

Volume III

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9:30 A.M. January 4, 1916.

THE REGISTER: We will now proceed with the hearing of this case, as I understand it, the protestant will now present the testimony, Mr. Robinson, you may proceed.

MR. ROBINSON: It is my understanding, your Honor, that Mr. Cosgrove was on the stand and had already finished his direct testimony at the time of the adjournment, and that the proper proceeding now would be to cross examine Mr. Cosgrove.

MR. COSGROVE: That is not the understanding at all, that is not the proper proceeding, at the close of the other hearing I believe I was the last witness, I said I had no objection to allowing the representative of the protestants, and the representative of the Government to cross examine me afterwards, I have no objection and will submit myself to cross examination any time they would indicate, but, of course, besides the city attorney there is also Mr. Whitney, hydraulic engineer, who must submit himself to cross examination, there is also Mr. Cronwell, I also have if they desire to cross examine Mr. Capp. My understanding was, as the Register has indicated, we were to go ahead with the evidence, I can't keep Mr. Whitney here three or four days in the employ of the Railroad Commission, it will cost us a lot of money to keep him here; after they have finished their evidence we will have the witnesses here for cross examination, so there will be no expense in complying with their wishes. Another reason why I

don't care to submit myself for cross examination is because I am prepared here as attorney, I have posted myself accordingly and I do not wish to submit myself to jump out of the witness stand and appear as attorney, I would rather they would go ahead and finish their case, and after I have finished my particular role as attorney then they can cross examine me to their heart's content.

MR. ROBINSON: At this time I desire the record to show the appearance of Mr. W. B. Matthews, of Los Angeles, as associate counsel on behalf of the protestants. I am sorry this misunderstanding has occurred but we were certainly under the impression that the cross examination of Mr. Cosgrove was to continue, was to take place this morning, and with that end in view and for that reason, Mr. Matthews is present, as he is thoroughly familiar with some of the phases of the situation with which I am not specially familiar, and we have had Mr. Matthews come here this morning for the purpose of conducting this cross examination, and while I have no desire to embarrass Mr. Cosgrove, or anyone else in connection with the case, think the record would show that we are justified in our assumption that Mr. Cosgrove was to be, was to submit himself to cross examination today, this morning.

MR. COSGROVE: I don't think there is anything in the record that would justify that.

I desire at this time to object to the appearance of Mr. Matthews, particularly in view of the fact he is called in here for the express purpose of cross examining a witness he

has not heard testify, it is a line of procedure that I have never observed in the courts, I feel flattered at the conduct of the protestants, in admitting that they are compelled to call in a special attorney to cross examine one of the witnesses; I do not feel particularly pleased over the action, and I shall at the time when the cross examination is conducted enter a protest against it, but I most sincerely contend that there was nothing said at the last hearing which justifies the presumption that this case was to open with the cross examination of the city attorney.

THE REGISTER: The Register does not understand, Mr. Robinson, the contention as he puts it, I understood you were to proceed with the case, I didn't know there was any special program been arranged by the Office, inasmuch as it is only a question of Mr. Matthew's inconvenience, which might result inconvenient to the city attorney of San Diego, by interfering with his arrangements for the conduct of his case, I can't see any harm in allowing the protestants to go ahead with their regular testimony, Mr. Cosgrove will be here during this hearing and you can cross examine him at any other time.

MR. MATTHEWS: I appreciate what Mr. Cosgrove says, and as far as I am concerned it is agreeable to adopt his idea, with this understanding that I ^{am} in the Edison condemnation case, which is going on almost every day of the week, if I could have four or five days' notice of the desire of Mr. Cosgrove as to the date, I could adjust myself to be here.

MR. COSGROVE: That is a reasonable request.

THE REGISTER: I don't know whether he could give you that much notice.

MR. MATTHEWS: As far as I am concerned I could not come on a few hours' notice because I am engaged in that case.

MR. COSGROVE: We will give you three or four days. My understanding was the protestants would go ahead and introduce their evidence, I anticipate to introduce evidence of the character we introduce it is a matter that a man cannot pick up and intelligently cross examine the witness without notice, I stated it was unfair and asked the attorney for protestants to cross examine my witnesses on hydraulics after a reasonable time had been allowed to examine the exhibit, and I am willing for the extension of a similar courtesy, my opinion is when they have finished the examination we will take an adjournment of seven or eight days, at the time the case is recalled Mr. Whitney's examination, Mr. Capp's and Mr. Cromwell's, they will be here for cross examination, on the first day or the second day or the third day, as may meet the convenience of the attorneys for the opposing side.

THE REGISTER: That seems fair enough, let us proceed with the case.

ED FLETCHER, protestant, being first
duly sworn by the Register, testified as follows,

BY MR. ROBINSON:

Q What is your post office address? A San Diego,
920 Eighth Street.

Q Where do you live? A San Diego.

Q How long did you live there? A Twenty-seven
or twenty-eight years.

Q You are one of the protestants in this case?

MR. ROBINSON: At this time, Mr. Cosgrove, will you
stipulate that Ed Fletcher, W. B. Hinshaw and James A. Murray
are a copartnership, doing business under the name of the Cuya-
maca Water Company?

MR. COSGROVE: I think that is the case, I would
have no objection, whatever your pleasure in the matter, whether
copartnership or individuals, I don't think there is any doubt
about that, I know they have a common interest in this Cuyamaca
Water Company, whether they are splitting the profits I don't
know.

Q When did you first become interested in the property
known as the Cuyamaca water Company? A June 1, 1910.

Q What did that property include at the time of
your acquiring the interest? A We secured Cuya-
maca Lake, which was completed, had been for many years, the
water rights and filings, etc. of the old San Diego Flume Com-
pany, all of them, the diverting dam was built, was also one of
the properties we acquired, since then we have raised the diver t-

ing dam ten feet, and another flume thirty-six miles in length
which takes the water from the diverting dam to La Mesa there,
was also a diverting flume at South Fork, and Mesa Lake was com-
pleted, that was also one of the properties, and Eucalyptus
Reservoir, and the entire distributing system which furnishes
water to the City of La Mesa and the towns of Lemon Grove and
Spring Valley and Normal Heights and Taranta, East San Diego,
we were furnishing water to East San Diego at that time, I don't
remember whether it was a city then or not.

Q At the time that you acquired this interest did
you, were any water appropriations made on the water of the
San Diego river?

A Yes, we had Bertha Oster-
stedt, secretary, file on the water of the San Diego River at
the diverting dam, it was simply a precautionary measure, how-
ever, as our attorney told us the old water filings of the San
Diego Flume Company were good, providing there had been no other
water filings since the original filings were made; we looked
up the records and found there had been none of any moment, but
as an extra precaution we filed again at the diverting dam.

Q How to support that appropriation was any work done
by the Cuyamaca Water Company in developing or enlarging their
system?

A Yes, we have been continually
at it, ever since, I have spent approximately six hundred thousand
dollars in the development of our system, increasing our supply
Do you want me to give particulars?

Q I think it would be advisable. A We
immediately made surveys of several reservoir sites up in the

mountains and down the San Diego river, and also the diverting dam down as far as the El Capitan damsite, in addition we surveyed tunnels through the hill for a reservoir on the S-tract.

MR. COSGROVE: Mr. Robinson, I should like to have you suggest to the witness, please, that in view of the position of the City as assignee of the claims of W. B. Hamilton, that you have the witness indicate the times when this different work of construction was carried on, in order that we may ascertain whether it was prior or after the Hamilton filing.

Q This was prior to the Hamilton filing, we had engineer Sackett, who was afterwards engineer for the applicant in this case.

Q When was the approximate date when this work was done?

A This was done, part of it was done by Mr. Post in 1910, and part of it was done by Mr. Sackett.

Q During what year? A 1911, we raised the side boards of our flume so as to carry twenty-five hundred inches of water instead of twelve or thirteen hundred inches, I believe gradually we extended our flume near to South Fork, we raised the diverting dam ten feet, concrete construction, we put in I believe a half a mile of concrete conduit, we cut out the Sand Creek trestle by putting in a forty-two inch concrete pipe across Sand Creek, I believe we put in nearly a mile and a half of trestle, steel flume with concrete abutment in place of wooden trestles, I think there is something like fifty or sixty trestles we rebuilt, so as to give them a life of thirty years, thirty or forty years, we cut out the South Fork wooden trestle and put in the South Fork siphon, this cut out over a mile and a half of wooden flume line, as well as the

big trestle at Chocolate, we did the same thing again, cutting I think it was nearly two miles we saved there, of flume line by putting in this fourteen hundred or fifteen hundred steel siphon across Chocolate Canon, we built the Murray Hill Reservoir, we relined the flume for thirty odd miles, the entire distance with two-ply rubberoid roofing, and reduced the leakage to practically nothing; we installed, we spent thirty thousand dollars in putting in a pumping plant at Chocolate, Pumping plants Nos. 2 and 3, and Pumping plant No. 3 is on the Indian Reservation, we purchased the old El Monte pumping plant, which the San Diego Flume Company originally used to furnish water with to the City, to its consumers, the City of San Diego and other consumers, and we installed up to date electric pumping plant there, which pumps three million gallons of water a day, approximately; we put in a new pipe line from Eucalyptus Reservoir to the City of San Diego, the city limits, a distance of ten or twelve miles, possibly only eight or nine miles, I wouldn't be sure as to the distance exactly, we put in a mile of cement pipe line to connect Murray Hill reservoir with Eucalyptus reservoir, we enlarged the ditch from Eucalyptus Reservoir to the La Mesa Reservoir, to more than double its capacity, so that we can now fill La Mesa Lake in about forty days, of course we have enlarged our distributing system a great deal, between two and three thousand people live in Normal Heights, and we put in a new system, built at a cost of seventy thousand dollars including pipe line over there, we have se-

cured a ^{fire}power permit from the State of California, water permit, for Boulder Creek, and have done quite a good deal of work there with the intention of saving, making quite a saving in the flow of water from Cuyamaca Lake and the diverting dam in the hope of developing something like one thousand horse power of electricity. We have purchased Poverty Gulch damsite, part of the reservoir, and have practically acquired the Conejos Reservoir, and our entire plan has been until we gave our option to sell to the Mesa Irrigation District, has been to develop our system gradually, as we have in the past, as conditions warranted and the growth of the country demand for water. Our San Diego Flume Company's original permit, or easement rather, was from the United States Government, the diverting dam is on Government land, seven or eight miles of the right of way is also on Government land, for which we received from the Government an easement.

Q What is the present capacity of the flume as compared with the South Fork and Chocolate siphons?

A They are larger, the capacity is greater than the capacity of the pipe line either at South Fork or Chocolate, for that reason that was intentionally done, that matter was taken up, our engineer, Mr. Post recommended we put in two siphons instead of one siphon for the final development, but the siphons we have in are large enough to supply the present demand. Our next step after we have built La Mesa Reservoir, La Mesa dam,

if we don't sell to the District, will be to raise La Mesa Reservoir, and put in another siphon, both at South Fork and Chocolate, duplicating the present pipe lines, the total cost will be approximately eight or nine thousand dollars to install another pipe line across South Fork and Chocolate, we will then be able to divert from the diverting dam alone clear through to La Mesa a continuous and equal amount of water.

Q Amounting to about how much? A If I remember rightly it is something like thirty million gallons daily, between thirty and thirty-five million gallons daily, the Government engineer measured the water, we have all told twenty-two million gallons daily, I believe, at La Mesa, that is our capacity at the present time.

Q You have said something, Colonel, with reference to the matter of the sale to the La Mesa Lemon Grove & Spring Valley Irrigation District, can you tell us something about the facts in regard to that transaction?

A We, in September I believe, or October 1914, no, it was November 1914, we sold the system, made a contract to sell the system to the La Mesa Irrigation District, the valuation to be put on it by the State Railroad Commission, we were to take bonds in payment, the District was to furnish us with a report from Dillon, Thompson & Clay, showing the bonds were O.K.

MR. COSGROVE: At this time we desire to object to the witness stating the contents of a written instrument, and I think that the attorney will appreciate the fairness of the objection.

MR. ROBINSON: The objection is well taken.

Q I hand you a document headed Contract for Purchase and Sale of Water System, I will ask you to state what that contract is and what it purports to be?

A It is a contract and schedule of properties signed up with the La Mesa Irrigation District by the owners of the Cuyamaca Water Company

MR. ROBINSON: We ask this document be received in evidence and marked Protestants' Exhibit O.

Q Now you may proceed, Colonel.

A The District were unable to get the approval of Dillon, Thompson & Clay to the issuance of these bonds showing the titles clear owing to a suit which Judge Boone brought for the Mesa Development Company, in which he contested the validity of certain assignments, the unconstitutionality of the act, I believe that has now gone to the Supreme Court, although Judge Boone got beat in the Superior Court, but any way it clouded the title to the bonds and the contract expired, the date of the contract expired the 1st of January, 1916, but it was our intention if we could get the matters adjusted satisfactorily, and still our intention if possible, to see that the District gets the system and negotiations are now in progress.

Q Handing you a document marked Decree and Confirmation, I will ask you to state what that is.

A The Superior Court hand ed down a decree of Confirmation in the matter of bonds, La Mesa Lemon Grove & Spring Valley Irrigation District, which this is a certified copy.

MR. ROBINSON: We ask this paper be admitted in evidence for the purpose of identification and be marked Protestants' Exhibit P.

MR. ROBINSON: At this time we desire to offer in evidence a certified copy of the grant of the right of way by the Department of the Interior to the San Diego Flume Company, under the Act of January 12, 1891, and we ask that this be marked Protestants' Exhibit C.

MR. ROBINSON: Also certified copy of a deed from the San Diego Flume Company to James A. Murray of certain real and personal property described therein, transferred to James A. Murray by the San Diego Flume Company, and we ask that this be admitted in evidence and marked for the purpose of identification, Protestants' Exhibit D, which instrument specifically includes the property described in the right of way heretofore referred to, being the right of way granted by the Department of the Interior heretofore referred to.

MR. ROBINSON: We also offer in evidence a deed from James A. Murray to Ed Fletcher of a one-sixth interest in and to the property conveyed to James A. Murray by the San Diego Flume Company, and we ask that that be admitted in evidence and marked for the purpose of identification Protestants' Exhibit E.

Also a notice of appropriation of water by the San Diego Flume Company, dated May 28, 1886, and we ask that be admitted in evidence and marked for the purpose of identification Protestants' Exhibit F.

Also notice of appropriation of water by the San Diego Flume company, dated June 29, 1886, which we ask to be

admitted in evidence and marked Protestants' Exhibit G.

Also certified copy of appropriation of water by the San Diego Flume Company, dated July 31, 1886, which we ask to be marked Protestants' Exhibit H.

Also appropriation of water signed by B. Otterstedt, dated June 1, 1910, which we ask to be admitted in evidence as Protestants' Exhibit I.

MR. COSGROVE: The City of San Diego at this time desires to enter an objection to the notice of appropriation by B. Otterstedt, of date June 1, 1910, and assigns as grounds for the objection, that the notice of appropriation does not comply with the State statutes of the State of California, governing the question of appropriation of water.

Q Referring to Protestants' Exhibit I, is that the appropriation which you referred to a short time ago, Colonel, as having been made in the interest of the Cuyamaca Water Company?

A Is that the Bertha Otterstedt?

Q Yes. A Yes, as I said before, our attorney told us the original filings of the San Diego Flume Company were good, we simply filed that as additional security at the suggestion of Mr. Post, who, I believe, drew up the notice of appropriation.

MR. ROBINSON: We now offer in evidence the assignment of water rights assigned by B. Otterstedt, dated February 14, 1913, which we ask to be introduced in evidence and marked Protestants' Exhibit J., being the assignment of the rights already

acquired and referred to in Protestants' Exhibit I.

MR. COSGROVE: I would like the record to show the same objection to the introduction of Exhibit J, assignment of B. Otterstedt that we made to the original notice of appropriation which was Exhibit I.

MR. ROBINSON: Also introduce water appropriation signed by L. A. Olsen, dated June 12, 1914, and we ask it be marked Protestants' Exhibit K.

MR. COSGROVE: The City of San Diego at this time desires the record to show an objection to the admission in evidence of the Notice of appropriation of L. A. Olsen, dated June 12, 1914, for the reason that the notice is subsequent in point of time to the filing of Mr. Hamilton's original application in this case.

MR. ROBINSON: Also the assignment of water right of L. A. Olsen, by virtue of his appropriation referred to in Protestants' Exhibit K, which assignment is dated July 7, 1914, and which we ask to be admitted in evidence and marked for the purpose of identification Protestants' Exhibit L.

MR. COSGROVE: To whom is the assignment?

MR. ROBINSON: To Ed Fletcher.

MR. COSGROVE: To Ed Fletcher alone?

MR. ROBINSON: Yes.

MR. COSGROVE: The City of San Diego desires the record may show the same objection to the assignment marked L as made to the original appropriation marked Exhibit K.

MR. ROBINSON: Also notice of water appropriation signed by W. E. Keenan, dated June 12, 1914, which we ask to be admitted in evidence and marked Protestants' Exhibit M.

MR. COSGROVE: The City of San Diego desires to have the record show that objection to the admission in evidence of the Notice of Appropriation of W. E. Keenan, dated June 12, 1914, on the ground the appropriation is subsequent in point of time to the appropriation of W. B. Hamilton, the original applicant in this case.

MR. ROBINSON: Also assignment of water rights referred to in Protestants' Exhibit M from W. E. Keenan to Ed Fletcher, which assignment is dated 7th of July, 1914, which we ask to be admitted in evidence as Protestants' Exhibit N.

MR. COSGROVE: The City of San Diego desires the record to show the same objection to the assignment of W. E. Keenan to Ed Fletcher that it has made to the original notice of appropriation marked Protestants' Exhibit M.

Q Who was the engineer of the San Diego Flume Company at the time that Mr. Murray and yourself acquired their interest?

A I don't think they had any regular.

Q Did you subsequently employ one? A Yes, we employed both Mr. Post and Mr. Sackett.

Q How long did Mr. Sackett continue in your employ?

A I think it was nearly one year.

Q Did he leave your employment of his own volition?

A No, we discharged him.

Q What was the reason of that discharge?

MR. COSGROVE: We object to the admission of this evidence on the ground that it has no tendency to prove any of the issues in this case, it has no connection whatsoever with their application or the protest, that it is nothing more nor less than the airing of personal difficulties that has no part in this proceeding.

A I feel that I should make an explanation, Mr. Sackett's entire association with the Company in order to, it won't take but a moment but I feel it covers the points that are of vital interest in this case, if I am allowed to explain the situation.

Q All right, Colonel.

A Mr. Murray brought Mr. Sackett and Mr. Hagar from Montana, Mr. Hagar to be superintendent and Mr. Sackett the engineer, we immediately ordered them to make surveys of the San Diego river, and determine the best dam site on the river for conveying the diverting dam, Mr. Sackett did survey the diverting dam to show its capacity and also the Helena Reservoir site. Then they surveyed down the river, I think one dam site on the Indian Reserve, and they made a preliminary, Sackett made a preliminary survey on the El Capitan dam site, and reported to us its feasibility, he also saw the man that surveyed off the tunnel through the El Monte hills for a reservoir site on the S-tract. In the meantime Hagar was drinking very heavily and Sackett was not giving satisfaction in the work of construction of the Murray Hill Reservoir, Sackett estimated the cost of the Murray Hill Reservoir nearly fifty

per cent under what it actually did cost before we got through with it, my attention was called by a friend of mine to the fact that he had overheard certain conversation between Sackett and Hagar--

Q Confine your testimony to what you actually know not to what you heard.

A I investigated the report and found that it was true, and I wired Mr. Murray to come to San Diego and he discharged Mr. Sackett immediately, and Mr. Hagar was soon afterwards discharged, but he had an option to purchase an interest for a certain period in the Guyanaca system, so Mr. Murray kept him until that option expired.

Q Was any plat prepared based upon the surveys which Sackett and Hagar made on behalf of your company?

MR. COSGROVE: Prior to the asking of this question, might I introduce on behalf of the City of San Diego, we respectfully ask that that last explanation of the witness, Mr. Ed Fletcher, concerning the engagement and discharge of Mr. Sackett be stricken from the record on the ground that it is a matter entirely irrelevant to any issues involved in this proceeding, it is nothing more nor less than a writing into the record of personal difficulties as employer and employee, and has no tendency to enlighten any member of the Land Office or any member of the Department of the Interior as to the merit or demerit of the application of either Mr. Hamilton or the City of San Diego.

Q (Question read.) A Yes, he made two or three maps and furnished us with a report, or a verbal report

of one or two other surveys, but Mr. Sackett took the maps of record from our office and we never have been able to get them although we brought suit against him, both for damages and for the return of the map.

MR. COSGROVE: The City of San Diego at this time desires to move that the last response of the witness Mr. Ed Fletcher be stricken from the record, on the ground that it is a matter entirely irrelevant to any issues in the case, has no tendency to prove or disprove any of the matters or contentions involved in the application, and according to the witness's answer it is a subject of litigation in the courts.

Q The map and data to which you have referred have never been returned to you, Colonel? A No sir.

Q As far as you know they are still in the possession of Mr. Sackett? A Yes.

Q Do you know one Linden L. Boone, attorney at law of San Diego? A Yes, I have known him for years.

Q Have you ever had any professional relations with him in connection with the subject matter of this hearing?

A Yes.

Q state what they were, please. A He was attorney for about fifteen years for the San Diego Flume Company, up to the time we bought our system from the San Diego Flume Company, and I had had a number of difficulties with him, the first when I was president of the Lemon Grove Mutual Water Company, acting in behalf of the citizens of Lemon Grove,

and we won our point which angered him very much, and later on he tried to have me arrested for stealing two pieces of second hand pipe which my foreman, Mr. Dooley, took, and I was very much annoyed by him after I purchased the property in several ways.

MR. COSGROVE: At this time, interrupting the witness, the City of San Diego moves that the answer be, the entire answer of Mr. Ed Fletcher, the witness be stricken from the record, and the City of San Diego at this time respectfully solicits the register and Receiver, that the witness and counsel for protestants be cautioned, or be instructed that further examination along this line be conducted subject to the penalties provided by the rules, it appears to me that it is a matter that is outside the record, and is far beyond the points in controversy as any matter can possibly be, that it is an attempt, and is an actual use of the hearing now being conducted for the purpose of airing personal grievances, personal enmities, that in no matter clear up the situation so far as the application and protest is concerned.

THE RECEIVER: It seems to me it is wholly immaterial, I will ask Mr. Robinson to try and confine the questions to matters in issue.

MR. ROBINSON: We think, your Honor, this matter is material and that the connection will be shown.

THE RECEIVER: If you can, at the present it looks immaterial.

Q You were interrupted then, Colonel. A When we bought the system from the San Diego Flume Company, Judge Boone

intimated like he would like to continue as attorney for the Company, but we did not employ him. A little later on in that connection I wish to say that the La Mesa Development Company, the stockholders are practically the same stockholders as the San Diego Flume Company and La Mesa Development Company owns a lot of land in the La Mesa Irrigation District, and Judge Boone was attorney for the San Diego Flume Company, also attorney for the La Mesa Development Company, in the transfer of the property from the San Diego Flume Company to Mr. Murray and myself, there was a condition in that contract which has already been introduced in evidence, that they, the La Mesa Development Company, reserved one hundred and fifty inches of so-called water rights, floating water rights, for which they paid no yearly rental, a sort of a blanket mortgage as it were on the surplus waters of the San Diego Flume Company, and we, on the advice of our attorney, and I believe the State Railroad Commission also, ignored those floating water rights in their decision, it is a matter of record we agreed to furnish them water, but at rates set by the State Railroad Commission, instead of recognizing these old so-called water rights, the result being in every way on earth, Mr. Boone and Mr. Helion, president of the La Mesa Development Company, have done everything on earth that they could to make us trouble, have brought suits in court which have been in court for years, asking us to recognize these water rights, and in addition it was Judge Boone and Mr. A.L. Ross, a partner of Mr. Helion's, both of these gentlemen working together with our discharged

engineer Mr. Sackett, and our discharged superintendent Mr. Hagar, in having these water filings made, and these different suits brought up, particularly the Hamilton filing, Mr. Sackett was the man that got Mr. Hamilton to make water filings, and we had a detective following both Mr. Sackett and Mr. Hagar for months, and we are aware of the fact that the prime mover in this entire project of litigation and trouble that we have had, is Judge Boone, either for himself individually for personal reasons or on account of his employ of Mr. Hagar, it is Judge Boone who started this, it is a matter of official record in evidence, he sent a letter to the Department of the Interior at Washington that he was a bitter personal enemy of mine, now I don't feel that way towards Judge Boone, I simply say he has put up a grand fight to make us all the trouble that he could in every form and shape, and then to tie up with our discharged employees and get our record, the benefit of our records that we paid for, and our surveys and everything. I feel that it is very important that Judge Boone's connection in this matter be fully brought out in every way.

MR. COSGROVE: The City of San Diego at this time respectfully asks that the entire answer of the witness as just given be stricken from the record, on the ground it has no tendency to prove any issues in this case, or to enlighten any Government authority charged with the duty of making a decision.

A I want to say one more thing, and that is this: within a week or ten days from the time that Judge Boone

having the power of attorney from Mr. Hamilton, gave to the City of San Diego free of charge this Hamilton water filing and application, Judge Boone immediately thereafter brought this suit on behalf of the La Mesa Development Company, which clouded the title to these bonds, so that Dillon, Thompson & Clay refused to certify to them, that is what blocked us, and therefore we naturally would not accept bonds which we did not know were valid. I claim that Judge Boone, either for the City of San Diego, or at its suggestion, or at the suggestion of Mr. Hagar, that that suit was brought simply to make us additional trouble, I don't know which of the three are the reasons.

MR. COSGROVE: We desire at this time to respectfully ask the answer or the statement of the witness, Ed Fletcher, be stricken from the record, as having no bearing whatsoever on any matters in issue in this case.

Q Has the Guyamaca Water Company ever entered into any negotiations with the City of San Diego, looking to the sale of the system to the city, if so when?

A Yes, we made one offer, the City officials said they could not very well issue bonds, and they wanted to purchase the system on easy terms, so we wrote them a letter offering to sell at a price set by the State Railroad Commission for one hundred and fifty thousand dollars, the idea of adding the one hundred and fifty thousand dollars bonus was because we offered to take fifty thousand dollars down, I believe ten thousand dollars a month until paid, this the city refused, or rather took no

action in the matter, they even wanted to buy water from us, all that we could furnish, and we entered into a conference with them on the 4th of September, 1914, the Mayor and every member of the City Council and the City attorney Cosgrove was present, and they agreed to build definitely at that time a pipe line from the Cholollos Reservoir, owned by the city of La Mesa, providing we would increase our capacity and deliver them approximately ten million gallons of water daily during the flood season. At that time it was urgent to have our part of the work completed immediately, because we only had less than three months to raise the side boards of our flume line, ~~and~~ our flume with rubberoid, and get the work done by the time the winter rains came, and we asked the City then and there for a contract and they told us to go ahead and that it would take time, and urged us to do our part and the papers would be drawn up and an agreement entered into later; we signed the contract next day to have our part of the work done, but the City of San Diego later on repudiated its part of the contract and didn't put in that pipe line as they agreed verbally, and as the records will show by reading the daily papers; the next day after the conference, and the result was that later on we put in the pipe line and furnished them with I think about three or four hundred million gallons through our own system, but that made, but the terms we received from the City made Mr. Murray so mad that we immediately thereafter signed up and made a contract with the La Mesa Irrigation District.

MR. COSGROVE: The City of San Diego at this time respectfully asks the answer of the witness be stricken from the record, a matter of a fancied grievance of the protestants against the City of San Diego, by reason of an alleged repudiation of a contract by the City, and an alleged failure on the part of the City to perform and observe its obligations to Mr. Fletcher and his co-partner, and as a matter which is entirely outside of this record, it is a matter which is open to investigation by the State Court, if there is any such condition as this, unless the attitude of the Government officials will be determined by the alleged failure of the City of San Diego to maintain good faith with Mr. Fletcher I can't see what connection it has at all with any issues involved,

A I want simply to add that the City of San Diego after finding out the La Mesa Irrigation District had purchased our system they intervened, they brought suit to condemn our system, it is a matter of record in the courts today.

THE RECEIVER: I understand you to say they refused to sign a contract, then there is no contract in existence?

A The City of San Diego refused to sign a contract to put in that seventy thousand dollar pipe line.

Q There was no contract to that effect?

A They agreed verbally and asked us to sign contracts, the next day we had to - in order to get the work done before the winter rains, this was September and the floods were coming in January, it would take thirty or forty days to sign up the papers, and in November they decided they could not legally

transfer some funds, so they never lived up to their verbal agreement with Murray & Fletcher.

MR. ROBINSON: Before what tribunal was this condemnation proceeding brought? A The State Railroad Commission, the City of San Diego intervened and they have now brought suit to condemn our entire system, it is a matter of record, but they didn't serve us with any notice, so we have asked the suit be dismissed as yesterday.

I want to say just one more thing, in connection with Judge Boone and Mr. Hamilton. I call your attention to the fact that Mr. Hamilton admitted that one A. L. Ross called his attention to the San Diego River water filing, that Judge Boone drew up the notice of appropriation, his notice of appropriation on the San Diego river, Hamilton's.

Q Does the Cuyamaca Water Company own any land in the vicinity of the El Capitan damsite or reservoir site?

A Yes, we own one mile of the valley including the El Capitan damsite itself.

THE REGISTER: You mean one mile of the river bed?

A Yes, the river bed, we own a quarter of a mile wide and one mile long right up the valley.

MR. ROBINSON: At this time the protestants desire to offer in evidence unlimited certificates showing title ~~as~~ to an undivided five-sixths in James A. Murray and an undivided one-sixth in Ed Fletcher to the southeast quarter of northeast quarter Section 7, south half of northwest quarter, southwest

quarter of northeast quarter section 8, Township 15 south, Range 2 east, which we ask to be marked for purposes of identification Protestants' Exhibit B.

Q Have you examined the plat accompanying the right of way of the application for reservoir site of W. B. Hamilton? A Yes.

Q state whether or not the flow line, the flood line of the reservoir will submerge any portions of the right of way of the reservoir as delineated by the plat of the Cuyamaca Water Company's system, and if so what portion?

A I don't understand your question, for the simple reason we own the damsite, the reservoir site, part of it, unless Hamilton acquires by condemnation or a suit or a purchase of the El Capitan damsite.

Q Read the question, please. (Question read.)

A I might go on the theory that the map of Hamilton, my answer, as I understand it, Mr. Robinson, do you mean in case the dam is built, our reservoir is built, the El Capitan reservoir of Mr. Hamilton.

Q Colonel, I show you herewith a blue print of the proposed dam and reservoir site which accompanied the application of W. B. Hamilton for a right of way. I am asking you whether or not any portion of the Cuyamaca Water Company's system will be submerged, providing this application is granted and providing the flow line, the flood line of the reservoir is as shown on this plat?

A Yes, over half of the property of the Cuyamaca Water Company will be flooded, including the pumping plants Nos. 2 and 3, and including also the Chocolate siphon and the South Fork siphon which would have over one hundred feet of water over these two siphons, if the reservoir was built and filled, and in addition, our one hundred foot right of way in several cases would be flooded almost up to our flume, as well as our tunnels at El Capitan dam site, and then the County road by which we get to the diverting dam would be flooded for seven or eight miles.

MR. COSGROVE: I would like to say on behalf of the City of San Diego, that we ask the last portion of the answer of the witness with reference to the County road be stricken out unless he considers the County belongs to him.

MR. ROBINSON: We ask that this plat be admitted in evidence and marked Protestants' Exhibit A.

MR. COSGROVE: The City of San Diego at this time desires to object to the introduction of this plat in evidence on the ground that it purports to be a chart of the proposed dam and reservoir sites which are subject to this inquiry, that it tend or purports to tend to show the location of various flume lines and siphons and section lines and contour lines, and elevations, and hydraulic engineering data of similar character, that there has been no foundation laid for the introduction of the same, no evidence as to whom or by whom or under whose supervision it was prepared, nothing to show that it in any manner correctly portrays conditions existing or the con-

ditions that would exist in the event that the application was granted.

MR. ROBINSON: The objections urged by the City of San Diego, the protestants agree are well taken, and the necessary testimony will be introduced by subsequent witnesses which will render it a competent instrument of evidence.

Q Directing your attention to the City of San Diego's Exhibit No. 25 I will ask you, Colonel, if you read that letter?

A I did.

Q Do you know what action if any was taken by the City of San Diego upon that offer to sell?

A I understand they turned it down, I know the City Manager made a report adversely to the council, at least the paper said so, I believe the mayor testified he didn't think there was any intention on the part of the city to buy water from us this winter.

Q Directing your attention to the last paragraph of that letter reading "Therefore we sincerely hope that our surplus water will be taken over by the City of San Diego, otherwise it will flow into the ocean" does the Cuyamaca Water Company divert more water than it can use in its entire system?

A At the present time, yes, but if we, as I have said to you, already spent six hundred thousand dollars in developing our system, if we don't sell it to La Mesa Irrigation District the final work which we shall do, or rather the next step which we shall take, will be the building of La Mesa dam to a height of at least one hundred feet, in this way we will take

care of any surplus waters which are now going to waste and for which we haven't storage.

For the benefit of the Register and Receiver I want to say that we have felt that our first step in developing the system was to so enlarge our carrying capacity, so to enlarge our carrying capacity the entire distance which we have done, and we can now divert nearly three times as much water by building a siphon at South Fork temporarily we can divert three times as much water as we did when we took the system over, we can now divert twice as much water and deliver to La Mesa, seven or eight miles from San Diego about twice as much water as we could originally, by raising the La Mesa dam, we are in a position to take full advantage of our flood water diversion by storing the same, and all we need is additional storage.

Q In other words, Mr. Fletcher, the Cuyamaca Water Company's system is not yet fully built, is that correct?

A No sir, but we have kept up with the requirements, we feel now we have approximately a two years' supply of water on hand, reinforced by three pumping plants, that alone will have capacity enough to furnish the City, I mean furnish the system with emergency water.

Q How to whom does the Cuyamaca Water Company furnish water?

A To the city of East San Diego.

Q How much? A We furnish about two-thirds of it to the City of East San Diego, we furnish all the water to the City of La Mesa, and also the City of El Cajon ,

the pipe line is now complete to the City of El Cajon, the State Railroad Commission has ordered us to furnish water to the City, we have only furnished a little so far but will furnish it all within the next ninety days. Normal Heights has two or three thousand people living there outside the city limits, and we furnish domestic water to them, then the town of Lemon Grove in addition to that, and the ranches lying from the city limits to the mountains, unless they own their own pumping plant; in the Valley of El Cajon some of the ranchers have their own pumping plant and take water from us as well.

Q Prior to the year 1915, did the Cuyamaca Water Company or its predecessors in interest, ever furnish any water to the City of San Diego, and if so during what year?

A 1914 we furnished nearly two hundred million gallons, I believe.

Q Prior to that time. A I furnished it one year, a small amount the year before, I would not say for sure, of course the San Diego Flume Company furnished it for ten years to the City of San Diego, ten years or more.

Q During what period of time, Colonel?

A I think it was from 1890 or 1891 up to 1906, I believe, I guess it was nearly fifteen years they furnished water, I know it was ten years anyway.

Q Do you know whether or not that water was pumped or gravity flow?

A That water was pumped from the El Monte pumping plant which we now own, most of it, and a good deal of it was gravity, we have all the records which

I understand will be introduced in evidence showing for years the City of San Diego, our Company furnished the City of San Diego with practically its whole supply.

Q Do you know when the City of San Diego acquired its present municipal distributing system? A Yes, I was in the campaign, I think it was 1901, I believe it was they bought it from the San Diego Water Company, which was owned by our Company before we bought it.

Q Do you know the source of supply of that system, Colonel? A How?

Q At that time? A Why at the time the system was bought the municipal distributing system was bought from the San Diego Water Company, they were acquiring water from our predecessors, I think they were also pumping from the San Diego river, from a private corporation, buying from a private corporation, I know for many years, fifteen years or more they got their water supply from the San Diego river by pumping within the city limits of San Diego, a private concern that furnished water for a number of years, when I arrived there in 1888 they were getting water from a pumping plant there in the San Diego River.

Q At least one of the witnesses for the city has testified, Colonel, that the cost of the erection of a dam such as is contemplated under the Hamilton application and the El Capitan damsite, and the cost of constructing the necessary

distributing system would amount to approximately two million dollars, in your opinion could a dam be constructed, a dam and distributing system be constructed for that amount of money, or are there any other elements which might enter into the cost of the construction of a dam and distributing system which the witness did not take into consideration?

MR. COSGROVE: I object to the question on the ground no evidence shows that this witness is at all qualified to testify concerning the cost of constructing hydraulic structures of the character of the dam at the El Capitan, and of the necessary conveying system to the City of San Diego. I presume if counsel desires to insist on an answer, there is no way of preventing the witness from answering.

Q Colonel, I will withdraw the question. How long have you been connected with the Cuyamaca Water Company? A Between five and six years.

Q During that time has the Company done any dam construction at all? A Yes, they built the Murray Hill Reservoir, we raised the diverting dam ten feet, and as manager of the Volcan Water Company we are also doing considerable construction work at the present time.

Q Are you familiar with the cost of projects of a character similar to that that will be required at the El Capitan damsite? A I am, not as a hydraulic engineer but through my association with for years with different hydraulic engineers, I simply have to take their estimates of cost, except in our case where we have actually spent money.

Q You know what you have paid in the past for work of a similar character?

A Yes, but as I understand it, your question is not as regards to more, - but as to additional expenditures that would have to be made, I don't want to qualify as a hydraulic engineer.

Q What element of cost would enter into the construction of a dam and distributing system such as is contemplated by the City?

A Assuming it would cost two million dollars to build the El Capitan damsite and the pipe line to the City, the other elements that are, that should be taken into consideration are these, the City will have to either buy or condemn our damsite and reservoir site, t that portion which we own, which is about three quarters of a mile within the reservoir site and a quarter of a mile below; in addition we have spent, there will be other damages, we have spent thirty-five thousand dollars there in installing a pumping plant, which will have to be taken into consideration. I have figured it rather closely, it will cost thirty-five or forty thousand dollars to Ballinew siphons around South Fork and Chocolate, as they will be covered one hundred feet or more with water if the dam is built; then again they flood practically all the land of Mr. Head, which the City will have to acquire, then there is one hundred and sixty acres belonging to Mr. Henderson, which they will undoubtedly have to acquire, then, of course, all the cost of the Indian Reservation land, then again they will have to build seven or eight miles of road up on the mountain side at a cost, which I have carefully esti-

mated at approximately seventy thousand dollars, I have built over one hundred and forty miles of road in San Diego County and I feel I am a judge as to the cost. Then again they flood a part of our right of way, a small part, I believe, but a vital factor in my opinion, outside of ours is a question of the riparian owners below, for twenty-five miles to the ocean, there are one hundred ~~we~~, between one hundred and one hundred and twenty five pumping plants, there are many thousands of acres of riparian lands will have to be taken care of, and the El Monte pumping plant which we own, is three or four miles below the El Capitan damsite, from which we can pump, and have pumped three million gallons daily of water, that is another handicap. I am absolutely positive it will take five years to straighten out the tangle on the San Diego river even if they commence today, before the City could build the El Capitan damsite, it will cost them at least three to four million dollars.

Q Anything else, Colonel?

A No, only that the bonding limit of the City I believe you have something to introduce there, showing that they are up to their maximum of fifteen per cent, and only have one million six hundred some odd thousand dollars leeway to vote in bonds, which, in my opinion, makes the entire project prohibitive from the City's standpoint. On the other hand, I want to say right now that we have put our money into this project, have put in six hundred thousand dollars in cash since we bought the system we have increased our facilities and have gone right

ahead in our natural development with the growth of the country of our Cuyamaca system, and I feel that the city has not one dollar invested that of course it is a fight of the City vs. Private Ownership, or, rather, Public Utility controlled by private ownership. I am positive in my own mind that the City of San Diego is simply doing this, trying to get a sort of a tax title hold in the San Diego river, simply to block our legitimate development of the San Diego river. We have the money in the proposition and they haven't one cent, it is another case of the City taking away at any price it can get, as cheap as it can get a public utility owned by a private corporation.

Q Did you ever make any inquiry, Colonel, of the City Auditor of San Diego as to the present bonding margin of the City?

A Yes.

Q Did you receive a reply to that inquiry? A Yes.

Q Showing you a letter signed by, purported to be signed by H. L. Moody, the auditor is that a reply which you received to your inquiry?

A Yes.

MR. ROBINSON: We ask that this letter be admitted in evidence and marked for the purpose of identification, Protestants' Exhibit R.

Q Directing your attention to the letter again, were the interlineations which I direct your attention to, written in lead pencil, a portion of the document at the time you received it?

get this.

A I sent Mr. Faudie down to

MR. COSGROVE: I will stipulate the city attorney advised Mr. Faudie to have that written in there, "Personal improvement assessment value" so it would correctly, to show the bonding margin that there would be no dispute, it included the entire bonding margin.

12 M. January 4, 1916, Recess until 1:30 P.M.

1:30 P.M. January 4, 1916.

ED FLETCHER, protestant, Direct Examination continued:

BY MR. ROBINSON:

Q Colonel, you testified this morning one of the elements of cost to be considered in the construction of the dam and distributing system at El Capitan site, would be the replacement of a certain road, County road I believe you said, which would be submerged, when the reservoir easement granted, what have you to say with reference to that? A I thought I stated once that there was seven or eight miles of County road as near as I could get it, that will be flooded if the reservoir is built, the dam is built and the reservoir filled up with water, a new county road would have to be built and as it is required the County road into the back country ten or twelve miles anyway of road I should judge from a personal examination on the ground, would have to be built to take its place, the road will have to be along the site of the - along the hill

sides, and in all probability the best road to connect up will have to go from the regular county road going to Alpine, so that if they don't join up with that road they would have to start in half a mile below the El Capitan dam site and the County demands nothing to exceed a six per cent grade, so they would have to start nearly half a mile below the dam site, and then the only, the most practical route would be along the south and east side of the San Diego river going up Chocolate for a mile or so, and then crossing back and going up south Fork, and crossing back and then continuing up a northerly direction up towards the diverting dam. There are many side canons necessitating the maintaining of bridges and culverts, yet it is a practical route in my opinion, because on the other side it is more precipitous, more rocky, and when you get up there you would have to build a bridge across the San Diego river to get back to the County road, that bridge alone would probably cost twenty-five or thirty thousand dollars.

