gates into the mains of the City, and the vertical distance between that line and the line above shows the total amount of evaporation since the beginning of the period.

Q Then briefly the third red or purple lines have in mind the irrigation of the riparian land limited to the present area? A Yes.

Q And the third brown line has in mind the full irrigation of the riparian lands? A Yes.

Q Now the unit in all of these figures except where otherwise designated is what?

A Acre feet.

Q On these mass curves you have referred in some places to gallons, have you not?

A In excess of the net draft, the net safe draft through the gates into the mains, I have reduced acre feet to gallons per day.

Q Where you haven't mentioned any other unit you mean acre feet? A I do.

Q Now referring to this bottom brown line on this United States Exhibit which will be introduced as No.VII Roman numbers, please state just what the significance of these two million three hundred and fifteen thousand gallons per

day is. A wet safe draft.

Q That means that from the 1st of June 1891, to the 1st of November 1904, there was water enough available for the City of San Diego to draw off two million threehundred and fifteen thousand gallons per day? In other words, if the irrigated lands were full, the riparian lands were full and cared for, and the Cuyamaca Water Company had diverted five thousand six hundred acre feet, that there would be left only two million three hundred and fifteen thousand gallons per day, is that correct?

A It is.

Q Taking one year with another for what period?

A From the 1st of June 1891 to the 1st of November 1904, and

Q If the irrigation of the riparian lands was confined to the lands, the riparian lands at present irrigated, there would be available for the City of San Diego how many gallons per day?

A Three million five hundred and eighty thousand gallons.

Q That refers only to the dry period, does it not? A Yes.

Q Let us take the wet period, if you choose to call it that, running up to 1913, explain why these lines are broken at another point in 1914 here?

A Considering the first purple line the same would apply to the brown, the reservoir is considered empty in the latter part of 1904, consequently the middle line representing the draft and evaporation touches the mass curve or the upper line, for convenience in considering the difference between the wet and the dry lines, showing the net safe draft, the lower line was moved up to this point of intersection, in that way it was possible to get a better idea for the amount of evaporation during that period as distinct from the amount of evaporation during the first period. Anyone desiring the total amount of evaporation since the very beginning has only to add the full evaporation for the first period to the evaporation in the second.

Q Now take this brown line in the period extending from 1904 to 1913, the bottom brown line, which reads "Net safe draft eleven thousand four hundred acre feet per year, or ten million one hundred and eighty thousand gallons per day, what do you mean by that?

A That means that from the 1st of November,1904, to the 1st of November,1913, ten million one hundred and eighty thousand gallons per day could have been drawn off through the gates into the mains of the City of San Diego.

Q That is with the full development?

A With the full development to the riparian land below, taking five thousand six hundred thousand acre feet for the

Cuyamaca water Company.

Q Now take the bottom red or purple line extending from 1904 to 1913, please read the figures in white immediately above that line.

A Net draft eighteen thousand two hundred and twenty acre feet per year, equal to sixteen million two hundred and twenty thousand gallons per day.

Q What does that mean?

A That means from the 1st of November 1904 to the 1st of November 1913, that irrigation of the riparian lands limited to the present area, the City of San Diego could have drawn into its mains sixteen million two hundred and twenty thousand gallons per day.

Q How does this differ from the City of San Diego's Exhibit No.13, which is also a mass curve showing the run off at the same point?

A The City of San Diego's Exhibit No.13, gave the net safe draft up to the year 1904, of eight million gallons per day, and for the period subsequent to 1904, of sixteen million gallons per day.

Q Well, for the period from 1904 to 1913, you don't disagree very much with the figures of the City of San Diego, do you? A No, I do not, so far as the area, limited to the present area.

Q That is only, however, it must be brought to the present area of development of the riparian land?

A Yes.

Q And if the riparian lands are taken care of instead of making sixteen million gallons per day you make it how much? A Ten million one hundred and eighty thousand.

Q And that is if the estimate was unusual, more than usually wet period or a fair period?

A I believe that could be considered a little more than normal run off.

Q From 1891 to 1904 what would you say of that period? A That is exceptionally dry.

Q Were there any other factors besides the riparian lands you took into consideration in compiling this data which was not taken into consideration in the exhibits introduced by either the protestants or the City of San Diego in considering these five watersheds below and to the west of the propose d dam site, did you make any more detailed compilation than was made in the other exhibits, if so how?

A I computed the total amount of run off by years for each of these watersheds. I also took into consideration the amount of land to be irrigated along the Vicente and Los Coches Creeks, and deducted from the run off from these two creeks the water which these lands riparian to these creeks was used, during the large portion of this dry period there was not sufficient water in the river to furnish

the Cuyamaca Water Company with its five thousand six hundred acre feet, and the riparian lands with all of the water which they would require even taking into account the storage underground basin considered as small reservoirs in order to properly take that into account I considered first that the dam were not built and considering the riparian lands above Lakeside first I took the run off given here on this blue print, or Exhibit No.7, headed Total run off at the dam, and reduced it by ten per cent to allow for transmission loss between the proposed damsite and the riparian lands, and added to it the run off from the Monte basin or Monte watershed; with these figures I drew a mass curve in order to find out how much of that water would be used, making use of the storage and how much would overflow into the next basin below; this overflow was again reduced by ten per cent to account for transmission loss between Lakeside and the riparian land below, and to that was added the effective run off from San Vicente Creek after deducting the needs of the water users on that creek, and in the same way effective run off from Los Coches Creek, and also run off from the north side of the El Cajon watershed and the watershed from the south side of the El Cajon watershed, where the land is much more level, was considered zero, With this data for the water received in the El Cajon watershed no mass curve was drawn, and in order to find the

amount which these lands would use and how much would overflow into the basin below, inasmuch as previous computation had assumed that the Mission Valley watershed could take care of the riparian lands in the watershed, this water flowing in the river below the riparian lands in the El Cajon watershed was available for storage in lieu of the Capitan dam. Now this water in passing from the El Cajon dam to the El Cajon watershed had twice been reduced by ten per cent, in other words, for one hundred acre feet leaving the El Cajon dam over and above the requirements of the land below only eighty-one acre feet would be left to flow into the Mission Valley watershed from the El Cajon watershed, consequently in figuring the amount of water which was available for storage in the El Capitan dam, this amount flowing out from the El Cajon watershed was divided by eighty-one one-hundredths to reduce it back to one hundred per cent, and that figure is given for the case of full development of land in column No.4, considering the year column as column No.1, and for the case of the irrigated lands being eliminated to the present area as given in the last column.

Q Are there any other matters you haven't mentioned which you took into consideration in arriving at this run off?

A The run off for the various watersheds had to be taken entirely from run off records, I haven't been able to

find anyaccurate measurement for that with the exception of one single measurement on San Vicente Creek, in taking into account the run off due to the rainfall the average elevation for the watershed was taken into account, and the probable normal rainfall for that elevation, considering the variation in rainfall with the variation in elevation, then using the regular ordinary curve for relation between rainfall and run off, modified to suit the conditions in the San Diego river basin, as shown by previous measurements. The variation from the normal run off with the variation from the normal rainfall was determined by a separate curve for each of the watersheds, separately, and the run off for each year or each of the watersheds was taken individually from the mean watershed of the whole basin, I mean rainfall records for the whole basin.

Q What is the longest period of time you have ever spent at one time on the El Capitan Indian Reservation?

A About six weeks.

Q Have you taken into consideration also the hold over effect of soil in arriving at this run off?

A In determining the run off for the river above the El Capitan dam I have, for the small tributary areas I didn't have data enough on which to take it into account, I had to assume the wet and dry years and utilize it as far as that is concerned.

Q Have you taken into consideration any seepage

from the reservoir if constructed? A No.

Q Why not?

A Because any seepage from the reservoir would deplete the contents of the reservoir by the same amount as though it had passed out through the gate, furthermore, any seepage from the reservoir would be absorbed in the sand immediately below and would be, would either evaporate and would not reach the irrigable land below; in all this case I have assumed the City of San Diego would provide a by-pass to avoid that excessive evaporation in that section.

Q If the riparian owners irrigated only the present area of land, had to depend entirely on seepage from the reservoir or run off from the lower water shed, how much water would have to seep through the dam to take care of them?

A Taking the average for the whole twenty-three years it would amount to two thousand, approximately two thousand one hundred and sixty acre feet per year.

Q would a dam of that proportion be safe, or possibly safe under such a leakage as that?

A No.

Q Why? A This would amount to an average leakage of three second feet per day, or amounting to about six acre feet, I understand on thoroughly good authority that the Otay dam leaks somewhat more than one acre foot per day while the seepage alone was not the only cause of the Otay dam failing it was considered more or less

unsafe on account of the excessive seepage.

Q Do you think of any other points that you want to present in this matter as an engineer of the Indian service in your comparison of the statistics compiled by you, with the statistics as heretofore submitted?

A I might explain an apparent discrepancy between the net safe draft during the dry period and the mass curve submitted by the City of San Diego Exhibit No.13 beginning with the years 1894 to 1895, assumes a full reservoir. Taking the case of irrigation limited to the present area I get, beginning on the 1st of June, 1895, fifty-three thousand acre feet of water in the reservoir; the City engineer claimed that allowance had been made for irrigating the riparian lands below, by means of seepage from the reservoir, but didn't state how much that seepage amounted to, so that I have no means of making any comparison in that respect, I have drawn this curve on the assumption - I have drawn both of these curves on the assumption that the reservoir would have been full on the 1st of June, 1891, my reasons for so doing were as follows: From the years 1888 to 1889 the rainfall was ninety-nine per cent of normal; in the years 1889 to 1890 it was one hundred and fifty-three per cent; the years 1890 to 1891 it was one hundred and twenty-three per cent. With these three full years I considered it perfectly safe to assume in all probability the reservoir would have been full by

the first of June 1891.

Q Was it a fair assumption that the reservoir was full in the years in which the City of San Diego's Exhibit No.13 from the time which it does date, the earliest year?

A No sir.

Q Why not?

A Beginning with the year 1891 to 1892, the rainfall was eighty-seven per cent of normal; 1892 to 1893 it was one hundred and six per cent; 1893 to 1894 it was sixty-three per cent of normal; 1894 to 1895 it was one hundred and thirty per cent of normal. Now taking into account the hold over effect of the soil, the run off for these years would be as follows: 1891-1892 seventy-four per cent; 1892-1893 forty-four per cent; 189301894 nineteen per cent; 1894-1895 one hundred and thirty-nine per cent.

MR. MANCHA: We offer in evidence as United States Exhibit No. VII Roman Numbers the mass curve, blue print identified by this witness.

Q As engineer and as representative of the Indian Service are there any other facts that you desire to put before the Department in connection with the matters at issue?

A I don't know of any.

MR. MANCHA: You may cross-examine.

MR. ROBINSON: No cross examination.

CROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q Mr. palmer, the exhibit that has just been introduced in evidence, marked United States Exhibit No.VI purports to show the actual number of acres of land under irrigation and susceptible of irrigation at different points on the San Diego river, did you ascertain those figures from actual surveys?

A Those figures were obtained from statements by Mr.Lee to the California Railroad Commission as to area.

Q Mr. Lee is the witness who has testified, Mr. Charles H. Lee, the witness who testified for the protestants heretofore in this case? A Yes.

Q Then you of your own knowledge know nothing of the accuracy of these figures, do you?

A I haven't checked them up by actual survey.

Q Do you know whether or not Mr.Lee's figures are based on actual survey?

A I could not say.

Q Then all you know about these figures is that they are taken from a paper submitted by Mr.Charles H. Lee, one of the witnesses who has testified for the protestants in this case?

A yrom a paper submitted by him under oath to the California Railroad Commission.

Q Have you seen any portion of the land which is shown here as irrigated and irrigable land during the last three weeks? A No, I have not.

Q Have you heard any report to the effect that this land has to a very great extent been entirely destroyed? A The reports which have come to Los Angeles have referred mostly to land a little further south in San Diego County, I haven't heard this land specified.

Q Would you be surprised to know that parcels of twelve to fifteen acres of the land in Mission Valley, the land about Lakeside in what you term the El Cajon watershed has been taken out completely to the gravel?

A From what I have heard of the flow of the river by hearsay I suppose such might possibly be the case.

Q Do you know that the river during the past three weeks down in the lower Mission valley was two and a half feet higher than it has ever been since records have been kept?

A I have not seen any authoritative data in that regard.

Q Have you heard that on credible rumor"

A Not what you would call credible, only by the newspapers.

Q Then, Mr.Palmer, this map which is marked Government's Exhibit No.5, shows or purports to show the acreage tilled and tillable as given by Mr.Lee in the paper

written how long since?

A About four years ago.

Q You spoke about the operation of the pump belonging to the City of San Diego lying down in the Mission Valley, have you ever seen those pumps?

A No, I have not.

Q Do you know where they are located with reference to the creek bed? A No, I do not.

Q Have you inquired either from Mr.Lee or from any officer of the City of San Diego concerning the available data with reference to these wells and pumps?

A I have never seen any available data, or any opinion in regard to the Mission Valley, and all the information which I have gotten I have had to figure it up myself from rainfall, for some reason or other that Mission Valley has been left out from all other consideration.

Q Are you acquainted with the sands and gravels in that valley, Mission Valley?

A I have never made a close study of them except to see them in crossing through there in an automobile.

Q Did you know that the City of San Diego has a log of some eighteen or twenty wells sunk to a depth of eighty feet in the vicinity of the easterly limits of the City of San Diego, showing the porosity of the sands and gravels and water bearing data? A I suppose they would have such a log.

Q Do you know that they have maintained for a period of to exceed eleven months test wells up and down that valley to see the effect of the operation of these pumps on the water plane, and also seeing the cones of depression at each well?

A They would probably keep such records if they went about it in a business-like way.

Q You made no attempt to get hold of any such records?

A No, what I wanted was to find out if it was going to be necessary to turn the water down the river to supply the riparian owners, and the investigation which I made indicated that the general watershed was sufficient to supply full development of that irrigable landin Mission Valley.

Q Unless the City took it all away from them with their pumps? A yes sir so far as irrigation was concerned I think there was water enough in the run off.

Q Coming up to the next watershed easterly that is the one you are pleased to term the El Cajon, and properly so termed, the conflux of the San Vicente Creek with the main channel of the San Diego river is just at the easterly extremity of that watershed? A It is.