Q What would be the cost of that new road? A That ten miles would easily cost, that is, built according to regular County plans and specifications, owing to its rough, the rough country, if you built a sixteen foot road there it will cost sixty or seventy thousand dollars, whereas if you only build a twelve foot road it will cost thirty or forty thousand dollars.

MR. COSGROVE: In behalf of the City of San Diego I move the entire answer of the witness be stricken from the

record, as being entirely irrelevant to any of the issues involved in this case, has no tendency to prove any issues, has no tendency to enlighten anyone interested in the matter as to the merit or lack of merit of the application, and the question of the taking care of the County roads is a matter that is controlled entirely by the State, a matter provided for under the State law the City would have to meet. The difficulty or lack of difficulty the City would experience, the City would meet, I respectfully submit has nothing to do with this inquiry, we submit this line of conversation has no more bearing on the case than if some private corporation had ten thousand barrels of cement in the Reservation and we would have to get that cement to build the dam.

THE REGISTER: Proceed.

Q Have you any knowledge as to whether or not the City of San Diego has ever purchased any land in the San Diego river bed for the purpose of erecting a pumping station?

A Yes.

Q Or for any other purpose in connection with a water supply of the City? A Yes.

Q State what your knowledge of that is. A I think it was in about somewhere between 1902 and 1904 there was a considerable shortage of water, the city installed a pumping plant in the San Diego river, and commenced pumping, if I remember rightly it was the city, I am quite sure it was, and they lowered the water level to such extent, needed such a large

supply of water that they acquired a number of tracts of land in the City limits of San Diego bordering on to their pumping plant, and after buying these lands and the water rights they installed a new pumping plant, and for some time have pumped a large amount of water out of the river, until 1906 they pumped some water out of the river.

MR. ROBINSON: In this connection we desire to offer a certified copy of Ordinance 1821 of the City of San Diego, and ask that it be marked for purposes of identification and submitted in evidence and marked for purposes of identification Protestants' Exhibit S.

And also a certified copy of Ordinance 1503 of the City of San Diego, entitled Ordinance providing for the purchase by the City of San Diego of certain lands in Mission Valley, San Diego County, and we ask that that be admitted in evidence and marked for purposes of identification Protestants' Exhibit T.

Q I believe that you testified a while ago that your partner Mr. Murray acquired certain lands of the El Capitan damsite?

A We acquired the land on which the El Capitan damsite is now located, there are two possible damsites, one about one-third of a mile from our west line, and one only a short distance from our west line, but the one one-third of a mile from our west line is where we have selected, what we have selected as the proper damsite in case we should ever build there.

Q Have you done any work in connection with that site?

A We have driven two tunnels and satisfied ourselves as to the side walls being in place, and have cleared the reservoir site at least half a mile I should say of timber, we have planted grain to it now.

Q What is the approximate cost of that work if you know?

A Oh, I suppose including the installation of the pumping plant and all we have put in forty thousand dollars there.

Q Is there anything further you desire to add to your testimony, Mr. Fletcher?

A No, except to say that we are in a position today to furnish at least five million gallons of water daily to the City of San Diego, would be able to furnish it to them at a price set by the State Railroad Commission, and we don't understand why the City is not willing to buy.

Q Have you indicated to the City your ability in that direction?

A Yes, we demonstrated last year.

Q And your willingness to deliver to the City?

A Yes, we wrote a letter to them to that effect, we are willing to take a contract to furnish five million gallons a day for the next six months, so that if we should be short of flood waters we could give them pumping water.

Q Do you wish to make any further statement? A No.

MR. ROBINSON: You may inquire.

CROSS EXAMINATION

on behalf of the United States

BY MR. MANCHA:

Q How many gallons do you say your Company has furnished the La Mesa District now? A You mean our consumers?

Q Yes. A I think it averages somewhere round four million gallons a day, but our engineer is the best witness on that, Mr. Faudie, he keeps the books, I think that is an average, somewhere between three and four million.

Q How many towns are there now included along your line that you supply with water? A Three cities El Cajon, La Mesa and the City of East San Diego, the last two years we have furnished water to the City of San Diego as well, about six hundred million gallons I should say for the two years.

Q There is no option at present between your company and the La Mesa and other irrigation companies to purchase your plant? A The contract with the La Mesa Irrigation District expired on January 1 1916, but negotiations are now in progress to give them a lease or an extension of their option, and if we can come to terms as I believe we will, we will extend that option for probably five years, if we don't we shall go ahead with our plans of developing the entire system as originally contemplated.

Q What effect, what would the effect be on the Cuyamaca Water system if this proposed reservoir application should be allowed and the reservoir constructed?

A You mean if the Hamilton application?

Q If the El Capitan dam were constructed and the application of the City of San Diego allowed by the Department, what effect would it have on the Murray and Fletcher system, in other words, the Cuyamaca water system? A The State Railroad Commission has determined that the El Capitan dam site is part of the system, if the United States Government grants the application of Hamilton, which is the City is now the successor thereof, we would be in this position - as a public utility the Cuyamaca Water Company could not in all probability build the El Capitan dam itself, for it would have to flood these Indian lands, which the City are making application for, we would undoubtedly be greatly hampered by the City as well, if we attempted to build any of our reservoirs in the mountains, owing to the fact of this permit having been granted by the United States Government, so that we would be without question seriously hampered if not absolutely prohibited by continuous litigation, to complete development of the conservation of the waters of the San Diego river, as planned by the complete development and conservation of the San Diego river as planned by the Cuyamaca Water Company, it would do irreparable damage.

Q Do you know whether the City of San Diego has ever done any work or expended any money in years gone by, when the City was smaller, with a view of utilizing the waters of the San Diego river for the construction of the dam?

A No sir, they have done it, the only money the City has ever expended to my knowledge, is the installation of a pumping plant.

Q How has the City of San Diego been supplied in the past?

A I arrived in San Diego in 1888 I think, ten or twelve years previous to my knowledge, I got it from William E. Smythe, who wrote the history of San Diego, that the City got its water from private corporations who pumped it from the San Diego river clear up to 1890, this private corporation furnished water to the City, then I think they continued until 1901 so to do to some extent, but in 1891 the San Diego Flume Company, of which we are the successor commenced furnishing water to the city, both gravity water for the City of San Diego and pump water; we furnished the San Diego Flume Company, the records show we have furnished to date part of the supply for ten or twelve years to the City of San Diego, until 1901 when the San Diego Flume Company, who controlled the San Diego Water Company, sold the San Diego Water Company which owned the distributing system within the city limits of San Diego, to the City of San Diego, and that is the time that the City, from 1901 controlled its entire municipal distributing system. I think until 1906 our records - in fact I know until 1906 our records show that the San Diego Flume Company furnished the City of San Diego with some water until the Spreckles system was contracted for, or a lease entered into with an option to buy. In 1904 I be-

lieve there was a plan on to vote to get water out of the San Diego river by the City, but by a few votes it didn't carry the necessary two-thirds majority, that was the day of the Bennington disaster, and people didn't turn out. The City was going to buy a lot of land in the El Cajon Valley and pump from there, and let the water run by gravity into the City. The City wanted to purchase about two or three thousand acres of land and water rights.

Q Did your Company ever have Mr. Sackett make a survey of the El Capitan damsite similar to the site as shown by Protestants' Exhibit A?

A He never furnished us with any maps of that character, his instructions were, and we spent something like two thousand dollars in surveying three or four reservoir sites and damsites, including the El Capitan, and Mr. Sackett reported both to Mr. Murray and myself, that the El Capitan damsite was the best one on the San Diego river, but as he took all of the records from our office when he was discharged we have nothing to show for it.

Q Did he ever make an estimate under pay to your company on the quantity of run off at El Capitan damsite, taking one year with another, say for a period of twenty years, or any other number of years?

A We may have but none of his records are in our office, I have no recollection of it.

Q You are familiar with the outlines of the Capitan Indian Reservation, are you not, in a general way?

A Yes, I am very familiar with them.

Q Do you know approximately how much land is included in the Capitan Indian Reservation? A I understand there is something like fifteen or twenty thousand acres, I know the boundaries very well because they run up close to Poverty Gulch damsite, and the Conejos, I have been all over the Conejos, all up through the tule section as well as around the diverting dam, in fact I am quite familiar with all the boundaries and have been for the last five years, because we have been surveying there different times.

Q You were ^{with} the Indian service man and the city attorney of San Diego and the Hon. Register and Receiver the last few days when they inspected the premises? A Yes.

Q In your judgment what effect would it have on the Capitan Indian Reservation if the application of the City of San Diego were allowed, and the Capitan Dam constructed?

A It would flood practically all of your good valley land on the Indian Reservation and force all the Indians in the Valley to move, with one or two exceptions, I am speaking of the San Diego river valley.

Q In your opinion could any of the mountainous land that would not be submerged be used for Indian Reservation purposes, if the Indians were, if the El Capitan dam were constructed and the arable land submerged? A There would be no habitable place for the Indians to live in my opinion, as far as securing land good for agricultural purposes is concerned, a few families might stay there and make a living by raising cattle, it is a good cattle country.

Q For sanitary purposes, would it for sanitary rea-

sons, would it be practicable to use this land round the reservoir if it were used by the City of San Diego for water?

A I can only answer this by saying that the City of San Diego does not seem to be, they have six or seven thousand head of cattle on their lands which drain into the Moreno and lower Otay reservoirs, but with a filtration plant I don't think it is so bad to have people living on the watershed.

Q Would it be practicable to have any of the Indians living on the Reservation at all, if this El Capitan dam were constructed and the City of San Diego should use the water?

A I don't think it would be practical to have them there, they ought to be moved, of course you could keep them up there in the Conejos Valley, but all eastern states now as far as possible and consistent with finances, are getting rid of the residents and people living on the watersheds where they conserve water for domestic purposes.

Q How much of that six hundred thousand dollars expended by your Company and Mr. Murray was expended under your supervision? A All of it.

Q Have you ever had any experience in the riparian rights of that section of country upon the San Diego river or any other river in that section of country? A Yes, I have been acquiring riparian rights for many years.

Q On what river? A On the San Luis river and the San Dieguito.

Q Have you ever had occasion to take into consideration the value of the riparian rights on the San Diego river

between the proposed El Capitan damsite and the City of San Diego?

A The San Diego Flume Company of which we are the successors, bought several miles of riparian rights, thirty years ago or more, at the time they commenced the construction of their system, but there was no litigation and we have had the undisputed possession of the water for twenty-five or thirty years that we have diverted, and we feel that our rights to the water of the San Diego river are in question.

Q From your experience on the San Diego river in your construction work for the supply of water, what effect would it have upon the riparian owners below El Capitan damsite if this proposed reservoir were constructed and water impounded for the City of San Diego?

A Unquestionably it will seriously affect the riparian owners if the dam is built and the water impounded at El Capitan dam, I would like to add that our plan of development and complete conservation of the water of the San Diego river, contemplates letting down enough water to surcharge all of the lands in the San Diego river, so the riparian owners below will not be affected, and if that is done there will be very little if any excess water after our plan of development is completed.

Q Are you basing that upon the report of the engineer?

A Yes, we spent thousands of dollars getting this data, for five years we have been working in conjunction with the United States Government measuring well s

and water measurements, installation, measuring devices, automatic devices for the purpose of determining the quantity of water that passes a given point at a given time.

Q Has your company ever arrived at an estimate of the run off at this proposed El Capitan dam taking one year with another?

A Yes, that will be furnished by our engineers. I want to correct one statement that I sent thousands of dollars, I was thinking of the Volcan system as well as the San Diego river, we have probably spent in the last five years three to four thousand dollars in assisting the United States Government in determining water levels measuring water, etc. and the installation of these measuring devices.

Q And in your proposed system what part if any of the Capitan Indian Reservation would be submerged?

A If we don't sell to the District and go ahead with our development, our complete, the complete development of catchment and conservation of the waters of the San Diego river according to our plan, will include two small reservoirs in the mountains, a reservoir at El Capitan which would only flood approximately to the Indian land, perhaps cover fifty or one hundred acres of the Indian Reservation land, we would pump water from the El Capitan Reservoir right into our flume, our present flume, at a nominal cost, we have the electricity available within two or three miles.

Q It would flood how many acres of the Indian Re-

reservation?

A None of the Indian reservation, but if we found we had to raise it ten feet more it would probably flood fifty or seventy-five acres, but there are no Indians living on that tract at all, it is practically all waste land in the canon.

Q What other experience have you had if any in the construction of reservoirs except in this locality?

A I have had charge of the construction of Warner's dam, now in process of construction.

Q Where is that located? A On the San Luis Rey river, San Diego County, we are also constructing one at Carroll damsite and I have spent considerable money at Pamo damsite, we are also working at the Sutherland damsite.

Q How many if any other available reservoir sites are there which could be used for the supply of water to the City of San Diego besides the one now in use and the El Capitan and the Barrett and the Pine creek? A Are you simply referring to the San Diego river watershed or to other watersheds where water can be secured?

Q I don't mean to confine it to the San Diego river, other watersheds as well? A The San Luis Rey river is the largest stream in San Diego County, and the Warner's damsite and reservoir site is fifty miles from the ocean at an elevation of twenty-seven hundred and sixty-two feet above sea level, that is the largest reservoir site in the country with two hundred and ten square miles, at a height of one hundred feet it will hold more water than all of the present reservoir sites of that capacity combined in San Diego County, excepting Sweetwater reservoir.

Q Would that be a practicable proposition to use

for the San Diego water supply?

A Yes, I would like to answer the rest of that question first if I could, on the San Dieguito or Santa Ysabel river or San Bernardo, all three of these refer to one stream and should be called All Saints river, its name changes through each section of country, as it traverses the Sutherland reservoir it is an elevation of approximately two thousand feet on the stream, Pamo is at an elevation of one thousand feet, and the Carrol Reservoir approximately three hundred and twenty-five feet, the Sutherland Reservoir will hold nine or ten billion gallons of water, by the way the Warner dam at a height of ninety feet holds at eighty feet holds twenty-eight billion gallons, my best recollection is at ninety feet, thirty-two billion gallons, and about forty billion gallons at one hundred feet.

Q What I meant, the reservoir site which could be used for the City of San Diego?

A I am referring to them, all of these are now under course of construction, the Pamo damsite holds about eleven billion gallons of water as a safe yield, and the Carrol about thirteen billion gallons, these two sites, these two streams have been reported on by the City of San Diego, they have hired chief hydraulic engineer Harroun, who was chief hydraulic engineer for the State Railroad Commission; they also employed J. B. Lippincott of Los Angeles, who helped to build the Los Angeles aqueduct, and O'Shaughnessy, chief engineer of the City of San Francisco at the present time, O'Shaughnessy and Lippincott advised that the city take water by the system from the Volcan Land &

Water Company, and that the cost of the water for one thousand gallons would be six and a half cents delivered to the City of San Diego.

BY THE RECEIVER:

Q How far are these from the City of San Diego?

A About fifty-five or sixty miles, that is the one, the furthest away, that is the Warner's dam, the Carrol reservoir is only about fifteen or eighteen miles from the City, while the Palmo dam is about twenty-seven miles, I believe the Sutherland about forty-five miles. Mr. Harroun in his report to the State --

MR. COSGROVE: I submit that inasmuch as these reports are matters of record the engineer's own words are the best evidence, I think that is much more competent, we will advise that he reads from the report rather than state his conclusions as to what they contain, I have no objection to the man stating in a general way what the report is but as to what they are to do I think the report itself is the best evidence of that.

A I will get the report and read the actual figures from the report.

Q Are there any other sites, reservoir sites in the City of San Diego basin watershed which could be used in a practicable way for supplying water to the City of San Diego?

A There is a lower reservoir site at what is called the Mission dam, which I understand J. P. Lippincott has reported on

very favorably to the La Mesa Irrigation District.

Q About how many ^{what} will be the area in acres of the reservoir that you propose under your system to construct that El Capitan?

A I would like to have you ask that of our engineer Mr. Post, who will be put on the stand later, we would have to determine just how much water there was before we knew how high we would build the El Capitan dam, if at all, or develop it step by step, we would then know whether there was an additional supply or not.

Q Do you know how the acreage compares with the acreage in San Diego's proposed plan?

A After the riparian owners are taken care of properly and their interest protected and our water development completed, in our opinion there won't be a drop of water for the El Capitan damsite.

Q I was asking you about the acreage that your reservoir would cover in comparison to the acreage of the City of San Diego's reservoir would cover in their proposed plan.

A If we build any reservoir at all it would only cover two or three hundred acres at the most.

Q I have you Protestants' Exhibit A, and ask you to indicate where the flood line would be? A It would cover--

Q In other words, how far the waters would back up on the Indian Reservation?

A Only a short distance, approximately there (Witness pointing to the road opposite South Fork,) where South Fork enters the San Diego River, approximately there, that is my understanding.

Q Near the center of the west line of the northeast quarter of the southwest quarter of Section 4? A Yes, but that would be one of the last things that we would do, in all probability, I am referring to the construction of the El Capitan damsite.

MR. MANCHA: That is all.

CROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Senator Edgar A. Loos, attorney for and on behalf of the La Mesa Grove and Spring Valley Irrigation District. We make application to intervene in this proceeding under Rule 97 of the Rules of Practice cases before the United States District Land Office. We have our application under oath, showing the interest of the District in this matter, we have only one witness we would like to put on and examine, that would be the extent of our participation in it, unless at the end you wanted proof, or unless we had an opportunity to file further proof. The reason we ask at this time is that we expected to be here early this morning to make the motion at the beginning of the case, but the train was late and I was delayed and didn't get here in time. I have to leave tonight to go before the Special Session of the Legislature and we would like to have this acted upon and get our witness on this afternoon.

MR. COSGROVE: In behalf of the City of San Diego at this time we will enter our objection to the application

for intervention. Our objection will be based upon the ~~the~~ order of the Assistant Secretary of the Interior, who has referred this matter here for hearing on certain issues raised by the application and protest, which specifically limits the jurisdiction of the Register and Receiver in the matter of this hearing. I desire to say, however, that in view of the fact that it is generally understood I take it that there will be a further hearing of this matter after a period of ten or twelve days or more, during which time if Mr. Loos is so disposed, this matter may be taken up in order to ascertain what he expects to prove and what he expects to disprove, after which we may not have any objection, but in view of the fact the evidence can be introduced at the adjourned hearing I take it, just as well as at this time, without any prejudice to any party, I move that the matter be held in abeyance until that time, in order to ascertain whether or not there is any real substantial objection to the motion.

THE RECEIVER: You say your witness was here in town

MR. LOOS: He came up this morning, the president of the Irrigation District, it is much to our convenience to have it disposed of now, so we won't have to come again, I have no knowledge of any further hearing in the matter.

THE RECEIVER: Is it of much importance?

MR. LOOS: We believe we are the real party in interest, we have a contract to buy the Cuyamaca Water System,

and any attack on the Cuyamaca Water Company is an attack on us, we have a filing, appropriation on the Mission damsite, if this permit were allowed of course it would affect our rights there; we also have a big issue of bonds that are in a measure jeopardized by this controversy, we are now taking water from this system, of course it supplies all us people in the Irrigation District, and we feel that we have more at stake than either the City or the Cuyamaca Water Company. We are not in a position to dispute any of the facts that have been put in, all we want to do is to present to you the situation of the Irrigation District; of course we could do that by their own engineers, we would rather be in a position of appearing independently of either the Cuyamaca Water Company or the City of San Diego, simply to present our case and then we are done.

MR. COSGROVE: I will say this present hearing is the culmination of several months of controversy before the different Departments of the Interior, a culmination of very serious and active litigation before the Secretary of the Interior. It seems to me quite out of the ordinary to come in at this time and ask that a matter be held in abeyance until the convenience of the intervening parties can be served, particularly from the fact no considerable inconvenience would be occasioned the petitioner. It may be we have no objection whatever, but to jump in in the middle of a hearing of this character we don't know what to expect.

THE REGISTER: This has taken the office by surprise, I see no way of taking his testimony at the present time, we will have to arrange for taking his testimony at the adjourned hearing.

MR. ROBINSON: It seems to me the application to intervene is in proper form, and complies with the Rules of Practice, which rule 97, complies fully with the Rules of Practice; as far as the protestants are concerned we have no objection to the intervention.

MR. LOOS: I think Mr. Cosgrove overestimates our intention as to what we intend to do, we intend to prove by our witness, the president of the Irrigation District, our situation there, it is a matter within your knowledge, of course, and within our knowledge, but not within the knowledge of the Land Office. I can say that the only difference I can see it would make in the case, simply have our witness on, take half an hour to get through with him and then we are done. We think his testimony ought to be in in the case in chief, the main question in issue. I might say the reason we haven't appeared at the date set it all developed very quickly. We have this contract from the Cuyamaca Water Company, we have got possession, mere possession in it or we may have to go to court to obtain possession, naturally we have been uncertain as to our position, what we should do in the matter, we have either to intervene now or come in here in some other way before the Land Office, of course we could file affidavits, but an affidavit is never so satisfactory, either on direct examination or cross examination. I have no intention as soon as the examination of our witness is over we are out,

we don't intend to argue the matter other than file a brief at the end, or to in any way clog the progress of the trial.

MR. COSGROVE: I desire to say in this matter I do not want to appear unreasonable or unkind, but it would certainly be a lack of prudence on the part of the city attorney at this stage of the proceedings to submit to somebody coming in and introducing some evidence concerning which I know nothing, and the effect of I haven't the slightest idea.

Mr. Loos, as attorney for the La Mesa District and the President of the District and all the members of the District have known for months of this hearing. Mr. Loos himself has spoken to me a long while ago about it and coming in at this particular time in the midst of this proceeding and asking it be halted to enable them to introduce testimony, to put a witness on the stand, it seems to me an unreasonable request, particularly in view of the fact that the adjourned hearing, if in the meantime we are apprised of what he expects to prove, we may have no objection, but I object to stopping here at this time for the purpose of allowing another outsider to come in and introduce evidence.

MR. LOOS: We can get round it by having Mr. Hall sworn as a witness for the Cuyamaca Water Company.

MR. COSGROVE: That would be good.

THE REGISTER: Unless counsel can stipulate we will not halt the proceedings to allow this witness to go on.

THE REGISTER: The application for intervention will be postponed until some future time.

MR. LOOS: The case will not be closed without

giving us an opportunity to present our case?

THE REGISTER: An opportunity will be given you to present your evidence.

CROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q Mr. Fletcher, I believe you became first interested in the Cuyamaca Water Company or in the property of the old San Diego Flume Company in June 1910?

A Yes sir.

Q Now since that time I understand you to say that you have continuously and diligently expended moneys in the perfection of the scheme of the construction by which you impound all of the waters of the San Diego river?

A That is our aim.

Q During that period of time in these engineering schemes and projects, you expended six hundred thousand dollars approximately, and maybe a little more, maybe closer to seven hundred thousand?

A We have paid in approximately six hundred thousand dollars to the Cuyamaca Water Company for these improvements and other expenses, of course I want to qualify that by saying that our aim is to keep, to have our water development come along as conditions warrant increased development.

Q But since 1910, for five and a half years you have expended six hundred thousand dollars on the system, isn't that correct?

A I believe that is the decision of the State Railroad Commission.

Q Is that a fact? A I think that includes interest, part of the six hundred thousand dollars

includes interest.

Q Since the 1st of June, 1910, you and Mr. Murray and Mr. Hinshaw, the owners of the Cuyamaca Water Company, have expended, including interest, approximately six hundred thousand dollars in the improvements of the system commonly known as the Cuyamaca system?

A That includes interest, maintenance, salary, and all those kind of things.

Q Now that has been spent with the aim of increasing the use of the water system and conserving the waters that are now running to waste and were running to waste at the time you became interested?

A That was spent in rebuilding a part of our system, in creating new structures, putting in new pipe lines and surveys--

Q Pardon me for interrupting you, I didn't mean to ask you to delineate the structures, I just asked you if that was expended in building up a system for the purpose of putting to beneficial use the waters running to waste on the 1st of June, 1910?

A That is money we have approximately spent.

Q Is that the purpose of the expenditure?

A Of course to improve the system.

Q Now then, at the 1st of June, the time that you took it over, what was the carrying capacity of the flume, beginning with the diverting dam as compared with the carrying capacity of the flume today, beginning at the diverting dam -

and by flume I mean all that water carrying facilities, including the box flume, siphon, steel flume, tunnels, pipe lines to anyone of your reservoirs, say the Eucalyptus Reservoir.

A I have never measured the waters myself but the Government engineer will testify that twenty-two million gallons a day, every twenty-four hours, was the water running into the Eucalyptus Reservoir or Grossmont.

Q Will you answer my question: Is the carrying capacity of the entire flume as great as the carrying capacity of the entire flume was on the 1st of June 1910?

A It has been materially increased.

Q Did it increase the carrying capacity of the flume to put in the South Fork siphon? I want an answer yes or no.

A You will have to ask our engineer.

Q Don't you know as a matter of fact you can't get as much water through the South Fork siphon now as you could get around your old box flume before you tore it down?

A I don't know that.

Q Haven't you seen the water run to waste at the easterly intake of the South Fork siphon because the South Fork siphon could not carry as much water as the box flume above it?

A I have.

Q Don't you know as a matter of fact that the South Fork siphon today won't carry as much water as the old box flume would carry at that point, -yes or no?

A I refuse to answer yes or no for this reason, we have increased the side boards of our flume from the diverting dam to South Fork since

we bought the system, and therefore have very materially increased its capacity.

Q I am not asking you what you have increased the capacity of the flume, I ask you if you don't know as a matter of fact that the old flume as it was down at South Fork had a greater carrying capacity than your present siphon?

A I don't believe it, I don't know it, I don't believe it.

Q Do you know what the carrying capacity at South Fork is?

A I don't know exactly.

Q What is your best estimate? A I would rather Mr. Post would answer it.

Q What is your best estimate? A I think it is twelve or fifteen hundred inches, something like that, I am not positive, in fact I am not a hydraulic engineer, I do not measure water I have to take other people's figures for it.

Q But you do know that at the present time, since the South Fork siphon was constructed, that the South Fork siphon is the limiting unit in your conveying system, don't you?

A Yes, but that was done intentionally.

Q I didn't ask you why it was done, I want to know if that is a fact. A That is a fact and was done intentionally in order to save expense.

Q Do you say that your system as it is built today will deliver more water to your first reservoir than it would on the 1st of June, 1910?

A Absolutely, and has

done it, that is my understanding from the records given me.

Q So the difference in the carrying capacity today

as compared with the carrying capacity when you took it over represents an expenditure of six hundred thousand dollars so far as getting the water into the system is concerned?

A You are asking me a leading question which I don't understand, I wish you would put it in a little better language that I can understand it.

Q Well, I am sorry for you, sir. Now you say that these filings that were made by Bertha Otterstedt at the diverting dam was a precautionary measure on the advice of your attorney?

A No, at the suggestion of Mr.

Post.

Q You didn't say on your direct examination it was on your attorney's advice? A I testified on my direct examination that my attorney told me that the original filings of the San Diego Flume Company were good, but that on the advice of our engineer, Mr. Post, we made additional filings simply as a precautionary measure.

Q Who is this Bertha Otterstedt? A My secretary.

Q This filing is for one hundred thousand miners' inches of water? A I don't remember, the records are the best evidence. Mr. Post made, drew up the filing for us.

Q Don't you know as a matter of fact it is for one hundred thousand miners' inches? A I would not say without looking at the records, I believe it is.

Q Haven't you often said it was for one hundred thousand miners' inches? A I don't ever remember making the statement before.

Q You do know as a fact it was for one hundred thousand miners' inches? A I don't know without looking

at the record.

Q Would you be surprised if that filing showed fifty thousand miners' inches? A No, I left it all to Mr. Post who made the filing.

Q The notice of appropriation was prepared by your hydraulic engineer, Mr. Post? A Who had been for eleven years doing that same work for the Pacific Light & Power Company at Los Angeles, for a number of years.

Q In other words, you don't ascribe the preparation of that notice to any attorney? A Yes, I believe it was copied from a notice furnished Mr. Post by the attorney for the Pacific Light & Power Company, because he made other filings with Mr. Post for the Pacific Light & Power Company and about that same time on the San Luis Rey river, it was a copy of the filing which was drawn up by an attorney for the Pacific Light & Power Company, if I remember rightly.

Q When did you raise the diverting dam? A It was, I think it was 1910, either 1910 or 1911 I don't remember which, that is my recollection, I can easily find out by the book, it was either the fall of 1910 or the spring of 1911.

Q When did you put in this Sand Creek siphon? A 19-- of course I will have to guess at it, 1912 I think was the time.

Q Was it subsequent to the Hamilton filing? A I will have to find out when the Hamilton filing was, if you can give me that date, please.

Q Don't you remember distinctly when these Hamilton filings were made? A Yes, I remember very distinctly but not the date.

Q Can you remember with respect to the time you made, you put your siphon in at Sand Creek, whether or not those filings were prior or subsequent in point of time? A I will find out from the books when I built the Sand Creek siphon and testify to it.

Q What is your best judgment? A I could not answer without an examination of the books.

Q You haven't any judgment on it at all? A No, we had none before Mr. Hamilton ever appeared on the scene we had made our diversion part way down the flume, I believe was delivering, filling the excess water at Sand Creek at that time

Q Is the Sand Creek siphon on the Indian Reservation? A Yes.

Q Have you got a permit from the Government for the installation of the Sand Creek siphon? A I believe we did, I would not say positive.

Q Did you ever see it? A Yes.

Q Do you know where it is now? A Yes.

Q Has it been introduced in evidence? A The Sand Creek siphon?

Q No, the permit? A I don't think it has.

Q Did you ever see the permit for the installation of the Sand Creek siphon? A I truly answer you I don't know, it is a matter of record, I have five thousand pieces or instruments to keep track of, I take it for granted Mr. Post

made arrangements with the Government, and took the matter up in the usual way.

Q Now the next siphon coming down the flume is the South Fork siphon? A Yes.

Q Is that on the Indian Reservation? A I believe that is.

Q Don't you know as a matter of fact that it is? A Yes, I am quite sure that it is.

Q You are very familiar with the boundaries of the Capitan Grande Indian Reservation? A Yes, but very close to the corner, the Henderson property joins up almost to the corner of one end of the South Fork siphon.

Q Have you got a permit from the Department of the Interior to install the South Fork siphon? A I am sure we have.

Q You are sure of that? A That was the original one, we had some controversy there.

Q Did you evince the same degree of certainty with reference to the Sand Creek siphon? A We may have put one over on the Government with regard to that sand creek siphon, I want to be cautious.

Q The Chocolate siphon is located on private property? A Yes.

Q Owned by the Cuyamaca Water Company? A Partially so and partially by Mr. Head.

Q When I say owned by the Cuyamaca Water Company I mean owned by the co-partners of the Cuyamaca Water Company?

A Yes.

Q Now you spoke about Pumping Plants Nos. 2 and 3, pumping plant No. 2 is the pumping plant commonly known as the Chocolate pumping plant located on private property? A On our property.

Q Pumping plant No. 3 is what is commonly known as the schoolhouse pumping plant? A Yes, in the Indian Reservation.

Q Have you got a permit to operate that pumping plant? A Yes.

Q Have you introduced it in evidence? A Yes.

Q Do you remember the time you got the Railroad Commission to send a telegram to the department to get you a temporary permit to pump during the dry period? A Yes.

Q Did you ever read that permit that was given you by the Government? A I think it first came by telegram, I don't remember reading the agreement itself, I think it was all in shape, the correspondence, however I may have seen it.

Q Now the application was to install a temporary pumping plant, was it not, Mr. Fletcher? A Yes.

Q How long ago was that application made? A The record is the best evidence, I don't remember.

Q What is your recollection of it? A A couple of years ago, two or three years ago.

Q Would you consider that your permit to maintain a temporary pumping plant had expired now? A We had further correspondence on the subject afterwards, and they gave us

a permit to go ahead.

Q They gave you a further permit than they gave you then?

A They didn't cancel our permit.

Q Did they give you a further one? A They made no further objection to our pumping.

Q Did they give you any further permit? A I don't know what constitutes the permit.

Q Very well, if you don't know what constitutes a permit you can't answer the question, so you will be excused.

A All right, my understanding was we had a right to pump until the Government exercised its right by notifying us to stop, and we proceeded along that theory.

Q How do you remember a telegram that was sent the Department of the Interior in that regard? A By me?

Q Yes. A No, I believe Mr. Post wrote the telegram himself, I don't remember, in fact I let him handle that end of it.

Q What would you say to a telegram reading as follows "Date september 10, 1913.

From The Cuyamaca Water Company

To The office of Indian Affairs, Department of the Interior.

Application is made by the Cuyamaca Water Company of San Diego, California for immediate permission to place a temporary pumping plant upon the El Capitan Indian Reservation, San Diego County, to pump from wells in the gravel beds of the San Diego river. The Cuyamaca Water Company provides the In-

dians on this reservation with domestic and irrigation water free of charge, as provided in right of way contract dated 1889. The purpose is to pump from the underlying gravels of the Reservation into the Company's flume. This flume is connected with each Indian tract and therefore no damage can be produced. The cause of this application is the unusual shortage in the water supply in San Diego County, and in addition to the Indian Reservation, the Cuyamaca Water Company serves about four thousand acres under irrigation and ten thousand people with domestic water. Unless this permission is granted irreparable damage will be done to the land and the people will be without water for domestic purposes. It is suggested that you grant by telegram a temporary permission to the applicants until you can receive a formal report by the Indian Bureau regarding same." Would you say that that was or was not the telegram upon which this temporary permit was issued? A I believe it was.

Q Did you ever see the permit which read like this: "The Office respectfully recognizes that temporary permission be granted to the Cuyamaca Water Company to replace a pumping plant upon the Capitan Grande, El Capitan Reservation in San Diego County, California, for the purpose of pumping water from wells in the gravel bed in the San Diego river for irrigation purposes, subject to the conditions that such permission shall not be construed as granting any right of way." You remember that?

A Yes, I believe that was our permit.

Q That constitutes the permit you have from the Government so far as you know of maintaining your pumping plant No. 3?

A We had other correspondence later, the installation of that pumping plant was as much a benefit to the Indians as anyone else.

Q I have no objection to your stating on direct examination any volunteer statements you want to make but I would like you to confine yourself to answer my questions, inasmuch as I have to pay for the transcript.

You said on direct examination that you had a pumping plant down below the El Capitan damsite commonly known as the El Monte Pumping plant, did you not? A Yes.

Q You said that it pumped three million gallons of water per day, will you explain to the Receiver what you meant by that statement, that it pumped three million gallons of water per day?

A We have operated the plant and the water measured coming from the pipeline into the flume measured approximately three million gallons a day.

Q In other words, you mean you have pumped there that has got a capacity of three million gallons every twenty-four hours?

A Not less than that, we can furnish water from these wells for ten years, the old San Diego Flume Company pumped from that same location and furnished water to the City of San Diego as per exhibits we will introduce, showing how much water came from that identical pumping plant.

Q Did that pumping plant ever operate for ten successive days that is now installed there and pump three million gallons of water in twenty-four hours? A I haven't the records but Mr. Post and Mr. Lee will testify on that.

Q You are on the stand I want you to testify.

A I wasn't running the plant, we installed it just a few days before the heavy rains came and there has never been any reason for our pumping it except for a few days, the rainy season came on in 1914.

Q So what this pump would do with reference to delivering water into the flume is a matter of speculation?

A Not at all, it is a matter of written guarantee, we signed up with the people from whom we bought the motor and the pump and the plant came up to the guarantee.

Q Guarantee as to the pumping capacity? A As to the pump not as to the water, we pumped for several days.

Q Will you say you ever pumped three million gallons for ten days? A There was no necessity of pumping it ten days because it rained and there was no necessity of pumping.

Q I insist on an answer.

THE RECEIVER: You may answer that question yes or no. A Not to my knowledge.

Q Then the electric pumping plant was put in not over one year ago, was it not? A It was put in November or December of 1914, just before the rains.

Q You put it in after you sold the system, after you agreed to sell the system to the La Mesa District?

A We were under contract to install it before we ever signed up with the system.

Q Will you please read the question, Mr. Reporter and if you can will you please answer the question, Mr. witness. (Question read.)

A Yes, but I wish to make an explanation, that we commenced to install this El Monte pumping plant on an understanding that we would sell the water to the City of San Diego, after the pump was installed, and we signed all contracts for the installation of this pump several weeks, perhaps months before we ever signed up a contract to sell to the La Mesa Irrigation District.

Q Do you remember being on the witness stand before the Railroad Commission at the time the hearing was held pursuant to your agreement with the La Mesa District, at which time Judge Andrews representing the district asked you about the installation of this El Monte Pumping plant and complained about it being installed in violation of your contract?

A I do, but it was not in violation of our contract.

Q I don't say it was, I asked you if you remembered that occasion?

A They were late in getting the motor and pump shipped, it had to come from San Francisco, they had to be welded together, the motor and pump in some way, it had to be done at the factory and they were late in the delivery of the motor and pump according to contract.

Q Do you remember the first time you started the pump, I think they filled them full of sand and ground the bearings out?

A I don't believe it was ever done.

Q Had no difficulty of that kind at all when they started?

A Not that I know of, simply a fuse blew out.

Q Of course this installation was somewhere subsequent to the Hamilton filing?

A Two or three years.

Q And this enlarging of the La Mesa ditch was subsequent to the Hamilton filing?

A No, part of it was and part of it was not.

Q How about the enlargement of the distributing system?

A Part of it was not and part of it was.

Q You spoke about a power permit that was issued by the State of California on Boulder Creek, is that the power permit that was a matter of discussion before the hearing, before the Railroad Commission valuation case?

A Yes.

Q What valuation did you place on that power permit at that time in your exhibits?

A I don't know.

Q Do you remember the exhibit that was introduced in your behalf by Mr. Lane of Los Angeles?

A I left everything to Mr. Lane and Mr. Post.

Q What is your recollection of the valuation you placed on that power permit?

A As I remember correctly it was two hundred thousand dollars or two hundred

Q Two hundred and fifty?

A I don't remember, I know it was somewhere round two hundred or two hundred and fifty thousand dollars.

Q What did the Railroad Commission allow you on that valuation?

A They didn't allow anything, they said we were entitled to our money back and eight per cent interest and proceeded along that theory, they recognized

nothing else, so Mr. Murray and I under those conditions would not get anything for our five years' services.

Q This Poverty Gulch damsite and reservoir site there in connection with Poverty Gulch damsite, a portion of that is located in the Indian Reservation? A No, that entire damsite, the reservoir site, maybe one end of it touches the Indian Reservation, if it does not it is Government land.

Q Is the Poverty Gulch damsite the damsite known as the Conejos? A No, the Conejos is entirely within the Indian Reservation on King creek.

Q You say you have practically acquired the Conejos reservoir site, what do you mean by that? A Well, we--

Q Made application to the Government for it? A Yes, have a letter by paying twenty-six hundred dollars we will be given a permit.

Q You haven't paid that? A No sir.

Q Do you think the city has practically acquired a permit for the El Capitan damsite? A It is a cinch they have not.

Q They are not going to if you can help it? A I don't like to answer it that way.

Q You can answer it. A If we don't. I want to see the city acquire all the water in San Diego County except as it vitally affects our interest, I shall certainly do nothing to block the city in any event.

Q Then if this application of the city does not vitally affect your interest or your interest in the Cuyamaca Water Company you won't have any objection? A Personally, no, but I am only representing a small interest in the Cuyamaca Water Company, speaking for myself.

Q If it is shown that this application does not in any manner prejudice your interest or your property in the Cuyamaca Water Company you have no objection to it? A No, but I believe it does.

Q You spoke about going ahead with this development of the Cuyamaca Water Company according as conditions would warrant, I will ask you to state if you can in a general way what is the ratio existing between the number of miners' inches or second feet or million gallons of water per day delivered by the Cuyamaca Water Company now, as compared with the amount delivered by the Cuyamaca Water Company at the time when the system was taken over by you and the other two protestants in June 1910?

A I can't answer that question but we will produce the records, the actual records, they will be introduced in evidence by our engineer.

Q You know as a matter of fact that at the time you took over the Cuyamaca Water Company's system there were outstanding contracts to deliver water to consumers along the line of the flume greatly in excess of the amount of water that you are delivering at the present time, don't you?

A No, I won't concede that, the State Railroad Commission

through engineers determined what the full supply of water was to supply all our customers along the flume and that amount was approximately three hundred, somewhere between three hundred and three hundred and fifty inches, continuous flow, if I remember rightly Mr. Post has the record, our engineer, and that was what constituted the obligation for a one hundred per cent supply of water to our consumers.

Q Then the Cuyamaca Water Company is under obligation at the present time to deliver about three hundred and fifty miners' inches of water continuous flow?

A That is what the system has been using the last few years, but the demands on the system cannot be determined until the question in court of the validity of certain water rights is decided.

Q You say then that the system has during the last few years been delivering to consumers approximately three hundred and fifty miners' inches of water continuous flow?

A Yes.

Q Outside of that three hundred and fifty miners' inches of water the system has no use for any other water?

A There are altogether approximately six hundred miners' inches of so-called waters right which we have, part of which we have never recognized at all, only those water rights were put to beneficial use if paid for their yearly assessment has been recognized, we have full instructions of the State Railroad Commission as to what water rights, so-called, shall be recognized, and that is a question wholly within the jurisdiction

of the State Railroad Commission.

Q Getting back to the first question I asked you, I believe you stated the system has been delivering for the past few years approximately three hundred and fifty miners' inches of water continuous flow, while there have been outstanding claims there valid or invalid of something like to exceed six hundred miners inches, is not that correct? A About that way, yes.

Q Has not the question of the validity of these contracts or claims for water been the subject of very careful and extended investigation by the Railroad Commission of the state of California? A Yes.

Q It has not been decided whether or not those claims were valid or not? A It has been decided by the State Railroad Commission.

Q When did they decide that? A In two decisions which they have handed down.

Q You remember the recent decision they handed down as to the Cuyamaca system that I introduced in evidence?

A That decision did not touch.

Q I insist the witness can answer the question by yes or no.

A It can't be done without putting me in a false light, I wish to make an explanation if I answer yes or no.

THE RECEIVER: Answer yes or no and then explain.

It is stipulated that the witness may now make a statement with reference to the defense of the Railroad Commission concerning the contracts for water against the Cuyamaca Water Company in order to correct or clarify his preceding

answer.