Q How the amount of irrigated or irrigable land in the San Vicente watershed is very slight? A It is.

Q The run off on the San Vicente creek is more than sufficient to supply the irrigable and irrigated lands in the San Vicente watershed? A It is.

Q so that the irrigated and irrigable lands shown in the El Cajon watershed may look to the San Vicente Creek for a portion of its supply? A yes.

Q The same is true, is it not, Mr.Palmer, also at the Los Coches watershed and creek? A It is.

Q well, now, is the run off in the Monte watershed sufficient to take care of the irrigated and irrigable lands in the Monte watershed?

A Only in the very wettest season.

Q ordinarily it is not sufficient?

A No sir.

Q How is the excess of water in the San Vicente Creek and Los Coches Creek, together with the run off of the El Cajon watershedsufficient to take care of the present irrigated section of the El Cajon watershed?

A I found only two instances in which it was.

Q Out of a period of? A Twenty-three years.

Q Now I notice in your table that you use for the run off and rainfall that you did not include the season of 1913 and 1914, those records are available, are they not?

A Yes.

Q And the City of San Diego has introduced in evidence in this case an exhibit, being the record of the

United States Geological survey, showing the run off at the san Diego river, on the San Diego river at Santee for that season; that record of run off, Mr.Palmer, for the season of 1913, which you have omitted to include in your estimate is more than the total of the prior four years, is it not?

A I have not the figures before me, I could not state definitely just what it is.

Q You can use your exhibit there very easily and ascertain.

A What was that total run off?

Q The total run off for the season of 1914 and 1915, according to the exhibit introduced by the City of San Diego, the City's Exhibit No.14, shows eighty-two thousand four hundred and eighty acre feet?

A It does.

Q In other words, the years of 1914 and 1915, the records of which were available, which were used by the City shows a run off in excess of the four prior years, and you haven't used that year although those records are available?

A I haven't used that year because it would be of no use for the purpose of this mass curve, my mass curve shows the reservoir absolutely depleted at the beginning of that season, on the assumption that the following year would be sufficient to put a reasonable amount of water into

reservoir; as a matter of fact all the seasons since then, especially 1915 and 1916, was sufficient to more than fill the reservoir, if I had taken it into account the reservoir would still be overflowing today.

MR. COSGROVE: I ask the answer be stricken from the record as not at all responsive to the question.

Q Now the record for the year which you failed to include in your estimate shows the greatest run off of the San Diego river of any record available, does it not?

A It may.

Q So far as you know it does? A Yes.

Q Now have you any idea of the run off at the San Diego river thus far this year?

A Only the statement made verbally by Mr.Cromwell, unofficially not under oath, as I remember it, right, it flowed about fifty thousand second feet for a period of five hours, with pretty large flood before and after, undoubtedly it was much more than enough to fill the reservoir.

Q The period from 1904 to 1912 and 1915 you concede that you consider above the normal, don't you?

A I believe it probably would be above the normal.

QQ well, now, there were at least three very dry years the latter part of that period, were there not?

A Yes.

Q But whether it is above or below it is not a very great deal above and not a very great deal below?

A No sir.

Q Mr. Palmer, will you state if you can from your records and exhibits about what per cent of the irrigable land in the El Cajon, as shown by your Exhibit No.V would be without water if they had to look to the watershed at the El Cajon and the excess of the San Vicente and Los Coojes Creeks?

MR. MANCHA: Just a minute, the question should refer to the riparian instead of the irrigated, we don't want to mislead the witness.

MR. COSGROVE: Just substitute riparian instead of the irrigable, that is a proper correction, this map shows the quantity the amount of land not to be irrigable but riparian, I would expect that to be only an approximation, I know it is a very difficult question.

A Twenty-nine per cent could have been provided by excess water from the San Vicente and Los Cochen creeks and the water shed at the north half of the El Cajon watershed.

Q According to your estimate seventy-one per cent of the land would have to be taken care of by water from the San Diego river watershed, as shown by your Exhibit No.5?

A Yes.

Q Could you give me some figures for the riparian lands shown in what you are pleased to term the Monte watershed?

A Nine per cent.

Q Nine per cent can be taken care of from the water shed, from the Monte watershed, ninety-one per cent would have to be taken care of from the San Diego river watershed?

A Yes.

Q These percentages are based upon figures which you have given as the actual acreage in the different watersheds, and if the figures given by you are high the percentages would be correspondingly high?

A They would.

Q In the development of the waters of the river in an arid section of country, such as San Diego County, it would be pronouncedly uneconomic conservation and utilisation of water to allow it to run wild over the sands if it could be conserved in dams and distributed by pipe lines, would it not?

A Yes.

Q If there then was any way of compelling the City of San Diego to furnish water to the riparian lands by distribution systems, it would be an advisable and economic manner of distributing the water, as against allowing it to simply run wild down the river bed?

MR. MATHEWS: I object to that as immaterial and irrelevant and witness not allowed to answer that question.

MR. MANCHA: I think it is hardly a fair question.

MR. COSGROVE: What appeals to you as being unfair?

MR. MATHEWS: Does the City of San Diego first propose to handle the water?

MR. COSGROVE: They must certainly would be glad to do it, we expect to take care, if we get this reservoir we expect to run pipelines down this river to everybody that wantes to take water from us, that is the attitude of the mayor and city council expressed before the Register and Receiver, we can be compelled to do it.

MR. MATHEWS: I don't think the riparian owners below are obliged to submit to any such arrangement as that.

MR. COSGROVE: I will say for your instruction, that the president of the organization, which represents all riparian owners along the river, has been here and has testified to the effect that he would be glad to have the City of San Diego get this proposition and has submitted an exhibit under which they could be protected. If Mr. Mancha desires to enter an objection to the question, after he enters his objection if he enters one, I will instruct the witness not to answer the question, because I think it is a matter that anybody knows it does not require an expert to testify.

MR. MATHEWS: I object to the question.

MR. MANCHA: The question is very lengthy and complicated, and I believe, I think if the city attorney of

San Diego with the full authority of the city back of him makes a positive statement that if a reservoir site be approved that the conditions precedent should be imposed as a condition precedent it should be imposed on the City of San Diego to furnish to the riparian owners the waters which they need, I think that a question similar to that might be properly presented to this witness. I think the question in its present form is complicated, I am not sure myself I understand just exactly all that is expected in propounding such a question.

MR. COSGROVE: I will say--

MR. MATHEWS: A further point to observe, this does not compare the situation with the City of San Diego supplying the owners of riparian lands with water, it compares the situation of the City of San Diego taking water and allowing it to go to waste.

MR. COSGROVE: I desire to say on behalf of the City of San Diego, representing the City of San Diego, and authorized to so represent them, that if the Land Office will approve this application, that we will be glad to have them stipulate as a condition precedent to the granting of the permit, that the City of San Diego agree to furnish such riparian owners of land along the San Diego river in the Monte watershed and in the El Cajon watershed, as shown by

United States Government Exhibit V, enterprise price to be fixed by the Railroad Commission of the State of California and the riparian owners to be determined, or the land to be determined either by the Land Office or the Railroad Commission of the State of California.

MR. MATHEWS: May I ask how your authority is expressed?

MR. COSGROVE: My authority is expressed by resolution by Council directing me to present this matter on behalf of the City to the Land Office.

MR. MATHEWS: How is your authority to make this proposition expressed?

MR. COSGROVE: The same as any authority representing any other client before any tribunal.

MR. MATHEWS: Any other way?

THE REGISTER: That matter was gone into pretty thoroughly by the Register.

MR. MATHEWS: Was it brought out counsel had any authority to make any such promise.

THE REGISTER: He was backed up by the mayor.

MR. MATHEWS: The mayor has no more authority than I have, I want to know if it is expressed in the charter the way it should be expressed.

MR. COSGROVE: I don't intend to make a lot of explanation to counsel who has been courteous where he has appeared, but he has not been present only where the cross ex-

amination of the city attorney has taken place, Mr.Mathews, I consider [illegible] shows authority to make the statement.

MR. MATHEWS: The mayor's act must be verified under the city charter, my idea is the Land Department has to seriously consider a proposition of that; I don't challenge the good faith of counsel.

MR. COSGROVE: If the City of San Diego desires to take advantage they will have to take it subject to conditions; if the city can't comply with the conditions they can't get it.

MR. MANCHA: I suggest the question be simplified, made shorter if necessary put it into two questions.

Q I simply wanted to know your opinion as an engineer as to whether or not the distribution of water from pipe lines from the reservoir wasn't a more economical distributaion than a distribution by simply allowing the water to run wild down the river bed and then being pumped from the sands.

MR. MATHEWS: Is that a hypothetical question or not?

A IN the level of the ground water is kept at more than eight to ten feet below the surface of the ground the evpporation loss from the soil can be practically eliminated whereas if the water is stored in a reservoir it is always subject to the evaporation loss, the percentage depending of course on the amount of water running through the reservoir;

on the other hand, water which must be pumped from underground involves the expense of pumping, to bring the matter down to the case in hand I have assumed the duty of water of two and a half acre feet per year, which I believe is sufficient and is applicable for mixed crops exclusive of orchards, orchards probably would not require so much, alfalfa would probably require more; at the present time the irrigators in many instances pump more water than two and a half acre feet per year, but in all probability the excess over approximately two and a half acre feet per year is returned to the underground flow and is available for the user below, and can be pumped back to the surface again, so the net duty would probably amount to two and a half acre feet per year; if the water is distributed by pipe it will be possible to avoid the evaporation from the river bed itself, the possible duty might bekept slightly below the present, although in the case of the soil being sandy what water seeps away would be lost underground.

Q Now take your exhibit No.VII, Mr.Palmer, which shows certain cumulative mass curves, which on direct examination has been compared to some extent with the exhibit of the City of San Diego No.13, I believe some reference was made to the exhibit introduced by the protestants, which was Exhibit W, the one prepared by Mr.Lee, isn't that the exhibit to which you referred?

A I referred to the City's, I did not refer to the one by the protestants.

Q Didn't you make any reference to the protestants run off above El Capitan?

A No, not in this data which I used for run off above El Capitan was data supplied to the Railroad Commission.

Q But I understood in one question, perhaps more questions that were asked you, reference was made to the exhibits of the protestants, said reference to available amount of water above the El Capitan, I understand you referred practically all of the time to the City's cumulative mass curve?

MR. MANCHA: I think you are mistaken about that. Mr. Schenck made his comparisons with reference to W and 15, this witness has not referred to Protestants Exhibit W.

Q Now take these two exhibits, Mr.Palmer, I would like to point out what I gather to be marked distinctions between the two, and I want you to correct me if I am in error. I think the exhibit of the City of San Diego makes no allowance whatsoever for lower riparian owners, does it?

A I believe it does not.

Q Your exhibit makes a full allowance for the acreage now riparian and irrigated and the acreage riparian and susceptible of irrigation?

A It does.

Q So that to that extent if the City of San Diego exhibits incorporated the item of lower riparian owners it would have to be reduced in the amount which you say the lower riparian owners are entitled to or would need?

A Yes.

Q And the City of San Diego's Exhibit No.13, in attempting to state that period of course is not inaccurate in that regard, is it?

A Provided they intended to supply those riparian owners from that water which they took out from the reservoir.

Q All it attempts to show, the City's exhibit, is the amount of water that would pass El Capitan damsite after allowing for the upper diversion, it does not take into consideration the lower diversion?

A I believe the upper diversion was limited to the amount which the Cuyamaca Water Company diverted at the time when they were not taking as much water as the Railroad Commission ordered them to take in the future.

Q That is another item, however, that I will get to. Now the exhibit which you have introduced, which, rather, the Government has introduced, exhibit marked Exhibit No.VII, shows the years from 1890 and 1891 to inclusive 1912 and 1913, this exhibit does not take into consideration all of the recent available records, does it?

A No sir.

Q Now your first column is headed Total run off

at dam, that is at the diverting dam is it not of the Cuyamaca Water Company?

A If you will read the note immediately under that table you will see that it reads five thousand six hundred acre feethave been deducted at the dam to furnish the Cuyamaca Water Company the amount called for by the California Railroad Commission.

Q (Question read.)

A No, it is not.

Q What dam does it refer to?

A The proposed El Capitan dam.

Q Now the note shows that this amount for any year as shown in the large table, is the amount left after deducting five thousand six hundred acre feet; now this five thousand six hundred acre feet was not actually deducted during any of these years, was it?

A No sir.

Q But you have the records which show the actual amount which was deducted, did you not? A I did.

Q But you didn't use the records which showed the actual deductions, you used the amounts which the Railroad Commission of the State of California very recently said was necessary to supply their present consumers, isn't that correct? A Yes.

Q Then this exhibit so far as being a comparison

between the City's exhibit for the period of time up to 1904 and 1905 is not comparable with the City's exhibit because the City used the actual amount diverted, while you used an amount greatly in excess of the amount diverted to base on what they now have to divert to comply with the Railroad Commission's order, isn't that correct?

A It is.

Q Well, now, in obtaining the record or the estimate of the amount of water that was available during these years, beginning with 1891 and ending with 1905, don't you think that it is more proper to use the actual records of run off and diversion rather than the actual records of run off on the theoretical record of diversion?

A No sir, I do not.

Q But according to your exhibit you show the amount of water which would have been in the reservoir during those years, beginning with 1891 and ending with 1904, and more water than you show would have been there, because according to your figures you deducted water which was not actually deducted, isn't that correct?

A Yes, it is.

Q If, however, you were getting up an exhibit to show what would be dependable from this time on, then your theory is a correct theory, is it not?

A It is.

Q And the other theory is an incorrect theory used by the City?

A If the theory used by the City were correct it would probably be better for every purpose to take the period from 1875 to 1888, when the Cuyamaca Water Company was not in existence and no water was diverted.

MR. COSGROVE: I will ask the answer be stricken from the record as not being at all responsive to the question and as having no bearing on any proposition raised by the cross examination of counsel.

Q Did you study that cumulative mass curve that was introduced by the City showing the comparison between the exhibit marked W of the protestants and the exhibit 13 of the City, which was introduced while Mr.Earl was upon the stand and was marked City of San Diego's Exhibit No.41?

A I looked it over but really didn't study it thoroughly.

MR. MATHEWS: I propose this stipulation to counsel representing the City of San Diego, that within a given time, say within the time that may be allotted to the party having the opening on the argument and brief, a statement made up by the city clerk of the City of San Diego, and certified to by him to be correct, be filed here as evidence showing, so far as the records contained, anything on the subject what claims if any the City of San Diego or the pueblo

of San Diego have made to the title or ownership of the waters of the San Diego river. The statement so made to include any ordinances, resolutions, or other official act and records of the municipality, and I might say if it is agreeable, including the report of counsel which has been submitted here in the way of an opinion that he rendered, together with the files of the litigation which counsel referred to earlier in his testimony on cross examination, that exhibit of ~~xx~~ fact to be in lieu of any further cross examination. The purpose is to proceed with the claims or attitude of the city of San Diego, so far as is evidenced by its official acts regarding the waters of the San Diego river may be set forth by such a certified statement, compared and certified to by the city clerk of the municipality. I haven't the slightest idea what that will show, I will be satisfied if such a statement could be permitted to go in within the time allowed in lieu of any cross examination.

MR. COSGROVE: On behalf of the City of San Diego, I will agree to no part of any such stipulation, it involves an amount of work which is tremendous, looking through the files of the City Clerk's office, as they are kept in the city of San Diego is an endless task, I have had some experience in that line, and I would know what I would be up against in preparing any such accumulation of data as counsel

refers to in the compilation of very old litigation, as the files are in such a condition that it would be almost impossible to gather it. I am here for cross examination and the counsel may cross examine me on these subjects as he sees fit, I will consent to no part of any such stipulation and agree to furnish no part of any such document.

MR. MATHEWS: I have consulted with my client, he would no doubt pay the expense, we would then be getting at concretely what could not be gotten at in any other way and save a long record and time of the office.

MR. COSGROVE: I consider it is a matter not pertaining the question that Mr. Mathews is interested in, is getting a statement which would show, or would have a tendency to show what action the City of San Diego has taken heretofore in preserving any rights, if it ever had any rights under the old pueblo, but under the decisions of this State it is inconsequential, the decisions are if we ever had any rights we cannot lose it.

MR. MATHEWS: We will also stipulate it will go in under our objection.

THE REGISTER: Counsel refuses to stipulate, there is nothing we can do except go ahead with the hearing.

12 M. February 11, 1916, Recess until 1:30 P.M.

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1:30 P.M. February 11,1916.

HAROLD K. PALMER, witness on behalf of the United States, Cross Examination on behalf of the City of San Diego continued

BY MR. COSGROVE:

Q Mr. Palmer, another discrepancy or difference between your Exhibit No.VII, being United States Government Exhibit No. VII and City of San Diego's Exhibit No.13, is that, you start a period of three or four years before this, that is before the City's exhibit, then when you get to the period where the City of San Diego starts it is a computation you have in the reservoir fifty-three thousand acre feet, and the City of San Diego starts from that period with seventy-one thousand acre feet, so, of course, that difference makes a difference in the final figures that are shown on both exhibits to that extent?

A It does.

Q You start your reservoir off full the same as the City does only you start a different period of time?

A I picked out a period where I had three good years to fill it up.

Q You make an allowance of two and a half acre feet per year for the land irrigated?

A I do.

Q You think that is a fair estimate?

A I do, for ordinary miscellaneous crops, as I understand are now used on that land.

Q In that section? A Yes.

Q You have used Mr. Lee's figures to some considerable extent in your computation, have you not?

A I have for underground water supply.

Q I will call your attention to an exhibit which was prepared by Mr.Charles H. Lee, and introduced in evidence before the Railroad Commission of the State of California, in a recent case to fix a valuation of the system, and to determine the rate to be charged for water, wherein he heads his exhibit Cuyamaca Water Company, Duty of water for irrigation on isolated tracts under Cuyamaca system, Data from detailed records of Company in which exhibit under the head of Tract or Owner he shows the name of the tract or owner of the property, under the head Locality, he shows where the tract is located, with reference to the different portions of the Cuyamaca system; then he shows whether it is low service or high service;; then follows the crop planted, being lemons, oranges, lemons and mixed crop, olives; then shows the area in acres in each tract; after that he shows the exact amount of water delivered from a period of 1909 to a period of 1914, the total water delivered to the tract in thousand cubic feet for each of these years. Then follows for the years 1909 to 1914 inclusive, the depth of water applied in acre feet per acre;

then he shows in a column the average for full service years; then he shows the average for all years; the average for full service years as compared with the average of all years he shows in this exhibit which was introduced by Mr.Lee under oath that the average of full service years was only fifty-four and one-hundredths acre feet per acre, and the average for all of the years based upon the records of the Cuyamaca Water Company is forty-eight one-hundredths of an acre feet per acre per year. Now in view of your estimate of two and a half acre feet per acre per year, I will ask you if you had an opportunity to examine this exhibit of Mr.Lee's which is based upon the actual records of the Cuyamaca Water Company served to actual consumers on the line?

A I believe that I saw that and I decided not to follow that one case, because that is largely orchard land with one exception of a lemon grove, is marked mixed crop, it serves land which is higher and of a closer texture, than you will find land down near the river bottom, consequently it can get along with less water than the riparian raw lands down along the river bottom; furthermore, there are several of these years the Cuyamaca Water Company was unable to supply water and the people were compelled to get along with just as little as possible, and nothing is said in the report as to whether the crops raised were adequate or of full amount. In deriving the duty of water at two and a half feet per

acre I consulted mostly some of the latest works on that special investigation by the Department of Agriculture, and State Engineer's office in the State of California, largely for alfalfa and other crops, and that seemed to fit this case very nicely, and the probability for alfalfa alone the duty would have to be somewhat higher than two and a half acre feet, especially in that sandy soil along the river, I have held it two and a half to allow for a mixture of crops, crops which do not require as much as an alfalfa crop.

Q Have you in your computation had an opportunity to examine Mr.Lee's Exhibit marked Cuyamaca Company's Exhibit No.53, where in the exhibit prepared by Mr.Lee he shows the average demand for all fruit, vegetables and alfalfa raised along the Cuyamaca Company's flume?

A No, I haven't seen this one.

Q The result that Mr. Lee arrives at in this Exhibit No.53 before the Railroad Commission is that the depth of water applied, acre feet per acre was eighty-seven one-hundredths on a high surface, and ninety-six onehundredths on the low service; eighty-five one hundredths on the flume, or a total average of eighty-six one hundredths to which he has a note appended "Equivalent to one miners inch to twelve and six-tenths acres for nine months irrigation season" Did I read that correctly? A Yes.

Q In making your estimates of the requirements

of the Railroad Commission with reference to the Cuyamaca System, did you use the forty miners inch per second feet measurement, or the fifty miners inch per secondfeet measurement?

A I didn't use inches at all.

Q Didn't I understand you to say that the Railroad Commission had required the Cuyamaca Water Company to serve or be able to serve a certain number of miners inches?

A I misunderstood your last question, I thought you meant in my own figure; in that case I used one miners inch to a fiftieth of a second foot.

Q The requirements of the Railroad Commission was two hundred and fifty-six miners inches? A Yes.

Q You added to that fifteen per cent transmission loss? A I did.

Q Did you ever read Mr.Lee's testimony before the Railroad Commission to the effect that transmission loss was not to exceed two per cent, probably one and a half per cent?

A As I remember it I considered it might be brought down to about ten per cent.

Q You have no knowledge of him having testified that it was ever reduced to two per cent or less, have you?

A No sir.

Q Fifteen per cent is quite a high transmission

loss for a flume, is it not?

A Yes, rather high, I consider it probably a fair one for a long flume of that kind.

Q You have never heard Colonel Fletcher make the statement that the flumeshas a one hundred per cent sufficient carrying capacity?

A I haven't heard it, I haven't seen it.

Q Taking your figures fifteen per cent transmission loss, was there any other item that you took into consideration in looking to the requirements of the Cuyamaca?

A The storage loss.

Q What was the storage loss?

A I took it at forty per cent for the amount which would have to be stored, assumed that about seventy-five per cents of the water would have to be stored, could not be handled direct from the river.

Q The figure I am trying to get at is this deduction of five thousand six hundred acre feet, will you tell me how you figured that out, I am not asking you to do the multiplication for me, if you will tell me what figures you used, how you started from two hundred and fifty-six miners inches and arrived at five thousand six hundred acre feet.

A Adding fifteen per cent for transmission loss increasing the two hundred and fifty-six miners inches to three hundred and one miners inches.

Q Three hundred and one?

A Yes, to reduce that to acre feet per year, divided by fifty, multiplied by three hundred and sixty-five, I believe in this case I multiplied by two, I believe in this case I used the factor two, instead of the more accurate factor 1.9835, this gives four thousand three hundred and sixty-two acre feet, assuming that seventy-five per cent of this water must be stored with storage loss of forty per cent on all water stored means that this figure must be increased by thirty per cent, yielding six thousand two hundred and thirty acre feet, now approximately nine hundred acre feet of this has already passed through the Cuyamaca reservoir, and the measurement includes the forty per cent storage loss, consequently I have reduced these figures by six hundred acre feet yielding five thousand six hundred and thirty, on account of the indefiniteness of it I have used approximately the figure five thousand six hundred.

Q what evaporation do you allow or figure on in an open reservoir such as you have assumed?

A Five feet per year.

Q That is certainly not high, is it?

A I should think it is about right.

MR. COSGROVE: That is all.

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REDIRECT EXAMINATION

BY MR. MANCHA:

Q You testified on cross examination, I believe, that you took the areas of the riparian lands from Mr.Lee's sworn testimony before the Railroad Commission investigation, is that correct? A Yes.

Q Did you compare these areas showing the contour lines of the Geological survey records?

A I did.

Q How did the area as given by Mr.Lee for these riparian lands which you have platted on United States Exhibit No.5 compare with the area of the riparian lands as shown by the contour lines of the Geological survey records?

A They are quite a little less to those which I could judge would be riparian lands susceptible of irrigation from the Government map.

Q It shows the area to be greater, which of the two? A The Geological Survey map.

Q In designating this as riparian land what did you mean? A Lands contiguous to the river, and in that adjacent watershed susceptible of irrigation.

Q Land that could be supplied from the river as it would flow in its natural channel, is that correct?

A with the aid of a pump.

Q Referring to your cross examination in refer-

ence to th excess as is referred to by Mr.Cosgrove from the San Vicente Creek and Los Coches Creek, which flows into the El Cajon basin, did you take into consideration the fact that part of the El Cajon and part of the San Vicente waters and part of the Los Coches waters flow into the eastern watershed of the El Cajon in arriving at and making out your table?

A I did.

Q The year 1914 was referred to, your failure to put that into your table, if you had also included the year 1914, made up twenty-three fraction years instead of twenty-two fraction years, would it have changed the net safe draft in any sense?

A It would not.

Q Why not?

A Because as that map and diagram shows in both instances that is the full development of the riparian lands developed, limited to the present irrigated area, the reservoir was entirely empty on the 1st of November,1913,

Q That is the last date of the period you considered?

A Yes, no matter how much water may have been run into that reservoir during the subsequent years would have made it possible to have increased the net safe draft for the period of 1914 to 1913 . To explain more fully, no matter how much water ran into the reservoir after the 1st of November,1913, the draft as shown

on these mass curves prior to November 1,1913, could not have been increased without emptying the reservoir, leaving it empty for some time prior to November 1,1913.

Q Then if you had included that and shown the year 1914 would it have changed your figures in any respect on theseUnited States Exhibits V, VI and VII or any one of the three?

A It would have made no change for any of the periods prior to November 1,1913, it would have introduced another period which is as yet incomplete, inasmuch as we can't tell what the year 1916, 1917 and 1918 are going to produce, it would be impossible for us to draw a net safe draft in excess of any of those shown on this mass diagram.

Q Referring to your mass diagram, United States Exhibit No. VII, you testified on cross examination that the first period there up to 1904 was below normal, in answer to the question in reference to the other period of 1904 and 1913, using the words of the attorney heraskedyou "if that period was not pretty close to normal" and you answered yes; now did you mean that?

A As I understand the question, at the time it referred to the rainfall during these two periods, it would not average up the rainfall records, my impression looking at the rainfall curve, taking into account the fact that there were very dry years included, one or two very heavy

years with the average nine years would be comparatively close, or rather close to it, probably being about, I have since added the figures up and find that the average one hundred and ten per cent of normal, that is for the rainfall.

Q Did you average up also the preceding period from 1891 to 1904?

A The average precipitation from 1891 to 1904 was eighty-three per cent of normal.

Q In answer to the question asked you on cross examination which was worded something like this, would it not have been more accurate if you had used the actual run off as shown by the measurements in place of the theoretical basis andwhich you answered no, did you refer to the run off in general or did you have in mind something else when you answered that?

A I had in mind the water diverted by the Cuyamaca Water Company through their flume.

Q Did you have in mind the run off from the land itself on the surface?

A No, I had in mind the run off from the diverting dam into the flume.

Q Some considerable stress has been placed upon the destruction of the land in Mission Valley by the recent floods and the particularly riparian land, supposing that all of the riparian land in the Mission Valley had been swept

away by the recent floods, would that affect the testimony which you have given with reference to the available run off after the requirements of the Cuyamaca is satisfied and taking into consideration the other factors which you have mentioned?

A I believe there is a legal question involved in that, inasmuch as some of these lands which have been flooded can in the course of time be reclaimed, assuming that they would be able to without their riparian water rights until such time, which would take years, that they could be reclaimed, it would make no difference whatever to the testimony.

Q Is it not true that you have testified that the lands to the east of the Mission watershed are the only ones which you have figured in your basis in acre feet?

A It is.

Q Have you any further explanation which you wish to make as the agent and engineer of the Indian Department?

A In regard to the question of the rainfall from the years 1904 to 1913, which I said averaged ten per cent above normal, I might say that the run off itself would be very much in excess of ten per cent, the reason for this is that when the run off, when the rainfall decreases to approximately fifty per cent of normal, or slightly less, the run off decreases to nothing at all, and the rate of increase with the percentage of run off is very much greater than it is in the rate of increase of rainfall, after the rainfall

exceeds the normal of one hundred per cent.

Q You have been asked on cross examination also in reference to San Diego's Exhibit No.[illegible], and I will ask you to look at the exhibit and state whether or not the assumption was that the reservoir was full at the beginning of that period, 1894, I believe the testimony will show that it was.

MR. COSGROVE: Yes, it is admitted that it was.