A Yes, the State Railroad Commission in two decisions handed down annulled those old so-called water right contracts, in fact, all of them, excepting approximately one hundred and fifty inches of floating rights, which the La Mesa Development Company claimed to own. The State Railroad Commission in probably one hundred instances where land had the so-called water right contracts attached to it and where said land had been subdivided into lots and acre tracts or less, the old rates per miners inch was entirely ignored, said rate being approximately one cent and a half per thousand gallons yearly, and the new rate was fifteen cents one thousand gallons where land was subdivided for domestic purposes; in other words, they ignored entirely the old contracts unless it is for irrigation.

Q Now at this hearing conducted by the Railroad Commission pursuant to a contract of agreement between the La Mesa Lamon Grove & Spring Valley Irrigation District and Mr. Fletcher, Mr. Murray and Mr. Hinshaw to determine the value of the Cuyamaca Water Company, did you claim any valuation for water rights?

A We did.

Q How much did you claim? A I think we put it in under two heads, our claim was, I believe, eight hundred thousand dollars under one plan, what the other was under the other plan I do not remember.

Q Eight hundred thousand dollars, how much did the Railroad Commission allow?

A As I have heretofore stated, they made no allowance for anything except they found out by touching our records how much cash we had put into the system, and they added eight per cent interest to it and handed down a decision and said, here is the value of our system.

Q Can you tell us in dollars how much they allowed?

A I don't know.

Q You know they allowed nothing, don't you? A No, they didn't segregate it at all, they lumped it everything.

Q Did you read the opinion? A Yes.

Q Did it not say in the opinion they allowed you nothing for water rights? A Not in that sense,

that is my recollection, I am really stating again that they did not make any attempt to specify what our value for water rights was, simply allowed us our money back and eight per cent interest, that is my interpretation of their decision, if you mean that they, I will say no, if you ask me the question in addition to our money back and eight per cent interest, they allowed us nothing for water rights, I admit that, I could not tell what part of the seven hundred and forty-five thousand which they did give us is the value for our water rights.

Q They gave you a valuation of seven hundred and forty-five thousand dollars, you say, that is money you put into it plus the interest? A Yes.

Q They didn't allow you anything for water rights?

A If the seven hundred and forty-five thousand dollars does not include water rights then they gave us nothing.

THE RECEIVER: Did you pay out any money for water rights?

A No sir.

Q Now you say the system as it stands is capable of delivering twenty-two million gallons a day to the La Mesa Reservoir?

A Yes, that is my understanding of our engineers.

Q Of course when the La Mesa reservoir is filled then where does the water go?

A We either try to sell it to the city or turn it into the river, but that condition will not last very much longer, our next step will be to build La Mesa dam.

Q This morning you were speaking about this reservation of one hundred and fifty miners' inches made by the La Mesa Development Company, that is one hundred and fifty miners' inches that you are talking about, hasn't been decided?

A It is one hundred and forty-nine inches, it is a floating right and they pay no annual rental, the State Railroad Commission did not recognize that right, it is in the courts now to be determined as to the validity of it, and the Railroad Commission has referred it to the courts for final decision.

Q But the recognized outstanding obligations against the Cuyamaca system is approximately three hundred and fifty miners' inches?

A The State Railroad Commission recognizes something between four and five hundred inches.

Q That matter is already set out in this opinion?

A Yes.

Q This morning in speaking of this suit which you say Judge Boone started in order to prevent the approval of the La Mesa Lemon Grove & Spring Valley Irrigation Company's bonds, you said, or I understood you to say, that that suit was started for the City of San Diego on behalf of the City of San Diego, or on behalf of Mike Helion, I want you to explain what you mean by the statement that suit was started for the City of San Diego?

A I am personally of the opinion that the City of San Diego instigated, got Judge Boone to bring that suit to cloud the title to the bonds of the La Mesa Irrigation District so that we could not sell our water system to the La Mesa Irrigation District, if I do the City an injustice I simply lay the blame back on the La Mesa Development Company of which Mr. Helion is president and Judge Boone is their attorney.

Q Will you state the facts and circumstances upon which you base the opinion that you have just given?

A It is simply an opinion based on the fact that the City intervened in this case before the State Railroad Commission, they brought suit in court to condemn the Cuyamaca system, I only have one inference, it was to keep the La Mesa Irrigation District from getting the system, that is a matter of public record, that the City did take that course of action, if I have done any injustice to the City officials I apologize.

Q This petition of intervention that was filed by the City in the matter of the valuation of the Cuyamaca system

was filed about one year ago, was it not? A I believe so at the time that the State Railroad Commission were putting a valuation on our property.

Q Well, it was filed a long while before they had any hearing? A Yes, but after we had signed the contract with the Mesa Irrigation District.

Q Didn't the City of San Diego file a petition of its own to place a valuation on this Cuyamaca system? A Not until after we had signed the contract with the District.

Q (Question read.) A Yes, but after we had signed the contract to sell the system to the District.

Q You entered into this contract to sell the Cuyamaca system to the District at the time and immediately after you were trying to sell the system to the City of San Diego, didn't you? A I think it was three or four months.

Q At that time you were trying to sell the Volcan system to the City of San Diego, were you not? A Why the City strung us along for a year and a half, I don't remember.

Q (Question read.) A No, I don't think the matter was before the Council then just at that time, it dragged along for a year and a half on negotiations with the City, the records are the best evidence, I will have to refresh my memory on that.

Q This man Hinshaw, William G. Hinshaw, that is one of the protestants in this case, is a very large owner of the Volcan system, is he not? A Yes.

Q What portion of the Volcan system does he own? A All of it.

Q Do you own any of it? A I have a working interest.

Q Now you say here in the protest that was filed with the Secretary of the interior and which is verified by you before Lou B. Matthews on the 24th of July, 1915, that Murray, Hinshaw and Fletcher, protestants, had been for more than five years last past co-partners, doing business in the City of San Diego, and as such co-partners have succeeded to and are and for five years last past have been the owners and in possession of the rights and property of the San Diego Flume Company, that statement is that correct, yes or no?

A No, Mr. Hinshaw has not had any interest whatsoever in the Cuyamaca system until the last two years or three years.

Q This statement in this protest, that is in the protest, therefore a verification, is not correct?

A It was a typographical error, overlooked by us, Mr. Murray and I owned the system from June 1910 to December 1, 1914.

Q You sold your interest, you sold half of your interest in the Cuyamaca Water Company to Mr. Hinshaw after you had attempted to sell both the Cuyamaca and the Volcan system to the City, didn't you? A Without looking

at the correspondence with the City I can't answer.

Q Do you know when you sold one-twelfth interest in the Cuyamaca system to Mr. Hinshaw? A The preliminary contract was in August I believe of 1914, but I would not be sure.

Q Can you answer the question, Mr. witness? A It is some time in the fall of 1914.

Q Prior to that time you had tried to sell both the Cuyamaca and the Volcan systems to the City of San Diego, hadn't you?

A I believe you are right, yes sir.

Q You know it for an absolute certainty?

A Without looking at the records I would not say yes, if you will give me that paper, show me the date at which we made the offer to the City I will answer yes or no but not from memory.

Q Didn't this man Hinshaw to whom you sold the one-twelfth interest in the Cuyamaca Water Company, whom you were representing in the sale, the attempted sale of the Volcan, have a discussion with you as to your activities in selling the Cuyamaca and not being active enough with reference to selling the Volcan, you can answer that by yes or no?

A We probably had,- I will have to answer no, for this reason, for the interpretation of your question is misleading, we had on e hundred conversations on the subject of the sale of both the Cuyamaca and Volcan systems to the city, the Volcan system was organized, was intended to be a mutual water company--

MR. COSGROVE: I object to this evidence as not responsive.

A Not to be sold to the City.

Q You testified in this matter before the Railroad Commission, do you recollect that? A Yes.

Q Do you remember being asked this question by Mr. Cosgrove "You say at the time you sold this one-twelfth interest you were in a very embarrassing position by reason of owning a portion of the Volcan as well as the Cuyamaca system, Mr. Fletcher? A Yes." Do you remember that? A Yes, I do.

Q Do you remember being asked this question:

"Is it not a fact that the embarrassment growing out of the fact at the time you were engaged in the sale of both these systems to the City of San Diego*to which Mr.Fletcher answered yes, do you remember that?" A I do.

Q Do you remember this question and answer: "Is it not a further fact that Mr.Hinshaw came to San Diego and conferred with you and got you to withdraw all your efforts in attempting to sell the Cuyamaca system to the city, and redouble your efforts in an attempt to sell the Volcan system to the City,"you can answer that yes or no. If I have misquoted the proposition you can simply say no to it, and Mr. Fletcher responded,"I don't want to do Mr.Hinshaw or myself an injustice, I don't want to answer, you remember that?"

A Yes.

Q Very well, for the record: Is it not a fact, Mr. Fletcher, that in this connection and bearing directly on this embarrassment, that you went to individuals in this town and explained to them that Mr.JHinshaw was blaming you, censuring you for your efforts in attempting to dispose of the Cuyamaca system to the City of San Diego, and requesting of you, demanding of you that you redouble your efforts in the proposition of the sale of the Volcan system, to which Mr.Fletcher responded "I can't answer, in justice to myself and Mr.Hinshaw, that I prefer not to answer that question?"

A I remember it exactly.

Q Do you think the City of San Diego needs any more water? A I do.

Q If they don't get it from the San Diego river they will be unable to get it?

A No sir.

Q Where can they get it?

A From the Tia Juana river.

Q Any place else?

A From the pump of the City of San Diego, in the San Diego river, furnish five million gallons a day.

Q Have they already got this?

A They are not using it, they haven't since June.

Q Are there any other places where they can get water, besides the Tia Juana river and the San Diego river pump?

A Yes, build Pine Creek dam.

Q That is a conserving system?

A Yes.

Q Any place else?

A They can get it from the Volcan;

Q That is the system you own, you and Hinshaw?

A I don't own one dollar in it.

Q Is this statement you made under oath, that you made before the Railroad Commission incorrect?

A It is not please read it again.

Q "You say at the time you sold this one-twelfth interest you were in a very embarrassing position by reason of owning a portion of the Volcan as well as the Cuyamaca systems" answer yes or no" is that a correct reading of what transpired before the Railroad Commission?

A Yes.

Q Didn't you say before the Railroad Commission that you owned a part of the Volcan system and that your interest in the Volcan system was a great deal bigger than in the

Cuyamaca system?

A I did not, I said it was, you so skillfully put words in your questions it does me an injustice, I overlooked the fact that you had inserted in your question, in your statement the question that I did have an interest in the Volcan or I would never have answered it that way, I had not, never have had one dollar invested in the Volcan system, simply a working interest in the profits in consideration of my services, whether that is an interest or not you probably can determine.

Q You testified before the Railroad Commission that you did have an interest in the Volcan system?

A If I did it was an error, because I have never had one dollar invested in the Volcan system except my services for nine years.

Q Did you get paid for these services?

A No sir I am not being paid.

Q Did you expect to get anything for your services?

A If Mr. Hinshaw makes anything at all on it I will make something.

Q Does he anticipate selling it to the City or anybody else without making something?

A He won't do it if I can help it.

Q If he gets ~~\$2~~ million that he asks ^{us} for it as it stands, would he make anything on it?

A Only a small profit.

Q I presume you would get some portion of that same profit, Mr. Fletcher?

A Unquestionably, but the probabilities are that you won't get the Volcan because there are new plans developing now.

Q I don't care to hear that unless you want to pay for it, going back now to your statement with reference to the suit that was instituted by Judge Boone on behalf of someone against La Mesa District, or somebody else, which you stated in your opinion was instigated by the City of San Diego, I will ask you if in addition to any facts which you have thus far disclosed there are any other circumstances upon which you base that opinion?

A You mean that the City was interested, no, I have stated all my reasons.

Q Very well, taking up the question I asked you before, whether or not the City needed any water, you said you thought they did?

A Eventually, yes.

Q Do they need it now? A No sir.

Q What are you trying to sell them this five million gallons a day for, because they have a two years' supply on hand they don't need any.

A Not for emergency's sake but as a matter of precaution, Mayor Capps has testified and I fully agree, the City should have a five years' supply on hand.

Q You think the City of San Diego should have a five years' supply of water on hand, do you? A It is safer, yes, they never have had that amount on hand yet in San Diego.

Q You say you think they should have it? A Yes.

Q They haven't it now? A No sir.

Q About a two years? A Yes.

Q You say they go to pumps in the San Diego river for water, do you think pumps in the San Diego river are an

insurance for the City of San Diego against the water shortage?

A Absolutely.

Q How much are they capable of pumping? A I only have the records to go by that the City has pumped five million gallons a day out of one pumping plant there.

Q For what period of time? A For months.

Q How much water can they pump out of those sands over a period of twelve months daily? A Well, if you would put in enough wells I should say you could keep that up most daily, get an average of three million gallons daily.

Q Do you think an average of three million gallons a day is an insurance against water shortage for the City of San Diego?

A It is a big help, the City of San Diego used water out of that San Diego river there for fifteen years, no reason why they can't continue it.

Q (Question read) A Yes, it is an assistance toward a short supply,

It will help to the extent of three million gallons a day for them if they have that capacity.

Q If the City would build Pine Creek or the Barrett dam do you think that we would need look any further for water development, do you think we have enough? A It depends entirely on the growth of the City, you should get an increased supply, in addition to that, according to the report of Mr. O'Shaughnessey and Lippincott and the report of Mr. Harroun,

Q What is the safe net yield of the Volcan system that you attempted to sell to the City on behalf of Hinshaw, approximately?

A Between fifteen and twenty million gallons a day.

Q What was your purpose in attempting to sell the Volcan system with fifteen to twenty million gallons net safe yield to the City of San Diego, was it on the theory that they needed it or not?

A Partially so and it should be developed unit by unit, in other words, I am in favor of the City of San Diego owning every reservoir site in San Diego County, getting options.

Q You are in favor of the City of San Diego owning this El Capitan Reservoir?

A Yes, and the Cuyamaca and all if the La Mesa District don't buy it, and develop these different water projects step by step as is necessary according to the growth of the City.

Q I presume why you would be in favor of the City getting these reservoirs and developing them unit by unit, is because it takes a matter of three, four to five years to develop a big project like Warner, Sutherland or El Capitan?

A Yes.

Q If the City of San Diego were to attempt to develop any one of these three, either one or alone or in conjunction one with the other, it would be a matter of say four years before they would be delivering water into the city's system?

A Yes, if you are referring to the Volcan system, I don't believe you will ever get that much if any water from the El Capitan, that is if built.

Q We would have had a great deal of water if it was built last year?

A Yes, but these are exceptional conditions.

Q Taking up the line of thought which you have

just indicated, namely, that you have always been in favor of the City getting control of these watersheds and developing them unit by unit, Capitan dam has a wonderful strategic value with reference to the City's system and with reference to the Volcan system, has it not?

A If used in conjunction with the Volcan system and if the water is brought as you suggest, as they suggested to me personally, from Warner's to Sutherland and then to El Capitan, it would be a valuable adjunct to the development of the San Diego system.

Q My suggestion to you is nothing new to you, you were acquainted with it, you knew that long before I did?

A That is one of the ways of developing the water of San Diego County.

Q If the City of San Diego would have a dam at the Capitan Grande Indian Reservation at the El Capitan damsite, if we didn't get any water out of the San Diego river it would be a very valuable adjunct to our system if we ever acquired the Sutherland and the Warner damsites, would it not?

A If you brought the water that way, yes, but I don't think that is the way to bring water from Warner's, I don't believe it ever will be brought that way, Sutherland water might be brought over there economically.

Q And that could be used, El Capitan Reservoir could be used and a reservoir to put water there from Warner's or Sutherland's and then into the Otay could it not? A Yes sir.

Q The City of San Diego had, in addition to its present system, a dam at the El Capitan damsite and the Warner and Sutherland with a conduit across the upper Ramona flat, it would have a water system that would supply water to a community of three or four hundred thousand people?

A Yes, I believe in doing--

Q Is not that in your estimation ideal for the City system to have?

A Yes, but I would not develop it that way.

Q This morning in your direct examination you were testifying with reference to an offer of the owners of the Cuyamaca Company to sell the Cuyamaca system to the City of San Diego, now you remember the first offer was made, Mr. Hinshaw didn't own any portions of the system, you remember that, don't you?

A I don't think he did.

Q Later on you wrote us a letter and said we would have to take him into consideration because you had sold him one-twelfth interest, you sent that letter to Major Fay?

A Yes, I think I can, can you tell me the date of that letter to Major Fay?

Q I have it here, you and Mr. Murray both had a conference with the city officials concerning the contemplated sale of the Cuyamaca system to the city?

A Yes.

Q And you offered to sell the system to the city for a valuation placed upon it by the Railroad Commission, plus one hundred and fifty thousand dollars, but of course when you made your offer to the District you didn't add that one hundred and fifty thousand dollars, did you?

A No, but I threw out hints I would like an offer from the City on the Railroad Commission's valuation.

Q You didn't put any of these hints in writing?

A No, we made our proposition, we would have considered the other seriously but the offer never came.

Q If the City bought your Cuyamaca system under your terms they would have to pay you one hundred and fifty thousand dollars more than the Railroad Commission thought it was worth?

A Not if they came back with a lower offer.

Q In other words that was a teaser? A We thought we ought to have fifty or one hundred thousand dollars on account of our selling on such a long time and small payments.

Q You asked one hundred and fifty thousand dollars on the supposition of getting fifty to one hundred thousand dollars?

A That is a common practice, is it not?

Q I don't know, I never have sold any. You say in that connection the City repudiated its contract? A It should be changed to verbal agreement, if I said contract it was an error.

Q This morning on direct examination you made this statement, as I understand it, that you asked the City to sign a contract concerning the construction of the Chollas Valley pipe line, did you ever submit any such contract?

A You misunderstood my answer, my answer was that at that date when we made a verbal agreement I spoke of the contract I was informed that it would take some time to get the papers drawn up, that we considered it for the present a gentleman's agreement, those are the very words you used, that it would be considered a gentleman's agreement, and as prompt action was necessary you asked us to sign the contract for the improvements which we had to make the next day, so as to expedite matters, and we did.

Q You did sign them the next day? A With the contractors who relined our flume, and with the Lumber Company to furnish us lumber, and then we started immediately the next day on the work that we had agreed to do as our share.

Q You say you signed contracts the next day? A It is a matter of record, I can get the contracts.

Q Did you sign the contract next day? A We signed some of them yes.

Q You say the city attorney requested you to sign contracts with somebody else next day? A I say the ^{mayor} ~~may~~ and city council and city attorney all together urged us to go ahead with our part of the improvements, the next day, and that it would be considered a gentlemen's agreement until a contract could be drawn up between the Cuyamaca Water Company and the City, so acting on that understanding we immediately ordered the work to proceed, and the next day did our part of the work in bringing the increased amount of approximately ten billion gallons of water to La Mesa.

Q I don't want to curtail your answer, I want to get somewhere but I feel I am not getting anywhere by the

character of the questions and your explanations. If you will kindly confine yourself to the question that is asked. Do you say that I, the city attorney, suggested what you are pleased to term a gentleman's agreement, and that was my phrase used at that conference? A Yes.

Q I suggested a gentleman's agreement in the place of a written contract or until a written contract could be entered into, did I? A Yes, that is my understanding, also Mr. Murray's, and that was the theory on which we proceeded to do our part of the work.

Q You heard me use that statement, a gentleman's agreement? A You used words, it would be considered a gentleman's agreement, yes sir.

Q Was there anything said at that time about a written contract? A Yes sir, that we would have one later, I understood you were to draw up the contract.

Q Did you ever see any contract? A No, you never furnished me with one.

Q What was this one contract to embody? A The taking of so much water from us within the city limits of La Mesa.

Q I understand that you have been testifying here this contract was something to the effect that you would go ahead and do a lot of work and the city would do a lot of work? A Yes, the city would lay a pipe line from the Chollas reser-

voir owned by the city to the city of La Mesa, and that we on our part would bring water from the diverting dam down to La Mesa and furnish you with all the flood waters we could furnish

Q And that is the contract that the city repudiated?

A That is the contract which the city repudiated, or rather, that is the agreement which the City of San Diego refused to ratify by contract.

Q It is what you said an agreement or contract the city repudiated, that is what you mean? A Yes.

Q As a matter of fact the Water Department of the City of San Diego, prepared plans and specifications for that pipe line? A Yes.

Q They went to La Mesa and attended, myself and all the city council tried to get a right of way? A Yes.

Q And they could not get it? A Yes.

Q They went to East San Diego and did get a right of way? A Yes.

Q And the city officials to your knowledge were very anxious to put in that pipe line and get that water? A Yes.

Q And the only reason they did not get it in was the city attorney told them it was bond money and could not be used for that purpose? A That was the last decision, but at our meeting with the mayor it was your understanding, you gave an opinion that the money could have been transferred for that purpose only on that theory would they have gone ahead.

Q You are saying you understood me to say that two

hundred thousand dollars approximately of bond moneys could be transferred from one purpose to another and that I gave an oral opinion to that effect, was that your understanding at that time? A Unofficially, yes sir.

Q What do you mean by unofficially? A You said it is my off hand opinion that this can be done.

Q Did you ever hear me say since I have been city attorney, give an off hand opinion on anything, answer that yes or no? A I certainly will swear under

oath that you gave the impression to Mr. Murray and myself this money could be transferred for that purpose.

Q (Question read) A Yes, unless-

Q Did you ever hear me give an opinion? A I never had cause to ask for an opinion.

Q Did you ever hear me give one? A I don't remember that I had or had not.

Q But I did give an off hand opinion to the effect that the city could divert approximately two hundred thousand dollars bond money from one purpose to another? A That is my impression, yes. In further explanation of my statement I want to say that was the subject of discussion at the meeting almost wholly, that there was any other method of getting the money to put into that pipe line, you were there, and so the mayor and every member of the city council obligated themselves to put in that pipe line and you didn't object to it, for that reason I believe I have a natural right to assume if for no other reason, that the money could be transferred for that purpose.

Q But you didn't have to assume that I gave an

off hand opinion that it could be done? A Yes, that is my impression, I would not be positive but you made no objection to it and knew that the mayor and city council were planning to do it.

Q I am not asking you for an argument I am asking you for an answer to my question. A That is all

I can say, if I do you an injustice I apologise.

Q You don't do me any injustice, I assure you. The city thereafter made connections with the Cuyamaca Water Company down close to Boundary street and took what water you could deliver through those pipes? A For about three months.

Q Well, as long as you could deliver it? A No, they took it -- yes, until the 1st of June, after that by resolution of the city council by a vote of three to two kept on taking it, now they have repudiated that deal and haven't paid it, not paid one dollar for any water, haven't paid one dollar for any water furnished in June, nearly six thousand dollars is still due us for water furnished in June which the City of San Diego has refused to pay for.

Q In order that the Register and Receiver may observe the character of the answer that is now made to the question and justify my position of objecting to the character of the answer, I would like this question and answer read.

Q Now, directing your attention, Mr. Fletcher, to that portion of your evidence on direct examination concerned

with the submersion of portions of the conveying system of the Cuyamaca Water Company, I would like to ask you a few questions.

4:30 P.M. January 4, 1916, Recess until 9:30 A.M.

January 6, 1916.

9:30 A.M. January 6, 1916.

ED FLETCHER, protestant, Cross Examination on behalf of the City of San Diego continued.

MR. FLETCHER: Mr. Register, could I make a remark in the way perhaps to correct a little of my testimony that has been misunderstood?

THE REGISTER: Certainly, any correction of the testimony is permissible.

A I have no desire in any way to cast any reflections on the integrity or ability of the city attorney of San Diego. I am referring to the meeting with the city council and the mayor and Mr. Murray, our attorney Mr. Sweet, ourselves as well as the city attorney Mr. Cosgrove, in the matter of the installation of the Chollos pipe line and my impression is that there was no objection made whatsoever by the city attorney when the mayor and the city council unanimously agreed to install that pipe line, and we went away from there with the impression that everything was settled, for that reason, perhaps, my reference to the fact that the city attorney, Mr. Cosgrove, gave us an offhand opinion in the matter of the bond issue transfer does him an injustice; I simply make this statement to have the record show that I don't want to insinuate that

he is in the habit of making offhand decisions, but I would like, if the city attorney will do so, to have it stipulated that the city council and mayor in good faith entered into that agreement, that is, they even advertised for bids for pipes, and advertised for franchise, applied for franchise, and eventually on his opinion that the money could not be transferred they did not live up to their agreement.

MR. COSGROVE: I think that is substantially correct, the record as it stands would even be stronger than a stipulation to that effect, because it shows the City of San Diego did as Mr. Fletcher has testified, apply for and get franchises for plans and specifications and prepared for the installation of Chollos pipeline, it was only when they called upon the city attorney for an opinion as to whether or not they could divert the bond funds to build it that they encountered any difficulty.

A Mr. Register, there is one other point I want to change the matter of dates. When the question was put to me as to when Mr. Hinshaw signed the agreement to purchase his interest in the Cuyamaca system I was under the - I had in mind the date of the contract with the La Mesa Irrigation district, which was about December 1, 1914. In error I gave that date as the date of the contract with Mr. Hinshaw, or it was I believe in October or in the fall of 1913 that I originally entered into the contract with Mr. Hinshaw to buy one-twelfth interest in the Cuyamaca, but he only paid five thousand dollars down and didn't keep up the rest of his

payments, in fact he has not paid anything since. At one time I thought he was going to let the matter drop, I assumed that by his not making any more payments. As the records will show, Mr. Murray and I in 1914 alone signed the contract to sell the system to the La Mesa Irrigation District and Mr. Hinshaw was not attached to that contract, although he had, it was nearly one year before he had become interested in the Cuyamaca but later on in talking with him I saw it was his intention to go ahead and he put up part of his assessments, in fact he put up all of his assessments that I had, voluntary assessments for improvements, and while he has not paid anything to me except the five thousand dollars originally paid yet I am satisfied he is going ahead eventually to pay for the rest of his interest in the Cuyamaca.

BY MR. COSGROVE: You sold him a one-twelfth interest for fifty thousand dollars? A Yes, for fifty thousand dollars in 1913.

THE REGISTER: Your corrections will all be properly considered in regard to your statement as to the city attorney's offhand decision. I interpret that merely that you assume he acquiesced in it. A It is my impression, I know he made no objection at the time to have the city enter into the contract.

THE REGISTER: You may proceed with your cross examination.

CROSS EXAMINATION

on behalf of the City of San Diego,

BY MR. COSGROVE:

Q I am going to ask you a series of questions, I use the statement logical place to go for water, by logical place to go for water I mean the place that will furnish an abundant supply at a reasonable cost:

Now, then, having that in mind, I would like to ask you this question: If the City of San Diego required more water than it could obtain from its present system fully developed, and if it could obtain no water from the San Diego river, where would be the logical place for the City of San Diego to go for the water, for a water supply?

A First, as an emergency, I would go to Tia Juana river, that is emergency, but the Volcan system is the next available source of supply.

Q The one thing they could get from the Tia Juana river, would be pump waters? A Yes.

Q That, of course, would simply be temporary relief in an emergency case? A Emergency relief, I understand you are eliminating the San Diego river.

Q Yes. A In your question, if we didn't eliminate the San Diego river why the San Diego river would be the place to go, I feel that the City of San Diego should acquire both immediately on the best terms possible, even to the extent of only getting an option of purchase, so as to control them all for future development as the city grows.

Q Now, right along that line, I presume it was

that same thought you had in mind when you, in testifying before the Railroad Commission in the matter of application No. 1432 and 1231 and 1482 on April 13, 1915, you said on the witness stand in deciding the question of the purchase of the Cuyamaca system looked at it from every angle possible and we saw at that time the specific value of this system, and for the following reasons, you will notice the end of the flume at La Mesa or Eucalyptus reservoirs is eight hundred and fifteen feet above sea level. You will notice that the sweetwater reservoir is one hundred and sixty-five feet above sea level, and you will notice on the lower Otay reservoir is three hundred and ninety-five feet above sea level, it will be impossible for the Sweetwater reservoir or the Sweetwater system to put water in the Cuyamaca, it will be impossible for the lower Otay to put water by gravity into the Cuyamaca only by pumping, in case it becomes absolutely necessary, I feel that it is only a question of time when the city or district will control not alone the lower Otay and the sweetwater but the Cuyamaca and the Volcan systems, that I believe is the logical outcome and the absolute necessity if this country is going to grow. The same thought you expressed today is the same when you made this statement?

A It is still my opinion, yes sir.

Q Now, referring for just a moment to the question of series of questions I asked you yesterday concerning your interest or lack of interest in the Volcan system, if my memory serves me correct, you finally said after a series of questions had been asked you, that you didn't say that

you had any interest in the Volcan system, At the hearing before the Railroad Commission, but simply in response to a question I asked in which I said that you had an interest that you responded, is that a correct statement of your position yesterday in that record?

A I can only answer in this way, that I misunderstood the question, if I have given at any time the impression that I had financial interest in the Volcan system, as I have not only a tentative working interest.

Q Now I will ask you to look at what purports to be a reporter's transcript of the evidence introduced before the Railroad Commission of the State of California, in the matter of the determination of the value of the Cuyamaca system, evidence given on February 17, 1915, and the question of Commissioner Thelen and the answer of Mr. Fletcher, which follows it, I will ask you to look at it right here. A Yes.

Q Now at that time did you not say in response to a question of Commissioner Thelen, do you think he would be satisfied, did you not give this answer: "I was in a very embarrassing position representing William G. Hinshaw and his holdings in the Volcan Company, and the time came when they were conflicting, and I felt that I either had to get out of one or the other unless I could have a thorough understanding with Mr. Hinshaw and in order not to give up my control of the Volcan system, which is so much larger than the Cuyamaca system and will render me much more profit, I sold

one-twelfth interest, half of my interest, to Mr. Hinshaw, at what I considered a very low place, and brought harmony into the family" did you not make that answer? A Yes, but the word "control" there should have been referred to as my interest, my working interest in the Volcan, and the one-twelfth interest refers, of course, to the Cuyamaca.

Q And you made that statement prior to the time that you were asked any questions on the subject by Mr. Cosgrove, isn't that correct? A Yes, it was just

a hasty remark, I mean, which did not convey the real situation, as ~~the~~ the word control might be interpreted as ownership in the property, which did not and never has existed, simply you might call it a working interest.

Q I understood you to say yesterday when we were speaking of the strategic value of this El Capitan Reservoir with reference to the present system of the City of San Diego, and with reference to the future development of the City, if the City ever did develop the Volcan that you would not bring the waters from Warner and Sutherland into the El Capitan, but you would develop it some other way, I presume by way of the Carroll damsite? A I do not.

Q You said you would not bring it into the El Capitan, didn't you? A Yes, I would like to make an explanation.

Q You can make your explanation. A I have changed my opinion on that score for this reason,

that since my last conversation with you on the subject and I think my last testimony, we have been approached by the Escondido Mutual Water Company, who have a large ditch line running from the San Luis Rey river nine miles below Warner's dam to Escondido, or within four miles of it, and for one million dollars less we can put that water today into San Diego by letting it run down the San Luis Rey nine miles and by bringing it through the Escondido ditch and their reservoir to within about forty, thirty^{five}/or forty miles of San Diego. That means that we can put for one million and a half dollars all the waters of the Warner's dam into the City of San Diego, not to exceed one million and a half expenditure, and possibly less, and that is a temporary expediency for the one delivery for ten million gallons of water daily into the system, eventually with the complete control by the City of the Sutherland and Warner's and the Cuyamaca systems and with the complete development of the power that goes with it, it is just possible that the best way would be to continue along the original plans that I have testified to heretofore, but it is only within the last three or four months that I have known or been approached by the Escondido people, with this you might say temporary or new plan of development.

Q You think it is an advisable thing for the city to control that entire system? A Absolutely.

Q You have stated here before, for example, you

stated in the hearing held by the Railroad Commission in the matter of the valuation of the Cuyamaca system, on the hearing April 13, 1915, concerning the Harroun report on the Volcan "I have been advised that it will save seven hundred thousand dollars to the City of San Diego to bring through the Cuyamaca system Warner's and Sutherland water, the elevation of Warner's being 2643 feet, the drop into the Sutherland reservoir at an elevation of 1940 feet, then bringing it to the diverting dam, which is an elevation of 512 feet, showing the power drop of nearly one thousand feet (at this point indicating on the map to the power drop of 450 feet at this point, indicated on the map by the city or district controlling these different systems, it would be possible for the San Luis Rey water system at Warner's which has a net safe yield of from thirteen billion gallons, that water can be put into sweetwater on the lower Otay reservoir for storage. Sutherland or Santa Ysabel river can be put into either El Capitan dam or into Sweetwater or into the lower Otay. I have been informed by Mr. Lee that there is storage capacity above all water catchment that is possible on that system of six billion gallons in the lower Otay," you did make that statement? A Yes.

Q At the present time the Cuyamaca Water Company has not storage capacity sufficiently large, or anything like sufficiently large to hold the water that you could carry in your flume if you diverted all the water you could?

A No, La Mesa dam is our next step of development, that will take care of most of the flood waters.

Q But still you say since you took over the system that you have been continuously and energetically improving the Cuyamaca system for the purpose of appropriating or putting to beneficial use all of the waters of the San Diego river?

A That has been our aim, we built the Murray Hill reservoir, and made other improvements I have already specified.

Q In response to the question asked you this morning and asked you yesterday morning by Mr. Robinson, you stated the municipalities that were being furnished water by the Cuyamaca Water Company, also the ranchers, I anticipate your engineers will have an exhibit which will show the consumption of water for the series of years over the entire system, will it not?

A Our engineers are not here, we have not been asked to make that statement but if you request it it is a matter we will have to look into, it is quite a detail job.

Q In view of the fact you have introduced such exhibits before I do not anticipate it will be any work at all?

A I would suggest you put in the exhibits that we furnished before the State Railroad Commission, that is the best evidence.

Q Now you stated on direct examination for a period of fifteen years ~~the only water~~ the City of San Diego got they got from the San Diego river, that is correct, is it not?

A That is my understanding, of course that is going back fifteen years, that is as near as I can estimate it without looking up the records.

Q The fact is the City of San Diego got all the water it ever got anywhere from the San Diego river until the Southern California Mountain Water Company was completed?

A Yes, they bought from private corporations until 1901 all the water they used, then after that they pumped, this is part of it,, then the rest we furnished, or the San Diego Flume Company.

Q But it all came from the San Diego river? A Yes.

Q So that this ~~attempt~~ of the City of San Diego to get water from the San Diego river is not a new, novel project, is it?

A No.

Q Now concerning the cost of the construction of the El Capitan dam together with the acquiring of the reservoir site and rights of way for pipe line and the construction of the pipe line to the City of San Diego, I believe that you stated it would cost the City, after delineating the number of items, between four and five million dollars?

A I said between three and four million, assuming that Mr. Cromwell's figures, two million for the construction of the dam and pipe line were correct.

Q I don't recollect your assuming that proposition, did you assume that?

A I did assume that.

Q You said that this cost makes the El Capitan prohibitive to the City of San Diego?

A That is my opinion on account of the lack of water from the San Diego river watershed, on account of the finances of the city.

Q Now when you were introducing evidence, or when evidence was being introduced on your behalf before the Railroad Commission for the purpose of determining the valuation of the Cuyamaca system, one item to which valuation was attached, was the property located at the El Capitan dam site, was it not? A Yes.

Q Do you remember that one of your witnesses, Mr. Lee, whom I believe you said is going to testify in this case, introduce in evidence an exhibit showing the cost of construction of the dam at El Capitan? A I have recollection of it but the exhibit is the best evidence.

Q I am not asking you about what is in it, I am asking you if you recollect? A It is my impression that he did.

Q Did you look at that exhibit in order to determine what valuation, in order to determine what he placed the cost at before you made this estimate of three or four million? A No, I assumed Mr. Cromwell's estimate of two millions, and Mayer Capps.

Q You don't recollect that Mr. Cromwell said he included in his estimate the cost of acquiring all private land and moving the Indians and the cost of rights of way and all incidental expenses? A That was not

my understanding of his testimony, I might have been away when he testified to that.

Q If the exhibit introduced on your behalf before the Railroad Commission, at which time you were placing a valuation on the Cuyamaca system, the exhibit prepared by Mr. Lee, showed that that dam could be constructed and reservoir acquired, and Indians moved, and private land acquired, and a pipe line built for nine hundred thousand dollars, would you be surprised? A I would, Mr. Lee,

however, is not an engineer giving estimates of value, of cost of construction of dams, and any exhibit that he introduced I don't believe the estimates were made by Mr. Lee.

Q So then Mr. Lee, according to your testimony at the present time, is not a competent witness on valuation of construction of dams? A I never have heard him qualify as an engineer who has put, who has given estimates on the cost of construction.

Q You heard him testify before the Railroad Commission, as to the cost of constructing the Cuyamaca, didn't you? A No, I have always understood Mr. Lee is more of a water expert, I am sure the El Capitan dam was never estimated on the basis of a height of one hundred and sixty feet.

Q We will get to that later. The period of time, Mr. Fletcher, elapsing between the first and the second hearing

before the Railroad Commission, in the matter of the Cuyamaca valuation, was a period of approximately two months, from February 17th to April 13th, was it not? A I think

it was continued, was it not?

Q Yes, continued for a period of two months.

A Yes.

Q As a matter of fact Mr. Lee was called upon at the first hearing to make a detailed statement of the cost of constructing a dam at El Capitan, and had that period of two months in which to prepare at the second hearing and submit the exhibit marked Cuyamaca's Exhibit No. 47, showing his estimate of the cost of construction, isn't that correct?

A I will take your word for it, I don't remember.

Q Do you remember Mr. Stearns, your attorney, asking Mr. Lee while on this question "Mr. Lee, at the last hearing we were requested to furnish an estimate of the cost of El Capitan Reservoir, have you made such an estimate" to which Mr. Lee answered "Yes, I have made an estimate on the reservoir and dam" do you remember that?

A If it is in the record that is true.

Q How do you remember Judge Andrews who represented the District, asking this question: "This damsite is located on the El Capitan Indian reservation, is it not" to which Mr. Lee answered "No, it is located on privately owned land, or, rather, land owned by the Cuyamaca Water Company.

Then this question: "And if a dam were constructed would it at the ordinary height flood any part of the Indian Reservation" to which Mr. Lee responded "I think at most heights shown on this petition it would flood more or less all of the land within the Reservation." And then this question "Your estimate does not include an estimate of acquiring a right to flood this land" to which Mr. Lee responded "Yes". Then this question: "It includes that expense" to which Mr. Lee responds "Yes," "The lands are owned by the government of the United States" "Yes." "Have you made some estimate of the expense of getting the Indians off these lands and getting them on to other lands that they would be satisfied with?" A. "I have made an estimate" which covered in general the expense of acquiring these rights. Now then, I will ask you if that exhibit showed that a dam at one hundred and forty contour line could be constructed and all those rights acquired for the sum of nine hundred and nine thousand dollars, would you say that your witness was not worthy of belief on that subject? A I would not.

Q Then would you say that your estimate of three or four million dollars is something above the estimate of reputable hydraulic engineers? A I would not, for this reason, that the difference one hundred and forty feet in height and one hundred and sixty feet in height, there is a very material difference, it would probably cost three or four hundred thousand dollars to put it twenty feet higher at that point than at the height of one hundred and sixty feet, which Mr. Sackett's plans call for, one hundred

and forty feet which you say that Mr. Lee's estimate calls for, the location of the ground is such as to warrant a much larger expenditure.

Q Would three or four hundred thousand dollars added to nine hundred thousand dollars make three or four million dollars?

A No, I would like to explain that.

Q You have answered my question, you can answer that in response to a question asked by your counsel.

Q You remember Mr. Mancha, the attorney for the Government, asking you some questions about the character of the dam you expected to build at El Capitan, do you not?

A Asking me?

Q Yes.

A I do not.

Q Don't you remember stating to Mr. Mancha that you expected to build a small reservoir at El Capitan, which would only flood a few acres of the Indian lands?

A Yes, but you said the character of the dam, I thought you meant concrete rock or earth.

Q You remember marking out on the map that Mr. Mancha show you a point just opposite south Fork conflux with the San Diego river, the portion that would be flooded? A Yes, that was the estimate, we had the records introduced later.

Q Was that the estimate based on the one hundred and forty foot dam?

A No.

Q You think the one hundred and forty foot dam would flood further up than you indicated? A Indeed it would.

Q Does not this plan of construction of the Cuyamaca system which you have been talking about all during this hearing contemplate the erection of a one hundred and forty foot dam at the El Capitan, yes or no? A No, not if I had my way about it.

Q Don't answer any more then. Do you remember your witness, Mr. Lee, being on the stand at the hearing conducted by the Railroad Commission of the State of California on April 12, 1915, in which he appeared and was sworn as a witness and testified as an expert hydraulic engineer for the Cuyamaca Water Company? A He has qualified as an engineer on water matters, but I never heard of his being identified with any construction work.

Q Don't you consider him one of the best hydraulic engineering witnesses in this section of the State?

A If hydraulic engineering includes all, everything pertaining to water and water development, yes.

Q Did you ever have a case to present before the Railroad Commission of the State of California barring the one case where Harroun was your only witness, where you didn't call Mr. Lee?

A You are right.

Q Do you remember Mr. Lee testifying as follows at that hearing: "By that I mean development 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 reservoir" to which Mr. Lee responded, "That includes the building of a reservoir at the diverting dam for regulation purposes, a reservoir at Conejos reservoir

site on the South Fork for reservoir purposes, and the construction of the El Capitan dam to a height for one hundred and forty feet, and the raising of La Mesa dam to a height of one hundred feet, and the duplication of the South Fork siphon to the capacity of the South Fork feeder" Do you remember that man stating that on the witness stand? A If it is in the record it is so.

Q He stated it, didn't he? A Yes, but since then we have changed our plan of development, we are going to build Boulder Creek reservoir instead of raising the El Capitan dam as high as originally planned, that is, providing we don't sell to the District, of course.

Q You talk about being in a position to furnish five million gallons of water per day to the City for the next six months, you mean by that if you have sufficient rainfall in the back country that you have a carrying capacity in the flume? A No, I mean we will guarantee to furnish water, either by gravity or pump from our pumping plant.

Q Where are those pumping plants you would use in case there was no rainfall? A The El Capitan reservoir site.

Q Let us take the one on El Capitan Reservoir, do you think this permit you have got from the United States Government to pump temporarily on the Indian land could be considered as allowing you to enter into a contract with the City to deliver five million gallons of water a day and de-

pend on that pumping plant? A I said the El Capitan Reservoir which we own.

Q I am asking you a question about the Indian Reservation pumping plant? A I haven't answered that.

Q I would like you to answer that. A In an emergency we would use it until stopped by the United States Government.

Q Do you think if you entered into a contract to deliver five million gallons of water to the City that that would be any such emergency proposition as you talk of? A I said if the City contracted with us for five million gallons daily and we needed to operate the pumping plant in the Indian reservation in order to furnish the City with water, that we would do it until stopped by the United States Government.

Q I will ask you if you think that that permit would justify you in taking that action under the Indian lands up there? A We would pump water from the Indian Reservation if we needed it until stopped by the United States government.

Q You refuse to answer whether you consider yourself justified? A We consider ourselves justified, yes, if we are giving valuable consideration in furnishing the Indians water it is an added protection to them to have it there, when there is a shortage of water if we can pump and furnish the Indians water when we could not furnish it by gravity.

Q Supposing the gravity water runs out? A Yes.

Q Then you would have to look to the pumps to furnish this five million gallons to the city? A No such question exists.

Q If you didn't have the gravity water you would have to use pump water, yes or no? A Yes.

Q If you used pump water you would have to use your pumps at El Monte and Chocolate and the Indian school-house? A Yes, but our reservoirs are filled, winter is coming on, we are absolutely sure of a continuous rainfall and run off, if we had no water in the reservoirs, no water should fall from above and we had a contract with the City to furnish it with five million gallons of water daily we would then have to resort to our pumping plants.

Q All your pumping plants have not got a capacity of five million gallons a day? A Yes, in excess of that.

Q Where are they? A El Monte.

Q How much has El Monte? A Three and a half million.

Q Do you remember testifying on that same proposition, using three million? A We exceeded that several times, the capacity is actually three and a half or four million gallons, the capacity of the pumps are three and a half or four million gallons, but we were only pumping three million gallons daily, we can speed it up to four.

Q Yesterday you said three, today you say four?

A In an emergency we will make it four.

Q In a greater emergency can you make it five?

A There is a limit, even to pumping plants.

Q Mr. Mancha asked you whether or not there were any reports of the run off at El Capitan, if Mr. Sackett had made any for you, and you said you didn't know of any if he did make them you didn't have them, Mr. Post made one, however, didn't he? A Of the run off at El Capitan?

Q That is what I said. A I believe he did, both he and Mr. Lee have been working together on it for years, on the run off of the San Diego river including the El Capitan damsite.

Q You didn't tell Mr. Mancha so did you? A I don't know what I told Mr. Mancha, I am telling you the facts now.

Q Were you not telling him the facts then? A Yes.

Q Now, Mr. Fletcher, you stated if this permit were granted to the City of San Diego, that you would be hampered in the building of the reservoirs on the upper San Diego river shed? A Yes.

Q Will you please explain what you would be hampered? A With the city having a permit to flood Indian lands by the United States Government below where we are going to construct our reservoirs in the mountains, when we do, if we do, the next step of the City of San Diego would unquestionably be to enjoin us before com-

mencing the construction of these reservoirs, on the theory they were going to put one on the same river below, and it would be another source of litigation.

Q Well, now, do you want this record to convey the idea that you would like to have the Government deny this application to the City in order to deny to the City of San Diego recourse to the courts in the event it desires to go into the courts to establish its rights? A I want the record to show that the Cuyamaca Water Company have put in seven hundred and fifty thousand dollars in good faith to develop the waters of the San Diego river, and that we have a right to demand protection for our investment, the fact that we furnish three cities with water too, we want our consumers protected, not alone in their immediate demands but in the future, we think it is small business for the City of San Diego without one dollar invested to come and accept Hamilton's water filing which never cost them a cent, hampering and costing us thousands of dollars to clear the record so we can go ahead with our future water development, if we do not sell to the Tamesa Irrigation District.

Q I want you to answer my question, not by making long statements which you can make when your counsel puts you on the stand for further redirect examination. Mr. Fletcher, have you been denied recourse to the courts in the event of disputes with riparian owners, are not the courts of San Diego County, and the courts of the State of Cali-

ornia open to you and your copartners? A Yes.

Q Has the City of San Diego ever instituted a suit to hamper you in any manner? A No, but it is doing it now.

Q In other words, the city, in an attempt to get water which you admit it needs, you consider that is hampering you? A We consider----

Q Because they don't go and buy it from the Volcan that you own, so you can make a bigger profit than selling the Cuyamaca?

MR. ROBINSON: Objected to on the ground it assumes a fact not disclosed by the evidence.

MR. COSGROVE: I submit that the record shows, the testimony of the witness before the Railroad Commission in two or three places, it shows that the witness had testified that he would make a bigger profit by the sale of the Volcan system.

MR. ROBINSON: There is nowhere in this record or any other record that shows that Colonel Fletcher owns the Volcan system.

Q If you have rights of appropriation on the San Diego river, that is the dams that you expect to build are further up the river than the El Capitan, are not they? A Yes.

Q We could not catch any water until you let it by, could we? A No sir.

Q If we filled our reservoir it would not flood any of your dams or reservoir sites, would it?

A None of those in the mountains.

Q Would it flood any of them anywhere?

A It would flood our--- I don't know what you are talking about, we own the El Capitan damsite and the lands going to be flooded for three-quarters of a mile we own it, so you have got to condemn our damsite if you want it before you can get it, you haven't anything to build a dam on yet.

Q You say that you are very familiar with the boundaries of El Capitan Indian Reservation? A Yes.

Q Did you ever see a map of it prepared to show the boundaries of El Capitan Indian Reservation? A Yes, many times, the Geological Survey map I believe shows it.

Q Have you seen the map that accompanies the Proclamation of President Wilson, of date of August 31, 1915, which defines the boundaries of El Capitan Indian Reservation?

A I have not.

Q As a matter of fact what you know about the boundaries of the Indian Reservation is simply having seen maps with the purported boundaries marked on them? A I have seen the maps of the Geological survey, I have also seen Mr. Mancha's maps.

Q When did you see Mr. Mancha's maps? A At the last hearing he showed them to me one day, I think they have been shown in court here.

Q Where do you mean in court here? A Here, yes sir.

Q Have you talked with Mr. Mancha about the boundaries of the El Capitan damsite or the Capitan Grande Indian Reservation?

A No sir.

Q Since I have shown him a copy of the Proclamation of the president?

A Never talked with him on the subject at all.

Q If you are so familiar with the boundaries of the El Capitan dam and the Capitan Grande Indian Reservation, I think you would be conferring a pronounced favor upon myself at least, and perhaps Mr. Mancha, if you will help us out on the map?

A I believe that was traced on the map of Mr. Mancha.

MR. MANCHA: In answer to that I desire to state in the record that the City attorney has a copy, or a copy has been delivered to him by the Indian Service, of what is termed a correct map of the Capitan Indian Reservation, and that the Executive order referred to by the attorney is not correct, but that the map which the witness, Mr. Fletcher, has seen and a copy of which the city attorney has, which will later be introduced in evidence, is a correct map of the Capitan Indian Reservation, and the Executive order of the land described therein is an error, it is so reported by the Indian Service.

MR. COSGROVE: The city attorney may have a copy of that map that you refer to, but didn't I give that back to you when I gave you the Proclamation, didn't you hand it

to your engineer and say you would have him check it up for me?

MR. MANCHA: No sir, I believe I delivered to you the Proclamation that you loaned me, together with the map, I have been informed that another copy was sent to you for which you wired while you were in the field at San Diego, a copy of the same corrected map made by the Indian Service, I believe that two copies have been delivered to you.

MR. COSGROVE: Well, you are very greatly mistaken when you say two copies have been delivered to me, you are also mistaken when you say I wired for a copy of the map, I don't know whether it was some representative or not.

MR. MANCHA: I don't know who wired, perhaps I am in error.

MR. COSGROVE: I will say this, the Proclamation of the President, of course, is the latest Proclamation, the Proclamation of August 31, 1915, it is the Proclamation that was handed me by the Surveyor in charge of the office of the Cleveland National Forest Reserve, and when he handed it to me, when it purported to be a copy of the Proclamation of the President I feel that I am justified in assuming it is correct. I will say further, that after the map which was prepared at your request in the office of the Indian Department was shown to me, that I then called this Proclamation to your attention, so if there was any discrepancy it might be shown, then I allowed you to take that Proclamation to do it, for I don't know how long, maybe a day or a few hours,

but the map was prepared by the Indian Department and showed a pronounced discrepancy as compared with the map attached to the president's proclamation; it seemed to me there was some mistake somewhere, that is the reason I presented the Proclamation to you so the correction could be made. Since that time if anyone has stated to me which is correct I had entirely forgotten, entirely overlooked, your statement now is the first knowledge I have as to which is correct, of course I knew one was correct and the other incorrect until you just made the statement now I have no knowledge of anyone informing me which one was correct.

MR. MANCHA: I have a distinct recollection of delivering back to you the Proclamation while Mr. Bauer, assistant irrigation engineer of the Indian Service at the same time handed to you in my presence, if I am not mistaken, a map made by the Indian Service of the Capitan Indian Reservation marked thereon, isn't that correct, Mr. Bauer?

MR. BAUER: Yes sir.

MR. COSGROVE: I don't understand if I had a copy of the map I have it, if I have not I presume you gentlemen would be glad to give me another one, the only object of handing maps back and forth, handing the Proclamation back and forth was we would have a correct description of the Indian lands shown on the exhibit, which the city had introduced, outside of that there is no other issue in the matter, is there?

MR. MANCHA: I think not.

THE REGISTER: If the Indian Service will kindly furnish him with another map if he don't find that one I think it will straighten matters up considerably.

Q You remember on cross examination by Mr. Mancha concerning the question of removing the Indians in the event that the permit were granted, you said that it would then not be a habitable place, that it would not be practicable to leave any Indians there, you remember making that statement?

A Yes, there would not be tillable land for the Indians that they are now using, is what I meant.

Q Did you not also say that they could not be left there for sanitary reasons?

A I said it probably was better that they not be left there, as I understand all Eastern cities are trying to clear off their watershed of any residents wherever they can.

Q You remember when you introduced your evidence with the Railroad Commission as to the valuation of your system, and particularly as to the valuation of your holdings, as to the El Capitan damsite, you remember Mr. Lee in response to a question I asked him to this effect "Are you familiar enough with the outline of the land at the dam at El Capitan to say whether or not it would be necessary for sanitary and other purposes, to remove the entire number of Indians now resident on that Reservation; to which he replied "I certainly think it would not be necessary for sanitary

purposes."

A That record is undoubtedly true.

Q He made that statement, didn't he? A If it is in the record, yes; of course a difference of twenty feet in elevation would eliminate the use of probably four or five miles of the Valley in which the Indians live, as a matter of fact practically all the Indians are at the extreme north end of the Valley, and the lands a dam one hundred and forty feet in height would flood would not cover many if any of the inhabitable lands, the farming lands.

Q Would it not run several miles up the canon?

A Yes, a one hundred and forty foot dam would, run probably a mile and a half or two miles, I don't know the records are the best evidence of the surveys, if we only built a small dam as will be introduced in evidence here shortly by us it will only flood about one half mile of Indian lands.

Q Do you remember Mr. Lee being asked this question: "Have you taken the trouble to ascertain what tillable and available land of the Indian Reservation would be flooded by the erection of such a dam? A A dam one hundred and forty feet would run several miles up the canon, most of the tillable land is in the floor of the canon."

A He probably made that statement, the record is the best evidence, he presented that statement at the request of Judge Haynes in relation to the construction, the cost of construction of the El Capitan dam, it was a matter of infor-

mation Judge Haynes asked for, it was not anything to use, prepared hurriedly, hastily simply as a matter of information to Judge Haynes.

Q He had two months to prepare it? A The records show we didn't make any surveys or new ones, it was an estimate based on the information in the office.

Q You didn't make any surveys? A Not that I know of, to comply with the request of Judge Haynes, Mr. Post may have done it without my authority, of course we had already made surveys at the El Capitan damsite and had the records in our office.

Q You spoke about the location of a dam and reservoir on the San Diego river down at what is known as the Old Mission dam, did you say that you considered that a practicable reservoir site for the City of San Diego?

A It is a natural damsite if it is built where the Mission dam itself is now, just below the Fanita ranch, it would flood several thousand acres, or one thousand or more acres of very fine alfalfa land.

Q Didn't you say in the presence of Mr. Roche and Mr. Mitchell last Sunday in the automobile you considered it was not a practicable proposition by reason of the valuable land it would flood?

A Yes, but by putting a dam lower down near the Old Mission you could put one in there that would eliminate that excessive cost for

reservoir purposes.

Q I understood you to say in direct examination that if your development is completed and the riparian owners below the El Capitan damsite are taken care of, there would not be a drop of water in the El Capitan? A I don't think there would be.

Q Do you anticipate building a dam there? A If my estimate is correct we would build there but the El Capitan dam would be the last one that would be built, so if there was any excess flood waters after taking care of the riparian owners we would build a small dam there.

Q You did say if the riparian owners below were taken care of after your development there would be no water? A I don't think there would.

Q Then the granting of this permit would not do you any harm?

A Yes, because the next step would be for the City to block our plans for the development of water by constructing dams in the mountains.

Q By that you mean the City of San Diego would go into court and get an injunction to prevent your development?

A That is my opinion, we claim the waters of the San Diego river, you would also claim as much excess water as you got.

Q You don't want to deny us recourse to the courts? A No, but we have, we control all the waters of the San Diego river today by reason of our water filings and our development.

Q You mean by that you have a right to it, you

have a prior appropriation?

A Yes.

Q Don't you think the courts would protect you in this prior appropriation?

A Indeed I do, but this gives you a shadow of a title to contest our rights, which if the permit of the United States Government which you are asking for through the Hamilton application is denied, I do not believe that the City of San Diego's position will be as great as it otherwise would.

Q In other words, if the City does not get this permit they won't be in a position where they can go into court and settle the question of rights for water for the San Diego river?

A Yes, you have the same right to go into court and condemn our Cuyamaca system and bring up the question of pueblo rights if you want the waters of the San Diego river.

Q You feel if this permit was granted the City would be in a position to place before the courts for determination the question of the rights to the waters of the San Diego river, don't you?

A Yes.

Q You don't want them to do that? A Yes, it is a recognition by the United States Government in a way that the City of San Diego has rights in the San Diego river, it gives them a right which we consider is an injustice to the Cuyamaca Water Company after we have spent years of time and seven hundred and fifty thousand dollars invested to protect those water right and protect consumers to whom we furnish water.

Q yesterday I spoke to you about a protest that was filed by James A. Murray, William G. Hinshaw and Ed Fletcher with the Secretary of the Interior, that was verified by you before Lou B. Matthews, a notary public, July 24, 1915, you remember filing that protest, do you? A That was drawn up by an attorney, I remember signing it, I don't remember whether I read it over carefully, I remember signing it.

Q Do you mean to say you signed under oath a protest to this application and had it filed with the Secretary of the Interior without reading it? A I read it over hastily, I left those matters to my attorney to draw up and relied on him to have everything correct.

Q Now the first paragraph in there contains a statement that you and Mr. Murray and Mr. Hinshaw were partners for a period of five years last past, how was that typographical error, should have been two years? A That is approximately two years.

Q Down in the next paragraph you make this allegation under oath, "that heretofore on the 1st day of June, 1910, and for more than twenty years prior thereto, the San Diego Flume Company, a corporation organized and existing under and by virtue of the laws of the State of California, was the owner and in possession and control of the actual, and exercising undisputed rights to the use of all the natural flow of the waters of the San Diego River, amounting to eleven hundred miners' inches more or less, and was on said 1st day of June, 1910, and had been for more than twenty years

prior thereto actually applying all of said waters to a beneficial use" do you remember reading that allegation and then verifying it?

A That sounds familiar, I guess it is all right.

Q How much water is eleven hundred miners' inches?

A How much water is eleven hundred miners' inches, is eleven hundred miners' inches, do you mean in million gallons?

Q Yes, million gallons. A Fourteen million three hundred thousand gallons approximately. In explanation of that, that allegation refers only to the natural flow of the river which runs only about five or six months a year, it does not, neither was it our intention to interfere with or to include all the flood waters of the river in making that allegation, simply the natural flow of the stream.

Q But you do say in this protest under oath that you had been putting to beneficial use for a period of to exceed a period of twenty years, you and your predecessors, to exceed fourteen million gallons of water a day?

A No, for the natural flow is not even for six months of the year, it starts in the winter about the 1st of December, of course we take what we can after the rains are over in the spring, it dwindles from eight or ten million gallons a day to July say we take all the natural flow of the stream.

Q You figured out eleven hundred miners' inches as a little bit more than fourteen million gallons a day?

A Yes, that was the capacity of our flume.

Q What do you mean by saying you had been for more than twenty years prior thereto actually applying all of said water to a beneficial use? A We had diverted all the natural flow of the stream.

Q Which you say is eleven hundred miners' inches which you say fourteen million gallons a day? A When the water was there we diverted it unless there was some unforeseen trouble came up, such as the rebuilding of a trestle or a wash out, a break in the pipes, or unless all the reservoirs were full.

Q Well then this statement under oath for more than twenty years last past you have been continuously applying eleven hundred miners' inches of water, that is subject to several modifications, is it not? A That is drawn up by our attorney, of course the statement is absolutely correct, we have taken all the water that we could get and put it to beneficial use, and the records as to just how much we have taken, our records are to be had, we presented to the State Railroad Commission I suggest they are the best evidence.

Q In paragraph 4 of this same verified protest you make this allegation, "that in addition to filing said application this protestant for the purpose of making available and utilizing the said flood waters of the San Diego river have raised the side boards of the flume used by them in carrying the waters of said river, and have consequently enlarged the carrying capacity of said flume and placed said

flume in a position where it can carry and utilize said flood waters" now you know as a matter of fact that your flume, taking into consideration your siphons, can't carry to exceed the carrying capacity of the smallest siphon, don't you?

A Yes, but with this explanation, that the South Fork diverting flume comes in south of the water from South Fork Creek, comes in south of the South Fork siphon, so any water that we bring from the diverting dam is reinforced and increased by the flow of the South Fork Creek and the chocolate pipe line was made considerably larger on that account.

Q How what is the size of the Chocolate siphon?

A Forty-two inches.

Q Its carrying capacity a little better than twenty-two seconds feet? A Yes.

Q How the capacity of your flume, even looking at it from the most favorable view point, is measured by the carrying capacity of the Chocolate siphon? A Yes, until we duplicate it.

Q What I am talking about is now. A Yes.

Q How your flume, including your siphons have a carrying capacity of twenty-two second feet, if that is correct, the carrying capacity of the Chocolate siphon?

A Yes, with the exception we can add any water we desire to pump from the El Monte pumping plant which is below and nearer San Diego than the Chocolate siphon.

Q But you say under oath in the protest filed with the Secretary of the Interior that you have consequently enlarged the carrying capacity of said flume and placed said flume in a position where it can carry and utilize the flood waters?

A Yes.

Q By that you mean that you have changed that flume so that at one siphon you have got a carrying capacity of twenty-two odd second feet and at the other siphon you have a carrying capacity of sixteen odd second feet?

A Yes, but by spending eight or ten thousand dollars more we will remedy this entire situation, we found out the necessity of enlarging the two pipe lines and we haven't done it until this time, that will be one of the next things we will do.

Q You didn't think it was necessary for you to make this statement in this protest? A That was drawn up by Mr. Stearns, our attorney.

Q You say in paragraph 6 that the water rights claimed by the protestants, Murray, Fletcher and Hinshaw and their predecessors in interest, have been for over twenty-five years recognized and undisputed, is it not a fact that the water rights of the Flume Company, the water rights of the Cuyamaca Company, have been subject to continual dispute in hearings before the Railroad Commission and also in the courts, is it not a fact that there are injunctions and proceedings pending prohibiting you, or attempting to prohibit you from pumping from the beds of the San Diego river, is it not a

fact you have a bond up under which you are allowed to pump?

A You have put three or four questions in one and I will answer them all no, with the exception that for twenty-five years, nearly thirty years, there was no question about our water rights until what you refer to as the opposition of the riparian owners to our pumping from certain land, which pumping plants were installed on the order of the State Railroad Commission, the preliminary trial last year three or four days, it took place, and the Court refused to allow the injunction and asked us to put up a thirty thousand dollar bond in case of damage, that case was heard nearly two years ago and the case has never been set down for trial since then.

Q You say in paragraph 7 under oath "that there are now no unappropriated waters of the San Diego river whatsoever, and were none at the time of the making by said Hamilton of the purported filings mentioned and referred to in connection with the rights of way sought by him"

A I reiterate that fact with this explanation, and say that the statement is true when we will have completed our plan of development of the system, if we don't sell it to the La Mesa Irrigation District there will be no waters, that the Cuyamaca water Company will have controlled them all by conservation and diversion through our water filings and our continuous work.

Q Now you have applied to the Land Office for permits, to the Department of the Interior, for permits

on the Cleveland National Forest in the Capitan Grande Indian reservation, have you? A Yes.

Q You know what these permits permit you to do and what they don't permit you to do in a general way, don't you?

A Yes.

Q Now this permit that the City of San Diego is seeking as assignee of Mr. Hamilton, is a permit to flood a portion of the Cleveland National Forest reserve and a portion of the Capitan Grande Indian reservation, is it not?

A No, your application does not ask to flood our land as I see it.

Q (Question read.) A Yes.

Q In other words, we are not asking the Government to give us a right to flood your private property, are we?

A No, but you will have to.

Q Never mind what we will have to, you don't understand that this permit gives us a right to take your private property, do you? A I understand that that is the next step.

Q If the Government gives us a permit that would not justify us in going up there and squatting on your land, would it? A No, but it gives you---

Q Just say yes or no. A No, but it gives you a hold on the San Diego river that might be a sort of a tax title hold, which you could in court, would give you some pretense of making a showing that you had some rights on the river.

Q You don't want to get us into court to show what rights we have.

A No, we have too much invested, we want to develop the water according to the original plan.

Q Confining yourself strictly to the question, you know that this permit from the Government, if it were granted, would give us nothing more than a right to flood Government land?

A Yes, a sort of a recognition that the Hamilton water filing, which we absolutely consider is a fake and worthless.

Q Your Chocolate siphon is on private property?

A Yes.

Q Your South Fork siphon is on Government property?

A Yes, I think so.

Q Your South Fork siphon would be flooded by a permit granted by the Government?

A Yes.

Q But the Government permit would not give us a right to flood the Chocolate siphon would it?

MR. MANCHA: I object to that question as calling for a conclusion of law, and a number of these questions that have been recently asked do call for a conclusion of law, I hardly think this witness should be called upon to state what rights the City of San Diego would have if this application were granted, as that is a conclusion of law.

MR. COSGROVE: I will say in answer to that, I am asking these questions because the witness has verified a

protest in which he makes the statement and I just wanted to find out if he knew the effect of this statement he was making under oath and filing with the Secretary of the Interior, I expect to follow it up by asking him what he meant by the allegation in his verified protest, that the permit would do such and such.

THE REGISTER: Your objection is you deem he is not qualified himself to answer these questions of law, is that what you mean?

MR. MANCHA: I just want to make an objection in the record.

Q (Question read.) If you can't answer this question you can say no.

A It would eventually lead to flooding our land, if you proceed along your present lines of acquiring the El Capitan dam site and building it.

Q But still you say in paragraph here of your first verified protest, that the granting of said application of said Hamilton and the construction of the dam at the location proposed by him, will result in the submerging of at least one mile of conduit; you mean by that that if he went ahead and condemned and acquired your property where your Chocolate siphon is, that that would result, but you don't mean to convey the idea the granting of the permit would result in flooding your Chocolate siphon, do you?

A No sir.

Q Now you say further on in this same paragraph

"It would be absolutely impossible for this protestant to furnish a supply of water to consumers under their system" you say it would be absolutely impossible for this protestant to furnish a supply of water to these consumers. Now if the Government would grant us that permit would that make it impossible for you to supply the water? A Mr. Stearns

drew that up, his assumption in making that statement is that providing the dam is built, of course if a permit was simply granted and nothing further done, why of course as long as we could continue business and transfer the water to the city through this siphon, it is only after the dam is built and the lands and siphon flooded that would put us out of business.

Q Well, now, even if the siphons were flooded, the siphons are all underneath the ground are not they? A Yes

Q If the siphons were covered over with water on top of the ground that fact would not prevent water from passing through them, would it?

A Well, there is always danger of the city tapping those pipes and taking our water out.

Q If the city would still have water you would furnish it to the consumer? A If there was a leak we could not repair it unquestionably we would have to build our siphon around.

Q It would require a period of four or five years as you have stated to get this thing in such a stage of construction to deliver water to the city?

A I think it would take at least five years.

Q During that time if the Government would grant us this permit do you think that we could comply with the requirements of the court with reference to the protection of your property where you have got a siphon? A If you have the money, yes.

Q If we haven't got the money we can't do anything, if we haven't the money we won't do you any harm.

A I want to make this explanation, we have three cities to furnish water to, the courts would have to determine whether their supply was going to be limited to their present amount or not.

Q In other words, the court would have to protect your consumers the same as they would protect the city?

A Yes.

Q And you would have no doubt your consumers would be afforded the same protection in the courts as the city?

A I think they would.

Q The flood line of the proposed El Capitan reservoir a height of one hundred and sixty feet would not flood any portion of the open box flume, would it? A No, I think it would flood a part of the right of way which we acquired from the United States Government by easement.

Q Now you say in your protest filed or verified before Lou B. Matthews on the 13th of August, 1915, verified by Ed Fletcher, that you have put to beneficial use by far the larger portion of the run off of the watershed of the San Diego river, well now that is certainly not true, is it?

A Certainly, we take all the natural flow and a greater portion of the run off which we store in Cuyamaca Lake, in La Mesa Lake, we fill those lakes each year, the Murray Hill and Eucalyptus all filled from flood waters.

Q Did you see the Government's Exhibit that was introduced by the City showing at Santee last year over twenty-eight billion gallons of water passed and went to the sea?

A Yes, but that is an exceptional year, that is not one out of twenty hardly, your own witnesses testified for five years the river didn't run a drop.

Q During those five years you did conserve and put to beneficial use the greater portion of the waters of the San Diego river?

A Yes, we took all the waters those five years.

Q What do you mean by this statement in this same verified protest "Your protestants admit from an engineering standpoint the waters of the San Diego river is susceptible of development, so that great quantities of water now yearly running to waste in the Pacific ocean could be put to beneficial use" you have already stated you took all the water in the prior protest, as I understand it?

A I did not, I said we took all the natural flow and a greater part of the run off, and we concede that there is some considerable flow which goes into the ocean, but when our plans are fully developed, our reservoirs built, as we have outlined, there will be mighty little if any water for others, except the riparian owners below who must be

protected.

Q If the City is denied this petition and you are allowed to go ahead and do go ahead with all development which you anticipate, and get all the permits which would be necessary to get, you will be able to supply water to the city yourself much more economically than the city can get it themselves?

A The La Mesa Lemon Grove and Spring Valley Irrigation District has developed very rapidly but we would be glad to give any excess water to the city, we feel sure, we know, I know as a matter of fact, my personal opinion, when we sell the city water at ten cents a thousand gallons as we have in the past it is cheaper than they can develop it at the El Capitan damsite.

Q (Question read.) A Yes sir, with the State Railroad Commission's consent we would furnish you water cheaper than you can get it yourself, because we have our distributing system and conduit line built to the city limits of San Diego, and while your own engineer has stated it will cost seven hundred and fifty thousand dollars to install it, it will be a duplication of our present system practically.

Q At the present time you are trying to sell the Volcan system to the city? A No, there is nothing before the city at the present time.

Q What do you mean in this protest by this statement "Your protestants allege that negotiations for the

acquisition of said system above referred to as the Volcan Land & Water Company, by the said City of San Diego, have been under way for some time, and that the Volcan Land & Water Company has made the said City of San Diego a very advantageous offer, looking to the purchase of an option of said system by the said City of San Diego, and the development of said system by the owners thereof, and to deliver to said system, ten million gallons of water per day at a very low figure, which said offer would require only the issuance by the City of bonds of an expense of one million million and a half dollars par value, that by the acceptance of this offer said City would be able to acquire at a low price more than sufficient water for its present needs." So the City does and is at the present time in need of more water?

MR. ROBINSON: What is the date of that, Mr. Cosgrove?

MR. COSGROVE: It is one of our protests, 13th of August, 1915, I expect if there has been a marked change in it the witness will be able to say so.

A The city has taken no action on that, we have considered their proposition off by their not taking any action, however, I will say this, that we shall probably make the city an offer reducing that price, or, rather, the price the city shall pay as first payment, we shall reduce it from one million and a half to one million, probably make the city another offer.

Q Is that on the theory the city needs water?

A It is along the lines of the plans of many business men of San Diego to have the city control all the water in the County.

Q Do you think the city needs more water now?

A They should control every reservoir site immediately by buying up unit by unit as water is needed develop it.

Q Then why do you object to us acquiring the El Capitan?

A Because it is being done in an underhand way.

Q Do you mean by that the city officials charged with the presentation of this matter have been dealing with the Government officials in an underhand way?

A Now they are trying to bolster up a fake water filing made by Hamilton, who got his engineering data from our office, which we paid for, with records taken from our office, never been returned, if the City of San Diego will go at it in its own name the Cuyamaca Water Company will act entirely different, our action will be entirely different than trying to acquire an interest through this fake water filing of Hamilton's then by trying to claim it by its pueblo rights.

Q Then your objection is the manner in which they have proceeded through Hamilton?

A Yes, but if the city should go at it in its own name we certainly should not feel as we do about it.

Q You would not have any objection to our acquiring it?

A If they can get it.

Q You would not protest it? A Only to the extent of protecting our investment and the water rights, which we must do as a public utility to protect our consumers.

MR. COSGROVE: I think that is all.

REDIRECT EXAMINATION

BY MR. ROBINSON:

Q Further objection on your part would be your contract with the La Mesa Irrigation District? A That is understood that the District are going ahead with the plan of development if they buy the system, just as we have outlined.

THE REGISTER: For the enlightenment of the office will a little more of that transaction be brought out?

MR. ROBINSON: I will say this certified copy of the contract of the Cuyamaca Water Company with the District is in evidence, the decree of confirmation of the Superior Court with reference to their bond issue is also in evidence, being Protestants' Exhibits O and P respectively.

MR. COSGROVE: In addition to that there is the opinion of the Railroad Commission of the State of California which was rendered in compliance with the request of both parties in compliance with the terms of contract, setting a valuation upon the system, the valuation to govern the sale according to the terms of contract.

THE REGISTER: We haven't, of course, read those records yet. The point I am getting at, a party comes

in here and takes the Office by surprise, and urges their testimony be heard immediately, if I am not mistaken he gave as reasons tomorrow or the next day Colonel Ed Fletcher or associates may be entirely out of this case, and we, if possible would like to get a little enlightenment on that point, just for our own benefit, you understand.

MR. COSGROVE: I think there is no disputing the facts probably when they are presented they won't meet with opposition of any parties so far as the protestants and applicants are concerned. Mr. Loos represents the La Mesa Lemon Grove & Spring Valley Irrigation District for some considerable time, together with the time shown on the exhibit, which is a contract between the owners of the Cuyamaca Water Company and the Irrigation District; the owners of the Cuyamaca water company agreed to sell to the Irrigation District at a figure to be fixed by the Railroad Commission, that is under Sec. 47 of the Public Utilities Act, they quit here and made a finding as to the value of the system, it has been concerning that evidence that I have made several references here on cross examination. Now the finding of the Railroad Commission being an opinion of the Railroad matters not in evidence, the Railroad Commission placed a valuation of seven hundred and forty-five thousand dollars on the system, that is the price the system could be purchased by the La Mesa Lemon Grove & Spring Valley Irrigation

District, now it has not been turned over as yet and there have been several little things that had to be taken care of, as I presume Mr. Robinson would be better able to take up than I am, as yet they have not been turned over, I understand they are in conference with reference to the turning over of the system to the District, Mr. Fletcher has referred to the fact if they don't turn it over they will do this and the other, and the attorney for this district, that we would have it by this time.

THE REGISTER: We only ask for enlightenment.

When an application to intervene has been granted, the attorney has at least one witness that will be presented on behalf of the intervenor, he will be duly examined and cross examined on the entire matter brought out, we told him he would have an opportunity to present his case.

REDIRECT EXAMINATION

BY MR. ROBINSON:

Q You have stated on cross examination that no harm could be done the Cuyamaca Water Company or the Cuyamaca system by the City in the absence of any money with which to procure this project, do you mean that?

A I mean if they do not, if the permit is granted and just lays there and the city never takes the question up again, or interferes with the construction of the rest of our development work, of course there would be no harm, but if

the United States Government does give this permit it will always be a sort of a cloud on the title to our property and can be used at any time that the City sees fit, but as far as interfering with the flow of the water is concerned or the use of the system in our daily use of the water, it would not amount to anything.

Q Now what are the present plans of the Cuyamaca Water Company with reference to the chocolate siphon?

A Mr. Murray and Mr. Hinshaw and I have decided if we own the system to immediately duplicate, put in parallel pipe lines.

Q Would effect would that have on the amount of water which could be handled at that point? **A** That would increase the flow to the full capacity of the flume. in its present condition, and a little more, I think.

Q What are your plans with reference to the South Fork siphon?

A The same, the whole cost will not be to exceed seven or eight thousand dollars. We haven't done it simply because we could get all the water our consumers needed through the other pipes, it would have been perfectly easy for us five years ago when we put in this other siphon to have put a siphon so big the interest on it would have eaten it up, in other words, it was not an economical thing to do until we had enlarged our flume.

Q And the fact of your having two siphons instead of one large one would tend to insure at least half of your

water supply in the event of accident to one or the other?

A Yes, it is two factors of safety, that is what was recommended by our engineer, Mr. Post, at the time we originally planned to put in one almost twice the capacity, but our engineer suggested we cut down the size.

Q Your attention has been directed to some testimony given by Mr. Lee before the State Railroad Commission with reference to the cost of the El Capitan dam which has been said he estimated to be about nine hundred thousand dollars, you in your direct examination testified that in your opinion the expense would be, as I recollect, between three and four million dollars, based on the city engineer Cromwell's assumption of two million dollars as the cost of the dam and distributing system; now can you explain the apparent discrepancy as between your estimate and Mr. Lee's estimate?

MR. COEGROVE: I object, on the ground it is a misstatement of Mr. Cromwell's testimony in this, that the counsel has just stated Mr. Cromwell testified it would cost two million dollars to build a pipe line and dam, whereas the record shows Mr. Cromwell made no such statement but he testified it would cost two million dollars to build a pipe line and dam and buy the private property and remove the Indians, and all other incidental expenses that would be necessary in flooding the reservoir.

A I considered Mr. Cromwell's estimate of two million dollars

entirely too low, I do not believe the El Capitan dam site, our reservoir site, our two pumping plants, together with the damage to our El Monte pumping plant, can be less than three or four hundred thousand dollars, in fact I do not believe they can even condemn the El Capitan dam site without condemning the whole Cuyamaca system; the value set on our system by the Railroad Commission of seven hundred and forty-five thousand dollars is entirely too low, and the courts, in our opinion, will verify this statement if the Cuyamaca system is ever condemned. In addition to that, I do not see for the life of me how under two hundred thousand dollars the Indians can be moved, or its equivalent if the Government is willing to accept other land, if you have to go out and buy other lands and move those Indians it will cost in my opinion two hundred thousand dollars, at least I have already testified to building a road sixty or seventy thousand dollars that will have to be built, then there is the condemnation of the Head & Henderson property.

Q What would be the amount you estimate them?

A The Head & Henderson property anywhere from twenty-five to thirty-five thousand dollars, and the riparian owners for twenty-five miles to the ocean, is one of the most perplexing problems the City of San Diego will ever have to contend with in its history, as far as their water supply is concerned, it would be - I do not care to make an estimate on it - it

will run into thousands of dollars, my statement of three to three and a half or four million dollars is liberal and conservative before the City of San Diego ever can clean up the San Diego river and build the El Capitan dam site and put pipe lines into the City, they haven't even bored for bed rock, they don't know whether it is forty or one hundred and forty feet, in the Morena dam they went down one hundred and two feet to bed rock, and then found there was a big leak there and had to fill it up, and still it leaks one million gallons a day, there is the same problem there, that no one knows, it is all a guess as to what it is going to cost, I believe that the Morena dam they went down fifty or sixty feet first and then they had to fill it up, a terrible big hole, Captain Harris is here, he can testify as to their troubles there and they are liable to expect the same thing anywhere through San Diego County.

Q Under cross examination by the City attorney I understood you to say that the Cuyamaca Water Company never bought any water rights, now do you wish to be understood as testifying as to that fact? A I was referring simply to the time since we bought the system, we have bought one or two pieces of land on the river with the water rights, but of course that does not refer to the rights that the San Diego Flume Company bought up and down the San Diego river for several miles, those water rights of course we bought and paid for in conjunction with the purchase of the San Diego Flume Company.

Q All of the water appropriations and water rights held by the San Diego Flume Company prior to the transfer to you were acquired by the Cuyamaca Water Company, is that true?

A Yes, as well as whatever pumping rights they had.

Q Now referring to the matter of the conference between the city officials, yourself, Mr. Murray with reference to the Chollos pipe line, you stated prompt action was necessary, immediate action was necessary, I believe were the words you used, why was that immediate action necessary?

A On account of the necessity of getting our work completed before the flood waters came that winter, this was September 4th the conference took place and we had to spend seventy-five or one hundred thousand dollars in getting our pipe lines and in lining our thirty-six miles of flume with rubberoid roofing and raising the side boards eight inches, etc. and as it would take by regular procedure a month or more to draw the papers up before we could get them signed, and as that month was so valuable when you realize what a job it is to line thirty-six miles of flume in three months, and put in several miles of pipe lines well, it is a job, so they asked us to commence work the next day, which we did. I am satisfied that the City Council and the Mayor acted in good faith, and entered into that gentleman's agreement, but that when the opposition of the city attorney came up to the effect it was

illegal to transfer those bonds they were compelled for lack of funds to repudiate their agreement with us.

12 M. January 4, 1916, Recess until 1:30 P.M.

1:30 P.M. January 4, 1916.

Ed Fletcher, protestant, Redirect Examination

continued

BY MR. ROBINSON:

Q During your examination by Mr. Cosgrove, Colonel, occasion was had to read a portion of paragraph 7 of your protest, sworn to on the 24th of July, 1915, and in justice to yourself I believe it necessary at this time to read the entire paragraph: "That there are now no unappropriated waters of said San Diego River whatsoever, and there were none at the time of the making by said Barney Hamilton of the purported filing mentioned and referred to in connection with the rights of way sought by him from the United States in the application against which this protest is made; that ~~within the~~ flood waters which may exist in said river, over and above the amount appropriated and claimed by these protestants is needed and used by the riparian owners of said river below the point where the purported filings were made by said Hamilton. That in the year 1912, at the time of the filing of said purported claim by said Hamilton, there were upwards of one thousand and thirty-three acres of land riparian to said San Diego river, the owners of which were then and for some time prior thereto had been continually using the waters

of said river for the irrigation of land, and that the amount used in said year 1912 was approximately five thousand one hundred and fifty-eight acre feet. In addition thereto in said year there were upwards of four thousand one hundred and fifty-eight acres of land riparian to said river and susceptible to irrigation from said river, that since the said year 1912, a considerable portion of said four thousand one hundred and fifty-eight acres has been actually put into cultivation, and water from the said San Diego river is being used for the purpose of irrigating said riparian lands. That the need of said riparian lands for irrigation are more than sufficient to take up all of the unappropriated flood waters of said San Diego river, and that, therefore, there are not now, and were not in the year 1912, any waters whatsoever in said San Diego river which were subject to appropriation or upon which appropriation or claim could have been filed" Do you wish at this time, Colonel Fletcher to modify anything respecting the statement which you then made under oath, or does the same condition of affairs still apply? and still obtain?

A Of course I was at all times, I at all times had in mind the necessary flood waters that the riparian owners are entitled to, I claimed then and claim now, with that exception, the Cuyamaca water company, we believe, controlled the flood waters through our filings ~~xxxx~~ and through our continuous work

except that as heretofore specified.

MR. DECHANT: Just let the record show that H.P. Dechant, assistant solicitor Department of Agriculture, appears on behalf of the Forest service. Let the record show I was here all day yesterday, January 4th, 1916.

It is agreed between counsel that Mr. Dechant was in attendance at this hearing beginning January 4, 1916.

Q Colonel, I understood you to say on your cross examination that the City of San Diego had obtained water from the sands of the San Diego river for approximately fifteen years, now, is it not a fact, that the City of San Diego, the municipal water system, did not pump any water from the sands of the San Diego river until the installation of their pumping plant in the Mission valley? A They pumped out of the San Diego river I believe somewhere between the years 1901 and 1905, but I am not sure before that whether say for fifteen or twenty or twenty-five years they got their water out of the San Diego river, but through private companies, not as a city, that they bought the water from those private companies my understanding is.

Q Prior to the year 1901? A Yes.

Q That pumping was done at Old Town, was it not?

A Yes, and at other points up the valley, some wells were strung all the way up the valley, I remember they had a wooden flume to convey it for a couple of miles down to the Old Town pumping plant.

Q When the municipal water system was initiated in the year 1901?

A That is my understanding.

MR. ROBINSON: You may inquire.

MR. MANCHA: No further cross examination.

MR. COSGROVE: I have no examination.

WILLIAM F. POST, witness on behalf of protestants, being first duly sworn by the Registrar, testified as follows

BY MR. ROBINSON:

Q What is your post office address? A Los Angeles.

Q What is your occupation? A Civil engineer.

Q How long have you been practicing your profession of civil engineering? A About twenty-five years.

Q How long have you practiced on the Pacific Coast? A About fifteen years.

Q With reference to your practicing on the Pacific Coast what particular line or branch of civil engineering did you pursue? A Largely hydraulic engineering.

Q Are you connected in any way with the Cuyamaca Water Company at this time? A Yes, I am chief engineer of the Cuyamaca Water Company.

Q When did that employment with the Cuyamaca Water Company begin? A Five years ago, I was employed at various times by Murray & Fletcher and the last three years I have been chief engineer.

Q How prior to that time in your capacity as hydraulic engineer, by whom were you employed? A I had been assistant engineer of the Pacific Light & Power Company for several years, I think two and a half years, I had been superintendent of a Water Company, Assistant Manager of a

Hydraulic Mining Company.

Q State whether or not you were ever employed by the Government of the United States in any capacity?

A I was employed for several years in the United States Geological Survey.

Q In what capacity? A As topographer, and assigned to the Irrigation, to the early Irrigation investigation.

Q During what period of time did that employment by the Government cover? A That was about 1890 to about 1898.