Q This mass curve shows that the reservoir , assuming it was built, was full at that time?

A At the beginning of 1894 and '95, yes.

Q Is that a fair assumption, taking into consideration the character of the years preceding 1894?

A The rainfall for the years 1891 to 1892 was eighty-seven per cent of normal, for 1892 to 1893 one hundred and six per cent of normal, 1893 to 1894, sixty-three per cent of normal, giving us a mean of eighty-five per cent. normal rainfall for these three years.

Q Are you prepared to state, taking into consideration the years preceding 1894 whetherthat reservoir could have been full if constructed at that time, 1894?

A Not if any water had been drawn out through the gates by limiting the total loss to evaporation, making no beneficial use of the water, it might possibly have been filled at the beginning of the period, of the years 1894 and 1895, but in no other way.

Q If the reservoir had been constructed, had been

used during these years preceding 1894, what would be its condition with reference to the water level at that time?

A It would contain approximately fifty-one thousand acre feet in case the irrigation of the riparian lands had been limited to the present area.

MR. COSGROVE: I object to this line of testimony on the ground it is nothing but a repetition, word for word, and figure for figure, of what the witness has testified to on direct examination, already shown on the exhibits, and is not redirect examination at all.

MR. MANCHA: I submit it would require an engineer to extract it, we are trying to put it in such shape it will be readily understood, it is simply an explanation of these tables and deductions which we think should be shown so that anyone can understand it.

Q Now taking into consideration the full development of the irrigation of the land, what would have been its condition in 1894?

A It would have had forty-seven thousand acre feet in the reservoir.

Q What effect if any would that have upon that mass diagram?

A To have assumed the reservoir was full at the beginning of the period, 1894 to 1895, it would have increased the net safe draft.

Q To any considerable extent?

A It would have increased the net safe draft by less than one thousand acre feet per year, for the following reason: that is on the assumption that the irrigation was limited to the present land below; the rainfall in the years 1894 and 1895 was sufficient to make a reservoir overflow, my records on this mass curve for that condition of irrigation limited to the present area, shows sixty-nine thousand acre feet in the reservoir, according to the computation which I made of the probable capacity of the reservoir of seventy-four thousand six hundred acre feet, which I believe is some three thousand six hundred acre feet larger than the city made, that new condition supplies only about five thousand six hundred acre feet with more water to be used during about nine years to the end of the period. On the other hand, if we take the case of the full development of the irrigable land below, according to my mass curve there would be fifty-four thousand acre feet in the reservoir on the 1st of June 1895. By assuming it full this would be increased by about twenty thousand acre feet, amounting to an increase of the net safe draft of about two thousand acre feet per year.

Q You haven't taken into consideration the condition, have you, if the City of San Diego had made a draft that they proposed to make on that reservoir prior to 1894?

A Yes sir.

Q What would have been its condition then?

A I didn't figure out to see when it would be empty.

Q would that have made any considerable difference if the City of San Diego had used water immediately prior?

A Yes. Now if you take the assumption that the reservoir was full at the beginning of the year 1894 and 1895 and try to hold ourselves down to the facts and the way in which that run off occurs, we find that we are up against the analogous position of having a reservoir filled at the end of about five dry months, the run off mostly occurs between the 1st of November and the 1st of June, in exceptional years there may be a little bit before the 1st of November, and perhaps a little bit during June, but most authorities agree that those are practically the limit, the largest amount of run off occurs during the months of January, February and March, and not having monthly data on the actual run off, having only annual data, I simply tried to approximate it in this case by confining all of my monthly run off to a period November 1st to June 1st, I have merely averaged it up as being equal between those dates, and when the question was given that we should assume a reservoir full at the beginning of the year 1894 and 1895, I immediately found it must be found after several dry, several months of no run off at all.

Q If the City of San Diego had been using the water from the El Capitan reservoir, supposing it had been constructed, they were using it the year before 1894 with the draft that they now propose to use it for under present conditions, what would have been the condition of the reservoir in 1894, would there have been any water in it?

A None at all.

RECROSS EXAMINATION

BY MR. COSGROVE:

Q Just one question, the figures that you give with reference to the acreage of the different watersheds shown on one of your prior exhibits, you got from Mr. Lee, now I don't understand whether you said that that was testimony that he gave by way of exhibit before the Railroad Commission of the State of California or elsewhere?

A Before the Railroad Commission.

Q How at what time and in what case did he give that evidence?

A It was for the Railroad decision, I believe, of the Railroad Commission No.536.

Q That is the last decision of the Railroad Commission fixing the valuation on the Cuyamaca system?

A Yes.

Q That has been introduced in evidence by the City?

A Yes.

MR. COSGROVE: That is all.

MR. MANCHA: We rest.

THE REGISTER: The La Mesa, Spring Valley and Lemon Grove Irrigation District now appears as intervenor in this case.

MR. LOOS: The District appears as intervenor, I appear as attorney for the District, we have one witness.

J. H. HALLEY, witness on behalf of the La Mesa, Spring Valley & Lemon Grove Irrigation District, being first duly sworn by the Receiver, testified as follows:

BY MR. LUCE:

MR. COSGROVE: At this time the record showing that a witness has been called and sworn on behalf of the La Mesa Lemon Grove & Spring Valley Irrigation District, who appears under an petition to intervene, the City of San Diego in order to preserve an exception and objection to the introduction of this evidence, and not knowing at this time anything concerning the scope of the evidence and the purpose of the intervention, objects to the testimony of the witness and objects to the allowing of the motion of the petitioner, the objection is based on the ground that under the order of the Assistant secretary of the Interior the Register and Receiver have no power to grant the motion, and to allow the petition in intervention, and to allow the intervenor to offer any evidence. It may be that after the evidence is introduced that I will withdraw my objection, but I make the objection only out of abundance of precaution, not having any knowledge whatsoever, not having been informed by anyone as to the purpose of the intervention or the scope of the evidence now sought to be introduced.

Q Your post office address?

A Lemon Grove, California.

Q What official position if any do you occupy in the La Mesa Spring Valley and Lemon Grove Irrigation District?

A I am its present president.

Q When was the Irrigation District organized?

A November 1913.

Q Generally what territory does it embrace?

A It embraces the territory of fourteen thousand seven hundred and ninety acres, I t hink, in the Ex Mission Rancho.

Q What County? A San Diego County.

Q What sections generally speaking does it embrace, what section of the County, not Government sections, communities I would say.

A La Mesa City, Spring Valley, Lemon Grove, two Irrigation Districts in which we grow citrus fruits mostly, and the surrounding country.

Q Is the town of La Mesa an incorporated town?

A An incorporated town.

Q At the time of the incorporation of the district where was that territory embraced within the district, from what source was it receiving its water?

A From the Cuyamaca Water Company.

Q Did it have any other source of supply except from the Cuyamaca Water Company? A No.

Q State generally what was the purpose and the reason of the organization of this District? A We have

lying between Lemon Grove, La Mesa and Spring Valley and the City of San Diego quite an extent of country that is absolutely bare for want of water, the Cuyamaca Water Company with plenty of chances of development, has never developed, in fact the present owners of land there who have water rights under the Cuyamaca water Company, which they had to buym have never got their full supply of water, I don't mean in any one year but in an average of years, they hever had their supply of water, the consequence of whichwas we lost a great deal of money, the outside owners, who had no water and no means of getting water really came to us first.

Q What do you mean by outside owners?

A Outside of these cultivated areas, these oasis, because we can get water and they, outside of these irrigated areas, those owners holding lands surrounding there, not being able to get any water, asked us to go in with them, which we were very glad to do for our own reasons and form the district, because the city had had an opportunity for some twenty or more years to get water, but never paid any attention to the waters at all with the exception of a pumping plant put in some fifteen or sixteen years ago, I don't know just exactly when, and abandoned after a dry spell, waste waters were being wasted year by year, we saw them passing and it was a great agravation, we needed the water and we banded ourselves to get it.

Q That district is still in existence, is it not?

A Yes.

Q Has been actively in existence since its organization? A Yes.

Q was been governed by the officers since that time? A Yes.

Q What was your first plan of water development briefly?

A To put in a dam just below the old Mission dam, which is really a very fine site for a dam.

Q On what river? A On the San Diego river, at the lower end of the El Cajon Valley, the upper end you might say, of Mission Valley.

Q Generally speaking what did you do towards formulating your plans for the construction of that dam?

A After viewing the damsite and thinking it a good place we called Mr.Lippincott in to examine all that section of the river, in fact all the river, and to give us his opinion, and his opinion was as our opinion that that was the place for a dam, and we went to work to prepare our necessary plans and data.

Q By Mr.Lippincott you mean J. B. Lippincott of Los Angeles?

A Yes, Mr.Lippincott of Los Angeles.

Q You say he prepared the necessary plans and data? A Yes.

Q What did you do with these plans, did you adopt

them?

A We adopted them.

Q And then how did you proceed after that?

A We proceeded under the law as I understand it, to apply to the Commission, the Engineer's Department, rather of the State, and they passed on the plans and approved them.

Q Then what did you do towards financing this project?

A Then we issued bonds.

Q About in what sum? A One million two hundred and thirty-two thousand five hundred dollars, which was the estimate the engineers approved of after taking Mr.Lippincott's finances.

Q Then what further did you do in regard to acquiring the land necessary for this dam and reservoir site?

A We bought some four hundred acres, and we got an option on another two hundred of the damsite.

Q Do you still own the four hundred acres?

A yes.

Q Do you still have an option on the other?

A yes.

Q Were the bonds, you say bonds were issued?

A Bonds were issued, yes sir.

Q Then what was done in regard to the approval of the bonds or the submitting of the bonds to the State

Bond Commission?

A First of all we applied to the Superior Court, the bonds were approved by the Superior Court, I have the data here.

Q You might give the data.

A Superior Court of San Diego County, September 21,1914. Validating Bonds, Dillon, Thompson & Clay Bond Experts,approve bonds unconditionally March 30, 1915, the legislature in 1915 I don't exactly know how to pronounce that, some way passed an act, legalizing all the acts of the District.

Q Validating? A Validating the District.

Q Were these submitted to the State Bond Commission? A Yes.

Q Generally what was their finding recommendation in regard to this whole project?

A They were not submitted in exactly so that they could demand filing, we first felt tentatively the objection seemed to be, if any, that there were so many old rights that would have to be examined,before we made application there should be some attempt made to adjust those rights.

Q What rights do you refer to?

A various old rights recorded, particularly the rights of the Cuyamaca water Company.

Q On what river? A On the San

Diego river.

Q Then what was their general recommendation to the District?

A That we should buy the Cuyamaca if it was possible, the Cuyamaca Water Company.

Q What did the District then do in regard to following out this recommendation, if anything?

A We went to Murray and Fletcher and entered into an agreement with them for the purchase of their system, the amount we paid should be determined by the Railroad Commission, they were to buy it for bonds at par and we were to pay them.

Q Now what did you do to carry out that contract?

A We had the bonds and notified Murray & Fletcher we were ready, after the Commission had passed upon it.

Q Took up the question of the action of the Commission on it? A The examination was held before the Commission and they adjudged the valuation to be seven hundred and forty-five thousand dollars, we then advertised, after notifying Murray & Fletcher, eight hundred thousand dollars of bonds, when the time came they didn't put in their bid as they had agreed to do; after a while, after considering a communication with them we advertised again and when the time was ripe they didn't take any action, didn't bid themselves again.

Q When was that last, when they advertised last, if you recollect approximately?

A I really do not remember, I think about September or October of last year.

Q What have you done since that time towards enforcing this contract? A We have entered suit.

Q Where have you filed that suit? A In the Superior Court.

Q Can you state generally the prayer of relief, what it was? I will ask you to refresh your memory whether the prayer was for damages and breach of contract as an alternative for the specifiedpurposes of the contract.

A Yes, specified purposes of the contract.

Q And that suit is now pending, is it?

A Yes.

Q Have you, has the District abandoned its project of erecting a dam at the Mission dam? A No sir.

Q What is the plan of the district if it acquires the Cuyamaca Water System as regards these two projects?

A The plans would be modified, the plans by which we should develop the Cuyamaca to as great an extent as we found possible some part of their development we do not consider at all feasible for our project, instead of putting a one hundred and three foot dam in the river, to put in a dam of some fifty-five feet at the Mission dam.

Q The Mission dam? A The Mission dam some place.

Q was the La Mesa Irrigation District any other source of supply except from the San Diego river?

A No sir.

Q No other possible source of supply? A Not possible as far as our purses are concerned.

Q I will ask you about what is the population of the District that is affected by these two projects?

A The present population is about two thousand.

Q That is of the district? A Yes.

Q Outside the District you would be required to serve the same consumers, the Cuyamaca Water Company serves, is that correct? A yes, if we obtain the Cuyamaca system.

Q yes, if you obtain the Cuyamaca system? A Yes.

Q Will you state briefly what effect upon your district would the construction of a dam at El Capitan dam site by the City of San Diego, what effect would it have on your project?

A It would have a very serious effect, of course we are going on the statement made by Mr.Lippincott, who as I believe is a very efficient engineer, he made a very detailed study of the rainfall and of the waters of the river in coming down the river in the last twenty-six years, in stating to us

the conditions that confronted us he said that during that time some two-thirds of these years we would have more water than enough, with the other one-third, if we didn't cut it down very considerable we should have, we should be without water long before the end of the third period, that in 19-- from 1899 to 1904 that if we went on half water that when we arrived at 1904 we should have no water, either in the reservoir or in the sands of the river, it would all be pumped dry.

Q Your contract for purchase of the Cuyamaca system included what properties of the Cuyamaca system? Did it include all the properties or portions of the properties?

Q Did it include the El Capitan damsite?

A Yes.

Q Now going back to the affairs of the District, how much money has the District expended up to January 1st, 1916?

A Eighty-six thousand one hundred and twenty-three dollars and twenty-three cents.

Q What is the assessed valuation of the land in the District?

A The assessed valuation of the bare land in the District, two million seven hundred and nine thousand dollars.

Q What is the estimate of the valuation of the improvements and lands?

A The estimated value of land unimproved and improved, four million two hundred and fifty-four thousand five hundred dollars, perhaps I should say that these estimates were taken from a statement when we organized, the first year of organization, I mean, these estimated of bare land and estimates of improved land.

Q Would that be changed somewhat by reason of development, do you think"

A I don't think so very much, of course the depression might make a little difference.