Q What were your duties as chief engineer of the Cuyamaca Water Company, just roughly? A My duty has been to take charge of the construction, design and follow new construction, to give such advice regarding operation as may be asked for from time to time, at all times to supervise the records of stream flow, measurement, and compile them for the company's records.

Q Do you have charge of the preparation of plats and maps and other data in connection with the system?

A Yes sir, as far as they apply to new construction.

Q Showing you plat marked Protestants' Exhibit A, I will ask you, Mr. Post, whether or not the data superimposed in colored ink on this blue print, was placed there under your supervision and by your direction? A Yes.

Q Does this red line running roughly from the northeast corner of the plat to the southwest corner of the

platplat delineate the approximate location of the flume of the Cuyamaca Water Company? A Yes sir.

Q Do these dotted lines in black ink what do they represent? A They represent the

pipe lines that connect portions of the flume at the crossing or drainage lines, I marked the Sand Creek siphon, the South Fork siphon and the Chocolate siphon.

Q Directing your attention to four forty-acre pieces outlined in green ink, what does that represent?

A It is the property of the Cuyamaca Water Company.

Q And commonly known as what? A As the Kuehner property.

Q State whether or not that property embraces a very large portion of the contemplated damsite known as the El Capitan dam? A Yes sir, it embraces the entire dam site for a low dam, and almost all for a high dam.

Q Now directing your attention to three forty-acre tracts lying south of the tract outlined in green ink, which is outlined in orange ink, I will ask you to state what that represents? A The property of Robert Alford.

Q Immediately south of that again are three forty acre tracts outlined in black ink, what does that represent? A The property of J. C. Dawling.

Q Now immediately east of the Kuehner property and the Alford property, I notice four forty acre tracts outlined in a broken black line, what does that represent?

A The property of Nellie Head.

Q Immediately north of the Head property and the Kuehner property there are four forty acre tracts outlined in crimson ink, what does that represent? A The property of J. J. Henderson.

Q On the property which you have described as the Kuehner property, very near the southeast corner there is a small black square, can you state what that is intended to represent? A That shows the approximate location of the chocolate pumping plant of the Cuyamaca Water Company.

Q And further north, towards the upper end of the flow line of the proposed reservoir I note another small black square, what is that intended to represent?

A Indicates the location of the Sand Creek pumping plant of the Cuyamaca Water Company.

Q The Sand creek pumping plant is the one which has been referred to in the course of this hearing as the Indian School pumping plant, isn't that so? A Sometimes, yes, it is also close to the Indian school on the Reservation.

Q It is sometimes designated as No. 3? A As No.3.

Q And the Chocolate pumping plant isn't that sometimes designated as a number? A As No.2.

Q Now, Mr. Post, I will ask you to give us as complete a description of the system of the Cuyamaca Water Company

showing its magnitude, its value, and the uses to which the water is being put by the system, as you are capable of doing, and to assist you in this matter I show you a map or plat marked Cuyamaca water Company, San Diego, California, which map bears your name as chief engineer of the Company and is dated December 1915.

A Beginning at the highest point of the drainage area is located the Cuyamaca reservoir, this stores the waters, all the head waters of Boulder creek, which is a branch of the San Diego river, the waters of the Cuyamaca reservoir are released and flow down the natural channel of Boulder creek, to a point where Boulder creek joins the San Diego river, which point is near, which point is located the diverting dam; at this point begins a flume, a water conduit system of the flume and pipe line and tunnel of a total length of approximately thirty-one miles, outlined in red in the map which I have in my hand, at about the second mile is located Pumping plant No. 3, or the Sand Creek pumping plant, and pumps water from the gravels of the San Diego river into the flume. At about the seventh mile a feeder enters the flume from another branch of the San Diego river, known as South Fork, this is about one mile long. At about the eighth or ninth mile is located the Chocolate pumping plant, or pumping plant No. 2. At about the sixteenth mile is located the Monte pumping

plant, shown on this map as the Monte pumping plant, the property on which the plant is located shown in yellow, near the end of a heavy red line, which is the end of the flume proper, are located two distributing reservoirs, one of which is marked as Murray Hill Reservoir, and the other the Eucalyptus Reservoir, into which the water from the flume is received. From a point near the Eucalyptus Reservoir, is a ditch known as the La Mesa ditch, which conveys water from the flume to the La Mesa Reservoir, which is a storage distributing reservoir. Going back now to the Eucalyptus Reservoir shown in a lighter red line, the pipe line beginning at the Eucalyptus and passing through the areas tinted brown to the easterly city limits of the City of San Diego.

Q Just at this point what are those areas tinted brown, what do they indicate?

A They indicate the city limits of the three municipalities marked El Capitan, La Mesa, East San Diego, which the Cuyamaca Water Company is selling water to.

Q This territory outlined in green, what does that represent?

A It is approximately a line showing approximately the Service area of the Cuyamaca water Company entire, there are also indicated in red a line between the La Mesa reservoir and the pipe line which is the connecting line around Murray Hill, the other pipe lines which are main lines connecting the two

reservoirs. There are in addition to the principal water conduits shown on that map a network of domestic and irrigation pipes throughout the Service area, beginning at approximately at the Murray Hill reservoir westward to the city limits of San Diego. The original cost of the San Diego flume was approximately one million dollars and subsequent to the time that Murray-Fletcher purchased it there has been over five hundred thousand dollars expended in improvements on the system, as it existed at the time of purchase.

Q Mr. Post, I will ask you the capacity in second feet of the flume line from the diverting dam to the Sand Creek siphon? A Forty second feet.

Q What is the capacity of the sand Creek siphon? A Forty second feet.

Q When was that sand creek siphon installed? A 1913.

Q Do you know how much it cost? A Why it cost at the rate of about six or seven dollars a running foot, I can't recollect the total amount, about one thousand feet long.

Q Now what is the capacity of the flume from the Sand Creek siphon to the South Fork? A It is from thirty-five to forty second feet.

Q What is the capacity of the South Fork siphon? A The South Fork siphon is eighteen second feet.

Q When was that installed? A In 1910 or 1911,

1911 it was completed.

Q Is the installation of the Company complete at the South Fork siphon at this time? A No, that is about one-half of the necessary carrying capacity to connect up the flow of forty second feet with the section above and below it.

Q Do you know whether or not the Company contemplates enlarging the carrying capacity of that siphon by the installation of another siphon, or in any other manner? A Yes, they do.

Q Have the necessary estimates been made with reference to the cost of such a procedure? A Yes, estimates have been made.

Q Now, directing your attention to the red line which I presume represents the flume known as the South Fork feeder, what is the capacity of that flume? A The South Fork feeder is about one mile long, I think the first half mile it has a capacity of twenty second feet, the remainder of it has a capacity of four second feet, the lower half not being a flume but a pipe line twenty inches in diameter.

Q What is the capacity of the flume from the junction of the South Fork feeder to the Chocolate siphon? A Forty second feet.

Q What is the capacity of the Chocolate siphon? A It is approximately thirty second feet, although I can't state exactly what it is, the total capacity will be,

because we have arranged an intake box in such a way to increase the head, we haven't had occasion to force it to its full capacity.

Q Is the carrying capacity of the Company at the Chocolate siphon complete at this time? A It is sufficient approximately for conveying thirty second feet in the lower section, but I think would be not sufficient for the delivery of forty second feet which is the condition of the first seven miles, nor would it be sufficient for a combined draft from both the South Fork and the diverting dam, which might be considerably higher, because the sum of the two conduits, the South Fork feeder and the diverting dam aggregate sixty second feet capacity.

Q Then at this time the Company does not contemplate enlarging the South Fork siphon or installing any additional pipe which would increase their carrying capacity?

A You are speaking of the Chocolate?

Q Of the Chocolate I should say.

A Of the Chocolate I should not advise any immediate increase of capacity, as it is sufficient for the present, I should advise it in the future by paralleling the pipe line.

Q Now from the Chocolate siphon to the end of the flume is there any difference in the carrying capacity in there, second feet of the flume?

A No, it is thirty-one second feet measured.

Q Do you know the capacity of that flume measured at its entire length at the time it was acquired by the

Cuyamaca Water Company?

A It was slightly over eight hundred inches, or sixteen second feet.

Q It has been increased, the carrying capacity has been increased during the period of ownership by the Cuyamaca Water Company?

A Yes.

Q In what manner was that increase made? A It was begun by the two siphons of which we have spoken, and the continuous increase of capacity flow, leading from the head towards the lower portion of the flume, the diverting dam increased the quantity of water, carrying it as far as the consumption up to that period permitted.

Q Was the flume itself reconstructed in any degree?

A The flume itself in 1914 was completely relined with rubberoid fabric, to prevent a leakage that had been going on before that time, complete reconstruction of trestles, complete reconstruction of about one mile of the flume into a steel flume instead of a redwood flume, of which it was constructed before.

Q Can you indicate on the plat where these changes occurred?

A The bulk of that work was done between the South Fork and the chocolate pumping plant, the work consisted of replacing trestles at the same time raising the side boards from the junction of the South Fork, and of the flume from the main San Diego river.

Q On this plat I notice an area shaded in lavender,

I would ask you to state what that area is supposed to represent?

A That is the area of the Capitan Grande Indian Reservation.

Q Does the Cuyamaca Water Company supply any water on that Reservation to anyone, if so whom?

A The Cuyamaca Water Company supplies the Indians who live under the flume, there are about twelve conduits.

Q Is there any limit to the supply of water which the Company serves to the Reservation?

A There has been a Departmental letter which the Indian Irrigation Service has agreed that the maximum demand on the flume will be limited to forty miners' inches.

Q Now referring again to the matter of these conduits which you say have been installed on the Indian Reservation, at whose expense were they installed?

A Of the Indian Department.

Q Directing your attention to the smaller of the ground area indicated on the plat which you say represents the City of El Cajon, can you state at this time, Mr. Post, as to the amount of water delivered by the Cuyamaca system to that municipality?

A No, I can not.

Q Does that answer also apply to the city of La Mesa?

A (I haven't the records with me of the amount, they are all, those amounts are well known and can be found in our records but I haven't them with me, I can't answer from memory what they are, I can say approximately the amount of domestic water is ten or

eleven per cent of the total supply that is largely on these municipal areas, on the portion outside.

Q Can you tell us, Mr. Post, approximately the irrigated acreage served by the Cuyamaca system throughout its length?

A About four thousand acres.

Q What is the service area?

A Approximately ten thousand.

Q Can you tell us approximately how many people are served with domestic water in the La Mesa and East San Diego regions?

A Approximately six to seven thousand people, there has been no census of those areas, of course that is entirely an estimate, probably a little low.

Q Have the inhabitants of the City of El Cajon any other water supply than that furnished them by the Cuyamaca system?

A They have a small pumping plant in the past have pumped from a well in the granite floor of the valley, but it is probable that would be insufficient for an increasing city.

Q Has the City of La Mesa any other water supply than that furnished them by the Cuyamaca system?

A They have no other supply except a spring which is negligible in this matter entirely.

Q I will ask you that same question with reference to the City of East San Diego.

A The City of East San Diego in its lower portions has a supply to the City of San Diego from its pipe line from the lower

Otay, and would have a gravity supply under those circumstances for its upper portion, it has no other gravity source of supply except the Cuyamaca Water Company.

Q Now when you said that the City supplied domestic water to between six and seven thousand people, did you include the residents of East San Diego? A Yes sir, in my mind, I haven't informed myself carefully on that amount, it is a figure that remains in my mind, I don't know as I know closely at all the number of inhabitants.

Q That is simply approximately? A Yes.

Q Maybe more, may be less? A Yes.

Q Directing your attention to this dotted contour line I will ask you to state what that represents?

A That is a line showing the limit of the watershed of the San Diego river close, at a point near Lakeside, in other words, it is the drainage area above Lakeside on the San Diego river.

Q Now directing your attention to what is marked on this plat as the Boulder Creek reservoir site, is that site owned by the Cuyamaca Company? A A portion of that site has been granted as a permit of the Forest Service, for power purposes.

Q Do you know whether or not the utilization of water has been continuous since the year 1888 by the Cuyamaca system? A I have examined the records of the Cuyamaca Water Company, and aside from two or three

gaps in the records as regards the diverting dam it shows continuous use from the year 1888 or 1889.

Q Can you tell us approximately the number of acre feet per year which has been utilized? A The amount, or to tell that absolutely, the amount which was delivered to the consumers I could not state the exact average without making certain additions, I should judge there were about thirty-five hundred acre feet.

Q Did the Cuyamaca Water Company or the water system ever supply the City of San Diego with any water and if so, when? A The records show the purchase by the City of San Diego for a considerable period of years, at least from 1891 to about 1906.

Q Are you able to tell us approximately how much was delivered? A I haven't it in mind, I can prepare a tabulation which I have got up but I haven't it with me yet.

Q Referring to this plat from which you have been testifying, under whose supervision was this prepared?

A Under my supervision.

Q As chief engineer of the Cuyamaca Water Company? A Yes.

MR. ROBINSON: We ask that this plat be admitted in evidence for the purpose of identification and marked Protestants' Exhibit U.

MR. COSGROVE: The City of San Diego desires to enter a formal objection at this time which I presume can be cleared up by cross examination in this, that the diverting reservoir, or the reservoir at the diverting

dam as shown on this map is misleading, in the corrected indication of the existing conditions there.

Q In addition to the water diverted at the diverting dam into the flume, has the Cuyamaca system any other source of water supply?

A In addition to the amount actually in the flume they have three pumping plants, the Sand Creek pumping plant--

Q When was that installed? A In 1913, the Chocolate pumping plant.

Q When was that installed? A Installed in 1913. And the Monte pumping plant.

Q When was that installed? A That was rebuilt and placed in service 1914, 1914 and 1915.

Q What is the capacity of the Sand Creek pumping plant? A The Sand Creek is fifty miners' inches.

Q And of the Chocolate? A The Chocolate about twenty miners' inches.

Q And the El Monte? A About two hundred miners inches.

Q Now, Mr. Post, are you familiar with the present plant of the Cuyamaca Water Company for additions and enlargements of its system? A Yes, I have been.

Q Will you outline that for us briefly? A The plan of enlarging the flume has been practically carried to completion in ninety-nine and a half per cent completion for the present conditions, that is, reached the delivery

of thirty-one second feet at the end of the flume, there have been during the last year surveys and studies at a number of reservoirs above the diverting dam which are indicated on the map.

Q Right here I will ask you to enumerate those from the plat, Mr. Post?

A There are shown on this map, referring to Protestants' Exhibit U, there are shown on this map that dotted contour by which is meant that they are proposed reservoirs and not actual ones, the several reservoirs which have been surveyed at various times and in which in some cases action has been taken; along the upper, at the upper end of the flume line is marked a dividing dam surveyed as shown here, indicates a reservoir with six thousand acre feet capacity, which would be an enlargement of the present reservoir, which is comparatively small. To the north of this is Dye Canon, which we propose to have a capacity of two thousand acre feet; to the eastward of Dye Canon is the Haskins reservoir site, which we propose to have a capacity of six thousand acre feet; to the south of Haskins' is indicated the Inaja reservoir site, which would have a capacity of approximately four thousand acre feet. Boulder Creek reservoir site has been already mentioned. To the south of Boulder Creek and upon South Fork are two additional reservoirs, the Conejos, located upon the Capitan Grande Indian Reservation, and Poverty Gulch to the eastward.

Q What is the capacity, the present capacity of the Boulder Creek Reservoir?
A Of the diverting dam?

Q At the diverting dam?
A The diverting dam is probably forty or fifty acre feet, I can't recollect precisely what the amount is.

Q What is the capacity of the Inaja reservoir site?
A The proposed capacity is approximately four thousand acre feet.

Q And the Boulder Creek reservoir site?
A Twenty-three hundred and sixty acre feet.

Q Now as to the Poverty Gulch reservoir, what is the proposed capacity?
A About four thousand acre feet.

Q And the Conejos?
A Eight hundred and sixty-seven acre feet.

Q The Conejos Reservoir site is located on the Capitan Grande Indian reservation, as delineated by this map?
A Yes.

Q Has any application been made for the right of way for a reservoir?
A Yes sir, application was made four years ago for the Conejos reservoir.

Q State if you can, the present status of that application before the Department of the Interior.

A Stipulations for transfer have been, for a permit has been rendered by the Company, one or two points in that matter were subject to further inquiry, negotiations, but as I understand it the matter waits the approval of the Secre-

tary upon the signing of stipulations and the payment of the regular amount for lands and the incidental damage to fences, etc. A further description of the last reservoir is indicated also in dotted lines, is the El Capitan reservoir site.

Q What would be the capacity of that reservoir site?
A Approximately twenty-five hundred acre feet.

Q And the height of dam?
A Fifty feet.

Q Approximately how great an area would that submerge providing the dam was full?
A About one hundred and sixty acres.

Q Would any portion of that one hundred and sixty acres be on the Capitan Grande Indian Reservation?

A A portion, yes sir.

Q About how much, how many acres?
A I don't know exactly, I think it would be less than ten acres, it is a narrow strip that is partly up the channel of the San Diego river, towards, from the bank very close to the Reservation boundary.

Q Have you ever had any survey made of this proposed reservoir site, Mr. Post?
A I have made a number of surveys around there, yes, I have had a survey made of this reservoir site.

Q Now referring to the plat again, marked Protestants' Exhibit U, what is the capacity of the Murray Hill reservoir at the present time?
A About seventy-two acre feet.

Q What is the capacity of the Eucalyptus Reservoir at the present time? A Approximately twenty acre feet.

Q What is the capacity of the La Mesa reservoir? A About fifteen hundred acre feet.

Q Has the Company any plan or project under consideration for the enlargement of any or all of these reservoirs? A A plan, there is a plan of enlargement for the enlargement of the La Mesa reservoir system, in enlarging it to at least eighteen thousand acre feet.

Q Now, referring again to the El Capitan dam site you stated, Mr. Post, that you have had some surveys made on that site? A Yes.

Q I hand you here a plat which reads: "Cuyamaca Water Company Contour Map of El Capitan Reservoir, surveyed October 29, 1915, W.S. Post, Chief Engineer" and I will ask you whether or not that plat was prepared under your supervision, by your direction, from surveys actually made in the field? A Yes.

Q Directing your attention to the figure 10 on the smallest contour, what does that indicate? A That indicates the flood line from the reservoir ten feet high, the high line of equal level.

Q Directing your attention to the figure 20 on the next contour, what does that represent? A Twenty foot contour.

Q And the figure 30 on the succeeding contour? A Thirty foot contour.

Q That is to say that would be the flood line of the reservoir providing the dam was erected to a height of thirty feet? A Yes.

Q As to the figure 40 on the next contour line? A The same.

Q That indicates the flood line of the reservoir providing the dam was erected to a height of forty feet? A Exactly.

Q And the last contour line marked fifty? A Is the water line of the dam, fifty feet high, and one that is contemplated in that plan.

Q Now how many acres would be flooded providing the dam was erected at a height of ten feet? A Four and seven-tenths acres.

Q What would be the capacity of such a reservoir? A Twenty-four acre feet approximately.

Q How if a dam were erected at a height of twenty feet how many acres would be flooded? A Eighteen and three-tenths.

Q What would be the capacity of a reservoir of that size? A One hundred and thirty-eight and five-tenths.

Q If a dam were erected at thirty feet how many acres would be flooded? A Fifty-two and three-tenths.

Q And the capacity would be? A Four hundred and ninety-one approximately.

Q Here feet? A Acre feet.

Q And if a dam were erected at a height of forty feet how many acres would be flooded? A Ninety and six-tenths acres, twelve hundred and six acre feet.

Q Would be its capacity? A Yes.

Q If a dam were erected at fifty feet how many acres would be flooded? A One hundred and sixty-four and one-tenth.

Q Its capacity would be two thousand four hundred and seventy-nine and four-tenths (2479.4) acre feet?

MR. ROBINSON: We ask that this plat be admitted in evidence and marked Protestants' Exhibit B.

Q You have previously testified that for a short distance on the South Fork feeder you have a pipe line that will only carry four second feet of water while the balance of steel flume is twenty second feet, is that smaller pipe line a permanent structure or not?

A No, it is contemplated to continue this structure approximately twenty second feet to the end, that is, to construct a conduit for a mile long to have the same capacity throughout the entire length of feeder.

Q How long is the twenty-inch pipe? A Half a mile.

Q Do you know where that small pipe was obtained?

A That pipe that was released by us in laying a new pipe line in the lower portion of our system.

Q It is not new then? A It is not new.

Q Mr. Post, you have testified at considerable detail as to the various improvements and enlargements

that have been made by the Cuyamaca Water Company, can you tell us when these improvements actually began?

A The fall I think of 1910.

Q Was that immediately after the acquisition of the property by the present owner? A Yes.

Q And has that enlargement and improvement continued? A That has been continuously maintained throughout that period throughout the five years.

Q Has the development of the system been completed? A No, not by any means.

Q Now referring to Poverty Gulch reservoir site, regarding which you have testified, state whether or not that site is owned by the Cuyamaca Water Company or not?

A A portion of the reservoir is owned as indicated on the Exhibit U, marked C.W. Company.

Q Approximately how much of the area of the reservoir site, what percentage of the area of the reservoir site is thus owned by the Cuyamaca Company?

A probably one-quarter, twenty-five per cent.

Q Now referring to the El Capitan Damsite, reservoir site?

A The Company has purchased one hundred and sixty acres here, of which approximately eighty acres are within the reservoir site.

Q You have spoken of the enlargement of the La Mesa reservoir, state whether or not surveys and plans have been completed for that enlargement?

A Yes, plans have been made, surveys of the reservoir have been completed, plans have been made for an increased height, one hundred feet, carrying on to one hundred and forty feet.

Q With reference to the pipe line to the City of El Cajon, when was that completed? A I think that was about one year ago.

Q 1915? A Possibly in January 1915 about that time.

Q Do you know whether or not the Cuyamaca Company has any contract with the city with reference to supply by the company of water? A Yes, the Cuyamaca Water Company has a contract to furnish wholesale water to the city of El Cajon, and has installed a pumping plant under certain further arrangements.

Q Now with reference to the connecting pipe of Holland Avenue, from El Cajon Avenue to Anna Street in connection with the City of San Diego's main, when was that line completed? A That was built I think in the spring of 1915, I guess either in 1914 or early in this year.

Q I believe you said something about a power project on Boulder Creek, do you know whether or not any permit has ever been secured by the Company from the State Water Commission? A yes sir, a power permit has been issued by the State water Commission to

the Company.

Q Has permission been secured from the Forest Service? A Yes.

Q Has any work been done on that project? A Yes sir, a diversion canal has been begun and carried down perhaps one thousand or fifteen hundred feet.

Q Do you know whether or not any extension or distribution pipes have been made by the Company since 1910? A yes, there have been numerous extensions of pipe, particularly in the area that is marked on Exhibit U, Normal Heights, Kensington park, very considerable extensions been made there.

Q Could you give us roughly the aggregate mileage of these extensions? A Well, fifty or sixty thousand linear feet of pipe, of all sizes, and perhaps a good deal more.

Q Mr. Post, you are the same W. S. Post, who subscribed to an affidavit supporting a protest filed by James A. Murray, William G. Hinshaw, Ed Fletcher, against the application of Barney Hamilton and others for a right of way for a reservoir site and water conduits across public lands, lands of the United States and the County of San Diego, state of California, which affidavit was sworn to on or about the 4th of August, 1915? A Yes.

Q In this affidavit you state that "Affiant has been familiar with the City water system, formerly owned

by the said San Diego Flume Company since on or about the 1st day of June, 1910, and know that said system has been owned by the said copartnership consisting of said James A. Murray, William G. Hinshaw and Ed Fletcher, since the said 1st day of June, 1910, and that said copartnership has been ever since said 1st day of June, 1910, and up to and including the present time, and is now storing in the reservoirs owned by them and distributing for the purposes of irrigation and domestic use, the said waters of the said San Diego Flume Company, so appropriated by said San Diego Flume Company by said copartnership as heretofore set forth. State whether or not that condition still obtains?

A Yes sir, I should note that Mr. Hinshaw did not become a partner until subsequent to the 1st of June, that would appear he was a partner on the 1st of June.

Q Such is not the case? A No sir

Q Now reading further from the same affidavit "That on or about the 1st of June, 1910, the date when said copartnership acquired said water system, and the said San Diego Flume Company, said copartnership for the purposes of augmenting the water supply available for distribution by means of a reservoir, flume and distributing system, previously owned by the said San Diego Flume Company, at that time owned by the said copartnership, for the purpose of extending said system, and for the utilizing all of the waters of the said San Diego river, caused said water filing of said B. Otterstedt to be made, that to

affiant's knowledge said copartnership ever since the date of said filing has been engaged in constructing the necessary work to put said waters so appropriated to beneficial use." State whether or not that activity still continues?

A Yes sir.

MR. COSGROVE: I would suggest that the witness be requested to state the facts rather than the conclusions, as set forth in the pleadings, and that he tell it, if he has not already told it, in what that activity consists, not simply stating that activity is continued.

Q You have testified as to certain improvements that have been completed, certain improvements that are under way, and certain improvements that are contemplated by the Cuyamaca Company at this time; have you anything to add to your previous statement? A Simply up to date the improvements consist of such work as appropriated to this period of years, the strengthening up trestles, several surveys looking to extensions.

Q That brings us up to the present time? A Yes.

Q Are you familiar with the flood line of the proposed reservoir, the right of way for which is asked by the City of San Diego as assignee of W. B. Hamilton?

A In a general way, yes, I haven't followed the general flood lines throughout the survey.

Q Will any portion of that flood line interfere

in any way with the proper enjoyment and use of the flume or any portion of the system of the Cuyamaca water Company?

A Yes.

Q State in what way that interference would take place?

A The Reservoir if filled would submerge the Sand Creek pumping plant and pipe line of the company, a greater part of the pipe line, a great part, all of the pumping plant, it would submerge the South Fork siphon, it would submerge portions of the footings of the trestles in the immediate neighborhood of the Capitán dam site.

Q How about the Chocolate pumping plant?

A Well, your question was asked if this permit was granted, I judged that being on private land would possibly be a technical question, but as a matter of fact if built it will submerge the Chocolate siphon throughout.

Q What effect would it have on the pumping plant?

A On the Chocolate pumping plant, submerge eighty acres of the Company's property.

Q Mr. Post, are you acquainted with Ben Hagar?

A Yes.

Q Do you know C. T. Sackett? A Yes.

Q Have you ever had any professional dealings with either or both of them?

A Well, at the time that they were respectively manager

and engineer of the Flume Company I knew them, I had no particular dealings with them.

Q Do you know whether or not they ever made any efforts to sell the system of the Cuyamaca water Company?

MR. COSGROVE: We object to the question on the ground it is wholly irrelevant to any issues involved in this proceeding.

A I was instructed to go to Los Angeles.

Q Before we go to Los Angeles suppose we start in at San Diego. (Question read.)

A I do.

Q Do you know J.E. Helm and H.P. Wade? A I have met them, yes.

Q Did you meet them on or about the second day of February, 1912? A Yes.

Q Where? A Los Angeles.

Q In what part of Los Angeles? Whose office?

A At the office of A.H. Koebig.

Q Who were present at that time? A Mr. Helm, Mr. Wade, Mr. Koebig, Mr. Eisler.

Q Were Mr. Sackett and Mr. Hagar in the employ of the Cuyamaca Company at that time? A No, I think not.

Q Was anything discussed at that meeting with reference to the proposed sale of the Cuyamaca system?

A Yes, these men stated that they had made financial arrangements to purchase the system, that they had every inten-

tion but that they wished to discuss further matters with me.

Q What further matters did they wish to discuss?

A The Hamilton filing.

Q What if anything was said with reference to the Hamilton filing?

A They asked me to--

MR. COSGROVE: I object to this question on the ground that under the rules of evidence commonly applied in courts consistent with the rudiments of the rules with reference to the admissibility of evidence, that a question and answer are wholly incompetent on the ground that no member of either the City of San Diego or Mr. Hamilton was present, and that it is hearsay evidence, pure and simple.

THE RECEIVER: Did these gentlemen have an option on the property?

A I think they did, yes, I don't know that it was in writing but I think there was a verbal option.

MR. COSGROVE: A verbal option in real estate?

A That is good with some men.

Q (Question read.)

A They asked Mr. Murray to make a payment of three thousand dollars, which was required to clear the title to the water, that was, ~~known~~ which they considered clouded by the Hamilton filing.

Q What if anything did you say to that?

A I virtually said Mr. Murray would not submit to blackmail.

Q Did you report the result of this conference to

Mr. Murray?

A I did, either to him or to

Mr. Fletcher, I think to both.

Q Was anything said or done in the matter?

A No further negotiations with these people as far as I know.

Q With reference to the Cuyamaca Reservoir, Mr. Post, I don't think you have stated the capacity of that, have you?

A No, I have not.

Q Will you kindly give us the capacity of the reservoir, Mr. Post?

A The capacity of the Cuyamaca Reservoir is ten thousand eight hundred acre feet.

MR. ROBINSON: You may inquire.

CROSS EXAMINATION

on behalf of the United States

BY MR. MANCHA:

Q Referring to Protestants' Exhibit U, witness, the pueblo lands of San Diego is noted on this exhibit?

A Yes.

Q Are those admitted to be pueblo lands of San Diego - in other words, simply a notation copied from a map from which that portion was compiled?

A Yes.

Q What map was that copied from?

A I can't say, there are a dozen different maps, about this scale I am not sure but what this may be, I doubt if it is that portion of the Government topographic map, or the information virtually stopped at the shore line, com-

pleted from any available map I can't say which one it was.

Q You never made any investigation with reference to the pueblo lands of San Diego? A No, none

at all, I know there is an area that is known as pueblo lands that are lost, something of that kind, this applies to everything north of there.

Q This wasn't put on here under your direction, was it, your own label? A That should

be a map carried to the ocean, I didn't actually make the tracing, but the data beyond the colored lines is entirely compiled.

Q I am just trying to find out under what authority these lines have been designated as pueblo lands, and if they are properly designated as pueblo lands.

A I could not make any suggestion as to that, that appears there entirely I presume from some other tracing, we frequently do that in compiling maps, take anything to add that to and complete the map, that was done in this case, I am quite certain that the tracing is from a tracing of our Railway Commission Exhibit but I am not absolutely sure.

MR. MANCHA: No further cross examination at this time, we might want to ask him some questions later.

CROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q This line where your colored area stopped in your Exhibit U represents the eastern boundary line of the City of San Diego? A Yes.

Q Now do you know whether or not the city limits of the City of San Diego are the same as the limits of the old Mexican pueblo of San Diego? A No, I have no knowledge of that matter at all, my only knowledge of the city limits in any respect is merely where they end at Normal Heights, and at one point further up, I have never gone into that particularly.

Q You have examined the maps of the City of San Diego? A I have seen about one dozen, photographs, I never have made any particular study of it.

Q What is your opinion, if you have an opinion, with reference to the coinciding of the limits of the City of San Diego, as compared with the limits of the old Mexican pueblo? A I haven't any opinion because I have never - I have been told to read Smyth's History of San Diego, as being interesting on the subject, I have never even taken the trouble to do it.

Q This term, pueblo lands of San Diego is used here and is very often used on maps, is meant to indicate the property that lies within the City of San Diego or the ancient pueblo of the City of San Diego irrespective of ownership?

MR. MANCHA: I object to that question as unfair, assuming on the part of this witness that he recognizes that the City of San Diego owns the pueblo lands when there is nothing in the record to show that this witness has so testified or that he so believes. This objection is simply for the purpose of ascertaining whether or not this witness wants to be understood as admitting that in his opinion, his knowledge, the City of San Diego owns the pueblo lands.

MR. ROBINSON: It is further objected to on the part of the protestants, for the reason it is not cross examination.

MR. MANCHA: I further object to it for the reason it calls for a conclusion.

Q (Question read)

MR. MANCHA: I object to it further for the reason that it refers to the ancient pueblo of San Diego when we are not prepared to admit as yet in the investigation and research I have been able to make as yet, that the City of San Diego was ever a pueblo, I am not asserting, however, that it was not.

THE REGISTER: That question, as I understand, it is not for him to say whether it is not or whether it is a pueblo from the Spanish grant, not asked to say what the boundaries of the City of San Diego were under that.

MR. MANCHA: Further object, this witness is not

qualified to state that, it calls for a conclusion of law as well as fact.

MR. ROBINSON: Further, this witness has not testified to pueblo lands on direct examination, nor has he shown himself qualified to testify regarding the same in cross examination.

THE REGISTER: The question was asked to find out if the man did know.

MR. COSGROVE: It seems to me the Register and Receiver have the exact comprehensive knowledge of what is intended, I can't understand how anybody can misconstrue it, the witness has identified the exhibit, he has stated it has been prepared by him or under his supervision, and at the instance of the attorney for the protestants, has gone into a great detail in explaining what certain things mean that appear on that map, upon cross examination by the representative of the United States Government he is asked the meaning of a term which appears on this same map and in a rather unsatisfactory manner answers it unsatisfactorily, in the sense that it does not clear up the situation, and the purpose of the question is simply as is stated in the question, asking him if it is not a fact that it is a term that is applied to maps, showing lands inside the city limits, irrespective of ownership, it is not intended and it does not presuppose that this man knows whether there was an ancient pueblo or what the pueblo rights were, but I am just asking him if it is not commonly used in the preparation of maps as indicating the land lying

within the city limits of the ancient pueblo limits irrespective of ownership.

A I would say this title on this map is traced from some other map, I don't know which particular one, but I think one which was presented before the Railroad Commission, as far as this map is concerned it is simply compiled of everything west of the colored line simply to complete the map.

THE REGISTER: That does not give us this question.

A The pueblo lands of San Diego, as far as my experience has been, has been applied to the tract of the Linda Vista Mesa owned by the City of San Diego, that is the only occasion that I have had to run up against the term.

Q Take your Exhibit U, Mr. Post, I will ask you to state whether or not the proposed dam at El Capitan reservoir site, the dam site is the same dam site that is shown on the City's Exhibits at El Capitan? A On the City's Exhibits?

Q Yes. A I don't know that, I haven't examined the city's exhibits closely enough to know, I presume it is.

Q This is the dam site commonly referred to as the El Capitan dam site? A Yes.

Q At the present time there is only one dam site constructed in the water shed of the San Diego river above the Eucalyptus reservoir that is used for storage pur-

poses, and that is the Cuyamaca dam and reservoir site, isn't that correct? A No sir.

Q Where is the other one? A The diverting dam and the Murray Hill Reservoir.

Q Is the diverting dam used for storage purposes? A Every day practically, particularly in the summer time.

Q How much water can you store there? A About three days' run of the flume.

Q Well, the Murray Hill Reservoir I should have said instead of the Eucalyptus Reservoir is down right close to the Eucalyptus Reservoir? A Yes, they virtually work together.

Q As to the diverting dam as now constructed, you consider that storage reservoir behind it? A I don't consider it as a very high storage reservoir which is probably what you have in mind, it is perhaps better described as regulating storage reservoir, wherein it may save more than is needed below, will detain it and at the proper time discharge it.

Q Now if there were no objections in the way of opposition by the Government or the Government officials to the erection of a dam at the El Capitan to a height of one hundred and forty or one hundred and sixty feet, it would be advisable to erect a dam there of that height in preference to erecting smaller dams further up on the river or its tributaries, by anyone desiring to conserve the waters of the river, would it not?

A My advice to the Cuyamaca water Company from my first report has been directly in favor of the so-called mountain reservoirs as against a large reservoir at the, on the lower reaches of the river, and I am still of that opinion.

Q I presume you had some considerable discussion with other engineers that have been employed by the Cuyamaca Water Company in that regard, haven't you?

A Yes, some.

Q Do they agree with you? A I don't know as they do.

Q The reservoir further down, particularly the El Capitan, you would not have your water subjected to the same area of evaporation as spread over several smaller reservoirs, would you? A I would have to

verify that before I answer it, I don't know as it would cut any ice in the matter at all, not in this section of

Q Not in this section of country would it?

A I should explain that further, the higher mountain reservoirs have practically double the amount of rainfall than the lower reservoirs, and the evaporation is what we call net evaporation, the evaporation less rainfall the higher your rainfall is the less your net evaporation is under ordinary circumstances, while it is a long problem where probably the least evaporation might occur, still the presumption is the higher the reservoir the higher the rainfall area the better we are off.

Q Of course the Cuyamaca Reservoir is higher than any of these others? A Yes.

Q You have quite a high evaporation there,

haven't you?

A Yes.

Q Now you have investigated these dam and reservoir sites as shown on the various places indicated on this exhibit?

A Yes.

Q You are satisfied they are practical reservoir and dam sites there? A Yes.

Q So far as testing the water there, so far as conserving it there, so far as letting it from that point down into your flume at the diverting dam, or down into your flume at the South Fork ~~section~~, the presence or absence of a reservoir and a dam site owned by the City at El Capitan dam site would not affect it, would it?

A As far as those particular matters are concerned as to the arrival of the water from those reservoirs.

Q Well, all of these dams that you contemplate constructing are farther up the bed of the stream, and nobody whether it was the Cuyamaca water Company or the City or anybody else who had a dam down at the El Capitan dam site would not be able to get any water until it had gone by your dam and reservoir site, excepting the flow or the run off from that area below your points of diversion, is not that correct?

A As far as that goes, but these reservoirs, of course, would be operated with our pumping plant, to that extent, if you should interfere with the operation

of the pumping plant you would also interfere with the operation of the storing.

Q I haven't said anything about a pumping plant, I anticipated you would confine your answer to the question, I expect to get to the pumping plant proposition later. Now with respect to the pumping plant, Mr. Post, if the Guymaca Water Company develops its system as is shown on this chart and has a reservoir and dam, has a dam and a reservoir at each of the points here indicated, and at the capacities by you indicated, would it be necessary to maintain a pumping plant at the Chocolate and at the Indian schoolhouse to supply consumers you have or those you expect?

A Not that alone, a number of others presumably.

Q In other words, if you had some other dams constructed with reservoirs behind them, of the capacity shown, as this exhibit shows it would be a most unexpected contingency to be put to the necessity of pumping, including, to supply anything like your present needs?

A It might be unexpected to someone else but as far as I mean increasing - to increase my storage I would increase my pumping facilities equally, I believe, thoroughly, in the general use of pumping with storage, practically every one of the projects in Southern California, and that arises from the extreme variation in our run off.

Q Now you testified as to the capacity of the South Fork siphon, I understood you to testify as to the capacity of the flume, the box flume that was torn down and substituted by the South Fork siphon, is it your opinion that the capacity of the South Fork siphon as now constructed exceeds the capacity of the box flume which was torn down?

A Yes, I think it exceeds by about - you are speaking now of the original one that was as it was at the time of the purchase, which was torn down by the construction of the siphon, I think it is about twelve per cent greater capacity than the original structure which it replaced.

Q You testified that the original cost of the flume was something like one million dollars and that there was expended on it something like five hundred thousand dollars prior to the time that it was purchased by Murray and Fletcher?

A I think I was misunderstood there, I said or meant to say about five hundred thousand dollars has been expended in improvements subsequent to the purchase by Murray and Fletcher, on the system as it is, I think is the way my sentence ended.

Q You know what Murray and Fletcher paid for the system, one hundred and fifty thousand dollars? A Yes.

Q These improvements as you are pleased to term them, the Sand Creek siphon was subsequent to the Hamilton

filing?

A Yes.

Q How about the South Fork siphon? A That preceded it.

Q The Chocolate siphon was subsequent? A Preceding it.

Q The Chocolate? A preceded it.

Q Now speaking about the Cuyamaca system furnishing the Indians with water in the Capitan Grande Indian reservation along the line of the flume, and you said they were required to furnish the maximum of forty inches, you testified before the Railroad Commission on this question a couple of different times, and you made a careful estimate of the amount you had been furnishing the Indians, and averaged it, didn't you? What did it average? A They expressed it in the term of the miners' inch flowing for nine months continuously, it was very close to three thousand miners' inches continuous flow.

Q Continuous flow? A Continuous flow during the nine months.

Q Nine months, miners' inches about three thousand? A Yes.

Q That would be less than three thousand continuous flow for the year? A Yes.

Q The per cent of water distributed by the Cuyamaca Water Company for domestic use I believe you testified

is ten per cent of the total amount delivered to consumers?

A Yes.

Q I believe you stated all the pumping plants were installed since the Hamilton filing, that is what I understood you to say. A As far as Murray and Fletcher were concerned, this rebuilt plant which of course was installed.

Q The El Monte was installed before? A Yes, a long time before.

Q You talk about increasing the height of that diverting dam so as to make a very high storage reservoir there of six thousand acre feet, did you not? A Yes.

Q Do you know whether or not that first diverting dam is on bed rock? A I have a very good idea of the construction, it is located in San Diego granite, as I call it, which weathers to considerable depth I have talked with some of the men who were present at the time it was being built.

Q Did you ever talk with Captain Harris, who built it? A I think so, yes.

Q How many feet would you have to put on the top of that dam to conserve six thousand acre feet of water behind it? A At seventy feet at the present time.

Q Where would you tie the dam, on the south or east side of the river? A The bluff there, the mountain sides come down virtually to the land there,

it is rather a long dam site.

Q Over on the north and west side you would have to put a curve or an angle or something in the dam before you got it up seventy feet higher?

A I don't know exactly what your point is, you are referring to the present dam has an angle in it?

Q No, I want to know what you would do towards tying in the dam, that would be seventy feet higher than the present one on the north and west sides of the river.

A The cross sections, of course, if built along the, exactly along the line of the present dam would have to have not only one angle in it but two, but my plan does not contemplate that.

Q That would not be stopped, that would be taken in the immediate future? A I have advised doing it immediately, if I had my way I would start tomorrow.

MR. COSGROVE: I guess that is all.

CROSS EXAMINATION

on behalf of the United States

BY MR. DECHANT:

Q Mr. Post, does the Railroad Commission require your company to maintain this pumping plant up above the Chocolate siphon in the Indian Reservation? A I know of no direct way of maintaining them, the railroad Commission has in the first place ordered the installation of pumping plants.

Q Look at Exhibit U, what is the distance from the ocean, just approximately, through the word "Pueblo lands of San Diego" over to the dotted line running past Normal Heights in East San Diego next to University Heights the word "University Heights".

A Approximately a distance of eight miles from the sea coast.

MR. DECHANT: That is all.

RECROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q Do you remember, Mr. Post, this exhibit that was prepared by you and introduced in evidence before the Railroad Commission, at the hearing to determine the valuation of the Cuyamaca system, which is headed "Exhibit of Reservoirs, Cuyamaca Water Company" which was marked Cuyamaca Water Company's Exhibit No. 4? A Yes.

Q You show a reservoir called the Tule Reservoir on the exhibit introduced before the Railroad Commission on this exhibit here today you don't show the reservoir called the Tule Reservoir, have you instead of the Tule substituted some other name? A No, the Tule is not shown on this map, it is located, however, within two miles of Boulder Creek reservoir, on this exhibit and a little to the south.

Q You stated today on direct examination that this

Boulder creek Reservoir would have a capacity of two thousand three hundred and sixty acre feet, what height of reservoir, what height of dam do you figure on at that point to conserve that amount of water? A I think it is one hundred and twenty feet.

Q While the exhibit introduced before the Railroad Commission you put that dam in at forty feet? A Yes, that dam as shown on the Railroad Commission exhibit is not identical; the dam shown on the Railroad Commission is one for which a permit was issued, while this one is a dam site slightly lower down.

Q Let us take the El Capitan, you said that was the same? A Yes.

Q I notice on the exhibit that was prepared by you concerning which you testified before the Railroad Commission, you show a dam of height one hundred and sixty feet with a twenty-three million gallon capacity, while today, in the exhibit which you introduce today, concerning which you are testifying, you show a dam of only fifty feet in height, with a capacity of twenty-five hundred acre feet, as compared with a capacity of seventy thousand seven hundred acre feet at El Capitan as shown in your exhibit introduced before the Railroad Commission, are my figures and statements not correct? A Well, it is a story, I presume I will have to divide it up into its ultimate questions, and begin to answer it be piece-

meal, if you will read about the first line where it says I testified before the Railroad Commission as to this reservoir I will answer this question first.

Q I request that the question be read in its entirety, if the question is unintelligible or impossible to answer he can say so, and if he can answer it I respectfully contend he should answer it.

(Question read.)

A No.

Q You say they are not correct? A I can go ahead and answer this question, your statement is not correct, you stated I testified as to the El Capitan Reservoir, as far as I know I don't know that I testified to a height of one hundred and sixty feet.

Q Well, the exhibit that was introduced shows the capacity of the dam at one hundred and sixty feet, does it not? A Precisely.

Q Does it not show the capacity at that height would be twenty-three billion gallons? A Yes.

Q Does it show the acre feet impounded would be seventy thousand seven hundred acre feet? A Absolutely.

Q Does not your exhibit introduced today show a proposed dam of fifty feet? A That is true, that is only a part of your question is true.

THE REGISTER: Let us have the question and answer responsive, don't argue, let the lawyers argue in their briefs.

Q Does not the exhibit introduced today show the

number of acre feet covered by the proposed reservoir at El Capitan as twenty-five hundred acre feet? A I don't know whether I said twenty-five hundred, I think so.

Q If you have anything to say that is tending to clear up the situation, or if you have anything to say which would in your opinion place in a better light before the Board of refuting any insinuations you think I have made, I would be glad to have you make a statement.

A The exhibit which has been shown to me here is a table of capacities of reservoirs that contains absolutely no statement of what I propose to build as a reservoir, it is a very easy calculation in an engineering office and was presented for the convenience of engineers in calculating reservoirs, subsequent to that time this table which has been brought here has been revised, that is all I have to say.

Q Now with reference to Poverty Gulch Reservoir, the exhibit introduced today if I recollect correctly you stated the reservoir proposed would impound about four thousand acre feet, is that correct? A Yes.

Q And that would contemplate a dam of what height? A I think about one hundred and fifty feet.

Q Now the exhibit that was introduced, concerning which you have been testifying before the Railroad Commission, contains a table as to the proposed or possible reservoir at Poverty Gulch, did it not?

A It contains a table of capacities of the reservoirs, there is absolutely nothing so proposed or possible on that exhibit, not only is not there but it should not have been put on there, there is not anything on that exhibit to state what my opinion was as to the height of the dam, it was simply information of the watershed.

Q This exhibit shows that a dam of the height of ninety feet would impound how many acre feet of water?

A Fifteen hundred acre feet.

Q And you say you anticipate building at Poverty Gulch in order to impound four thousand acre feet a dam of what height?

A About one hundred and fifty feet.

Q Now the Conejos Reservoir site as shown on the exhibit introduced today and the proposed reservoir there would impound I believe you said eight hundred and sixty-seven acre feet? A Yes.

Q That would be a height of how many feet? A Eighty feet.

Q Referring to the exhibit introduced before the Railroad Commission, it shows possibilities at Conejos, does it not, by reservoirs? A Yes.

Q It shows exactly the same thing as your exhibit today? A Yes.

4:45 P.M. January 5, 1916, Recess until 9:30 A.M.

January 6, 1916.

9:30 A.M. January 6, 1916.

WILLIAM S. POST, witness on behalf of protestants, CROSS EXAMINATION on behalf of the City of San Diego, continued,
BY MR. COSGROVE:

Q Mr. Post, do you know when the contour lines of the survey were made for the proposed fifty foot dam at El Capitan?

A were made partly in October and partly very recently, within a few days.

Q Within the last few days? A Yes sir.

MR. COSGROVE: That is all.

CROSS EXAMINATION

on behalf of the United States

BY MR. MANCHA:

Q Mr. Post, you testified in reference to Protestants' Exhibit U, and described a number of smaller reservoirs which it is the plan you say of the Cuyamaca Water Company to develop; now if these smaller reservoirs were developed what effect would that have upon the supply to the proposed El Capitan dam, in other words, how would the watershed which would supply the El Capitan dam under the proposed plan of the City of San Diego be affected if these smaller reservoirs were developed?

A I can't give you the exact figures, but the effect of that would be during the drouth years to by pass you might say around the El Capitan practically all the run off of the river during the extremely dry years, all of it, and then during

the normal years, exceptional wet years there would be an overflow into the El Capitan Reservoir, and out of it down the river in exceptional wet years.

Q How much watershed would there be left to supply these small reservoirs that you have described in conjunction with Protestants' Exhibit U, how much of that watershed would there be left by the El Capitan dam if these small reservoirs were developed first?

A The area is about forty-five square miles below the diverting dam, of this, of the Cuyamaca system, that would be directly tributary to the El Capitan dam.

Q The point I am trying to make is to clarify the record as to whether the Cuyamaca Water Company has done sufficient development work in connection with this proposed reservoir described in connection with Protestants Exhibit U, to give them a right to that water or to establish a prima facie case for the use of that water, the right to use the water as against the users under the proposed El Capitan dam. Now is there anything further that you want to say in reference to the expenditures or inception of development work on these smaller reservoirs made by the Cuyamaca Water Company which would utilize all or any part of the watershed which would supply the El Capitan dam under the City of San Diego's proposed plan?

A Yes, I should like to say that the theory of the development under the water right notices is that work on a portion of the system is considered work upon the increased diversion, the other point which has to be attended to

in maintaining the water rights, for which notice has been, appropriation notice has been filed, is continuous work. Both of these matters in their opinion have been thoroughly well taken care of, continuous work for an increased supply and an expenditure of the magnitude proportionate to the amount, proportionate to the magnitude to the future development in each year.

MR. COSGROVE: On behalf of the City of San Diego I desire at this time -- I do not object to the question because an objection would serve no purpose; I do not make a motion to strike out the answer from the record because a motion would really serve no purpose, but in view of the fact that the question of the respective rights of the Cuyamaca Water Company and of the City of San Diego standing alone, and standing as assignee of Hamilton, with reference to priorities of appropriation, is a matter that can be determined apparently only after some very thorough and perhaps lengthy investigation in a court of competent jurisdiction. In view of the fact that the testimony of the witnesses for the protestants has failed to indicate, I anticipate that it is a reasonable failure, the exact time when the above construction was begun, commenced, in view of the fact that the testimony of the witness for the protestants show that a very considerable portion of the work was commenced subsequent to the filing of the Hamilton appropriation, the notice of appropriation and

some since that time, that it would be impossible for the officers of the Department of the Interior to really arrive at an intelligent and safe conclusion as to the respective priority of the parties in interest. A I respectfully submit that it is a matter that is not capable of determination in this tribunal, I do not intimate that anybody contends that it is, but I also respectfully suggest that the record is so voluminous and the question of priorities as determined by time of construction, is so vague, it is well nigh impossible from the record to arrive at a reasonably safe conclusion in the premises.

THE REGISTER: Mr. Mancha, you refer to this place on the map marked Reservoir site?

MR. MANCHA: Yes sir, that is right, the proposed plan of development by the Cuyamaca Water Company.

Q I believe you have already testified in substance, witness, have you not, that in your opinion it would be necessary to move the Indians off the proposed Capitan dam were constructed as planned by the City of San Diego.

A The portion that might be on the upper water contour up to that point at any rate, would be my opinion, I don't think I have testified in the matter as to a complete removal from the watershed, as to rather the sanitary matter would require some regulations.

Q But as to the irrigable land in the Capitan Indian reservation, what portion of that if you know, would

be submerged by the construction of the El Capitan dam?

A I should think very closely three hundred and forty approximately acres of the arable land, I make that figure from a joint study of the Indian lands a number of years ago, I am quite sure three hundred and forty was the figure we arrived at as the arable land.

RECROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q I notice by totalling up the sum of acre feet of all of the reservoirs contemplated that includes the diverting dam reservoir of six thousand acre feet and the El Capitan of twenty-five hundred acre feet, twenty-seven thousand two hundred and twenty acre feet, of course it is omitted the Cuyamaca which is already constructed, that is correct, is it not?

A I think so, yes.

Q The dam at El Capitan that we propose would impound seventy thousand seven hundred acre feet, would it not?

A Yes.

Q Now if it would be possible to fill that reservoir which we contemplate at the El Capitan it is apparent that there is a great deal of water that would run off there that could not be caught in this upper reservoir, is it not?

A No, that does not necessarily follow from those figures.

Q Well, this follows, does it not, if you could catch seventy thousand acre feet of the El Capitan you certainly could not hold it in the reservoirs that you have here contemplated which only hold twenty-seven thousand,

could you?

A Well, that would assume a possible flood of seventy thousand.

Q Yes, precisely, of course if you could not get your El Capitan filled you could not get your seventy thousand acre feet?

A No, to make that entirely clear the flume itself has a capacity of thirty-one second feet, that is approximately sixty acre feet per day, at the same time that these reservoirs are filling the flume is also removing from the watershed, the stream flow at that rate.

Q And placing it?

A And placing it either with the consumers or in storage, or in storage in the lower reaches.

Q When you have got your run off such as you speak of, that is the lowest point of consumption on your line, is it not, in other words, there is no water used for irrigation purposes to speak of when you have this big run off in the rainy season, on your flume?

A Not very much, no.

Q And this storage would go into the La Mesa reservoir, what would be the capacity of the La Mesa reservoir with the dam raised to a height that you propose to raise it?

A Eighteen thousand nine, eighteen thousand for the purpose of explanation.

Q Supposing we had eighteen thousand acre feet to what we have already had, if I figure correctly that will make forty-five thousand two hundred and twenty-seven acre

feet?

A Yes.

Q Now that includes also your run off for this reservoir which is above the El Capitan?

A Yes.

Q Now you folks introduced exhibits before the Railroad Commission as to the run off there would be at La Mesa Reservoir in the event you increased your dam to the height proposed, do you remember how much that was?

A No, I do not recollect.

Q Approximately?

A No.

Q Could you make a rough estimate for the purpose of calculation?

A I should think it might be perhaps thirty or forty acre feet per square mile, per year, on an area of about five square miles.

Q One hundred and fifty acre feet?

A one hundred and fifty acre feet.

Q Well, making no allowance for the run off at La Mesa, you would have in all of your reservoirs excepting the Eucalyptus and Murray Hill, now you haven't got at the present time a capacity in your flume of thirty-one second feet.

A We have for ninety-nine and a half per cent of the distance.

Q At the present time what is the carrying capacity of your flume?

A Thirty-one second feet for ninety-nine and a half per cent of the distance, eighteen for one branch of the flume line.

Q Well, on the theory that a chain is as strong as its weakest link what is the carrying capacity of the flume in the sense I am asking you this question, to know the

flume as it stands today, what is the greatest amount of water that can be carried through it continuously for a period of forty-eight hours?

A Twenty-two second feet.

Q That is the carrying capacity of the Chocolate siphon?

A No, that is not the limiting carrying capacity of the Chocolate siphon, it can carry twenty-two second feet.

Q Now, Mr. Post, you spoke a minute ago about carrying water, the flood waters through the flume during these rainy seasons, now ordinarily that would not continue over a period to exceed six months, would it?

A No sir.

Q Now then with a carrying capacity of twenty-two second feet for a period of six months, you could not fill the La Mesa Reservoir as contemplated, could you?

A That is a matter of calculation, twenty-two second feet is forty-four acre feet per day, one hundred and eighty days about eight thousand acre feet.

Q And you contemplate having eighteen thousand acre feet reservoir there, don't you?

A Yes.

Q Admitting you can carry eighteen thousand acre feet in that period while your figures show you can only carry eight thousand, admitting that you could also fill your Murray Hill and your Eucalyptus, which would have to be filled before you would fill the La Mesa, or which might be filled before you filled the La Mesa, the figures you gave on these were, as I recollect, seventy-two acre feet for the Murray Hill, and twenty acre feet for the

Eucalyptus, now if I add this correctly, your total forty-five thousand three hundred and nineteen acre feet, that is giving ten thousand acre feet margin on the La Mesa, still the fact remains that the reservoir capacity contemplated by the City of San Diego is seventy thousand seven hundred acre feet, while all of the reservoirs contemplated by the Cuyamaca Water Company only total forty-five thousand acre feet, isn't that correct?

A That is correct, as a matter of fact - one moment, that is practically of no significance as far as results are concerned. I can illustrate that by certain simple relations which perhaps will clear that matter. The maximum capacity of a reservoir we find, I have found in various calculations, to be from six to twenty times greater than the net yield which can be obtained from it, a mountain reservoir of a certain capacity, everything else being equal, does not have to have as large a capacity to sustain a given yield as a low reservoir for various reasons, which I could go into, therefore, it might easily be that forty-five thousand acre feet storage capacity intelligently located might give a larger quantity of water for a given service than seventy-five thousand stupidly located.

Q Do you consider the location of the reservoir at El Capitan of seventy thousand acre feet capacity, taking into consideration all the facts and circumstances that would have to be taken into consideration in determining

the advisability of locating the reservoir there, as stupidly located?

A If I were advising the City I would undoubtedly place such a dam, a main dam for that particular purpose, but I would expect even then some very elaborate hydraulic calculations to prove its practicability, either from a financial or a water supply standpoint.

Q The reservoir site at El Capitan is an admirable one so far as the exposure of water for evaporation is concerned?

A I have not examined the exact ratio between them, the capacity of evaporation surface, but it is admirable, admirable is a rather difficult word to answer, it has probably a high evaporation as being in an extremely hot mountain canon, as far as I have gone evaporation varies with the temperature primarily, but the big thing in evaporation is the area of water exposed; It varies as usually taken directly with the area exposed.

Q I understood you to say a little while back in the construction of dams and reservoirs that it is sometimes advisable to erect dams and reservoirs capacities six to twenty times the capacity of the net safe yield, now I want to know if these reservoirs that you have constructed are from six to twenty times the capacity of the net safe yield on this San Diego river watershed, if you can answer that question.

A The first part of the question I should be loth to advise anyone to build a reservoir that would require a capacity of twenty times its yield, so that is not my position. Answering the second portion, I cannot give the exact ratio of the Cuyamaca but the figures are approximately these: ~~that the~~ mean draft from the Cuyamaca reservoir is fourteen hundred acre feet per year, its capacity is ten thousand eight hundred acre feet, this ratio is roughly one to seven or one to eight.

Q As one of these proposed reservoirs, I have forgotten which one now, where you said you would have to build a dam one hundred and fifty feet, do you remember which one that was? A Poverty Gulch I think is the one.

Q Now, of course, the character of construction of a dam one hundred and fifty feet high that would impound four thousand acre feet would have to be the same so far as strength is concerned as though it impounded four hundred thousand acre feet, would it not?

A Not necessarily, I don't think you are referring-- if all the other conditions were the same as the amount and size of the reservoir is not important.

Q In other words, other conditions being the same the question of amount of water stored does not determine the character or type or strength of the dam?

A Well, to answer that question without explanation is rather difficult.

Q I won't ask you to answer it.

A The importance of the structure, of course, is related with the danger of failure, and failure of a very large reservoir causing destruction of life and destruction of other works below it, the possibility of failure must be adjudged in all these matters? It can't be answered without taking all the facts in consideration.

Q As a pure proposition of mathematics, there is no more pressure on a one hundred and fifty foot dam that impounds four thousand acre feet than one that impounds four hundred thousand acre feet of water? A Of the same height, no.

Q Have you made surveys at all of these proposed dam and reservoir sites or has your Company? A Yes.

Q Have you here the available data which would enable you to answer a question which would tend to bring out the width of all the proposed dams?

A No, I haven't that data here.

Q Well, have you any idea what the cost would be of construction of all these dams that you show here, and by cost of construction I mean the cost of building the dam and the cost of acquiring the property, if you haven't already acquired it? A I haven't made any detailed calculation of it.

Q Would you have just a rough estimate.

A I suppose the most expensive of our structures would cost about two hundred thousand dollars and the cheapest

one about fifty thousand dollars, the lands are mostly mountain lands and are not so very expensive as far as I can see.

Q Well, you think you can put seventy feet of masonry on top of your diverting dam and impound six thousand acre feet of water behind it for two hundred or two hundred and fifty thousand dollars?

A Well, I perhaps make an exception of the diverting dam, I think possibly that would run over two hundred thousand dollars, that would be - I was thinking of all with the exception of the diverting dam, I would consider that would run over two hundred thousand dollars.

Q Can you build a one hundred and fifty foot dam at Poverty Gulch and get your material in for two hundred thousand dollars?

A Yes, I think so.

Q Now you talk about a fifty foot dam at El Capitan, what do you figure that would cost.

A My personal plan of that proposition would be a rather slow development of that dam, in case of the last of the entire series, inasmuch as in years of exceptional rainfall there is an exceedingly heavy momentary flood rushes, it would require a good deal of study as to how to work that up, I consider it rather remote in the line of development I am recommending to the Company.

Q (Question read.)
made an estimate on that.

A I haven't

Q Do you think you can put it in for two hundred thousand dollars?

A I haven't studied that matter closely enough to have an opinion on it, a certain type of dam I think could be put in for that.

Q A certain type, do you think a type of dam could be put in for two hundred thousand dollars fifty feet in height to stand the flood rushes there?

A Yes.

Q Have you examined the cost of constructing a dam one hundred and forty feet high at El Capitan as estimated by Mr. Lee?

A No sir.

Q The cost of digging out for the side walls and for the bottom of the dam and sealing up with the bed rock and constructing the dam to a height of fifty feet as compared with one hundred and fifty feet, would compare ordinarily what ratio one to another, if that is not intelligible I won't be offended if you say so. The point I am getting at is this, in the construction of a dam the excavation to bed rock for the bottom of the dam and the side walls and sealing the dam with bedrock and constructing your first twenty or thirty feet, is very expensive portion of the construction, is it not?

A Yes, that is true.

Q And the last forty or fifty feet would not bear anything like half the cost of that first forty or fifty feet?

A Yes, that is true, and yet the foundation for a fifty foot dam would be

planned on an entirely different method than one for a one hundred and fifty foot, I don't think they are very easily to be compared.

Q Now you have seen the exhibit introduced by the City of San Diego showing the run off last year at Santee, haven't you? A Yes.

Q Last year there was a run off there to exceed twenty-eight billion gallons of water wasn't there? A Yes, something like that, that, of course, was not a normal year.

Q That was far above normal, was it not? A Yes, very much above.

Q You say that in course of the development of this scheme as outlined in this Exhibit U of the protestants, the construction of a dam at El Capitan would be the last unit of construction? A That would be my feeling regarding it.

Q So that if the City were allowed to construct a dam there it would interfere with only the last portion of the contemplated construction work of the Cuyamaca Water Company? A No sir, that is not true.

Q That does not follow? A That does not follow.

MR. COSGROVE: That is all.

REDIRECT EXAMINATION

BY MR. ROBINSON:

Q What is the amount of storage in the reservoir of the Cuyamaca Water Company at the present time?

A About two billion one hundred million gallons.

Q You have testified, have you not, that ten per cent of the Cuyamaca Water Company delivery is for domestic consumption? A Approximately seven, ten or eleven per cent.

Q On this basis how much storage now held on the Cuyamaca system will be used for domestic consumption?

A Ten per cent of the present storage, it would be two hundred and ten million gallons.

Q You have also testified that approximately six thousand population are served by the Cuyamaca Water Company's system? A Yes.

Q How much water per capita is now held in storage for the domestic consumers, dependent upon the Cuyamaca Water Company's system?

A Thirty-five thousand gallons per capita is the reserve for domestic use.

Q How much water is now held in storage by the City of San Diego's system? A By ex-

amining the City's exhibits, I don't remember the number, there is eleven billion three hundred millions in

storage on June 1st as I remember.

Q Now what is the present population supplied by the City of San Diego's municipal water system if you know?

A It has been variously estimated I believe the estimate is ninety-six thousand people.

Q How much water per capita is now held in storage by the municipal water system of the City of San Diego for domestic consumption for the inhabitants of San Diego?

A One hundred and twenty thousand gallons per capita.

Q Regarding San Vicente Creek which has been mentioned as having a flow sufficient to supply the riparian owners, do you know whether or not there is a feasible reservoir site on that stream?

A Yes, there is a very good reservoir site on San Vicente Creek.

Q Do you know of any non-riparian appropriations of water made on that stream?

A I know of no appropriations on the San Vicente.

Q Now referring to the time when Murray & Fletcher took over the old San Diego Flume Company's system, approximately how long was it after they took that system over before active work was begun in the field, looking to the development and extension of that system?

MR. COSGROVE: I object on the ground it calls for a conclusion, and be of no service to anyone attempting to determine whether or not actual construction work had been commenced prior to the appropriation, it leaves to the witness to determine what constitutes compliance with

the law with reference to the commencement of construction work.

A within thirty days.

Q Has that work been continued down to the present time?

A yes sir.

RECROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q You remember the occasion of the Hamilton filing having been made? A I remember about that period, I am not sure that I was at San Diego at the time, but my attention was called to it soon after they were made.

Q The Cuyamaca Water Company made a filing immediately after, didn't they? A No, I am not aware of any filing made after the Hamilton filing, they made one preceding it.

Q When was that one made preceding it? A A year and a half before.

Q You mean for one hundred thousand miners' inches appropriation at the diverting dam? A Yes, and they also made some subsequently.

Q Did you prepare that notice of appropriation, Mr. Post? A Yes.

Q You say they also made some subsequently? A yes.

Q well, now, they made two subsequently.

A They made an appropriation at El Capitan damsite in 1914.

Q Well, that is the place where Hamilton made his

A I am not aware of where Hamilton placed the filing precisely, I made some inquiries, I never could find precisely where he put it.

Q It is in that vicinity?

A It is in the same place where it states in the notice, yes sir.

Q Now what was the purpose of making a filing in 1914? if, as has been contended and maintained through this proceeding the Cuyamaca Water Company owned all the waters of the San Diego river prior to the time, had appropriated all of it to beneficial use and their claim was undisputed?

A The immediate purpose of the filing at El Capitan dam was to provide for a notice of increase of diversion at that particular point.

Q Of course the notice of appropriation is in all particulars the same as the notice of any original appropriation, is it not, or don't you remember?

A You mean in the original appropriation, I don't understand what you mean by that question exactly.

Q Was the notice of appropriation in any way different than any of the other notices of appropriation?

A It was cast on the same lines, yes, the general terms of it.

MR. COSGROVE: I guess that is all.

MR. ROBINSON: That is all.

ED FLETCHER, protestant, recalled,

BY MR. ROBINSON:

Q You are the same Ed Fletcher who has previously testified in this proceeding? A I am.

Q What work if any was done by the Cuyamaca Water Company on the system prior to the water appropriation by W. B. Hamilton, if you know?

A Immediately after purchasing the system we spent several thousand dollars in surveys.

Q Let me interrupt you just a moment, if you can actually give us the amount for the various improvements that you enumerated, and the approximate time when the improvements were begun, it will facilitate matters a great deal?

A In 1910 we spent several thousand dollars with engineering crews, Mr. Post was in charge, to determine ascertain reservoir sites to be purchased, rights of way, etc. we put ten feet of concrete in 1911 to the diverting dam, also cleared at the reservoir sites that would be flooded by the increased diversion, we built a cushion at the foot of the diverting dam which cost several thousand dollars; at that same time, in 1910, we also raised and increased the capacity of the flume, I believe for a mile and a half down to SandCreek, diverted in 1910 and 1911 something like twenty-five hundred inches of water as the capacity of the flume; we built

in 1911 the Murray Hill reservoir at a cost of I believe forty-five thousand dollars, between forty and forty-five thousand dollars; we put in a concrete pipe line from Murray Hill Reservoir to Eucalyptus Reservoir, a mile and a half in length approximately. In 1911 in addition to that we made a large extension of our distributing systems enlarging our La Mesa ditch from Eucalyptus Reservoir to La Mesa, we did considerable work on that, we purchased I believe, the Poverty Gulch dam site and lands in 1911; we rebuilt the Kelly ditch in the fall of 1910, it is my impression, either that or the fall of 1911, all of this work was done before Mr. Hamilton ever made his water filing, and we had Mr. Sackett spend, he spent several thousand dollars for us in surveys, location of reservoir sites, I believe that covers it all except we rebuilt a number of the heavy big trestles during 1910 and 1911, and without looking at the dates I am not positive, but I am quite sure we put the South Fork and Chocolate siphons in in 1911. I will look that matter up and verify it but I am quite sure we did, before the Hamilton water filing was made.

Q Mr. Fletcher, you said something about correcting some testimony which you previously gave,

A Yes, I said we had diverted and delivered to Eucalyptus Reservoir twenty-two million gallons of water daily every twenty-four hours, I meant twenty-two second feet, it was

just a slip of the tongue.

Q Any other statement you desire to make at this time?

A No sir.

MR. ROBINSON: You may cross examine.

CROSS EXAMINATION

on behalf of the United States

BY MR. MANCHA:

Q Have you ever examined the mountainous lands in the Indian Reservation, the Capitan Indian Reservation?

A Yes, I have been all over them, horseback and walking.

Q Of what character are they with reference to grazing, good, bad or no good?

A With the exception of about fifteen hundred or two thousand acres it is very good grazing land, as good as any we have in the country, in the deep canon along the San Diego river it is rough, but outside of that it is good.

CROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q Do you desire to be understood as testifying in this hearing now that the grazing land in the El Capitan or the Capitan Grande Indian Reservation are as good as any in this country?

A Yes, elevation for elevation, of course I am not referring to fine valleys but I am referring to the rolling hillside land.

Q How does it compare with the grazing land at Warner's?

A It is not to be compared because Warner's is in a valley while this property in the Capitan Indian Reservation is hills and broken up and rough, small patches of valleys here and there, which are not large enough to give much farming.

Q How does it compare with the Santa Marguerita ranch for grazing land?

A It does not compare with the Santa Marguerita ranch because that extends for thirty or forty miles along the Coast, only compares to the mountains in the Santa Marguerita.

Q In other words it is just as good as any other land in this country if it is not any better?

A Elevation for elevation rolling hilly land.

Q Rock for rock and gully for gully?

A I will say this in making an explanation, that I have seventy thousand acres of land under my control and have been in the grazing business and cattle business selling for the last fifteen years lands in San Diego County, and I feel that I am qualified to testify, particularly as I own thirteen thousand acres of land in San Diego County myself.

CROSS EXAMINATION

on behalf of the United States

BY MR. DECHANT:

Q You are familiar with the Cuyamaca lands as shown on Protestants' Exhibit U?

A Yes.

Q Can you state if you know when that plan as shown on there was first contemplated? A That was?

Q That plan of development, I mean?

A That plan was developed by Mr. Post in 1910, and we have constantly adhered to it, he first put this question to us, it is a question of the storage of the waters of the San Diego river in the mountain or in one big dam in the San Diego river, and he finally determined that owing to the heavy silt flow of the San Diego river and the effect it would have on the riparian owners below, and partly on account of the evaporation and cost of construction and past records as to bed rock along the San Diego river from the diverting dam down, that it was advisable to build our reservoirs in the mountains, so it could be a continuous gravity flow to all of the consumers of our system, while if it were built at El Capitan it would be a pumping proposition for us after we had stored, besides that it brought up a fight with all riparian owners below.

Q If I understand you correctly, there was not contemplated in that line of development, a dam at El Capitan?

A We never have made any plans for building any dam at El Capitan until within the last year or two, and then we would only build it if the dams in the mountains after it showed, after they were built if didn't catch all

of the run off except that which the riparian owners should have. I want to put ourselves clear at this time and say that no attempt will be made by the Cuyamaca Water Company to conserve the waters of the San Diego river that does not protect the riparian owners to the ocean, our plan is to see that each year enough flood waters run to the ocean and the sands are surcharged before an attempt to conserve any additional flood waters is made.

Q You heard Mr. Post testify, did you?

A Part of it.

Q The latter part of it?

A Yes sir.

Q Did I understand him correctly that say that there was a notice of appropriation or diversion posted at the El Capitan dam site in 1914? A Yes, that is only a small one.

Q Was that taken up with the State Water Commission do you know? A No sir, not to my know-

ledge; after our reservoirs in the mountains are built if there was any flood waters we could conserve and still protect the riparian owners, our intention is to build a small dam at El Capitan.

CROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q Are you acquainted with the construction work in a general way that has taken place at these contemplated

Reservoirs shown on Protestants Exhibit U ?

A Yes.

Q Have you driven any tunnels at the Hoskins Reservoir Site? A No sir.

Q Have you driven any tunnels at the Inaja Reservoir site? A No sir.

Q Have you driven any tunnels at Dye Canon reservoir site? A No sir, we control the dam site and own the property there, part of it, but we have driven no tunnels.

Q Have you driven any tunnels at Boulder Creek? A No sir, we have driven no tunnels.

Q Have you driven any tunnels at Poverty Gulch? A No sir.

Q Have you driven any tunnels at Conejos? A No.

Q Have you driven any tunnels at El Capitan? A Yes.

Q El Capitan is the last unit of your construction according to your scheme? A Yes.

Q So you drove your tunnels first in your last structure? A There was no need to drive tunnels at the other reservoir sites.

Q Do you know how much money you have expended at El Capitan, don't you? A Approximately, yes.

Q How much? A I would say two or three thousand dollars, possibly four or five, the books

are the best evidence.

Q What is your best judgment on that? A I could not say offhand.

Q You remember introducing an exhibit before the Railroad Commission which showed the amount of money you expended at El Capitan, don't you?

A I do not.

Q Don't you remember that? A No sir.

Q Would you say you didn't introduce such an exhibit? A I would not.

Q Have you expended more money at El Capitan than you have at Conejos? A I could not say without looking at the books.

Q Will you, Mr. Fletcher, produce at the next hearing a detailed statement of the expenditures that have been made at each of these proposed dam and reservoir sites, segregating them so as to show the amount of money expended at each dam and reservoir site and the work accomplished there? A I think we can get that out by that time.

Q I don't care for myself for anything in the way of surveys, I want the money expended on actual construction work, and the character of the actual construction work, eliminating the surveys, if surveys is properly termed construction work, will you produce such an exhibit?

A I think we can get it out by that time.

MR. ROBINSON: We don't agree to confine ourselves to construction work, the matter of surveys is a proper matter of expenditure as you well know.

MR. COSGROVE: If you have what I ask you can confine it to that request, you can produce anything else you wish.

THE REGISTER: You would like to have it segregated, however?

MR. COSGROVE: Yes, just as I have indicated.

CROSS EXAMINATION

on behalf of the United States

BY MR. MANCHA:

Q What portion of the entire run off of the watershed of the San Diego river is now conserved by the Cuyamaca Water system?

A I have to go by our engineers, but I understand in excess of fifty or sixty per cent on a basis of a net safe yield.

BY MR. COSGROVE:

Q Net safe yield of the run off? A Net safe yield of the water delivered to consumers, or to be delivered to consumers.

MR. COSGROVE: I ask the answer be stricken from the record as unintelligible.

After taking into consideration evaporation.

MR COSGROVE : Such a thing as a net safe yield

of the system?

A I am speaking of a net safe yield of water that can be absolutely relied upon for delivery to consumers.

Q You mean from your system or from the watershed?

A From the watershed, after taking all the effects into consideration. --

I would like to correct my last answer, as I understand the question the watershed of the El Capitan damsite is approximately one hundred and ninety-one square miles, the watershed of the Cuyamaca Water Company's system east of El Capitan damsite is approximately one hundred and forty-five square miles, so the portion of the watershed of the Cuyamaca Water Company is as one hundred and forty-five is to one hundred and ninety-one, or approximately forty or fifty square miles of watershed which the Cuyamaca Water Company at present have no control over, and are not catching the waters from that watershed below our system.

BY MR. MANCHA:

Q Do you mean to say the one hundred and forty-five miles of watershed that supplies your system is part of the one hundred and ninety-one square miles which supplies the El Capitan dam, or would supply it?

A Yes, however, there is a great difference in the value of the watershed of the El Capitan reservoir site and the

Cuyamaca for the reason that elevation is what furnishes the greater or lesser amount of run off yearly, to illustrate: An elevation of four or five thousand feet at the Cuyamaca the average rainfall is approximately forty inches, at the El Capitan damsite and the forty odd miles of watershed which the Cuyamaca Water Company does not get, the elevation is only from one thousand to two thousand feet, and the rainfall is approximately only from twelve to fifteen inches, so the valuable watershed is controlled by the Cuyamaca Water Company because it has a high altitude that furnishes us with our water.

Q And that run-off which would pass the proposed El Capitan dam, taking one year with another say for a period of twenty years, what proportion of that run off is now conserved by the Cuyamaca Water Company?

A I wish you would put that question to our hydraulic engineer, Mr. Lee, as he made a careful study of it and I would only have to be giving you his figures, and he is going on the stand.

REDIRECT EXAMINATION

BY MR. ROBINSON:

Q In your direct examination you referred to a letter which was written by the Cuyamaca Water Company to the City of San Diego offering to sell the water system, and you were asked if you could produce a copy of that letter. I hand you herewith a document which you

can examine.

A This is a copy of a letter which I signed and sent to the City for the Company.

MR. ROBINSON: We ask that this be admitted for the purpose of identification, to be marked Protestants' Exhibit X.

CHARLES H. LEE, witness on behalf of protestants, being first duly sworn by the Register, testified as follows,

BY MR. ROBINSON:

Q What is your post office address? A 1103 Central Building, Los Angeles.

Q Where do you live, Mr. Lee? A Residence in South Pasadena, California.

Q Your place of business? A Los Angeles.

Q What is your profession? A Civil and hydraulic engineer.

Q How long have you been practicing that profession? A For some fourteen years, including University training.

Q Training in what University? A University of California.

Q Are you a graduate of that University? A Yes.

Q In what year did you graduate? A 1905.

Q After graduation what did you do, what have you done since in the line of your profession if anything?

A Since graduation I have followed the work as a civil and hydraulic engineer, immediately following graduation I was employed as surveyor for a mine and smelter company, in laying out a large smelter plant in California in San Francisco Bay; following this for one year I was employed by the United States Geological Survey as hydrographer, gauging streams throughout the State, covered practically

every stream in the State, during that time, including San Diego County, in fact, I initiated stream gauging work of the Government in the County in the fall of 1905, and established all the stations there except the station on the San Luis Rey river. Beginning, in August 1906, I entered the employ of the City of Los Angeles, the Los Angeles Aqueduct Engineering staff, and was engaged in the preliminary surveys in connection with the Los Angeles Aqueduct, and later with the initiating of the Koster-Keating system I worked on a contemplated twenty-three million dollar project; during three years I was engaged in the water supply investigation, both surface and underground, for this project, involving an expenditure of some twenty-five thousand dollars. The underground water investigations were carried on under my direction, and were in cooperation with the City of Los Angeles and the United States Geological Survey, and the results of this work were published by the Government as a public document in Water Supply papers series. After the completion of the water supply investigations I was engaged in the service of a number of hydro-electric power plants on natural streams in Owens Valley, for the City of Los Angeles, and the survey of a transmission line to the City of Los Angeles. During the year 1912 I was engaged by the California State Conservation Commission

in the study of underground water supply in Southern California, as affecting by the spread of flood waters of streams and other work, and made a formal report to the Commission. Since 1912 I have maintained engineering offices and have engaged in hydraulic work largely, at the present time I am consulting engineer for the United States Department of Justice and the Public Health Service of the City of Los Angeles, the Los Angeles Aqueduct Power Bureau, the Los Angeles Water Department, the City of San Francisco, at various times I have been engaged by water companies in different parts of California, such as the Spring Valley Water Company of San Francisco and Sweetwater ~~Water~~ Company of San Diego and other companies. I am also at the present time engaged in the preparation of a report on the underground water resources of San Diego County for the United States Geological Survey.

Q Have you ever made a study to show the amount of water which will be utilized by the Cuyamaca Water Company's system when fully developed? A Yes.

Q Is this table which I now show you entitled Cuyamaca Water Company total run off San Diego river above El Capitan Reservoir system a utilization of same by the Cuyamaca Water Company's system when fully developed, a copy of the study referred to?

A yes, it is.

Q Now in the table which I show you and referring

to the first column entitled "Season" will you explain what that means?

A Season refers to the period of time covering one year from July 1st of the first year mentioned in each case to June 30th of the second year.

Q Now referring to the second column entitled "Total Run off from 192 square miles of drainage area of San Diego River tributary to El Capitan Reservoir" will you explain what this means?

A This column represents the total of run off from all portions of the drainage area of San Diego river tributaries above the El Capitan Reservoir site, and is obtained from the measurements of run offs from various portions of the area and estimates for the balance; the portions for which the run off has been measured are the ninety-two square miles exclusive of Cuyamaca and above the diverting dam on the San Diego river, twelve square miles tributary to Cuyamaca reservoir, and during the past three seasons forty-four square miles on South Fork and forty-five square miles, I think it is, on the main San Diego river below the diverting dam, above the El Capitan dam, has been estimated from the measurements actually made on the adjacent areas, and this is also true of the run off of South Fork prior to the last three seasons.

Q Now referring to the third column entitled

"Water" which would have been utilized by the Cuyamaca Water system if fully developed, with allowance for riparian owners, will you kindly explain what that means?

A That column set forth for each season the amount of water which the fully developed Cuyamaca Water System would divert and store for the use of consumers under the system. It is the result of an extended study, taking into account each individual reservoir of the fully developed system, with its run off and the amount of water which would be passed from it to the lower reservoir, and taking into consideration evaporation, and so on, capacity of the flume to divert, and has gone into all the conditions to be met with in great detail; it includes an allowance for riparian lands on the stream below the El Capitan dam site to the extent that the normal water plane would be interfered with by the consideration of reservoir storage of water.

The column shows that on an average eighteen thousand acre feet would be utilized only out of twenty-five thousand six hundred available.

Q Referring to the fourth column, entitled "WASTE FOR EL CAPITAN RESERVOIR IN EXCESS OF RIPARIAN DEMAND" Will you kindly explain that?

A That column sets forth the amount of water remaining which would pass from the El Capitan dam as proposed and waste on down the stream beyond the system.

Q From this study what conclusion of any have you reached? relative to the degree of utilization of the water available from the Cuyamaca Water Company's complete system?

The degree of utilization of the stream and its run off above the El Capitan dam site would be above the average under the development here proposed for highly developed streams of Southern California, the Santa Ana River, which is one of the most highly developed streams in California, has but fifty-eight per cent of its water utilized. The San Gabriel river, another highly developed stream, has but thirty-six per cent of its water utilized; the proposed development by the Cuyamaca Water Company would utilize seventy per cent.

Q Now this study covers a period of how many years?

A This study covers a period of twenty-one years.

Q As shown by your record during how many years would there have been no waste from the El Capitan reservoir in excess of riparian demands? A There would have been eleven years.

Q During this period of twenty-one years how many successive years would no waste occur? A There would have been seven successive years of no waste.

MR. ROBINSON: You may inquire.

MR. ROBINSON: We now ask that this study be admitted in evidence and marked for the purpose of identification Protestants' Exhibit W.

MR. COSGROVE: Are you through with this witness, I understand you introduce no more exhibits.

MR. ROBINSON: That is the inference.

MR. COSGROVE: I want to know as a matter of fact you consider the witness has finished so far as your direct examination is concerned, there are no more exhibits, in other words, if you are going to introduce several other exhibits I would like to have them all introduced and then have the cross examination.

MR. ROBINSON: It is not my purpose.

CROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q Are you at this time preparing any other exhibits for introducing at this time in this case? A No sir.

Q You haven't any other exhibits already prepared either that you propose to introduce at this hearing?

A No.

Q The heading of this exhibit reads "Total run off of the San Diego river above El Capitan Reservoir site and utilization of same by the Cuyamaca Water Company's system when fully developed. Now when do you expect, if you do expect the proposed development to be completed or fully developed? A I haven't any idea, it is a development that San Diego can make in the future, the County has a future before it, it will be made, but when it occurs I can't fairly state.

Q You think during the interim the City of San Diego should be prohibited from going ahead and developing water that at some later period the Cuyamaca Water Company might wish?

A I don't think that is involved in an engineering calculation, I would not want to answer that question.

Q I will say, Mr. Lee, you are at the present time doing some work for the City of San Diego?

A Yes.

Q If I ask you any questions that embarrass you if you will indicate it I will consent it be stricken from the record, I don't want to embarrass you at all. Now this system when fully developed, do you know what that development contemplates?

A Yes, that study has been prepared by myself, I took into consideration the exact structures, and the

proposed development in detail.

Q Does it contemplate the building of a dam at El Capitan damsite?
A Yes sir, a dam of some fifty feet in height.

Q Now the development of the Cuyamaca Water Company, or the plan of development, has changed since you last testified for them before the Railroad Commission, has it not?

A Not to my knowledge.

Q Do you remember testifying before the Railroad Commission that the plan of development of the Cuyamaca Water Company contemplated the erection of a dam one hundred and forty feet high at the El Capitan damsite?

A I remember I made a calculation based on that, yes.

Q Mr. Reporter, please read the question.

(Question read)

A I answered that.

Q Didn't you testify before the Railroad Commission that the plan of development of the Cuyamaca contemplated the building of a dam at El Capitan one hundred and forty feet high?

A I did.

Q It has been changed since that time?

A It has not, the condition is this, I have never been employed by the Cuyamaca Water Company to advise them as to their future development, I have been employed to make studies to determine the ability of the system to produce certain amounts of water under certain conditions.