Q Was the District had some conference with the City officials in regard to plans there or water development on the river, you might state generally what they were without going into specific detail?

A Some time in 1914 we heard that the city was worried because we were trying to get into the river, we felt we had a right, however, and we applied to the city officials for an interview and we met the council, I can't say they were enthusiastic at all because they wanted the water of the river, but we represented the conditions, we represented they had done nothing, they had developed in another direction, bought the Mountain water Company out, they had developed in that direction, that the water was being lost year by year, they needed the back country and didn't have it, I think I said something about I could always hear the howling of coyotes in the back yards in the city where I lived at that time,

but, however, before we left I think I had better say the mayor left the room before we left, but before we left the general impression left with us, they shook hands with us and a statement of one or two of the members of the Board was that we should go ahead and they would not interfere with us. Another time, and Mr.Cosgrove has some knowledge of this, we met at the invitation of the Chamber of Commerce, we were invited to meet the city officials, and Mr.Cosgrove came down, I think that Mr.Fay was there for a while, we had some little discussion, the general impression being, and I think Mr.Cosgrove will back me out in this, that there was enough water for both, and we would not stand in either one or the other's way, some question came up with regard to the possibility of law suits, I know Mr.Cosgrove made the statement he was satisfied there was nothing would come up that our lawyer and he together could not work out, now whether he had in mind the same as we had in mind I don't know, but the impression distinctly in the early part was, we had overcome the objection of the council, and certainly we would have been very careful about spending as much money and going as far as we had done if we had felt we had an objection to get over in connection with the City.

Q Can you give the dates of these conferences, just the one with the council and the one with the Chamber of Commerce?

A I am afraid I can not.

Q Can you state approximately?

A The first one was in 1914.

Q How long after was the second? A I should think it was the beginning of 1915, I must confess that I cant remember.

Q At the present time has the State Bond Commission yet approved the bonds of the District? A No;

Q Have you taken the matter up with them recently, either formally or informally?

A Not since the application was made for them to approve the purchase of the Cuyamaca system.

Q Has any State official investigated or examined any further your project there, in view of the contract with the Water Company, the Cuyamaca water Company?

A The deputy State engineer came down and we had a talk, or rather I had a talk with him, but he has never made any report since, he said he would report to the Commission.

Q What in your opinion would be the effect of the granting of this permit applied for in this present case, what effect would it have upon your bonds for the further carrying out of your project?

A In my opinion?

Q Yes, just generally.

A Under such a dam as the city talks of building?

Q Just a moment, not the dam but the question of permit as affecting immediately your proposition there?

A It would affect it very adversely undoubtedly.

Q In what way? A It would make people believe that the City generally is considered to have a strong pull and a long pull as against a bunch of farmers, I think it would affect their ideas of values on the bonds.

Q You know, or have you any way of knowing what effect it would have on the findings of the bond Commission of the State in regard to your bonds?

A I do not, I am satisfied it would have quite an effect but I have no personal knowledge.

Q Can you think of anything else you wis h to state in regard to the position of the District in this matter?

A No, I have not attended these meetings, I don't know whether any statement has been made as to the city, whether it at present maintains of there being any necessity of the granting of such petition at this time.

Q I will ask you, have you a written report from Mr.Lippincott? A Yes.

Q It is on file in the papers of the District in regard to the water project? A Yes.

Q Is it his opinion and is it the opinion of the District that both of these projects are necessary for the proper development of the water for your district and the

surrounding country, by both projects I mean the Cuyamaca system and the Old Mission dam.

A For the full development of the District and surrounding country, yes.

Q When you say the full development of it just what do you mean?

A Well, the Cuyamaca has a section of its own, part of the stored water, the District which takes the water, part of the water, of course Lippincott, in making his estimate, took into consideration the amount of water that was used by the C uyamaca Water Company, and also the riparian owners.

Q If there is a report of your engineer do you contemplate, does the District contemplate the erection of a dam at El Capitan on the land it would acquire from the Cuyamaca system? A No sir.

Q I will ask you to examine this map and state who prepared that and what it is founded on?

A It is just a map prepared for the purpose of showing clearly the position of the two proposed dams and the watershed connected with these two dams, it shows two drainage areas, the drainage area for the proposed El Capitan dam and also the area for our dam, it shows by a bar across between the two that if the El Capitan dam and reservoir was built that it would bar this section of country which has the high-

est rainfall, one hundred and fifty-six acre feet per mile below here we have two estimates, the San Vicente Creek and neighborhood with a drainage area only bearing seventy-six acre feet per mile as an average; below that again in El Cajon valley and the hills around there a drainage area which is thirty-nine acre feet, an average of thirty-nine acre feet per mile.

Q Who prepared or computed those figures and prepared that map?

A I got the map prepared by Mr. Vaudie as a personal favor, I prepared the thing myself on the records of Lippincott.

MR. LUCE: We now desire to offer in evidence as Intervenors Exhibit A, this map.

MR. GOSGROVE: To which the City of San Diego objects on the ground that the intervenor is not a proper party in this proceeding.

Q One more question regarding the bonds of the District, how many, how much, what are the amounts of bonds that you have already sold, the District, that are now outstanding against the District? A Some sixty-two thousand dollars.

Q And you have this balance unissued of the amount you stated you voted for the project? A Yes.

Q In the event that the District is unable to acquire the Cuyamaca Water System, unable to by reason of the non-

approval of their bonds, or any other reason, to go ahead with the Mission dam project, is there any other project that the District can turn its attention to to develop water for itself?

A No sir.

MR. LUCE: I think that is all.

MR. ROBINSON: No cross examination on behalf of the protestants.

CROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

MR. COSGROVE: In behalf of the City of San Diego I ask that the entire evidence of the witness be stricken from the record, on the ground that the intervener is not a proper party to the proceeding, that under the order of the Assistant Secretary of the Interior the Office has no jurisdiction to entertain the evidence.

Q Mr. Halley, what would be the height of the dam at the Mission damsite in the event that you obtained the Cuyamaca? A Some fifty-five feet.

Q How much water would it impound? A I haven't got that figure with me, I can tell you roughly.

Q Well, approximately? A About fifteen thousand acre feet.

Q What would be the flooded area of the reservoir?

A Between six and seven hundred acres.

Q What would be the cost of such a dam and the acquiring of a reservoir site?

A The acquiring of the reservoir site is mostly the four hundred acres that are acquired, the cost I cannot tell you.

Q Approximately? A I don't think I can tell you that, that has not been passed on you understand by an engineer.

Q You can say approximately what it is?

A I did figure it out once, I didn't expect that question, I would like to answer as a layman.

Q You know about how much water the City of San Diego gets from its present system? A I do not.

Q Haven't you any idea on that score?

A I know what they use three billions a year, in the neighborhood of that.

Q Well, now, do you think, Mr. Halley, that there is enough water going to waste down the San Diego river, if properly conserved with proper observation of the rights of all parties, meaning the District and the city and the riparian owners that there would be an abundance of water there for the District, as well as a supply for the City?

MR. LUCE: The District would object on the ground that the witness is not an expert, if it is clearly understood in the record he is testifying not as an expert but merely

an opinion I have no objection.

Q If the District were allowed all it wanted first would not there be still quite a supply the city could use?

A yes, most of the year.

Q You say that you don't intend developing the El Capitan? A No sir.

Q Now you entered into a contract with Mr.Fletcher and Mr.Murray under which they agreed to turn over to you the Cuyamaca system upon the basis of valuation fixed by the Railroad Commission? A Yes.

Q Did the Railroad Commission fix that valuation?

A Yes.

Q Did they turn the system over to you? A No.

Q Have you made a demand upon them? A Yes.

Q Have you done all you have been advised to do under your contract? A Yes.

Q What excuses do they give for not turning it over? A All kinds of excuses.

Q You want the system? A Yes.

Q You brought suit to compel the specified purpose of the contract? A Yes.

Q You have been trying for several months to get Murray and Fletcher and Hinshaw to turn this system over to you according to what you consider the terms of that contract?

A Yes, in some ways better terms.

Q In other words, you are willing to make conces-

sions? A Yes.

Q You haven't been able to get the system?

A No sir.

MR. COSGROVE: That is all.

REDIRECT EXAMINATION

BY MR. LUCE:

Q Have you any further statement to make in regard to the District interest in this matter?

A It is this, we are far from feeling inimical to the city, we would be glad to combine with the city to develop the water, all we feel alarmed about is this El Capitan damsite, and the proposed dam getting across the river is so large that if secured at any time it will take probably two or three years of water before we will ever see anything over the edge of it, for the lower country, except - unless we had a year like we have just passed through, consequently if we could have some kind of a contract with them, or if we could combine with them, or if they could build a damsite below us so we could secure what we ask for, twelve thousand acre feet of water for us every year, for the people of the Districtm then we would be more than glad, we would be glad to make any combination by which we could work together to develop it, but the actions lately of the city are leading me to feel as though they were wanting to establish something

ahead of us, we do not feel that we ought to lose out if we can help it, we have too much at stake. We would welcome any way by which the city and ourselves could come to an agreement for working together, each getting what we get of the water.

Q How close is the district to the City of San Diego?

A The edge of the District is practically at the city limits, if El Cantc is in the city yet, it is in the city limits, we fully expect it will go when the development of the country will take in a great part of this into the city if the city develops so it will need this water, I can't imagine the city developing and needing all this water without taking us in because we are in too favorable a part of the country .

Q If your difficulty with your bonds and with the Cuyamaca system were settled at the present time, if you had acquired this system you would then be in a position to take up this matter with the city, would you not?

A We would, not only that we would then be in a position to furnish them a great deal of water while the combined district was developed.

Q Until your difficulties are settled you are not in a position to make any definite settlement with the city, are you or are you not?

A That might be, I don't know if the city is.

MR. LUCE: I think that is all..

RECROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q You live at Lemon Grove? A Lemon Grove.

Q How many years? A Six years.

Q Do you know anything about the duty of water in that section? A Yes.

Q What is the duty of water? A I am rather conservative, the duty of water on my ranch has been not to exceed half an inch to the ten acres.

Q You mean by half an inch half a miner's inch?

A Yes.

Q You mean a nine months' inch or a continuous flow?

A Continuous flow miner's inch.

CROSS EXAMINATION

on behalf of the protestants

BY MR. MATHEWS:

Q What has been the duty on other properties?

A It has been generally estimated at as one miner's inch to ten acres, perhaps the character of soil on my ground has something to do with it, I am superintendent of our local water company, and I know we don't use that much as an average through the whole of Lemon Grover, we handle forty-six and a half inches of this Cuyamaca water.

Q Is your supply quite limited?

A Our supply at the present is not limited but it has been very limited at times.

Q In ordinary times it is limited? A Yes, two years ago we only had domestics for a good part of the summer time, we lost a little crop in consequence, we didn't lose any trees at all.

MR. ROBINSON: At this time, if your Honor please, the protestants desire to move that they be permitted to re-open their case in chief. In support of that motion I desire to say that for the first time my attention has been called to a very material witness, who has documents, the original documents in his possession, which I believe to be material to the issues in this case, that the very existence of these documents was not known to me until after my case in chief had been closed, and that consequently I had no knowledge of the contents of these instruments. Further, I believe that the Department would sustain a motion for a new trial if based upon the evidence which we propose to introduce from this witness, and in order to save the time and the expense attendant upon a motion of that character I now at this time move we be given permission to reopen our case in chief and put this witness on the stand.

MR. COSGROVE: If the Receiver please, we oppose the motion on the ground that the motion is not properly made,

not properly supported, is indefinite and uncertain, and if it were allowed similar motions could be made at any time upon the unsupported statement of counsel in the absence of anything to show other than the mere conclusions of counsel. I respectfully ask that the motion be denied and that we continue along with the case, we are willing to take the chances of a new trial in the event that he makes his motion and is entitled to do in the proper manner.

MR. MATHEWS: As I understand it the matter is largely by discretion of the officers, so I understand the city has not placed itself in a position where it would be put at a disadvantage by the reopening of the case and the introduction of more direct testimony in behalf of the protestants, so that it seems to me in the interest of justice and the exercise of reasonable discretion, the protestants should have an opportunity to put in, put before the office the witness who has heretofore been unavailable, especially since the city is in the position of fully protecting itself, just as it could have done if the witness had been put in at the proper time, it certainly is not right to require this office to dispose of the question adversely to the protestants when with the evidence in this office, and on appeal the Secretary of the Interior or the Appellate officer can pass upon the entire case, it would be a saving of time as stated by

yr. Robinson, and could not possibly be in error in the exercise of that sort of discretion where in a few minutes after the case is closed a request is made for another witness to be heard, the City having an opportunity, just as it would have if this witness had been brought in seasonably, to put in anything or wish to cross examine or take any other steps necessary to the city's protection. I think it is a proper and reasonable request, and customary under such circumstances not to draw down any hard or fast rule where the object of inquiry is to get at the truth and the whole truth so the entire case may be fully known, so far as the parties having witnesses who are able to testify on the questions involved.

MR. COSGROVE: If the Receiver please, just my opinion without ascribing any ulterior motives to anybody is this case has not been prosecuted at this hearing on behalf of the protestants with the idea of closing at this time; if they would make this motion after they had completed the testimony of Mr. Walley so that the thing would be done, and then if they would come up and say we have one more witness would take a few minutes and would like the privilege of taking his evidence, there would not be any objection.

MR. ROBINSON: If you will so stipulate that will be agreeable to me.

MR. COSGROVE: If you will stipulate you can finish--

THE RECEIVER: As far as the Receiver is concerned the motion will be denied, I think we have put in time enough in this case, you have had ample oppertunity to bring this witness it seems to be a hardship on the City of San Diego. If you wish to take the matter up with Mr. Roche when he comes here he may have a different opinion, I haven't had experience enough in Land office matters to know what a distinct opinion is, but personally I feel like denying the motion and proceeding with the case.

MR. ROBINSON: Please note our exception to the ruling.