Q I am not asking you if you had ever been employed by the Cuyamaca Water Company, I am not asking you

what you have been employed for, I simply asked you if you didn't testify before the Railroad Commission about nine or ten months ago that the plan of development of the Cuyamaca Water Company contemplated the erection of a dam one hundred and forty feet high at the El Capitan damsite, I respectfully ask you to answer that question yes or no.
A That is what I am going to explain.

Q I would like to have you answer it and explain it afterwards, I should like the answer first, and explain fully. Didn't you so testify?

A The exhibits that I had---

Q Didn't you say so on the witness stand?

A I probably did.

Q You can explain it.

A The situation is I never have been employed by the Company to advise them as to future development, and plans of the Company always has been to my knowledge, has been to develop mountain reservoirs, and a small reservoir at El Capitan. In presenting the testimony before the Railroad Commission at that time I, in looking over the information at hand, of my own initiative, regarded the probable future development of that Company as one with a dam one hundred and forty feet high at El Capitan with small reservoir at Conejos diverting dam, this, however, was not the plan of the Company, as shown by the action of its officers in the past, and at present, and in fact

was probably quite different from that plan, and of necessity certain differences of opinion arose between the officers of the Company concerning such plan, but that study was made on my own initiative, my own belief of what the future system would be for purposes of getting the same quantity to deal with as to the probable future development of the system, storage is an essential element needed on that system, it needs storage, whether that storage is the El Capitan damsite or some other place, it is immaterial so long as storage is provided.

MR. COSGROVE: At this time I am going to ask the Register and Receiver to assist me in having the witness confine his answer to the question asked.

Q At the time you testified last February and in April concerning the erection of a one hundred and forty foot dam at El Capitan damsite, you said without qualification, did you not, that the plan of the Cuyamaca Water Company contemplated the erection of a dam there one hundred and forty feet high, I want you to answer yes or no?

A I don't recollect in exact words what I did, it may have been there to that extent but I don't at this moment, I don't recollect exactly the words in which it appears, but I have explained the situation.

Q Now this exhibit marked Protestants' Exhibit W shows what water would have been utilized by the Cuyamaca Water Company if during that twenty years they had had in actual service the system as you expect them to develop it in the future?

A Yes.

Q You have, however, in your possession, or you had at the time you prepared this exhibit, data from which you could have prepared an exhibit showing the actual amount of water which the Cuyamaca Water Company during this same period of time did actually deliver to the consumer, did you not?-- You didn't prepare any such exhibit, did you?

A No sir.

Q Now then you prepared an exhibit of yours, Protestants Exhibit W, which represents what would have been conserved by the system which is not in existence, isn't that correct?

A That is true, the system as proposed.

Q You have the records for the past twenty years to show what they did conserve at your disposal, haven't you?

A Yes.

Q You have the rainfall and run off for a portion of that time at your disposal?

A Yes.

Q And the portion of the time or the period of time you have no record you use your best judgment and estimate the rainfall and run off?

A Yes.

Q After the experience you have had and the number of estimates that have been made by other hydraulic engineers approximation is considered pretty close, is it not?

A Fairly so, yes.

Q Now if the Cuyamaca system had been other than it is and had been as you contemplate it will be, this exhibit correctly represents the result upon the actual rainfall and run off together with estimates of the actual rainfall and run off? A Yes.

Q Mr. Lee, it would be a very simple matter to prepare an exhibit similar in character to this exhibit W, which would show the actual amount of water conserved and put to beneficial use and delivered to the consumer by the Cuyamaca Water Company during the period of time covered by this Exhibit W, would it not?

A Yes.

Q Will you before the next hearing, at the expense of the City of San Diego, prepare such an exhibit?

MR. ROBINSON: Just at this point this gentleman is a witness for the Cuyamaca Water Company, the testimony that he has prepared has been prepared for us, if you desire to employ him as your witness why that is a matter between you and he, but we certainly cannot be expected to be bound by any such testimony.

MR. COSGROVE: I don't understand there is anything in the question that tends to bind you, I asked him if he would prepare it for me or the City of San Diego at our expense, I don't anticipate you have any objection to him doing a little work for us, have you?

Q Would you be embarrassed in answering that

question, would you rather not answer it?

A If the data is available to me and the Company is willing I have no objection.

MR. ROBINSON: All right, the Company has no objection, we have no objection to Mr. Lee making as much money as he can in his profession.

Q You made a record of the one, similar to the one I requested before the Railroad Commission, didn't you, at the last hearing? A Yes.

CROSS EXAMINATION

on behalf of the United States

BY MR. DECHANT:

Q Are you familiar with Protestants' Exhibit U?

A Yes sir, in a general way, I haven't examined this as to detail but I am generally familiar.

Q Can you state whether your calculation as shown in Protestants' Exhibit W are based on the system as shown on Exhibit U?

A I can state after a short examination of the exhibit.

Q Go ahead and examine it as much as you wish.

A Yes, the study was based on the system as outlined here on this Exhibit U as to reservoirs.

MR. MANCHA: No cross examination.

12 M. January 6, 1916. Recess until 1:30 P.M.

1:30 P.M. January 6, 1915.

JAMES A. MURRAY, protestant, being first

duly sworn by the Register, testified as follows

BY MR. ROBINSON:

Q What is your post office address?

A Butte City, Montana.

Q You are the same James A. Murray, who is one of the protestants in this hearing?

A Yes sir.

Q And you are the same James A. Murray who is interested to a greater or less extent in the Cuyamaca Water Company?

A Yes.

Q I will ask you to state when you acquired an interest in the Cuyamaca Water Company or the Cuyamaca system?

A I think it was in June 1910, it was known as the San Diego Flume Company then.

Q And from whom did you acquire that interest?

A From some Company over there, Mr. Healion, he is the gentleman through whom we negotiated.

Q Has anything been done by you or your associates since the acquisition of this property to improve or develop it?

A Yes.

Q Just state in a general way the amount that has been expended if you know, and for what purpose the amount was expended?

A Since the year 1911 or 1910, rather, the Company has expended, outside of the purchase price, between four and five hundred thousand dollars, I don't know the exact amount, I would have to refer to the books to do so.

Q Are there any obligations of the Company outstanding that haven't been paid?

A That I am not positive of, I presume there may be sixty or seventy-five thousand dollars.

Q As one of the owners of the Cuyamaca Water system what is your intention regarding its operation and management and development?

A In what way have you reference to?

Q Is it your purpose to increase the service of the Company or to continue the operation at the present place?

A In the event of our not disposing of it to the City or this Irrigation Company or anybody else, as far as that is concerned, it is our intention to go ahead and develop the property and expend a great deal of money on it which will be necessary.

Q You spoke of disposing of the property?

A Yes.

Q Have you any scheme of disposing of the property at the present time or is there any obligation outstanding to dispose of it?

A Not at the present moment, there has been, we entered into a contract with an Irrigation Company but the option has expired.

Q Are you still under negotiations with the other party?

A To a certain extent.

Q What is the name of the other party to the deal?

A I believe it is called the La Mesa Lemon Grove & Spring Valley Irrigation District, it is such a long name I have forgotten it.

Q And you state you are still negotiating with that Company, or with that District, rather?

A In a way, nothing definite.

Q Looking to the disposal of the system?

A Yes.

MR. ROBINSON: You may cross examine.

MR. COSGROVE: I have no cross examination.

LOUIS VANDENHOOK, witness on behalf

of protestants, being first duly sworn by the Register, testified as follows

BY MR. ROBINSON:

Q What is your post office address? A 148 South Lucas Avenue, Los Angeles .

Q Mr. Vandenhook, where do you reside? A 148 S. Lucas Avenue, Los Angeles.

Q What is your occupation? A I am Chief Clerk of this United States Land Office.

Q How long have you been employed in that capacity? A In this Office about six and a half years.

Q Do you know Mr Charles T. Sackett? A Yes.

Q How long have you known him? A I have known Mr. Sackett about fifteen or sixteen years.

Q Have you ever had any dealings with him in your capacity as chief clerk of this Land Office? A Yes.

Q State if you will please, briefly, what those dealings consisted of? A During the winter of 1911, possibly in the month of December, he came to this office and had a conversation with me regarding rights of way application, as to the procedure in filing them, etc, which I explained to him and also gave him a copy of the right of way circular; at that time he

wanted to know if there was not some way of filing an application or covering certain lands for right of way until permanent plats could be filed; as I remember now, I told him that any application that was tendered would be received, as is customary, and given its regular number and placed of record in the different books, and thereafter sent to the General Land Office for the action by the Commissioner's Office; as to whether it was a temporary application or a permanent we had no means of knowing that when the application came before us.

Q Did he subsequently file a right of way application?

A Yes sir, for W. B. Hamilton.

Q What became of that application and plat?

A That application was noted on the records of this office and sent to Washington in the due course of work.

Q Was the application accompanied by a plat?

A Yes sir.

Q Subsequently was any further plat filed by him?

A I don't recollect that, whether there was or not.

THE REGISTER: Will your records show, Mr. Vandenhook?

A The serial register might show a supplemental plat filed, or additional papers filed, we do not in all cases enumerate on the record what papers are filed, except in certain cases.

THE REGISTER: I should think the records ought to be furnished for Mr. Vandenhook to refresh his memory.

MR. ROBINSON: All right, we will ask that the records for that application be produced.

Q Now, Mr. Vandenhook, you have produced the serial register with reference to 014683 of this office which reads "Right of way application for reservoir site W. B. Hamilton 126 E. Broadway, Salt Lake City, Utah, San Diego California, Box 435 having a line drawn through it, what does that indicate?"

A That the address was changed from San Diego, California to the address given in Salt Lake City.

THE REGISTER: That does not denote the date when the address was changed?

A No.

Q Now read further.

A "L. L. Boone attorney in fact, 2244 4th Street, immediately below that, 401-2 Union Oil Building, L.A. Q The last address 401-2 Union Oil Building, L.A. having a line drawn through it, what does that indicate?"

A It means that the address was stricken out from 401-2 Union Building, San Diego, California.

Description of land in Section 15, 21, 22, 27, 28, 35, Township 14 South, Range 21 East, in Sections 3, 4, 5, 8, 9, 17, Township 15 South, Range 2 East.

Q Further the date appears, the word "Date" appears and the word "Notation" appears, I will ask you to read

first the notations on that serial register.

A "1912, January 25th, Application filed and suspended for completion."

Q Now the second notation.

A "February 19, additional papers filed."

Q And the third notation.

A "February 27, all papers transmitted G.L.O."

Q G.L.O. meaning what? A General Land Office.

Q Indicating that the papers were forwarded when completed to the Commissioner of the General Land Office on February 27, 1912, am I correct? A That is right.

Q In connection with that application did you ever have any correspondence with Mr. Sackett?

A Yes, he wrote me a letter regarding the application that they intended to file, both, I mean Mr. Hamilton and Sackett.

Q What became of the original letter? A The letter that Sackett wrote to me?

Q Yes. A I probably threw that away as I do all miscellaneous correspondence addressed to me personally, I keep no files of my personal correspondence.

Q Have you a copy of that letter? A Yes.

Q Will you produce it?

THE REGISTER: Is this a copy that you made at

the time you received it or where did you obtain this copy?

A No sir, this is a copy given me by Mr. Robinson here today.

BY MR. ROBINSON:

Q Now I will ask you to examine that purported copy and say whether or not to the best of your recollection that is a true copy of the letter you received from Mr. Sackett?

A Yes sir, I have looked it over and I find it is as near as I recollect.

Q Are you positive in your own mind that it is a correct copy? A Yes, I am positive.

MR. ROBINSON: We ask this document be admitted in evidence and marked for the purpose of identification Protestants Exhibit O.

MR. COSGROVE: The City of San Diego at this time objects to the introduction of the document in evidence, and at this time respectfully requests that counsel for protestants be required to state the purpose of this line of evidence, and the purpose of the introduction of the communication.

MR. ROBINSON: I think the document itself speaks for itself, Mr. Vandenberg has testified to the best of his recollection it is a true copy, and that the original has been destroyed or lost.

MR. COSGROVE: Where did this copy come from?

THE REGISTER: Inasmuch as Mr. Vandenhook is an official of the United States Land Office, as this is personal correspondence, in justice to Mr. Vandenhook, I think counsel should make a little explanation why he put him on the stand.

MR. ROBINSON: Simply to identify this communication as having been received by him.

THE REGISTER: This you don't claim to be an official communication to the Land Office, do you?

MR. ROBINSON: In no sense, no sir.

MR. COSGROVE: I respectfully contend at this time I do not see the relevancy of this communication at all, it is purely a personal letter addressed by Mr. Sackett to Mr. Vandenhook, the tenor of which would seem to indicate that they were friends and acquaintances, The bearing of this communication upon the application of the City taken in connection with the protest as shown by the evidence it is conceded it is not apparent what the purpose is, I do not think I have any more objections to make to it.

Q Mr. Vandenhook, in the course of your various conversations with Mr. Sackett did he or did he not indicate to you that he was anxious to file this right of way application at the earliest possible moment?

A Yes sir.

Q What did he say to you if anything that led you to believe that to be the case?

A Well, he talked about other parties wanting to make application for a similar line, or something.

Q Did he mention those parties by name?

A No sir.

Q All right, proceed.

THE REGISTER: Mr. Vandenhook, such conduct as that occurs daily, people in a hurry to get land and rights of way before somebody else gets in, was there anything unusual about this man's actions?

A At the time that he had talked with me before he wrote that letter to me afterwards he was very anxious to know if there wasn't some way of covering that against other people before they could get in their regular application; at the time I thought it was a rather peculiar request to make of me, if I could not fix him up in some such way as that, although I made no remarks about it, naturally people are always anxious to get of record first, especially in rights of way.

Q They even ask us some way of being protected until they can get it through.

Q Was this man Sackett accorded any special privileges by you?

A No sir.

Q He, however, gave you the impression that he was desirous of securing special privileges, did he not?

A Yes.

MR. ROBINSON: You may inquire.

CROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q In this connection, Mr. Vandenhook, did Mr. Sackett obtain any information or get any assistance in the matter of the filing of the papers in this case that gave him any advantage over any other applicant?

A No sir.

Q So far as filing papers were concerned were they regular in all respects in compliance with the rules of the Land Office?

A When the application was filed it was incomplete, I can't say now what papers were lacking. When the papers were all transmitted to the General Land Office on February 27th, according to regulations all the papers necessary had been filed.

Q Then this activity of Mr. Sackett did not result in an undue advantage to Hamilton so far as you know, did it; so far as this Office is concerned?

A Nothing that the office did that I did gave him any advantage.

MR. COSGROVE: I think that is all.

THE REGISTER: It is merely your impression of the circumstances you have stated.

A Well, I mean I didn't give --

Q No, I mean the circumstances of his coming to the office, you said you thought he acted a little peculiar,

merely your impression?

A Yes, my impression, I said I had known him for a good many years, one of the boys going to school in my home town, he thought possibly he could get something out of me other people could not get.

Q Presuming on your friendship? A Yes.

Q It often occurs at the counter that men come to file on land with papers not incomplete and they will ask you a question if there is no way they can be protected until they can get their papers in; that happens almost every day?

A Yes.

CROSS EXAMINATION

on behalf of the United States

BY MR. MANCHA:

Q Did you ever talk with Mr. Sackett after the receipt of that letter January 1, 1912, asking for an explanation as to what he meant when he said in the first paragraph "Finally I have a man that I think will be able to take this matter up"?

A In answer to that I will have to state when he came to see me before he had written that letter he spoke about parties that were going to file applications, I was not interested in the proposition, knew nothing about it, I never asked him who the parties were, so when he came in after he had written that letter to me I never asked him anything about it, because as my recollection is he brought Mr. Hamilton with him at that time, I met Mr. Hamilton here

at the counter once or twice, possibly three times, I remember him distinctly because I had seen Mr. Hamilton in Mr. W. A. Clark's bank at Butte when I lived there, as I remember he was receiving teller or cashier at that time.

Q Were you given to understand at any time by Mr. Sackett for whom this filing was made?

A I don't believe he told me that before he tendered the application of Mr. Hamilton, just mentioned parties or people that he was working for.

Q Did you have any conversation with Mr. Hamilton about this matter?

A No sir, nothing except just the general routine of work, that was all.

MR. MANCHA: That is all.

FRANK J. LEBERT, witness on behalf of

protestants, being first duly sworn by the Register, testified as follows

BY MR. ROBINSON:

Q What is your post office address? A Box 933 San Diego.

Q What is your occupation? A At present I am superintendent of the El Monte Ranch Company developing water.

Q Have you any interest in any land riparian to the San Diego river below the El Capitan damsite? A No sir, only as president of the San Diego River Waters Association.

Q You know where the El Capitan damsite is? A Yes.

Q Have you ever at any time had any interest in any land of that character? A Yes.

Q State where that land was located and what your interest was? A I owned an undivided one-third interest in the Lakeside Farms Tract opposite Lakeside known as the J. D. Fedder Ranch.

Q How many acres? A Nine hundred some odd acres in that tract.

Q Do you know of the existence of an organization called the San Diego River Riparian Owners Association? A Yes.

Q Are you a member of that Association? A Yes.

Q Do you hold any office in that Association? A I am president of the Association.

Q What is the object of that Association?

A It is mutually agreed between the riparian owners, it is got up with the idea of protecting all the riparian lands owned on the river, or the people that live there.

Q Are you familiar with the territory embraced in that Association? A Yes.

Q Approximately how many pumping plants are owned by the members of that Association? A Probably about thirty-five pumping plants.

Q Now roughly speaking what territory is covered by the membership of this Association? A It is the territory from the old Mission dam east, to the east line of the El Monte ranch, what is commonly known as the El Cajon Valley.

Q And you have no connection with any riparian owners below that point? A No sir.

Q Now what is the source of supply of the wells which you have testified by the members of this Association? A The supply is the San Diego river.

Q Do you know how long those wells have been in operation to your knowledge? A I know some how long they have been in operation.

Q For what period of time does that cover? A The longest is eight years I have known in operation.

Q Has there ever been any interference with the operation of those pumps by anyone? A Not that I know of.

Q By interference I mean legal interference?

A Why yes, we have, it is legal interference, we undertook to stop the Cuyamaca Water Company from pumping water out of the San Diego river.

MR. COSGROVE: I beg your pardon, I insist on the witness being allowed to answer the question without interruption, particularly in view of the fact he is your witness.

MR. ROBINSON: I disclaim any intention on my part to interrupt the witness, have you anything further to say in answer to that question? I submit there is no interruption.

Q Can you tell us approximately how many acres there are in the El Monte ranch bottom land? A Nine hundred and seventy acres.

Q How much water do you pump on that ranch per day? A I have never computed it.

Q Can you give us roughly any idea? A During the irrigating season we pump an average of perhaps ten hours a day with each pumping plant, I have never kept track of the amount of water that was used throughout the year, or the number of days that we used the pumping plants, I know the capacity of the plants.

Q If you will, please. A A capacity ranging from five hundred gallons a minute to two thousand.

Q Is that plant ever operated at its full capacity? A It is at times.

Q During what period of time? A During the dry irrigating season and summer.

Q How many acres of riparian land below the El Capitan damsite east of where San Vicente Creek comes into the San Diego river, can you tell us that? A About seventeen hundred acres.

Q How is that land supplied with water if at all? A Supplied with the San Diego river and the confluence of the San Vicente creek.

Q Pump water or natural flow? A Pump water.

Q You are aware of the fact that this proceeding is brought about by the effort of the City of San Diego as assignee of W. B. Hamilton to secure permission to construct a dam one hundred and sixty feet high at the El Capitan damsite? A That is my understanding, yes.

Q In your opinion, from your familiarity with the situation, would the building of a dam of that size at that point interfere with the lower riparian owners securing the necessary amount of water required by them to irrigate their lands?

A It certainly would if there was no proper arrangement made whereby they could get sufficient water to replenish the depleted sands each year.

Q Are you familiar with the values of land in the

El Cajon Valley? A No, not in the El Cajon proper I am not, I am in the San Diego River.

Q Will you give us your best judgment as to the value per acre of land riparian to the river, which are irrigated by the water as you have heretofore described?

A The land varies in value according to improvements that have been made upon it, raw land in the valley adjacent to the river, which is susceptible of making good alfalfa land, in a rough state without any development work on it is worth three hundred dollars an acre, that is that portion of it that is not flooded by water during excessive flood of the river.

Q Do you know of any land that can be purchased for fifty dollars an acre of that character? A Not riparian land, no sir.

CROSS EXAMINATION

on behalf of the United States

BY MR. MANCHA:

Q In order that the reviewing officers in Washington may know the exact location of the land concerning which this witness has just been testifying, I would like to refer to Protestants' U. Referring to Protestants' Exhibit U, witness, at the point marked Old Mission dam on that exhibit, are you familiar with the land between the Old Mission dam and the El Capitan proposed damsite?

A Yes.

Q What is the distance approximately from the Old Mission dam to the El Capitan? A About twelve or thirteen miles.

Q And the distance from Old Mission dam to Lakeside is about how far, Lakeside being marked on this Exhibit U. A About six miles.

Q Between the Old Mission dam and Lakeside about how many acres of riparian lands are lying along the San Diego river? A About seventeen hundred acres, as near as I am able to state.

Q Now from Lakeside to El Capitan, how many acres? A About the same number of acres.

Q That is a total of about how many riparian acres from Old Mission dam to El Capitan damsite? A Between thirty-five hundred and four thousand acres I should judge is the total number.

Q Are those lands now being cultivated? A The majority of them are, yes sir.

Q About how many residences are approximately between Old Mission dam and Lakeside riparian owners' residences? A I am unable to state exactly the number of residences. Lakeside farms, it is ~~scattered~~ cut up in small tracts that contain one hundred and fifty-one people, I know the population but the number of residences is too numerous.

Q Does that include Lakeside? A That is just immediately east and north of Lakeside.

Q How many people in Lakeside?

A I could not tell you how many people reside in Lakeside.

Q Approximately? A Probably two hundred and fifty or three hundred people.

Q Between Lakeside and El Capitan dam approximately how many residences are there if you know?

A I think I could tell you, what is that, thirteen.

Q About how many people between Lakeside and El Capitan are there living on that land? A Probably fifty or sixty people.

Q Is there any Government land bordering on the San Diego River, between Old Mission dam and El Capitan damsite? A None that I know of.

Q Is it all patented land? A Yes sir, as near as I know.

Q What portion of that distance between Old Mission dam and the El Capitan damsite, what portion of that distance are there wells being operated and the land being cultivated by riparian owners? A The entire length of it from Mission dam to the east line of the El Monte ranch.

Q Will you indicate on Plaintiff's Exhibit U, what is the east line of the El Monte ranch? A It is a very light line just east of Tunnel No. 4, two miles, that line is two miles and six-tenths from the point at which the El Capitan damsite is located, I measured that part of the route.

Q How far is it from the letter "E", beginning the word El Capitan Reservoir site? A That is the

line of El Monte ranch, the corner.

Q The east line?
line of the corner.

A That is the east

Q How many acres in El Monte ranch? A About
forty-five hundred acres.

Q Now how long, witness, to your knowledge have
these lands between the Old Mission dam and the El Capitan
damsite been cultivated by riparian owners?

A To my knowledge only since 1908, that is as far back
as my knowledge dates.

Q Has the City of San Diego or anyone else ever
tried to enjoin any of the users of the water in that dis-
tance, to your knowledge? A No sir, not to
my knowledge.

Q What is the average ^{value} per acre of the land bor-
dering on the San Diego river, between the Old Mission dam
and the El Capitan proposed reservoir site?

A I could qualify on that question only to the
east line of the El Monte ranch, two miles and six-tenths
miles, I am not able to qualify on its value.

Q That is two miles and six tenths west of the
El Capitan damsite? A Yes.

Q You are not familiar with that two miles?

A I am familiar with the ground but don't know the value
of it.

Q To the east line of the El Monte ranch which
you have indicated as being the capital E, tunnel 4, between
that point and Old Mission dam, all the irrigable land

between Old Mission dam and that point, what is the average
value per acre for agricultural purposes? A There is
not anything worth less than three hundred dollars an acre
in its raw state without any improvements.

Q Do you know of any of it having been sold for
that price?

A There is none in which
I have been interested, any of the two largest tracts on
the river that didn't sell for that or more per acre.

Q Are you familiar with the land west of the Old
Mission dam towards San Diego?

A I know
the land only, not familiar with its value or development.

Q Not sufficiently familiar with it to testify?

A No sir.

Q As between the Old Mission dam and the east line
of the El Monte ranch you know the land pretty well, do
you? A Yes.

Q In your opinion what would be the effect upon
the value of the lands extending along the San Diego river
between the Old Mission dam and the east line of the El
Monte ranch if a one hundred and sixty foot dam were erected
at the proposed El Capitan damsite and the waters impounded.

A If the waters were impounded at that point the El
Capitan damsite and held back without making due provision
for the riparian lands, to replenish the subterranean
sands of the river bed, it would practically annihilate
the value of that land for intensive farming.

Q Have you as agent or representative of this Water

Association, have you ever taken up the question with the City of San Diego as to what provision would be for your protection or measure of damages in reference to that?

A No, only in so far as an attempt to submit an arrangement that would properly regulate the flood waters on the San Diego river, and protect the riparian owners as well, it was never acted upon, however, by anyone. I will state in connection with that that we have never had in our Association any objection to anyone making arrangements to preserve and conserve all the surplus flood waters of the San Diego river, with due regard, however, for the protection of the riparian lands, and we went to some considerable expense to prepare plans to that effect and submit a copy to the City of San Diego, and a copy to the Cuyamaca Water Company, and also a copy was sent to the Railroad Commission in 1913, we have always realized that there was a large surplus of flood waters in the San Diego River that ought to be conserved, of course always with due regard to our rights.

Q Have you ever, has your Association ever had an engineer report to you what the effect would be if a one hundred and sixty foot dam were constructed at El Capitan, or whether it would be a feasible proposition giving due consideration to the riparian land values below.

A Yes, we had the engineer's approval of the plans

that were submitted for conserving the surplus waters of the San Diego River.

Q Who was that engineer? A Mr. Finkle, we got his approval before we submitted the plans.

Q What are the plans? A I can't recollect what those plans were.

Q You have never taken that question up with the City of San Diego? A No, only furnished a copy, I furnished a copy to the Cuyamaca Water Company, it was at their suggestion that we prepared this expensive piece of work, and they asked us to do that in order to get a chance to dismiss a suit or something that was then pending, so we submitted the plan but it was never acted upon after that.

BY MR. DEBHANT:

Q Have you any arrangement with the Cuyamaca Water Company at the present time to protect these riparian rights?

A The only protection we have now is a bond, the court has made the Cuyamaca Water Company put up a thirty thousand dollar bond for damages, we still hold that against them, in case they do us any damage; that is because the court permitted them to pump.

Q Would that be sufficient bonds to cover any possible damage? A No, not if they continued to pump dry years.

Q What would be the amount of bond which would amply cover any damage that might result to the riparian owners if the proposed El Capitan dam should be constructed and the waters impounded, that is, what would be a sufficient bond to safeguard the interests of the riparian owners between the Old Mission dam and the east line of the El Monte ranch, - have you ever as representative of those owners made any such estimate or computation?

A I have never made any such estimate but would say that without due provision made -- I have got to add that to the question, due provision made for recharging the sands of the riparian lands, the estimate would be, the damage would be incalculable, absolutely ruin the property, it would be of no value except as a dry land proposition, it would destroy all of the orchards.

Q Have you submitted to the City of San Diego a plan which in your opinion would safeguard the interests of the riparian owners?

A Yes.

Q You have written authority to represent all the owners between Old Mission dam and the east line of the El Monte ranch?

A When we submitted our plan it was discussed thoroughly at the meeting of the Association, and agreed upon unanimously that the plan would be subject to protect all the riparian lands, anyone who undertook to conserve the surface waters of the San Diego river to store

them must still take care of the lands.

Q That plan has not been made a part of the record in this case has it?

A No sir.

Q What effect would the erection of a fifty foot dam at the El Capitan damsite have upon the riparian owners if you know?

A It would not have very much effect on them, provided we had always normal years, if a fifty-foot dam conserved all the water of a dry year, the sands in the San Diego River, the riparian lands had been depleted, it would, of course it would prevent any water from going to them and the sands would remain depleted until the following year, therefore would destroy part of the crop.

Q In brief what is your plan to protect the riparian owners in case of construction of either of these dams?

A The plan for protecting the riparian lands is to allow the first flood waters to pass over the sands in sufficient quantity until the sands are recharged.

Q That is, to leave the gates of the dams open?

A Yes, we want the first flood water, in other words, we want the assurance we get ^{them} in case there are no other flood waters, just as though we hadn't intercepted the waters at any point in the San Diego river, we want the sands recharged first, we have provided in our plan to keep the water level in those sands, not to have it lower than they are in a normal year when the river takes its natural

course and flows to the sea. We have always provided that just as soon as the water comes to the surface, goes to the sea, the gates shall remain shut and impound all the surface waters. We have provided a system of test wells, surface wells shall be located, we have provided for a man to gauge those wells before the dam is installed and to maintain a certain water level in those wells which will show the normal stage of water in the subterranean sands.

Q In what way are the Cuyamaca Water Company interfering with these rights?

A At the time of the suit in which the court required them to give a thirty thousand dollar bond they went to work by authority of the Railroad Commission and were taking the waters out of the sands of the San Diego River; we contended they had no right to do it, they were trying to establish a permanent right to increase their water supply.

Q Where were these pumps, are those the ones on the Indian Reservation? A Yes, installed three of them at different points, one at the Indian Reservation, one at Chocolate Creek and one at the diverting dam.

Q Was the El Monte one of them? A No, they put that one in afterwards, we included that in our action afterwards.

BY MR. MANCHA:

Q As representative of these riparian owners you have never intervened have you in this case, this private contest?

A No sir, not before this present one. For your information, as representative of the Government, I respectfully inform you that under Rule 97 of the Rules of Practice, you could yet intervene and show the interest which you represent in order that the Department may have before it all of the facts in passing upon the application.

A I would not like to submit intervention at this time without further consulting the remainder of the Board, only in so far as to say that we have no objection to anyone conserving the surplus waters of the San Diego River, with due regard to the protection of all the riparian lands, but we must be assured that this is done.

BY MR. DECHANT:

Q You are looking at Protestants Exhibit U?

A Yes.

Q If that system is developed as it is shown on that plat or exhibit, if you know please state whether that would interfere with the riparian rights and the recharging of the sands of the San Diego river.

A Any further development according to these plans here than what now exists at the Cuyamaca Lake up here, without due regard, provision made for recharging the sands of the San Diego river, will seriously affect the value of the

the lands of the riparian owners.

Q Are you sufficiently familiar with that development and the results of that development to say that if the system was developed as shown there the sands of the San Diego river would not be charged sufficiently to supply the riparian owners as they are at present?

A Only in normal years when there is sufficient rainfall, only if the system has been, has had or made a catchment, it is able to contain, then the riparian owners will have to depend on the dry years just what they could get below that system, which would be insufficient.

Q You think that in the years that are subnormal the system as shown on there would catch all of the flood waters or would impound all of the flood waters of the San Diego river?

A Yes sir, it is agreed that all of the waters below the Cuyamaca Lake since 1908 one year disappeared at a point within one mile below Santee and were absorbed by the sands.

BY MR. MANCHA:

Q Santee is how far west of Lakeside on Protestants' Exhibit U, Santee not being marked?

A About three miles and a half west of Lakeside.

CROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q There is a creek coming in just above Lakeside as shown on the Protestants' Exhibit U, is that the San Vicente Creek?

A Yes, that is from the north.

Q There is one other creek that is indicated in here that furnishes some supply of water, Los Coches, not indicated on the map, where is that?

A A little west of Lakeside, on the San Diego river, it comes within the boundaries of the townsite of Lakeside, it ends at the San Diego river practically at Lakeside, it furnishes some drainage and helps replenish the sands in normal years, some years it does not go through.

Q Mr. Finkle is a civil engineer who consulted with your Association in the preparation of plans?

A Yes sir, he is our engineer.

Q Is he an engineer of recognized ability?

A Yes.

Q He has an excellent reputation as an hydraulic engineer?

A Yes.

Q Now under the scheme that has been prepared by your Association and approved by Mr. Finkle, did you contemplate the erection of a dam at the El Capitan and to conserve the flood waters at that point?

A No sir.

Q Just what did you contemplate?

A We never contemplated anything except to depend on the rainfall to recharge the sands in the Valley so we could pump annually

from them to supply the land.

Q Well, is it your understanding if the dam might be erected at El Capitan then the flood waters conserved and a portion of them allowed to flow down below so as to charge the sands as you have mentioned, so that no injury would be done to the lower riparian owners?

A It is possible with proper arrangements to recharge all the sands annually by allowing sufficient water to pass.

Q Then if anybody did build a dam at the El Capitan do you believe that if they would recognize the rights of the lower riparian owners by allowing a sufficient amount of water to escape to recharge the sands, that still a portion of the water might be conserved behind the dam without injuring the lower riparian owners? A I do.

Q As representative of those lower riparian owners are you in a position to say you would have no objection to such a plan if they would recognize your rights?

A I know that they will agree to it, our Association will, of course we would have to have a guarantee that we would be properly used and it would not be taken away from us, we would rather, in fact I think I speak for myself and the largest holders, we would rather that that would happen, that the flood waters should be conserved, we want them conserved if it is possible to do so.

Q Why? A Because they eliminate damage on the river to a large extent, they permit some

farmers to reclaim lands that are now subjected in normal years to floods, which does no good.

Q So if the excessive floods that now occasionally occur were held back by a dam or otherwise, you would be able to farm more land than you now farm, is that the idea?

A Yes.

Q If the water were held back by a dam at El Capitan and the flood water allowed to descend gradually instead of in flood sweep you consider it would be a benefit to the lower riparian owners? A Yes.

Q Is it your observation that at the present time under present existing condition, a great amount of water very frequently sweeps by into the sea that could be conserved and used for beneficial use if the dam was constructed at El Capitan? A Yes, it ought to be put

there by someone to conserve those waters.

Q As between the construction of a dam at that point under such circumstances as would, under such guarantees as would protect the lower riparian owners, have you or the Commission or the Association that you represent, any choice as to whether it be erected by the City of San Diego or some outside party?

A Well, the Association itself I think would prefer the City would get it.

Q What is your opinion on that? A Well, I am of the same opinion, as far as conserving the waters is

concerned, always of course, with the assurance that the guarantee we will get the flood waters to replenish our sands.

MR. COSGROVE: I think that is all.

REDIRECT EXAMINATION

BY MR. ROBINSON:

Q With reference to this plan which was submitted to the Cuyamac Water Company and the City, don't you know the reason the Cuyamaca Water Company didn't act on that plan was by reason of their, of the contemplated sale to the La Mesa Irrigation District?

A I believe that came up shortly afterwards, we submitted this plan in February 19, 1914, I think shortly after that there was something came up in the sale, the contemplated sale or something either to the City of San Diego or the La Mesa people.

Q Now you have spoken of the normal water level on the lands represented in your Association, can you tell us just what you mean by that?

A The normal water level would be when the sands have been full, recharged, and the water allowed to go through the entire length of the valley, that then of course assures us of a continuous pumping supply till the following year when the rains come again, they are gradually lowered during the pumping season it all disappears.

Q Have you ever bored any wells on this land that you speak of?

A I have bored sixty-two that are now in operation.

Q At what depth was water secured in those wells?

A They range in depth from fifty-five to one hundred and thirty feet, they are all twelve inches in diameter.

Q Are they all producing water at this time?

A They are all connected to pumping plants at this time.

Q About how many gallons per day are those wells capable of producing, if you know?

A I am not able to tell you in each well for they vary in capacity, those wells from fifteen miners' inches to one hundred, depending upon the porosity of the sands we strike at the bottom.

Q Can you give us roughly the number of gallons per day those wells are capable of producing?

A Not -- only miners' inches, the way we have measured them

Q All right.

A I said from fifteen to one hundred miners' inches continuous pumping, I can't give you the total of all the wells.

Q The total of El Monte ranch then?

A The wells on the El Monte ranch now in operation are capable of producing seven hundred miners' inches of water, if all of them were put in operation at the same time they would produce that amount of water while in operation.

Q How many wells have you on the El Monte ranch?

A Twenty-nine.

on behalf of the City of San Diego

BY MR. COSGROVE:

Q If a dam were constructed there at El Capitan dam site and the requirements of the lower riparian owners complied with so that the sands became saturated to the level you have indicated, in addition to the benefit to the ranchers which you have indicated by holding back the flood, keeping the floods from sweeping you, there would be an additional advantage in this, would there not, that the seepage from the dam during the season when you would be pumping would have a tendency to help and maintain the water plane, would it not?

A It would to the extent of the amount of that seepage, that is the whole problem, whether it will seep very much or very little, we assume if a dam that is constructed properly is done with the intention of making it perfectly tight, going on that assumption we would require arrangements that will properly protect the riparian owners.

Q If there was any seepage that seepage would be an advantage?

A Yes, to the extent of that seepage, whatever it might be.

Q What is the diameter of those wells? A All twelve inch.

Q They are the same character that have been bored and now in use on lands that you have testified to regarding?

A All the same kind of wells.

Q Approximately how many wells are there?

A I have put down sixty-two.

Q All told, how many wells are there on that land if you know?

A Twenty-nine on the El Monte ranch.

Q Including the El Monte ranch and the lands outside the El Monte ranch owned by the members of your Association?

A I am unable to say.

Q Can you approximate?

A There is perhaps one hundred and fifty.

Q Including the wells on the El Monte ranch?

A Yes.

Q They are all twelve inches in diameter? A No they are not all twelve inches in diameter.

Q About how many are twelve inches in diameter?

A I don't care to make an estimate because I am not able to do it intelligently.

REDIRECT EXAMINATION

BY MR. ROBINSON:

Q Would you consider a seepage of one million gallons a day would be sufficient to supply the demands of the riparian owners?

A Not if the season was an excessively dry one and the sands had not been properly recharged it would not be sufficient.

RECROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q If the sands had been properly recharged the seepage of one million gallons a day would be of great benefit?

A It would help materially, I am not prepared to say to what extent it might benefit, it might not be sufficient, it is a problem to be determined when it has been tested.

I am prepared to leave with the Receiver or the Commission a copy of this arrangement if it is of any benefit.

MR. COSGROVE: Why don't you introduce it in the record as your exhibit.

A I am willing to do that.

MR. ROBINSON: We will introduce it as our exhibit if you so desire.

MR. ROBINSON: I think possibly after having examined the document in question that it would be better to introduce it as an exhibit of the Riparian owners Association, although we have no objection to its introduction.

A I will say the document as it stands is where we are going to stand, if we go into court that is the point we are going to make, we will test it on that ground clear through, our case is pending, that is what we are going to fight on.

THE RECEIVER: Do you wish this marked Riparian Owners Exhibit No.1?

A Anything that will identify it.

THE RECEIVER: This is marked San Diego River Waters Association Exhibit No.1.

.....

ED FLETCHER, protestant, recalled in his

own behalf;

MR. FLETCHER: I have no knowledge that the City of San Diego really instigated the suit which Judge Boone brought on behalf of the La Mesa Development Company, it merely was a conclusion of mine from the fact that it was only a few days after Judge Boone transferred the Hamilton water filing to the City and that is the only fact upon which to base my conclusion, but I have no desire to question the motives of any of the city officials, but since I have testified they have personally assured me that I am mistaken absolutely, I feel sure the city had no knowledge of the bringing of the suit by Judge Boone.

3:40 P.M. January 6, 1916, Recess until 9:30 A.M.

January 7, 1916.

9:30 A.M. January 7, 1916.

FREDERICK M. FAUDIE, witness on behalf of protestants, being first duly sworn by the Register, testified as follows

BY MR. ROBIESS:

Q What is your post office address? A 916 - Eighth Street, San Diego.

Q What is your occupation? A Civil and hydraulic engineer.

Q Are you connected in any way with the Cuyamaca Water Company? A Yes.

Q In what capacity? A Assistant manager.

Q As assistant manager have you or have you not the custody of the books and records of the office of the Cuyamaca Water Company? A Yes sir, I have.

Q It has been testified here by at least one witness in this proceeding that the Cuyamaca Water Company refused to give certain data in their possession with reference to the water supply to a certain representative of the City of San Diego who requested the same, have you any knowledge of that at all? A I think I can recall that incident that the witness testified to.

Q Will you kindly give us your version of that occurrence? A Mr. Cromwell, the city engineer and one of his men came to the office and asked for certain data regarding I believe it was the draft, the actual draft on the Cuyamaca reservoir and I stated--

Q With reference to what year?

A I believe the information was wanted for a long period of years, I have forgotten the exact date, I told him that that information was not available at that time, that it was not made up in the shape that he wanted it, but didn't refuse to make it up or to give it to him, my recollection is that Mr. Cromwell stated that that being the case he would do without it.

Q You didn't absolutely refuse any employee of the City of San Diego any information that you had at your disposal?
A No.

Q As a matter of fact you have never refused any information at the disposal of the Cuyamaca Water Company to any employee of the City of San Diego?
A No.

MR. ROBINSON: Take the witness.

MR. COSGROVE: No questions, Mr. Faudie.

LOU B. MATTHEWS, witness on behalf of protestants, being first duly sworn by the Register, testified as follows

BY MR. ROBINSON:

Q What is your post office address? A 916 - Eighth Street, San Diego.

Q What is your occupation? A I am secretary of the Cuyamaca Water Company.

Q How long have you been such secretary? A A little over five years, five years and a half.

Q Were you in the employ of the Cuyamaca water Company as secretary on or about the 1st day of April, 1912?
A Yes.

Q Do you know one C. T. Sackett? A Yes.

Q Do you know whether or not there was a map showing a certain projected reservoir site on the San Diego river in the office of the Company at that time? A There was.

Q Do you know whether or not there was any data other than the map or plat having reference to that project in the office of the Company at that time? A There was other data, yes sir.

Q Is that map, is that data in the office of the Company at this time? A The maps are not in the office.

Q And the data? A No sir.

Q What became of it if you knew? A Mr. Sackett removed them from the office.

Q Was Mr. Sackett at that time in the employ of the Cuyamaca water Company? A He was not.

Q So far as you know those maps and plats have never been returned? A No sir.

Q Do you know whether or not any demand was ever made on Mr. Sackett for the return of those documents? A Yes.

Q And you say they never were returned? A No sir.

Q Have you any knowledge with reference to the application for right of way of W. B. Hamilton? A I knew that it was filed on.

Q Do you know who acted as engineer on behalf of W. B. Hamilton in filing that application? A C. T. Sackett.