MR. HANCHA: As representative of the Government my observation has been that the Department, the Land Office allows great latitude to both parties to get evidence in on a properly made motion supported, well supported, if there is newly discovered evidence which has come to the notice of the attorney today which is material, which would affect the issues in the case, upon proper showing the motion for new trial could be granted; of course I know not what the testimony is but it seems to be it would be perhaps well if you permit me to make this suggestion, that the attorney for the protestants be requested to state what he expects to prove by this material witness whom he has not yet been able to procure, the facts having thus come into his possession since the closing of the case; that the Register and Receiver, both being present,

pass upon that motion for reopening of the case; as the attorney for the City of San Diego and his witnesses are here present now, and if it is such a showing as would be sufficient to grant a motion for a new trial, it would be very much less expensive to all parties to have the testimony taken at this time than to grant a new trial, and I suggest that the attorney be required to state what this material witness would testify to and that the Register and Receiver both pass upon the motion after he has so stated.

THE RECEIVER: In view of the fact he has made no such showing caused me to make the ruling denying the motion, Mr.Roche was not here, if I had known he would be here I would have consulted him. It seems to me a hardship on the city attorney of the City of San Diego to stay here day after day, in fact, week after week and month after month, when the prosecution has had ample oppertunity to present their case. If you wish to reconsider it when Mr.Roche is here--

MR. ROBINSON: I desire to say at this time that the motion when originally presented was presented in the absence of the Register, that the Register has since returned and is now on the bench together with the Receiver, and I ask for the benefit of the Register that the record be read at this time so he made be in a position to pass upon the motion intelligently.

THE REGISTER: Unless counsel for protestants show the office the materiality of the witness:s testimony proposed to be introduced the Register sees no reason to differ in the decision of the Receiver.

MR. ROBINSON: I ask a recess for five minutes and I will submit the documents to the Register and Receiver.

THE RECEIVER: After viewing the documents handed us by the protestants' counsel we have come to the conclusion to allow a limited time in which to present these documents and as it may cause referring the whole thing back from the Department and in order to expedite matters counsel thinks he will get through within thirty minutes and it is so ordered.

THE REGISTER: Have you any objections?

MR. COSGROVE: I have no objection, your Honor, I have been making a bona fide attempt to close this case up, it means an awful lot to us, it is a hard thing to us, we have to come here, we have a lot of work to do, we have been subject to hardships the last three or four weeks and the way this case has dragged that would not be tolerated for a minute in the courts.

THE RECEIVER: We are aware of that fact but we have no authority to do anything differently under the Rules of practice, that would prohibit us from doing anything differently from what we have done.

J. H. HOHMANN, witness on behalf of protestants, being first duly sworn by the Receiver, testified as follows:

BY MR. ROBINSON:

Q What is your post office address? A San Pedro, California.

Q What is your occupation? A At present expert accountant.

Q Do you know one C. T. Sackett, a civil engineer? A Yes.

Q How long have you known Mr. Sackett? A Approximately five years I should say.

Q When did you first become acquainted with him and under what circumstances? I will ask you to make your reply as brief as possible.

A I think I met Mr. Sackett in Minneapolis originally about five years ago, 1911 or thereabouts, in the early part of the year, I guess.

Q Have you ever had any business or professional dealings with him, if so, what dealings?

A I negotiated with Mr. Sackett together with several other gentlemen looking towards the purchase of the Cuyamaca Water Company at San Diego, beginning some time I believe in October 1911.

Q Did Mr. Sackett ever have any correspondence with you with reference to that matter? A Yes, quite a bit.

Q I will hand you a document marked Cuyamaca Water Company Successor to the San Diego Flume Company, and ask you whether or not that is part of the correspondence which you received from Mr. Sackett? A Yes.

Q Is it signed by Mr. Sackett? A Yes.

Q Have you ever received other papers or other documents signed by him? A Yes.

Q Do you know that that is his signature of your own knowledge? A I do.

Q Do you positively identify it as such? A Absolutely.

Q I will ask you to state briefly, Mr. Hohman, the contents of that document?

MR. COSGROVE: We object to the question on the ground that the document is the best evidence in the witness's hands.

A It is rather difficult for me to go through this, it is a rather long document.

MR. COSGROVE: Why don't you introduce it?

MR. ROBINSON: I am going to introduce it.

A I haven't seen that for some time.

Q You identify it as the original document received by you from Mr. Sackett? A Yes.

Q When did you receive this, Mr. Hohman?

A Some time in November 1911 as far as I can remember.

MR. ROBINSON: Will you waive the reading of this instrument?

MR. COSGROVE: Yes.

Q what time during November if you can state?

A I would imagine it would be towards the close of the month.

Q Have you anything by which you can fix that time? A Approximately, yes sir.

Q By what do you fix that date? A By a letter that I have from Mr. Sackett, requesting return of the back sheet.

MR. ROBINSON: We ask this be admitted in evidence and marked for the purpose of identification Protestants' Exhibit GG. I will agree, Mr. Cosgrove and Mr. Mancha, with the permission of the office, to furnish you with a copy of that instrument.

MR. COSGROVE: On behalf of the City of San Diego I consent to the stipulation to be furnished with a copy, I think it is a reasonable request under the circumstances to introduce a document in evidence, but I object on the ground that it is an improper procedure at this time that the evidence as introduced is out of place, that it is not rebuttal evidence in any manner, shape nor form, that it is evidence in chief, that no proper foundation has been laid for its introduction. I object to it for the further reason it has no bearing on any material issues of this case, I object to it for the further reason it has not been properly identified, neither has it been properly authenticated.

Q You mentioned the fact you had a letter, Mr. Hoh-

man, have you that letter with you? A I have.

Q will you produce it, please.

(witness produces letter.)

Q This letter written on the letterhead of the Cuyamaca Water Company, Successors to the San Diego Flume Company, office [redacted] Building, 1550 B-Street, Cor. of E, and is dated San Diego December 11, 1911, is addressed to Jos.- are you the Dear Joe who is referred to here?

A I guess so.

Q This letter I notice is signed Chas. an abbreviation of Charles, is that right? A Yes.

Q From whom was that letter received?

A C. T. Sackett.

Q You identify the writing here?

A I do.

Q As the signature or part of the signature of Mr. C. T. Sackett? A I do.

Q The particular portion of this letter to which you refer is found in the first paragraph on the second sheet is that not so? Will you kindly read that paragraph.

A "Have been doping up more stuff all the time, have a great layout now. By the way Jos. (spelled Jos.) if you get a chance send me that signed last sheet in both copies up there. Just slip the last sheet out from Irvins copy and also one I sent you so I know exactly what I have out."

Q That is the paragraph in full? A Yes.

Q Some mention is made here about the Irvine copy, to what does that refer if you know?

A I haven't any particular recollection of that.

Q Any particular recollection,- have you any general recollection?

A A copy of that, I presume it is a copy of that, I don't know what you might call it, that exhibit you placed in the court.

Q We ask that that letter be admitted in evidence and marked for the purpose of Identification Protestants' Exhibit H.H.

MR. COSGROVE: The City of San Diego at this time objects to the introduction in evidence of the letter to be marked Protestants' Exhibit HH and assigns for the further objection the same reasons assigned, and objected to the document offered in evidence marked Protestants' Exhibit GG, in addition assigns a further reason that it hasnno material bearing on any issues involved in this proceeding.

Q When did you receive that letter, Mr.Hohman, if you know? A I usually get mail the following day from San Diego.

Q The letter is dated December 11th?

A yes sir.

Q What is your best recollection in the premises

if you know as to the date of the receipt by you?

A I would imagine I got it the following day.

MR. ROBINSON: We will also stipulate at this time that counsel for the City of San Diego and counsel for the Government will be furnished with copies of this exhibit.

Q In the exhibit HH the word "Copies" appear which indicate that there was more than one copy of that report, did you ever see any more than one copy, Mr.Hohman?

A I haven't any recollection as to copy or copies.

Q At the time that you received this letter you were in possession of the document which has heretofore been admitted in evidence and marked Protestants' Exhibit GG, is that not so? A Yes sir.

Q Is that the paper referred to in the letter, a portion of which you have just read? A Yes.

MR. ROBINSON: You may inquire.

MR. COSGROVE: No cross examination.

MR. MANCHA: No cross examination.

WARREN C. EARL, witness on behalf of the City of San Diego, Cross Examination on behalf of the protestants,

BY MR. ROBINSON:

Q You are the W. C. Earl who has heretofore testified in this hearing? A Yes.

Q You now submit yourself for cross examination by the protestants? A Yes.

Q Have you specialized in any particular branch of engineering? A Civil engineering, you mean?

Q More especially as to the hydraulic branch of the profession? A I have had some experience as related the other day.

Q Please state your experience in connection with hydraulic engineering?

A I was superintendent of construction first in the installation of a water system--

MR. COSGROVE: At this time and interrupting the witness I desire to object to the question on the ground the man has stated at considerable length all of his experience, it is asking him to state over again and is encumbering the record.

THE REGISTER: I think the record is pretty full.

Q Referring to Exhibits 36 and 37 and 38 of the City of San Diego? A Yes.

Q State if you will please, from what source you secured these reports?

A Those were given to me by the city attorney of San Diego.

Q Are they now published with the consent of the Company, if you know? A I don't know anything about it.

Q These reports refer to impounding reservoirs entirely, do they not? A Yes.

Q And not as to the proposed El Capitan dam?

A No.

Q They are dated 1910 and 1911 are they not?

A Yes they are.

Q Now referring to the Exhibit No.42 of the City of San Diego, is it not true that the run off available after diversion by the Cuyamaca flume was much greater during the five year period, 1905 to 1910 than in the five year period of 1910 to 1915? A That is true, the run off.

MR. COSGROVE: I object to the witness answering any further, you have already answered the question.

MR. ROBINSON: That is all we want.

Q From what source did you obtain those figures?

A From---

MR. COSGROVE: I object to that on the ground the exhibit itself shows where he got the figures.

A From the Cuyamaca Water Company's exhibit 4-8,

in Application No.1482 before the Railroad Commission of California.

Q Did you also examine the exhibit presented at the same hearing showing the amount of water in process of being put to beneficial use, Exhibit H-9, entitled Water diverted from the San Diego River South Fork, a portion of which wasted back into the river at end of additional sideboard construction?

A Yes, I remember that.

Q Have you that report available, that exhibit available? A yes.

MR. COSGROVE: I desire to say for the record that there is no such exhibit been introduced before the Rail road Commission as H-9, the exhibits were all numbered.

A That is there private mark on there, please correct the record, H-9.

Q Please read the total there given at the bottom, the column for the year 1912? A Two thousand miners' inches, that is the total agreeing with 6235 for 1913, 6786 for 1914, 5304.

Q In this year you know for two months the entire flume thirty-three miles long was under repair, being lined with paper, isn't that so?

A 1914?

Q Yes. A Yes.

Q And the average for this year?

A Six thousand one hundred and eight.

Q Please read the figures which you give in your Exhibit No.42 for the seasonal years 1911 and 1912, 1912 and 1913, 1913 and 1914? A Four thousand four hundred and eight, four thousand six hundred and twenty-one, four thousand one hundred and eighty-one.

Q Roughly the average of these three years is? A-- Four thousand four hundred acre feet, is it not?

A It is more than four thousand four hundred, yes.

Q Now taking into account this exhibit H-9, which immediately followed the one you used, it is evident that your figure refers to that which was carried from end to end of the flume less loss of water, is it not?

A Not to me.

Q And the actual diversion was really about fifty per cent greater, is it not so?

A I don't understand it so.

Q If you will refer to Exhibit 43 of the City of San Diego, referring to the exhibit which I have just mentioned, will you kindly read in column No.1, entitled Total run off of drainage area tributary to El Capitan reservoir site, run off on seasonal years 1912 and 1913?

A 9542.

Q That is the year the flume actually diverted about two-thirds of the run off or sixty-seven per cent of the run off, is it not?

A According to this exhibit it diverted forty-eight and a half per cent total run off.

Q Now referring to the same exhibit, Column No.2, headed water Diverted into Flume by San Diego Flume Company and Cuyamaca Water Company, the figures in this column don't show the total amount diverted from the river in numbers being put to beneficial use, do they?

A No, that is the amount diverted from the river into the flume, whether it was put to beneficial use or not is not attempted to be shown here.

Q Is it not true water for a number of years, the water that has been diverted into the flume by pumping from sands? A Yes.

Q This column No.2, inCity of San Diego's Exhibit No.43, includes these waters?

A No sir, it does not.

Q If these various additions were made to Column No.2 it would tend to increase the percentages of run off diverted as shown in Column No.4, same exhibit?

A It would show more water had been put into the flume, but whether that would be water that could be considered run off in that particular year for five years prior, I don't knew, whether pumping up from the ground when it run off and seeped into the ground there I don't know.

Q Is it not a fact in dry years? A I don't know.

Q Is it not a fact in dry years a far greater portion of run off is diverted according to your figures on City of San Diego's Exhibit No.43 than wet years, a greater portion of the run off for that year? A Yes.

Q Is it not a fact that there were several dry years preceding the first season entered on the City's Exhibit No.43?

A From this exhibit I can't state.

Q Do you know whether or not that is a fact?

A Yes sir, that is true.

Q Would not the inclusion of these dry years in the tables tend to increase the percentage of run off diverted? A I expect it would in dry years when there is not such a great amount of water going down the river to the diverting dam, the amount diverted is fairly uniform each year as near as operating conditions of the Company make it so, I believe, and with a small run off their proportion of water diverted would be greater, and the reason this table was not taken back beyond the period here shown is because I had no figures available for Column No 2.

Q If you will refer to the City of San Diego's Exhibit No.46, referring to City of San Diego's Exhibit No.46, what is your definition of safe draft, as used in the headings of the columns?

A It is the amount of water that would be liberated from the reservoir.

Q That is the best definition you can give us?

A You mean safe reservoir draft or safe draft data?

Q safe draft data?

A That would be the greatest amount of water turned into the conduit.

Q What is the safe reservoir draft?

A That would be the total amount of water liberated from the reservoir, the draft on the reservoir.

Q Would it not be more correct to say that the safe draft would be ~~the~~ dependable supply during the period of the greatest known drouth? A No sir.

Q You would not consider that a more accurate definition? A No sir.

Q Should the words safe draft be used in connection with the second period, 1904 to 1914?

A Well, I don't understand your question exactly, it is rather meaningless to me, if there is a demand for that amount, do you mean?

Q Yes. A I think it is proper to use it.

Q Would it not be more correct to segregate these columns headed safe Draft Period 1904 and 1914 into Safe Draft Surplus? A I don't understand you.

Q All right, sir, that is the best answer you can give to that question?

A If you make the question clear I might be able to make it better, if there is a demand for the amount of water here shown as the safe draft why there would be no surplus.

Q Can a domestic system be figured on anything but a safe yield basis?

A It should not be.

Q But it is possible for an irrigation system to operate through an extremely dry period on a three-quarters or one-half normal supply?

A It is done.

Q You state in your title that the ~~other~~ proposes to develop and conserve the surplus flood waters of the San Diego river, is based on the seven reservoirs do you not?

A yes.

Q Does your list of seven reservoirs include the diverting dam enlarged to a height of one hundred feet?

A No sir.

Q Then this list does not include six thousand acre feet of storage at the diverting dam provided it were enlarged to a total height of one hundred feet?

A It does not.

Q Does your list of seven reservoirs include the enlarging of La Mesa at a height of one hundred and forty feet? A No sir.

Q The list does not include the storage of approximately Eighteen thousand nine hundred acre feet in the

La Mesa reservoir, providing it were increased to that height? A No sir, it does not.

Q Then your Exhibit 46 does not include roughly speaking twenty-four thousand nine hundred acre feet of storage available for conserving the surplus flood waters of the San Diego river, isn't that so? A No sir, not taken into consideration.

Q They are not taken into consideration?

A No sir.

Q Then your answer should be yes.

A They are not taken into consideration, I don't know the manner in which the question was put.

Q Then your Exhibit 46 does not show the complete conservation possible by the Cuyamaca system?

A I haven't made this exhibit on the assumption the Cuyamaca system are going to make this development, the City of San Diego is going to make this development, and the Cuyamaca system being an existing operating utility on the San Diego river would not have a right to go into the diverting dam, or at La Mesa, increase the height of these dams and store water there, these are small reservoir sites that are available for city conservation of water, the conservation of water for the City of San Diego.

Q Your results are expressed in terms of safe draft for your seven reservoir scheme, while Mr.Lee's

Exhibit, while the Protestants' Exhibit W is expressed in terms of run off, isn't that so?

A My Exhibit, City of San Diego's Exhibit No.46 the results for which this compilation were made as shown, as designated for safe draft Exhibit W of the protestants shows one column run off from the drainage area, the other two columns I don't know what they are except as the heading shows.

Q Do you consider those two exhibits to be comparable?

A No sir.- Protestants' Exhibit W and mine?

A No.

Q Yes.

Q Will you explain the general method by which the safe reservoir draft in gallons daily as shown in Column No.4 of which sheet of the City of San Diego's Exhibit 46 was obtained?

A Yes, that for which the reservoir was shown by the mass curve, for each of the proposed reservoirs introduced as City of San Diego's Exhibit 45, in other words, Exhibit 46 is simply a tabulation of results obtained on Exhibit 45.

Q Will you please refer to 48 of the City of San Diego, Exhibit 48, referring to Exhibit 48 please explain where the figures in Column 2, headed El Capitan one hundred and sixty foot dam were obtained?

A They were obtained from the mass curve introduced by the City, marked City of San Diego's Exhibit No.13, I be-

lieve it is.

Q. That is a mass curve computation compiled by Mr.Cromwell ? A Yes, and checked by myself.

Q what is the net safe yield as shown by this mass curve? A From June 30,1893 to June 30,1904, a draft of eight million gallons per day; from June 30,1904 to June 30,1915, a draft of sixteen million gallons per day.

Q Can you give me the net safe yield for the entire period?

A What do you mean by net safe yield?

Q What do you mean by net safe year I have used that term, you as a hydraulic engineer know what net safe yield is, you know the definition, do you not? A I think I do, I haven't used it in this case.

Q I am asking you to apply that definition to the facts as shown by your exhibit and give me if possible the net safe yield for the entire period.

MR. COSGROVE: I object to the question on the ground it is a question that is not absolutely impossible but is coupled with so many difficulties, in view of the contents of the exhibit, that witness is unable to answer it without making a very protracted investigation and figures, this exhibit does not pretend to show anything with reference to a net safe yield, it simply shows a dependable supply of water over two different periods of time, he is now asking

him to show figures over one period of time.

Q can you give me the net safe yield for the entire period?

A I don't believe I can.

Q Are you sure you can not? A I haven't made a computation over this entire period as to what the net safe yield is.

THE REGISTER: Just tell him you can't answer it off hand. A No, I can not.

Q Are you willing to say, Mr.Earl, that a hydraulic engineer with that exhibit before you could not compute the net safe yield for the entire period of time covered by that exhibit?

A The net safe yield for the entire period as shown on this diagram is eight million gallons per day.

Q Have you figured the waste from the El Capitan Reservoir during the period of 1904 to 1906, 1914 to 1914, for the net safe yield or some larger quantity of draft based on eight million gallons per day?

A That is in my exhibit, the City of San Diego's Exhibit 46.

Q That is 48, Mr.Earl.

A No, the waste on the El Capitan reservoir from the period June 30,1904 to June 30,1914 is sixteen million gallons a day.

Q If the waste was figured during this period for

the net safe yield of eight million gallons per day, would the waste be more or less than you have shown?

A It would be more.

Q would it be much more? A Quite considerable.

Q If the computation of Column No.3 Exhibit 48 had been made for a nine proposed reservoir, Cuyamaca Water Company, including six thousand acre feet at the diverting dam, and eighteen thousand nine hundred acre feet at La Mesa, would not the percentage wasted be much less than you have shown for a seven reservoir system?

A well, assuming that the flood waters would have been conserved at La Mesa and the diverting dam waste would have been less, yes.

Q Now if you please refer to Exhibit 54, you have for the cost of El Capitan Reservoir nine hundred and nine thousand two hundred and ninety-five dollars?

A Yes.

Q And you have stated that this is as per Cuyamaca Water Company's Exhibit No.47 in Application No.1482, before the Railroad Commission of California?

A Yes.

Q Is it not a fact that this estimated cost as given in the exhibit presented to the Railroad Commission is accompanied by the statement that no allowance had been included for acquiring the riparian rights on the lower San

Diego river?

A No allowance for riparian rights I find at the bottom.

Q That is correct? A Yes.

Q This whole study, series of studies presented by you, Mr.Earl, is merely a comparison of two reservoir systems, assumed to be available to the city, isn't that so?

A That is true.

Q In this study of these two exhibits have you included all of the priorities of the Cuyamaca Water Company on the San Diego river?

MR. COSGROVE: I object to the question, that presupposes a matter which is a matter of dispute and contest, concerning which no evidence has been introduced, namely, the priorities of the Cuyamaca Water Company, it is not a fair question to ask the witness.

MR. ROBINSON: This is cross examination and the various water appropriations certified copies of various water appropriations have been introduced in evidence.

MR. COSGROVE: Not by this witness, concerning which he has given no testimony.

MR. ROBINSON: We have a perfect right to know what he assumed.

MR. COSGROVE: Ask him what he assumed.

MR. ROBINSON: I have done so.

A I haven't taken into consideration the priority of the rights of the Cuyamaca Water Company, because if I had there would not have been a gallon of water to figure to catch anywhere.

Q Are you aware of the priorities in right of diversions from the San Diego River and its tributaries which the Cuyamaca Water Company claims to have acquired?

MR. COSGROVE: I object to the question on the ground it is not cross examination, this man has given no testimony upon the rights or priorities of anybody.

A I am acquainted with the, with their claims, yes, they made pade part of a contract between the Cuyamaca Water Company and the La Mesa Irrigation District, of which I was chief engineer.

Q You ignored these claims entirely in the preparation of these studies?

A I certainly did.

MR. ROBINSON: That is all.

MR. MANCHA: No cross examination.

C. T. SACKETT, witness on behalf of the City of San Diego, recalled in rebuttal testimony

BY MR. COSGROVE:

Q Did you hear the testimony of Mr. Hohman, preceding you a few minutes ago on the witness stand?

A Yes.

Q Will you make for the benefit of the officers interested any statement that you consider pertinent in rebuttal of his testimony ?

A Along the line of my previous statement I had taken up the idea of purchasing the Cuyamaca with certain friends of mine, I referred to Mr. Hohman who was on the stand today, along in November I received a letter signed by Hohman and Heisler, whom I didn't know at all, simply a broker, I presume, requesting me to come to Los Angeles at their expense with any data available to draw up a sort of prospectus or report on the Cuyamaca Water Company, I did so, I came to Los Angeles and spent considerable time and some little money, and the report was made in Heisler's office, and the letter which was introduced in evidence in which I requested that they remove the last signed sheet of that report and return to me, was made to Hohman, for the reason they never paid anything, Hohman paid some few bills at the hotel, Heisler never paid anything nor any of the others never paid any money, according to the agreement which I had with these

gentlemen, who expected to put through the purchase of the Cuyamaca Company, consequently I was very desirous there would be no reports out over my signature in their hands, and I requested Hohman to obtain the last sheet on which my signature was and return to me, from these reports which were supposed to have been paid for and never were, that was commercial work, had nothing to do with the Cuyamaca Company, that was between myself and Hohman purely a personal affair. The report itself which is in evidence bears out my testimony as well as the corroborative testimony of Mr.Hagar, to the extent that no surveys were ever made below the diverting dam, Mr.Hagar had pointed out apparently a favorable damsite at Indian School. You will note in my report he referred to th at. In referring to the lower damsite no reference whatever is made to the Capitan Grande site.

Q Is that all?

A That is all.

Q The letter which you have referred to and which you are now looking at, written on the Heisler-Harvey Company's stationery, signed by John W. Hohman, H. C. Heisler, is that the letter to which you referred in your testimony a moment ago? A Yes, absolutely.

MR. COSGROVE: We offer this letter in evidence and respectfully ask it may be marked City of San Diego's Exhibit No.55, at this time, and at the expense of the City of San Diego

will the reporter kindly furnish the counsel for the Government and counsel for the Forestry Department, and counsel for Protestants, and the City attorney of San Diego, and C.T. Sackett, Livingston, Montana, ~~xxx~~ copies of this document at your earliest convenience.

CROSS EXAMINATION

on behalf of the protestants

BY MR. MATHEWS:

Q Is that report true that you made?

A It is in answer to this letter asking me if I would tabulate or collaborate any data relative to the Cuyamaca Company

Q I refer to the paper filed in evidence as Exhibit GG.

A In reply I stated that report is the result or answer to this letter which has been introduced in evidence asking me not to give an original report on the Cuyamaca but to collaborate and gather all possible data from all available reports in the Cuyamaca office, Mr.Murray had given these gentlemen, or Mr.post, all the Cuyamaca engineer's reports, etc. it is not an original report at all.

Q It is a report signed by you?

A Yes.

Q Is it a correct report, does it contain anything untrue?

A As y have stated, it is copied from a great

many of these authorities, I believe in every instance is cited the authorities, to that extent it is true.

Q It is only partially true then?

A No, I do not mean to convey that idea at all, I haven't read that report for several years, particularly, and I don't know as there is some particular point you refer to, ask me specifically.

Q I see your name at the bottom of it, you don't dispute you signed it, I am asking you if the report is to any extent untrue?

MR. COSGROVE: I object to the question on the ground it is not a fair question to the witness, on the ground he has asked the question two or three times, on the ground the witness answered to the best of his ability, in all fairness to the witness he should confine it to that particular point he believes he has untrue.

A I will say in answer to that question, if it were a report on which any investigations were to be based the report would have been signed on each and every page, as is customary on any mining report, this was a report which was transmitted with a letter of transmittal to Mr.Hohman, and was not for the purpose of hinging any material finances on.

Q Do you wish to look at the report?

A No.

Q I will ask you if it is because the sheets are

not separately signed by you, the report contains matters not untrue?

A No.

Q You wish to have the report each sheet is not signed by you?

A That the data was not mine, that it was gathered by me.

Q You are not responsible for all that?

A No, the records go back to 1869 and 1870 that were copied from authorities, I could not say at all whether they were correct or incorrect, I copied the water rights.

Q I notice in the report over your signature these words "Included in this data are the recent reports of Mr.William S. Post, which I herewith enclose."

A Yes.

Q Will you please state where you obtained the recent reports referred to?

A I think that I just related that on the stand the other day, access was given to these gentlemen to all of the reports in the office of the Cuyamaca Water Company.

Q And these reports which you included in this data were reports obtained by you from the office of the Cuyamaca Water Company?

A No sir, not at all, they were reports obtained by these gentlemen who were then looking over the plans, under the authority of Mr.Murray, they even checked over the books in the office and made extracts.

Q In explanation of your paragraph in the letter to Mr.Hohman, otherwise known as Dear Jos. the letter being dated December 11,1911, where you ask for the return of certain sheet or sheets, you gave as a reason for that a financial reason, that is that you hadn't been paid certain money, isn't that true? A Yes.

Q I notice the wording of the paragraph--

A what is the date of that letter?

Q December 11,1911, have you a copy of it there?

A I think so.

Q Do you want to read it before I ask you further?

A Yes, you might read the paragraph.

Q "Have been doping up more stuff all the time and have a great layout now. By the way Jos. if you get a chance send me that signed last sheet in both copies up there. Just slip the last sheet out from Ervine copy and also one I sent you so I know exactly what I have out." You mean by that you casually requested the return of the paper, did you?

A No sir, you understand my business affairs were with this man Hohman, I knew nothing of these other gentlemen, presumably brokers he had taken in.

Q Do you state the reason why you wish the return of a portion of your report?

MR. COSGROVE: If you are interrupted go ahead?

MR. MATHEWS: Take your instructions from the

officers, I didn't mean to interrupt you.

MR. COSGROVE: Understand you are entitled to the protection of counsel who puts you on the stand.

A I will state there was no unfriendliness, Mr. Hohman himself had not lived up to certain financial agreements when he wired for me to come at his expense, and attempt to purchase the Cuyamaca Water Company, he informed me he wasvery hard up financially himself when I knew he had several thousand dollars of cash subject to his personal check; a great deal of this matter contained in this letter would undoubtedly be a lengthy story between Hohman and myself, which was purely personal, not connected with the matter in issue, and having nothing relative to the issues of the Guyamaca Water Company as pertaining to the W. B. Hamilton rights.

Q You knew at the time you wrote this letter that the party to whom you were addressing it had a large sum of money in the bank?

A I do, he had some, he had informed me so.

Q What do you mean by this paragraph following this one?

"Am in just as bad shape as ever financially and hope you are able to get me a few hundred dollars pretty soon for it will make a big difference right now. "

A I mean I had come from Mexico here, I had spent considerable money endeavoring to further the purchase

of the Cuyamaca Company, understanding that Hohman was to stand the expenses.

Q Who paid your expenses from Mexico?

A I paid them myself, the only money which Hohman ever advanced was one hundred dollars on the entire work, during the course of several months, he might possibly have paid forty or fifty dollars hotel bills, I paid a considerable portion of it.

Q When was that advance made, prior or subsequent to your coming from Mexico?

A I think it was made, I would not be sure whether it was Florida or Mexico he sent one hundred dollars and wired me to come.

Q It was not this particular document of December 11, 1911, that you stated to Hohman that the reason why you wished him to return the last signed sheet was because he hadn't made good on financial arrangements?

A The letter itself is the best evidence, I merely asked him to return my last signed sheets on that report, not feeling he was entitled to my report.

MR. MATHEWS: That is all.

T. B. COSGROVE, witness on behalf of the City of San Diego, Cross Examination on behalf of the protestants

BY MR MATHEWS:

Q In the first place I would like, if the officers are agreeable, to withdraw the unintelligible question which I left Mr.Cosgrove with when I was cross examining him before, which was not answered, I wish to disregard it and start afresh.

Q Mr. Cosgrove, did you yourself gather the data upon which your so-called report of January 5,1914, the report was based?

A I don't know what you refer to. You mean by that the opinion I wrote?

Q Yes. A Yes, I gathered a great majority of it, a couple of elderly gentlemen in San Diego I think one of them is a Spanish lawyer, had practiced in Mexico gave me some considerable translations with respect to the Mexican law, it was practically all gathered by me.

Q For the purpose of finding out the extent of your research, I will ask you whether you made any search of the records of the City of San Diego in connection with the preparation of the report? A Oh yes.

Q Did you investigate the records of the City of San Diego with a view of determining if there were any records of that municipality bearing on the question of the

city's alleged water rights in the San Diego river?

A Yes, I had heard there were opinions on it, I made investigation to determine whether or not there was such opinion, I was informed that formerly Judge Neil had written an opinion to the city, I tried to locate it.

Q Did you find it? A No.

Q Did you find any ordinance or resolution or other record of the municipality bearing on that question?

A Yes.

Q As of date prior to the date of your so called opinion?

A yes, I found a great mass of data which I considered bore on the question of the rights of the city to the waters of the ancient pueblo.

Q Did you find any ordinance, resolution or other record in which the watersor waterrights of that river were mentioned?

A I don't think so.

Q In other words, what I am trying to get at, so far as it has any bearing is this, you didn't find and you don't know of your own knowledge of any ordinance, resolution or record of the municipality in which any express reference is made or claim is made to the so-called pueblo water rights in the San Diego river?

A Yes, I knew of many.

Q You found them? A Yes.

Q Will you state what they were.

A All the records which I found that bore on the establishment of the rights of the president and the board of trustees of the City of San Diego as successors to the ancient Mexican pueblo of San Diego, which was introduced before the Commission appointed by Congress for the purpose of determining the land rights in the State of California, in my judgment bore directly on the question of the water rights, because the decisions of the Supreme Court of the United States have repeatedly held that the water right is a more incidental to the land right, when you establish your land right the water was a more incidental to it.

Q Did you find in these papers any express reference to any such water right?

A In none of these papers did I find the question raised as to the water rights as distinct from the right of the successor to the old Mexican ayuntamienta, but I did find a reference to the San Diego river, within the old Mexican pueblo.

Q As topographical?

A No, it was mentioned I think it is reasonable to say with reference to topography.

Q What I am getting at is this, you did find no doubt that proceedings had been taken relating to the succession of the American City of San Diego to the former Mexican

municipality that far, but you didn't find in any records that you searched any reference to the so called pueblo water right which is here involved, that is the water right claimed by the City of San Diego in the river?

A I know of no case although I made no search for any case wherein that single feature was involved, I simply know when the President and members of the Board of Trustees established their right of succession the United States of America confirmed their claim to the pueblo lands, and by that confirmation or claim they took with it all the incidental powers which the Mexican pueblo had, one of those was the right to the river.

Q You say that as a lawyer who has made a search of the question?

A Yes, made a search of papers which you claim have been examined.

Q Is it not a fact that prior to your opinion, which I assume was filed among the records of the municipality, there is nowhere in the records of the municipality so far as you know, any document of any kind, in which the municipality asserts any water right in the San Diego river?

A No sir, that is not true, but the contrary of it is true, there are many documents on file in the office of the City Clerk and the office of the City Treasurer, and the office of the City Attorney, wherein these water rights are

asserted.

Q You mean that was the case prior to the time you made your report and opinion?

A yes, a number of cases have been brought, besides the question of paramount title there have been cases prosecuted to the Supreme Court of this state, referring to the question of the rights of the City of San Diego, as successor to the Mexican pueblo of San Diego, in all these cases the files are in the office of the city attorney, the original patent has been put in evidence, the question of the rights of the Board of Trustees of San Diego as successors to the Mexican authorities has been passed upon by the Supreme Court of this State in questions involving this question of the loss of right by possession.

Q Do you know of any decision of the Supreme Court of this State in which the question was involved as to whether the City of San Diego has a pueblo right which it is now asserting in this proceeding?

A I know of several decisions of the Supreme Court or, at least two I have in mind at this time, wherein the rights of the City of San Diego as siccessor to the Mexican authorities, Mexican pueblo were concerned, where it was held that any rights that the Mexican authorities held, for private distribution or for sale, could not be lost by adverse

possession, wherein it was held that any property or right held by the Mexican authorities by the city authorities, as their successor in trust for the common use of the people could not be lost.

Q Will you have my question read, I am trying to keep out your opinion as a lawyer, I would like to have my question also repeated and answered, so I can get through.

A I know of no decision of the Supreme Court of this State wherein that question in and of itself alone was concerned, I only know of cases where the general doctrine was laid down as I have heretofore announced.

Q Is it not true that the question of a water right here involved as to whether the City of San Diego has a water right was never involved in any case you know of in this State or elsewhere prior to the filing of the opinion by yourself to which we have already referred?

A That is not true.

Q If you know of any such case will you please give us the reference.

A There are cases referred to in this State which in my opinion sustain the proposition that the City of San Diego , if it referred, as successor to the Mexican pueblo, as has already been determined, is entitled to the waters of that river.

Q Do you mean to say any decision you referred to or can refer to, says a word about the pueblo rights of the City of San Diego?

A I have answered that question by telling you I know of no case wherein that particular incidental right of itself was concerned, I know of cases wherein the particular question or the fact of succession to the Mexican pueblo, wherein they formed the incidental rights.

Q I want to get one case to indicate to this tribunal just what you mean by the matters involved.

A In the People vs. Kerber, 152 Cal.731, the Supreme Court of this State says this :

"Property thus held by the state in trust for public use cannot be gained by adverse possession, and the statute of limitations does not apply to an action by the state or its agents to recover such property from one using it for private purposes not consistent with the public use. This is the settled rule in this state with respect to all properties so devoted to public use, and tide-lands, underlying waters forming part of the waters of a navigable bay used for navigation, are not, in this respect, to be distinguished from property used for other public purposes. Upon this point the rule is thus stated: 'It is immaterial where the title -- that is, the record title--is held, whether by the state at large, or by a county, or by some municipal department or

other official body. There can be no adverse holding of su ch land which will deprive the public of the right thereto, or give title to the adverse claimant, or create a title by virtue of the statute of limitations. The rule is universal in its application to all property set apart or reserved for public use and the public use for which it is appropriated is immaterial. The same principles which govern the adverse holding of a street, a public square, a quay, a wharf, a common, apply to adverse holdings of a schoolhouse. The public is not to lose its rights through the negligence of its agents, nor because it has not ch osen to resist an encroachment by one of its own number, whose duty it was, as much as that of any other citizen, to protect the state in its rights.' This rule has been often repeated in the opinions of this court." and in the case of Ames against the City of San Diego, 101 Cal. 390, the question---

Q Have you any case which com s n ar to the case directly involved, the question of whether San Diego has a so called pueblo right of the San Diego river, than the case that you have just referred to?

A I have no case that com s closer to it, no case than the authority cited in this opinion, if they don't support it.

CROSS EXAMINATION

on behalf of the United States

BY MR. DECHANT:

Q I want to find out if the basis of the pueblo rights to the waters of San Diego river as stated in your opinion, is based on the establishment of the ayuntamiento in 1835 or the approval of that map by Pio Pico in 1846, or on the conformation of the grant by the United States in 1850, or on all three of them?

A It is not based on the confirmation of the grant, I don't know which of the prior acts constitutes the culminating act of the establishment of the ayuntamiento, in other words I don't know what particular act culminated the establishment of the ayintamiento, I only know what they did. Now the confirmation of the grant, as is decided by the Supreme Court and as is mentioned in one of these decisions, is not a grant, it is simply a recognition of a grant which antedates the sovereignty of the United States.

Q All right, conceding that the ayuntamiento was established in 1835, and conceding that the map was approved by Pico in 1846 for the purpose of getting your idea of the matter, on which of these two do you say that the claim of the City of San Diego to the waters of the San Diego river is based, it is on both of them?

A I don't know, I don't know, as I said, what act constituted the culminating or crowning feature of the ayuntamiento, I don't know whether the confirmation of the map by Governor Pico was necessary or not, I simply know he did it. The evidence introduced before this Land Commission would seem to indicate it were of some importance, just what importance I don't know, in other words, I haven't gone into the case for the purpose of determining what particular act or acts constitute the culminating act, I only went into it far enough to satisfy myself there really had been a pueblo, what particular thing constituted the formation of it I don't know, I never investigated to ascertain that question

Q Will you look at page 9 of your opinion, I am referring to Chapter 46, Statutes, Act 1850, Act of march 27th, to incorporate the City of San Diego, of what importance in connection with the establishment of the pueblo rights to waters of the San Diego river do you attach to that particular act of incorporation?

A Well, I didn't attach any particular importance to that particular one, any more than to eight or ten which followed it, I just referred to this to show that from the very first formation what constituted the government, it seemed to be a recognized fact that there had been a Mexican pueblo, and they recognized it all the way through.

Q Did you examine any other act of incorporation by the State of California in 1850, in connection with any other city in the State of California that had been previously established by the Spaniards, especially the City of Los Angeles?

A I did, I remember in looking in the early charter provision in that particular instance I had in mind San Francisco and Los Angeles.

Q Did you find that in that connection, if you did so, did you attach any importance to the difference as exhibited in the various acts of incorporation in the State of California, of these two particular cities that you have mentioned?

A Have you in mind the fact that the act creating the City of Los Angeles mentions the ancient city of Los Angeles, while the act creating San Diego mentions the ancient presidio?

Q Yes. A I notice they said the ancient presidio of San Diego, I notice they speak of Los Angeles as a pueblo, I am not absolutely certain, I do not believe there ever was a presidio at Los Angeles, I do not know for certain.

Q In connection with the act of incorporation you will recollect concerning that of Los Angeles, it specifically mentions the rights of the city or ancient pueblo of Los Angeles to the waters of the Los Angeles river, you

will also recollect, as shown by your quotation on page 9 of the City of San Diego, it don't mention the waters or the water rights of that city to the waters of the San Diego river.

A I don't attach any significance to that for this reason, the authorities who had charge of the presentation of this matter to the United States Government, the original presentation of the matter, apparently went at it in a very diligent and careful manner. When the United States Government confirmed this grant why somebody was negligent, because you will find that the copy of the map attached to the patent to the city is not the same as the copy that was introduced before the Land Office, but at the same time it says in the patent it is the same; you find if you examine the original map, the original map signed by Pio Pico and his secretary, and introduced in evidence, it includes the entire Point Loma, it includes all of Coronado or North Island, a portion of the Strand, when they come to get their patent somebody didn't check it up, all they got title to was a point north of the Military Reservation, and they didn't get title to any portion of North Island nor any portion of the Strand, in other words, this patent does not conform to the map, it says it conforms but the City of San Diego didn't get what they were entitled to by the

finding of the Land officers.

Q Do you think, Mr.Cosgrove, that the confirmation by the United States was the confirmation of the rights of the City of San Diego as expressed in the act of incorporation of the legislature of 1850, which you have quoted on page 9 of your opinion, or was it a confirmation of Pio Pico's approval of the map and the act of the ayuntamiento in 1835.

A I don't think it was a confirmation at all, I think it was simply a recognition of a right which existed for years and years before the Government of the United States ever had soverignty.

Q Before the act of incorporation of 1850?

A Certainly.

Q When you refer to cases in the Supreme Court, you mean the Supreme Court of the State of California?

A Some Supreme Court of the United States, referred to in that opinion.

Q You referred on the stand to the Supreme Court of the United States?

A yes.

CROSS EXAMINATION

on behalf of the protestants

BY MR. MATHEWS:

Q Will you speak again about this point, that the act of March 1850 incorporating San Diego, being the act

of the Legislature does not refer to or in any way mention any rights of the City of San Diego in the San Diego river, whereas the legislature, that same legislature, a few days afterwards incorporated the City of Los Angeles and did specifically refer to and preserve the rights of the city of Los Angeles as successors to the pueblo of Los Angeles?

A I understood if that statement you made is true, and I beleive it is, if any such difference as that existed it existed because the man who sat down and drafted the act providing for the incorporation of the City of San Diego did not know his business, did not incorporate that fact in there, the man who drafted the act for Los Angeles was on to his job and put it in there, but if the right existed, if it was or was not mentiom d in the legislative act would not have anything to do with it, would not have any bearing on the question now.

CROSS EXAMINATION

on behalf of the United States

BY MR. MANCHA:

Q I would like to ask Mr.Cosgrove if there is any record of any official protest or objection by the City of San Diego, any public objection to any filing or installation of a pumping plant by any of the riparian owners along the San Diego river?

A Not that y know of.

It is stipulated that this case be submitted without briefs before this Office.

THE REGISTER: Case closed 5:20 P.M. Feb.11,1916.

Ed Fletcher Papers

1870-1955

MSS.81

Box: 59 Folder: 3

Business Records - Water Companies - Cuyamaca Water Company - Case Resulting From Hamilton Filing on Mission Gorge, through El Capitan Reservation - Murray, Fletcher, Henshaw vs. City of San Diego, United States Land Office testimony - Volume 3

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