Q Being the same C.T.Sackett referred to whom you have heretofore testified? A Yes.

CROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q Have you had any experience in engineering? A I have not, no sir.

Q Had you examined this map that you say that Mr. Sackett removed from your office? A I saw it, yes sir.

Q Did you ever examine it? A I have made, I have looked at it several times, I know the map and knew what it was.

Q You say it was a map of a projected reservoir, what do you mean by a projected reservoir?

A It is where the temporary surveys had been made, a rough sketch had been made of it.

Q Where was this reservoir site located?

A Up in the El Capitan, on the Indian Reservation.

Q How long had that map, when was that map removed by Mr. Sackett? A That was removed in 1912.

Q When in 1912? A That was along about March or April I judge as near as I have it.

Q How long had the map been in the office prior to that time? A It was transferred or turned over with the system from the Plume Company with other maps and data.

Q You say it was turned over with other maps and data from the Plume Company to the Cuyamaca Company, that was in 1910? A Yes.

Q So at least since 1910 this map had been in existence, had been in the office of the Cuyamaca Company? A It was a part of this record.

Q This data that accompanied this map, of what did that consist if you know? A Principally field notes and figures, etc. concerning this proposed dam and reservoir site at El Capitan.

Q It showed I suppose the amount of land that would be flooded at different elevations of the dam? A I didn't go into the figures or papers at all.

Q What was the height of that dam as shown by that map? A That I don't know.

Q Has you any idea? A No, I haven't any idea at all.

Q It was not data that had been prepared by Sackett?

A Sackett never prepared that, no sir.

Q So that when the Cuyamaca Water Company took over the flume or the water system, which is now called the Cuyamaca Water Company, in 1910, with the other properties they got a projected map of a projected reservoir site at El Capitan, together with some considerable data with reference to it?

A There is quite a number of maps of the entire system and this was one of them.

Q How were you in charge of that data at that time? A It was in the office.

Q Were you in charge of the office? A I was in charge of the office, yes sir.

Q Mr. Sackett was not in the employ of the Cuyamaca Company at that time? A No sir.

Q Well, he had been right up to a couple of days before? A We had been in the employ for a matter of probably four or five months.

Q How long before he moved these maps had he ceased his employment? A Probably four months.

Q So according to your figures he had ceased his

employment with the Cuyamaca Water Company along the latter part of 1911? A September he left.

Q September 1911? A Yes sir, September 1911.

Q How did he tell you what he was taking it or removing this map, this data for? A He simply said he was going to take them over to the hotel where he was stopping.

Q He never brought them back? A We never brought them back.

Q Have you any reason to believe any officer of the City of San Diego knew anything about that?

A I could not say as to that.

Q You say you have looked at this map several times? A Yes.

Q Did you look at it the day he took it away? A I did, yes.

Q It was the same map you had looked at several times? A Yes.

Q What was the legend on the map? A I can't remember the legend on it.

Q Your best recollection. A It had an outline of the contour of the reservoir, etc. of course I don't, I can't memorize the data that is on the map, there are so many of them in the office.

Q Would you know the map if you saw it? A Yes, I think I would.

Q I will show you a plat which has been introduced

in evidence in this case, Protestants Exhibit B, and ask you

whether or not that is a copy of the map? A Well, the map you see was considerably larger, it was a tracing that he took, this is reduced, you know it looks very much smaller to the tracing that was taken out of the office, and these contour lines scattered around here, I say it was a larger tracing, the width of it was probably four feet, this has been reduced.

Q I will show you a tracing which is part of the records in this case and which bears the following inscription: "Received February 19, 1912, 9 A.M. United States Land Office, Los Angeles, California. Received September 25, 1914, 1 P.M. United States Land Office, Los Angeles, California, which bears the legend, Map, showing the location of dam and reservoir site applied for by W. B. Hamilton on lands of the United States, situated within the watershed of the San Diego river, within the Capitan Grande Indian Reservation and the Cleveland National Forest Reserve and the County of San Diego, State of California, and contains other inscriptions, and ask you to look at that and state whether or not that looks more like it?

A The map that Mr. Sackett took and he undoubtedly worked from that map he worked, this is one of the maps he took from our office.

Q Would you say this map shows about the same location of reservoir as the tracing? A It was more on this order (Pointing to Protestants' Exhibit B) showing the contours of the proposed reservoir.

Q Now directing your attention not to the contour lines by particularly to the size and extent of the reservoir, would you say that that map showed a reservoir of this size (Pointing to the tracing) being a part of the files which has just been identified, or does it show, or in your opinion did it show a reservoir more of the size as shown on Protestants' Exhibit B, if you can answer that question you may do so.

A I would not be able to answer that intelligently.

Q The point I am trying to get at, Mr. Matthews, is to determine the size of the reservoir and the height of the dam as shown by the map that Mr. Sackett is alleged to have taken by you stated to have been taken, can you say or not what the height of the dam was as shown by that reservoir? A I am not prepared to give figures on that.

Q You haven't any idea? A No sir.

Q You haven't any idea of the area of land flooded?

A No sir.

Q Do you know how far up the river from the El Capitan dam site the flood line of the reservoir extended?

A I could not answer that either.

Q You don't know how far below the diverting dam the flood line of the reservoir extended? A I could not say.

REDIRECT EXAMINATION

BY MR. ROBINSON:

Q Mr. Sackett was in the employ of the Company for some little time? A Yes.

Q Over what period of time did that employment cover? A May 1911 to September 1911.

THE REGISTER: Let the record show what he is refreshing his memory from.

Q State what that book is you are refreshing your memory from? A This is a little memorandum book I carry, your Honor, and set down figures.

Q Set down at the time the events transpired? A I looked it up that next day from the office record.

THE REGISTER: We want the record to show what you are refreshing your memory from.

BY MR. ROBINSON:

Q During that period of his employment did Mr. Sackett make any surveys for the Cuyamaca Water Company?

A He made several surveys, yes.

Q Is any data in connection with these surveys at present in the office of the Cuyamaca Water Company?

A Not to my knowledge.

MR. ROBINSON: That is all.

RECROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q You don't claim to be able to identify hydraulic engineering data that he has collected if you would see it in front of you now, do you? A Well, I would know the notebook, the field note books and other data and preliminary maps that are gotten up from time to time.

Q Is it your desire from the question and answer that has just been asked and answered to create the impression that in addition to the field notes and maps spoken of prior hereto, that Mr. Sackett or someone else has removed other data from the files of the Cuyamaca Water Company? A I don't know of any other matter in the office.

THE REGISTER: He stated not to his knowledge there was not anything else removed.

Q Is it possible that could have been removed and you would not have knowledge of it?

A Such a thing is possible, the notes were taken, the field notes made, he kept his personal notes.

Q And you as the custodian of the office records would know that? A Yes.

BY R. COSGROVE:

Q Is it not a fact that since Mr. Sackett left the employment of the Cuyamaca Company that at the very least calculation ten hydraulic engineers have had access

to those field notes and to this data of the Guyamaca Water Company.

MR. ROBINSON: Objected to as uncertain, what field notes are referred to, what data are referred to.

Q (Question read) Answer that yes or no.

A They have.

Q Is it not just barely possible that some of these engineers have removed some portion of this data and have simply failed or neglected to return it?

A Not the field note books.

Q You will just answer the question yes or no, if you can answer it yes or no. Read the question again for the witness, Mr. Reporter.

(Question read)

A (I don't think so.

MR. COSGROVE: That is all.

REDIRECT EXAMINATION

BY MR. ROBINSON:

Q Do you know whether or not the Guyamaca Water Company have since instituted any suit against Mr. Sackett with the idea of securing the return of this map and this data?

A They have, yes sir.

RECROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q How long ago did they commence this proceeding?

A It was 1912.

Q What time in the year 1912? A I can't remember the exact month, the latter part of 1912, along in August, I judge or September.

Q Did they ever go to trial on the case? A No sir.

MR. COSGROVE: I guess that was all.

THE REGISTER: What was the outcome or the present status of the proceeding?

A Of the case, your Honor?

Q Yes. A They have never located Mr. Sackett.

Q Haven't got service on him? A No sir.
BY MR. COSGROVE:

Q Have you attempted to locate him? A I have not attempted, no sir.

Q Do you know anybody that did attempt to locate him? A Yes.

Q Who attempted to? A Mr. Lacey.

Q Mr. Lacey, the young attorney who works for Mr. Sweet a great deal? A Yes.

Q And Mr. Sweet is the attorney who commenced the action? A Yes.

Q If you desire to locate him I will give you his address any time you wish it, Mr. Matthews. A Thank you.

MR. ROBINSON: Whose address do you refer to?

MR. COSGROVE: Mr. Sackett's. Mr. Robinson we will give you his full name and address where he can be reached by mail any time you wish it, I think I can give it to you right now. I have a letter from him that he

wrote to Judge Boone at the time that this first hearing was had, and he is in Montana, and the name of the town I don't just recollect.

MR. ROBINSON: Livingston?

MR. COSGROVE: I can't say Livingston although that was what I had in mind, at the next hearing I will give you a copy of the full name and address.

MR. ROBINSON: Thank you very much.

ED FLETCHER, protestant, recalled

BY MR. ROBINSON:

Q You are the same Mr. Fletcher who has heretofore testified in this matter? A Yes.

Q In your direct examination, Mr. Fletcher, you referred to some report that was made by Messrs. Lippincott and O'Shaughnessey, with reference to the Volcan water system? A Yes sir.

Q Have you that report, a copy of that report with you? A Yes.

Q Now referring to page 8-a of the report entitled REPORT ON THE VOLCAN LAND & WATER COMPANY TO THE CITY OF SAN DIEGO, by M.M. O'Shaughnessey, Mem. Am. Soc. E. E. and J. B. Lippincott, Mem. Am. Soc. C. E. the abbreviations I take it meaning Member of the American Society of Civil Engineers?

A Yes.

Q Now do you know O'Shaughnessey and Lippincott?

A Yes sir, personally.

Q What is their occupation? A O'Shaughnessey is now city engineer for the City of San Francisco, and has charge of the Hetchy-Hetchy project.

Q Mr. Lippincott? A J. B. Lippincott is now connected with the City of Los Angeles, and with Mulholland built the Los Angeles Aqueduct for the City of Los Angeles.

Q Reading from page 8-a, now beginning at the second paragraph, please read the context of that report.

A The cost of developing the entire system to a safe yield of 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 (6.8) for structures.

Q Do you know Phillip E. Harroun? A Personally, yes sir, he was ex-Chief Engineer of the State Railroad Commission of California.

Q Do you know whether or not he ever made any report on the Volcan Land & Water Company's system?

A He did.

Q This report which you now have before you, entitled REPORT TO THE CITY OF SAN DIEGO AND TO THE VOLCAN LAND & WATER COMPANY ON THE SAFE NET YIELD VALUE, Cost of Completed system, Cost of water delivered and of properties of the Volcan Land & Water Company, By Phillip E. Harroun, Consulting Engineer, San Francisco, California, August 1914, is that a copy of the report that you refer to?

A Yes.

Q Reading from page 28 of that report, Colonel Fletcher.

A Upon a basis of four and a half per cent interest on the value of the property, together with annual depreciation, maintenance and operating cost, and the delivery of twenty-three million gallons daily, this water will cost delivered into the distributing system of the City of San Diego per thousand gallons 5.26 cent

Q With reference to the first report, Colonel, was that report made by the engineers in question at the special instance and request of the Cuyamaca Water Company? A No sir,

Q Who was that report presented to?

A The City of San Diego, and paid for by them.

Q How as to the report of Mr. Harroun, was that report - for whom was that report made?

A Jointly for the City of San Diego and the Volcan Land & Water Company, each paying half the expense. In explanation, the mayor of San Diego telegraphed the State Railroad Commission of California to select an engineer to make this valuation, and the State Railroad Commission selected Mr. Harroun, neither the City of San Diego or the Volcan Water Company had anything to do with the selection of the engineer to make the appraisal.

Q Do you wish to make any statement with reference to these reports? A Accompanying

the reports of O'Shaughnessy and Lippincott there was a letter recommending--

MR. COSGROVE: If there was a letter we want the letter in, not what Colonel Fletcher will say about it.

A -- Recommending to the City of San Diego--

MR. COSGROVE: I would like the record to show at this time the City of San Diego objects to Mr. Fletcher stating the contents of a letter accompanying the report, when he has the report.

A --Accompanying the report of Lippincott and O'Shaughnessy was a letter to the City of San Diego, advising the City of San Diego to purchase the Volcan system,

that letter we will produce in evidence shortly. In further explanation will say, the plan of purchase of the Volcan system was on the following basis: One million and a half dollars down in bonds, as an option of contract to purchase the Volcan system, and if the City voted one million and a half dollars in bonds the Volcan Company would immediately build one unit of the system, and deliver at least ten million gallons daily of water to the City at a price to be agreed upon with the city, and the city could have an option for forty years to purchase the system and make the final payment. New negotiations are talked of and we shall probably modify that arrangement, and reduce the initial payment to one million dollars, if the City sees fit to do any business with the Volcan Water Company.

Q There are now, however, no negotiations pending between the City of San Diego and the Volcan Land & Water Company?

A No, only two or three prominent citizens have taken the matter up again, the citizens of San Diego individually, they believe that something should be done along those lines, but no official action by the City as a matter of fact it is not before the City at the present time.

Q Now referring to the matter of the employment of one C. T. Sackett by the Guyamaca Water Company, what was his employment, Mr. Fletcher?

A He was our engineer in charge for five or six months, I

believe.

Q What were the duties, what were his duties as engineer?

A To make all surveys that we instructed him to do, we was also engineer in charge of the construction of the Murray Hill Reservoir.

Q Did he ever make any surveys for the Company?

MR. COEGROVE: I object to this on the ground that it has been gone over three or four times, everything that Colonel Fletcher has stated about Mr. Sackett has been stated three or four times here in the record.

Q Did he ever make any plats based on those surveys?

A He did, several.

Q Is the data concerning those surveys and the maps at present on file in the office of the Guyamaca Water Company?

A No sir, none of them, or any of the data, they were taken out along about the 1st of Jan, 1912, or in 1911, December, immediately thereafter we wanted them and could not find them, and we never have seen them since.

Q Do you personally know what became of those maps and data?

A I do not, we wanted it for the benefit of Mr. Post immediately after we discharged Mr. Sackett, but never have been able to find any data at all of his, of all of his work while he was with us.

Q Did the Company ever make any effort to secure that data?

A We certainly did.

Q What efforts did you make? A We had Mr.

Lacey do everything possible to locate him.

Q Locate whom? A Mr. Sackett, but he has never returned to San Diego since 1912, we heard he was in Montana some where but where we don't know.

Q Did you ever institute legal proceedings for the purpose of securing this data? A We did.

Q In San Diego? A Yes.

Q Do you know whether or not the summons was ever served? A No, we could not reach him.

CROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q You said in this offer of sale of the Volcan property to the City of San Diego, under which you agreed to deliver ten million gallons a day, that in that offer the price was to be agreed upon, as a matter of fact the price was stated in the proposition, was stated at fifteen cents one thousand gallons?

A That was the price in the original proposition, we modified that verbally.

Q That was the price stated in the proposition you submitted in writing to the City of San Diego?

A That was the original price, we are willing to reduce that price very materially now.

Q You talked about the City of San Diego securing the services of Lippincott and O'Shaughnessey to make these

reports and the City of San Diego paid for it, were you interested in that matter?

A I don't understand.

Q You don't understand what I mean by that. Do you remember going to John Forward in order to solicit his efforts to get the city to hire O'Shaughnessey and Lippincott?

A I have no recollection of it, I might have discussed the matter with him, I think he brought the subject up first.

Q He went to you? A I think so.

Q Do you remember telephoning to me when I would not approve of the expenditure for this investigation asking me to do all I could to help this get through?

A I have no recollection of it, no.

Q Referring to the Harroun report from which you just read, referring in particular to the paragraph which you just read, it states that the cost of delivering twenty-three million gallons daily is (5.26) five and twenty-six one-hundredth cents per one thousand gallons, does it not?

A Yes.

Q This five and twenty-six one-hundredth cents per one thousand gallons is based upon a delivery consumption of twenty-three million gallons daily, is it not?

Of course if the city could only use three million gallons daily, and could not use the other twenty million gallons daily that three million gallons could not be obtained

any anything like 5.26 cents per one thousand gallons could it?

A No, but in explanation will say that the system can be developed unit by unit, so that the cost will not be materially higher per one thousand gallons.

Q This is the Volcan system concerning which you have given quite a little evidence as to your interest in it, is it not?

A Working interest I tried to explain.

Q Question read. A Yes.

Q This is the Volcan system, the same system?

A Yes.

Q Will you refer to the report from which you read, Mr. Harroun's report, and read the paragraph preceding the paragraph that you read from?

A "That on this basis the total cost of the complete development of the system, on the basis of permanent construction, such as to deliver to the City of San Diego twenty-three million gallons daily, will be seven million seven hundred and thirty-nine thousand dollars"

Q Now, referring to the report of Lippincott and O'Shaughnessy, referring to the paragraph which you read into the record, that portion of the report shows that this cost of six and eight-tenth cents per one thousand gallons for water delivered to the city, is based upon a daily delivery for nine-tenths and five-hundredths (19.05) million gallons, is it not?

A Yes.

Q The offer of sale of the Volcan Water Company of their water system to the City of San Diego, the first one coming on May 22, 1914, was signed Volcan Land & Water Company, by Ed Fletcher, Manager, was it not?

A Yes.

Q You are that Ed Fletcher? A Yes.

Q Well, now, I anticipate you won't attempt to sell the City of San Diego a system susceptible of development of nineteen or twenty million gallons a day unless you anticipated the City would be in a reasonable length of time, be in need of such a system, would you?

A I would not, I want the City of San Diego to control all the water in San Diego County and have worked to that end for ten years.

Q In all of the negotiations with reference to the sale of the Volcan system to the City of San Diego, there were very many such conferences, were there not, held in the City Hall? A A number of them, yes sir.

Q The stumbling block that always confronted yourself and Mr. Hinshaw, was the limit of the bonding capacity of the City of San Diego, was it not?

A No, it was the vote of the council so as to get it before the people.

Q The limit of the bonding capacity then was not

a serious obstacle at all?

A Not if the City had wanted the system.

Q Do you remember, Mr. Fletcher, a bill that was presented to the California Legislature at the last session?

A I do.

Q Which increased the amount, which increased the percentage of the bonding capacity of municipalities in the State of California from fifteen to twenty-five per cent of the assessable values of their real and personal property, when the bonds were to be used for the acquiring of water systems?

A I do.

Q Do you take any active part in the securing of the passage of that bill at the last Legislature?

A I never asked a Senator or an Assemblyman to vote for it, no.

Q Who drew it up? A Why Senator Bridge, I believe.

Q It was not drawn up at San Diego, was it? A No sir; that bill was not drawn up at San Diego.

Q It passed the Legislature and Senate, didn't it? A It did.

Q It was vetoed by the Governor? A No, it was passed both in the Assembly and the Senate and the Governor refused to sign it, but in the course of three or four years it was the proper thing in his opinion, but owing to the banks fighting it he felt at this time, owing to the amount of bonds which the banks were holding, that it was the proper thing to do to veto it.

Q Did you have any consultation with the Governor with reference to the merit of the bill prior to his refusing to sign it? A I never discussed it with him.

Q Do you remember telling me that you discussed it with the Governor and he showed you a stack of telegrams received from bankers through the State and that is the reason he refused to sign it?

A I never discussed it until ^{after} he had vetoed it, he showed me a stack of telegrams from Chicago and Boston and other places, the Governor brought the question up himself, I went there on road matters, with Lieutenant Governor Eshelman, and at that time the matter was brought up.

Q How did you know the Governor was interested? A I deny your insinuation as uncalled for.

Q The Governor at this consultation you spoke of when Lieutenant Governor was there, he told you about this without knowing you had any interest in it whatsoever?

A As I explained before, a week after he had vetoed that bill I was there with Lieutenant Governor Eshelman, discussing road matters, I brought the matter up myself, Governor Johnson turned over his entire file and let me read letters from Rudolph Spreckels and telegrams, and everything showed the position he was in, and why he vetoed it.

Q Do you remember some considerable time back, as far back as April of 1914, discussing with me the manner

of selling the Volcan system to the City of San Diego on a sort of yearly or installment basis, because the City could not issue enough bonds to pay for it on the start.

A I do not, I remember discussing with you the question of one million and a half in bonds, as first payment.

Q Do you remember your attorney of recognized ability and of State wide prominence, suggesting to your Mr. Sweet of San Diego a scheme by which the City could buy the Volcan system and pay for it in yearly installments back in April 1914?

A That might have been the case but I haven't your remarkable memory.

Q Do you remember the thing I have just referred to?

A No sir.

Q Do you remember a letter that a member of the Supreme Bench of the State of California wrote to you, a copy of which you furnished me, proposing such a scheme?

A I might have done so.

Q Don't you know as a matter of fact he did?

A Without looking up my records I could not say.

Q I will show you this correspondence and then ask you to answer that question.

A Yes, that

letter I remember it now.

MR. COSGROVE: That is all.

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REDIRECT EXAMINATION

BY MR. ROBINSON:

Q You indicated your desire to explain some answer that you made on cross examination with reference to Harroun's report, any explanation you desire to make with reference to your answer you can make it at this time.

A Simply this, that in making his estimate of - in giving as his figures, rather, five and twenty-six one-hundredths cents as the cost per one thousand gallons delivered to the distributing system of the City of San Diego of the Volcan Water, he only allowed ten thousand dollars for power values of our system, which he called a nominal sum, stating he had not been asked to include that in his valuation, while in the Lippincott and O'Shaughnessey report they give a valuation of the power of the Volcan system as six hundred thousand dollars" which is approximately one-half its ultimate value to the City" I want to be fair there.

RECROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q In spite of that fact that they put six hundred thousand dollars valuation on your power proposition, they increased the cost of the water from Harroun's figure of five and twenty-six one-hundredth cents per one thousand gallons to their figure of six and eight-tenth cents per one thousand gallons, do they not?

A Yes, but the Lippincott and O'Shaughnessey

valuation has really only three hundred thousand dollars for the power, and their net safe yield is less by four million gallons daily than Harroun's which makes the difference in cost per one thousand gallons.

Q It also should be said in fairness to you that O'Shaughnessey and Lippincott put their estimate upon a daily delivery of twenty million gallons, while Harroun put his delivery on a delivery of twenty-three million gallons?

A Yes sir, our engineers estimated twenty-six million gallons daily from our system.

THE REGISTER:

Q Referring to the missing data from the office of the Cuyamaca water Company, Mr. Fletcher, the charge of stealing that you know is a rather serious charge, do you in any way connect the city officials of the City of San Diego with the disappearance of those records?

A No, only that they got the benefit of the Hamilton filing.

Q But you don't question their faith? A Not at all.

Q In that respect? A Not a bit.

REDIRECT EXAMINATION

BY MR. ROBINSON:

Q That is your impression? A It is my impression after talking with the mayor and city council I believe what they told me, I do not believe they had anything whatsoever to do with this underhanded business

of Sackett or Hamilton.

MR. ROBINSON: That is our case, with the exception of the introduction of certain exhibits with reference to portions of our rights of way, and with reference to the pumping plant in the San Diego river, which we desire the privilege of introducing some time later in this proceeding. With this exception that is our direct case.

MR. COSGROVE: I think it might be stipulated that anything that either party has overlooked in either of the prior hearings that at the next hearing they may be allowed to introduce it without objection.

MR. ROBINSON: I will so stipulate it gladly.

OWEN W. BAUER, 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 age. A 27 years.

Q Occupation. A Civil engineer.

Q How employed at the present time, by whom?

A Employed by the United States Indian Service.

Q In what capacity? A United States

Civil Engineer.

Q Are you familiar with the El Capitan Indian Reservation? A Yes sir, I am.

Q Did you accompany the city attorney and the officials of San Diego and the Cuyamaca Water Company's representative on their recent inspection of the land?

A I did.

Q Have you made other examinations of the land?

A I have.

Q Have you prepared a plat showing the outlines of the El Capitan Indian Reservation? A Yes sir.

Q Where did you get that data in the preparation of that plat? A From the records on file in the office of the Indian Service, local office of the Indian Service and the local office, the United States Government Land Office.

Q The Register and Receiver's office? A Yes.

Q Did you check up these records with the map accompanying the Executive Order of August 31, 1915?

A Yes sir, to a certain extent.

Q Did you find any discrepancies? A I found, yes, I found discrepancies.

Q Have you prepared a map which correctly shows the boundaries of the El Capitan Indian Reservation?

A To the best of my knowledge and belief, yes.

Q As shown by the latest records of the Indian Service and the Register and Receiver's Office? A Yes.

Q Is that map before you? A It is.

MR MANCHA: We offer in evidence as United States Exhibit No. I, to be marked in Roman numbers.

Q How many acres in the El Capitan Indian Reservation? A I don't know exactly, there are twenty-seven and seven-sixteenth sections, which would amount to about seventeen thousand six hundred acres.

Q What is the population of the El Capitan Indian Reservation, how many Indians living there?

A According to our latest records, one hundred and thirty-two, I believe one hundred and thirty-one at the present time.

Q You are familiar are you with the flood water line of the proposed El Capitan Reservoir? A In a general way, yes sir.

Q Have you given the matter any consideration as to what the effect would be on the El Capitan Indian Reserva-

tion if the City of San Diego should construct the dam proposed at El Capitan? A Yes.

Q What would be the effect? A A large portion of the best lands of the Reservation will be flooded and the Indians occupying and cultivating this land would be compelled to vacate.

Q Have you made any, compiled any table of the acres of the different character of land within the Indian Reservation? A Yes, I assisted in the compilation of such a table.

Q How many acres of irrigated and cultivated land is there within the boundaries of the El Capitan Indian Reservation, you have your table you may refer to it.

A There are along the San Diego river about two hundred and three acres of irrigated and cultivated land, and in the Conejos, I understand that there are from twenty-five to thirty acres irrigated.

Q Using the smaller number, twenty-five, that would be a total of how many acres? A Two hundred and twenty-eight.

Q What is the value approximately of that land per acre? A About four hundred dollars.

Q How much would that amount to in dollars, you have that figured out? A It would amount to ninety-one thousand two hundred dollars.

Q How much irrigable and cultivatable land is there within the boundaries of the El Capitan Indian Reservation?

A Along the San Diego River I think about possibly three hundred acres, in addition to the land now irrigated, which could be irrigated and cultivated.

Q How much of the Conejos? A I could only state that from a conversation with the Indians and the superintendent and other parties, about one hundred acres.

Q How about the records of your office, substantiated by the records of your office? A Yes, practically.

Q What would be a fair value of that four hundred acres, three hundred on the San Diego and on hundred on the Conejos?

A I can only estimate that roughly about one hundred dollars.

Q That would amount to how much, of four hundred acres of irrigable and cultivatable land? A Forty thousand dollars.

Q How much arable and cultivatable land in the Reservation? A There is about seven hundred acres of arable land on the San Diego river, which would leave one hundred and ninety-seven acres in excess of the five hundred and three already stated, in other words, one hundred and ninety-seven acres of arable not already set forth.

Q How much on the Conejos, arable and cultivated?

A Our records show that there are eleven hundred and thirty-eight acres of arable land on the entire reservation, subtracting seven hundred as being on the San Diego River, leaves four hundred and thirty-eight on the Conejos portion; now subtracting one hundred and twenty-five which has already been set forth as irrigated and irrigable lands we have three hundred and thirteen acres as being arable land in the Conejos portion of the Reservation.

Q How much of that three hundred and thirteen acres is cultivated or cultivatable?

A All cultivatable, yes sir.

Q How the one hundred and ninety-seven on the San Diego River and the three hundred and thirteen on the Conejos is a total of how many acres of arable and cultivatable land in the Reservation?

A Five hundred and ten.

Q What value have you placed upon that land per acre?

A About thirty dollars.

Q Makes a total of how much?

A Fifteen thousand three hundred dollars.

Q How much grazing land within the Reservation?

A About sixteen thousand four hundred and twenty-two, according to these figures.

Q What is a conservative value of that per acre?

A It is rather hard to estimate a conservative value, I suppose a conservative value probably would be three dollars an acre, I think probably more than that.

Q At three dollars what would that amount to?

A Forty-nine thousand two hundred and sixty-six dollars.

Q What is the total value so far that you have testified about?

A One hundred and ninety-five thousand seven hundred and sixty-six dollars.

Q Now you have testified in reference to the probable value of that land, is that a conservative or a high price you put upon that land?

A I think that is a conservative price on all those kinds of land.

Q Have you taken into consideration the water rights, together with these lands?

A Yes.

Q Have you figured that in or do you calculate that as a separate value?

A I figured that in.

Q Then as a conservative value for lands in the El Capitan Indian Reservation, including the water rights, you have estimated at one hundred and ninety-five thousand seven hundred and sixty-six dollars, is that correct?

A Yes.

Q Now if the Indians were removed from this Reservation which you say would be necessary if the El Capitan dam were constructed, what buildings would you take into consideration, if you haven't included them in the land --

have you included the buildings, the schoolhouse, the cottages, for instance within the value of the land?

A No sir.

Q What would it cost to renew the Government buildings?

A Well, there is a school house there, a teacher's cottage, I imagine they could be renewed at a price approximately fifteen hundred dollars each

Q That would be three thousand dollars? A Yes.

Q What do your records show to be the number of homes on this Reservation?
A According to the census twenty-nine.

Q For what could twenty-nine new homes be constructed if the Indians were removed from this Reservation?

A That depends on what kind of homes were provided for them.

Q Commensurate with conditions.

A I suppose a comfortable house could not be constructed for less than three hundred dollars.

Q What would that amount to, twenty-nine homes at three hundred dollars?
A Eight thousand seven hundred dollars.

Q How about the new church? A That would be required if the Indians were moved away in a body.

Q What would that cost?

A That would cost a little more, that would cost about five hundred dollars.

Q If the Indians were removed to another place would they be self supporting for the first year, if not,

what would you estimate a fair allowance or reasonable or conservative allowance for their support for the first year in new quarters?

A Well, I think if the Indians were moved to such a place where they could get work for other people they might be self supporting the first year but that would not give them any opportunity to develop their new lands nor to become established on the land, and in order to maintain these Indians during the first year I don't know but what it would take longer, they ought to be maintained for a long time, but as a conservative estimate I should think it would require fifty dollars a person, that is very conservative.

Q What would it cost them to maintain say one hundred and thirty-one Indians at ~~at~~ fifty dollars each the first year?

A Six thousand five hundred and fifty dollars.

Q Now the removing of the Indians, have you placed any estimate upon that?
A Two thousand dollars.

Q What is the total of these second items that you have testified about including the other total of one hundred and ninety-five thousand seven hundred and sixty-six dollars, what is the grand total?

A Two hundred and sixteen thousand five hundred and sixteen dollars.

Q Now when you place an estimate of two thousand dollars on moving the Indians, is not that rather a wild guess, have you any definite place in view to where they

would go?

A Yes, it is a wild guess.

Q It might cost twenty times that much, might it not?

A I suppose so.

Q Now about the burying ground of the Indians, have you taken that into consideration?

A Yes, but not in these figures.

Q How long have they been burying their dead on this Reservation?

A Well, I believe it is the only burying ground that these Indians have been using for some time, I suppose they have been burying their dead there for a good many generations, possibly.

Q Do you know approximately how many Indians have been buried there?

A I do not.

Q Have you taken into consideration what would be necessary if their lands were flooded in reference to the removal of these bodies, what the cost would be, how it would be done, has that entered into your figures?

A It has not.

Q Is it possible to measure such a damage?

A I have nothing to base an estimate on moving of bodies or taking care of the cemetery in some way to the satisfaction of the Indians.

Q From sanitary conditions would it not be necessary to remove all these bodies, if that were used for a reservoir to store waters for municipal purposes?

A I think it would be advisable.

Q Have you ever talked with any of the Indians on the Reservation to find out their disposition in reference to moving under such conditions?

A Yes sir.

Q How many of them have you interviewed?

A I think about seven or eight or so.

Q Did you interview the two that Judge Boone mentioned as having expressed a willingness to move?

A I did.

Q Who were they?

A Ramon Aimes and Jim Bonegas.

Q What did they have to say about moving, are they willing to go if they would be asked to go?

A Ramon Ames told me that he had never expressed any desire to go, while the other man Jim was very much opposed to moving.

Q What was the disposition of the others you interviewed?

A Well, Ramon Ames and Jim Bonegas acted as spokesmen for the rest, claimed that none of them wanted to move.

Q From your experience with these Indians would it be easy to move them peacefully to some other quarters?

A Well, I have never attempted to move them, but I think there would be a great deal of difficulty experienced in trying it, such things have been tried before sometimes with serious results, and sometimes no results.

Q Do you know what their religion is in reference to their happy hunting ground, whether they come back to their burying grounds, is that their belief?

A I believe there is some story of that sort, I guess it is true.

Q You haven't taken into consideration any misery or anguish in this matter?

A No sir, that would be very great, however.

Q How many acres of this El Capitan Indian Reservation would be flooded if the proposed El Capitan dam were constructed?

A I believe seven hundred and forty acres approximately.

Q Of that seven hundred and forty acres how much of it is actually irrigated?

A About one hundred and twenty-four.

Q Of the irrigable land in that seven hundred and forty acres, how many acres of irrigable land?

A I have never made a measure of that, it is about, runs about two hundred acres.

Q How much of grazing?

A The grazing would be the balance, four hundred and sixteen acres.

Q That would be a total of seven hundred and forty acres flooded?

A Yes, the grazing land, however, includes the river bed which is sandy.

Q In your testimony, witness, in reference to the lands on the Conejos, that is in the El Capitan Indian reservation, is it not?

A It is in the Capitan Grande Reservation, but the Conejos Creek is separated from

the San Diego river by a ridge.

Q This is almost an impassable mountain?

A It is impassable because there is no road.

Q That is why you have separated this irrigable land from the Conejos and the San Diego River?

A No, I am familiar with the San Diego river familiar but not very familiar with the Conejos, they naturally separate themselves.

Q Both the San Diego river lands and the Conejos lands are all within the boundaries of the El Capitan Indian Reservation, are they?

A Yes.

Q Have you made any extract of the Executive orders creating the El Capitan Indian Reservation?

A I have searched through the Executive orders which we have in our office, also through the letters referring to Executive orders in the office of the United States Land Office at Los Angeles, and made an extract from those documents.

Q You have that extract with you?

A Yes.

Q Please state briefly just what that extract represents?

A This extract shows the Executive orders, the Departmental Orders and the Presidential Proclamation, by which the Capitan Grande Indian Reservation was created and revised, it is divided into four parts, these four parts representing four townships on which the Reservation is located.

Q What is meant by the legend at the bottom, is that self explanatory in reference to patented land?

A Yes, these legends are showing the patented lands referred to, the lands just above.

Q In other words, the legend shows the patented lands and refers to the line just above that designation, does it?
A precisely.

Q And is shown on the legend by different colors showing which land has been patented?
A Yes.

Q How much of this Capitan Indian Reservation has been patented?
A To the best of my knowledge seventeen and fifteen and sixteen sections.

Q And there are how many sections in the whole Reservation?
A Twenty-seven and seven-sixteenths.

MR. MANCHA: We offer in evidence United States Exhibit No. II Roman numbers, the extract of Executive orders and the plats of the four townships, or parts of four townships just identified by this witness.

12 M. January 7, 1916. Recess until 1:30 P.M.

1:30 P.M. January 7, 1916.

OWEN W. BAUER, witness on behalf of the

United States.

DIRECT EXAMINATION continued

BY MR. MANCHA:

Q Mr. Bauer, have you made an extract or a copy of your Indian Office records in reference to the water rights

in the El Capitan Indian Reservation, the water right of the Indians?

A I made an extract, one of them is a water right which the Indians have in the San Diego Flume Company's flume.

Q You have that paper before you?
A Yes.

Q Was that made by you?
A It was copied under my direction, yes.

Q Does that give what your records contain in reference to it?
A It does.

MR. MANCHA: We offer in evidence United States Exhibit No. III and ask it be so marked in Roman numbers, the papers just identified by this witness, I believe it has been at least partly introduced by the protestant as Exhibit C.

Q What does this paper represent, witness?

A I believe that paper represents the resolution which was drawn up and adopted by the officials of the San Diego Flume Company, in which they set forth the conditions which shall be followed and the concessions they will make to the United States in exchange for an easement, a right of way, over the lands of the Capitan Grande Indian Reservation, for their flume, it also contains, it also includes an acceptance of this proposal, this acceptance being signed by John W. Noble, secretary, Department of the Interior, and is dated July 13, 1892.

Q Have you prepared any table showing any estimated damage to the El Capitan Indian Reservation?

A I have assisted in the preparation of such a table.

Q You have that before you? A I have.

Q Was that made under your direction? A Yes, partly.

Q Has it been checked up and compared by you?

A It has been checked up by me and compared also.

Q You have testified, have you not, in reference to these figures today? A Yes.

MR. MANCHA: For convenient reference we offer in evidence as United States Exhibit No. IV, the table just identified by this witness, showing the estimated damage to the El Capitan Indian Reservation, in the event of the removal of the Indians.

Q As a representative of the Indian Service, have you any statement you would like to make in reference to the application of the City of San Diego, in reference to the Indian interest? A We have nothing very definite to work on, as to what disposition of these Indians will be, the city has agreed to provide these Indians with land and water, which will recompense them for the land which they must relinquish here, also the water rights, I think it is going to be a difficult problem to get these Indians to move; it seems to me if they have to move, if they are compelled to move, it would be better to move them as short a distance as possible from their present location,

that is, I don't believe they ought to be taken away across the State and put on some other land there where the surroundings would be entirely different from their present surroundings, I think these Indians have been brought up in those mountains and they would not be satisfied anywhere else except in the mountains.

Q What other improvements if any are there on the Indian land which should have been mentioned, anything growing in the soil except ordinary crops?

A Yes, the Indians have planted a few vineyards, they have also planted a few trees, orchard trees.

Q About how many orchard trees are growing if you know?

A I think the records show nearly four hundred, most of these trees have been planted during the past year.

Q Your estimate of two thousand dollars for removing the Indians, would you have any place in mind where they could be moved?

That would have to be pretty close by if they could be moved for two thousand dollars?

A It would, I think I had no place in mind though, I don't know of any tract of land for sale of equal size where the Indians could be adequately taken care of.

Q Do you know of any acreage comprising seventeen thousand six hundred acres or anything like that amount of acreage that could be purchased for the figure that you have placed upon these lands? A No,

I might state that the Indian Irrigation Service have installed several pipe lines for the irrigation of this land of the Indians, these pipe lines connecting with the Cuyamaca Company's flume, supplying the water from that source to the Indian land, this work was constructed during the past five or six years.

Q At the expense of the Indian Service?

A Of about fifty-five hundred dollars, consisting of seventeen pipe lines.

Q Paid for by whom? A By the United States Government.

Q Have the Indians received sufficient water for the cultivation of their crops? A There has been some question raised as to whether they were or not, while I don't believe they received as much water as they might have used, I don't know for what reason they did not get this water.

Q Are the Indians satisfied with their conditions now on this Reservation? A Fairly so, yes sir.

Q Are they making any progress? A Yes.

Q In what way? A They are planting, they are going into the fruit raising business for one thing, which is a new departure, this is shown by the fact that more than half of the orchard trees which are now on the Reservation were planted during the year ending July 1st last.

Q I will ask you if you placed the El Capitan Indian Reservation on the City of San Diego's Exhibit No. 11, was that done by you? A Yes.

Q That correctly represents the outline of the El Capitan Grande Indian Reservation, does it? A It does to my knowledge and belief.

Q Referring to Protestants' Exhibit A, witness, please refer to the lands in the Forest Reserve, and please state approximately how many acres within the Forest Reserve of the Cleveland National Forest which would be submerged if the El Capitan dam were constructed? A If I interpret this map rightly the initials F.R. stand for Forest Reserve, and there would be about seventy-five acres submerged.

Q What would be a fair valuation per acre of that land? A I have never examined this land, I can only guess at the value, it includes the lands at the south end of the proposed dam, and some of the lands within the Reservation above that point, which are very rough and would not be worth much, the lands just below the Indian Reservation are I think of better quality, I suppose roughly the average value of that land would be about thirty or thirty-five dollars an acre.

Q What is the total damage, witness, altogether that you estimated would result to the Indians in money

so far as it can be measured, if the El Capitan dam was constructed?

A Two hundred and sixteen thousand five hundred and sixteen dollars.

Q What have you left out if anything besides the burying ground and the sorrow that may come to the Indians for giving up their homes and their personal injuries that cannot be measured in money, if any?

A I think this estimate is complete except those points.

MR. MANCHA: That is all.

CROSS EXAMINATION

on behalf of the protestants

BY MR. ROBINSON:

Q Mr. Bauer, included in that two hundred and sixteen five hundred and sixteen dollars have you made any allowance for the cost of installation of the pipes for distributing water for irrigation purposes, which you testified has been paid for by the Government? A Yes, I think that is covered by the first item, ninety-one thousand two hundred dollars.

Q These Indians are living in tribal relations, are they? A Yes.

Q Do you happen to know the name of the chief?

A I don't believe they have a chief any more.

Q What do they call the head man? A They used to call him Captain.

Q They have a captain now. The point I am trying to determine is, whether this man Jim speaks with any authority?

A Yes, Jim is, however, the representative of the Government, he is the policeman, I don't believe there is a captain any more, it seems to be against the policy of the Government now to have a captain on these Reservations.

Q Is this man Jim one of their leaders, recognized as one of their leaders? A Yes, in a way.

Q speaks with authority for the rest of the tribe? A yes, very largely.

MR. ROBINSON: I think that is all.

CROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q I notice, Mr. Bauer, the figures you give on the portions of the El Capitan or Capitan Grande Indian Reservation, which has been patented shows that very close to two-thirds, practically two-thirds of the whole Reservation has been patented? A At least.

Q The exact figures are 17-15/16 sections have been patented and 27-7/16 sections have not been patented. The entire area in the whole Reservation 18.27 would be exactly two-thirds, yes, I would rather change that.

Q You want to change the figures? A Not change the figures, my last answer, at least it is not quite that two-thirds.

Q Have you any way of determining from the data which you have here at hand now what portion of the patented land would be flooded by the proposed reservoir site?

A I think I can get that roughly, however, I am not certain that that includes all the patented land, it is all the patented land as far as I could find out in the Land Office records that I had to go on are not very complete, but I think that represents it all right, if I could see the map. The flooded portion is practically all in patented land.

Q Practically the entire flooded portion is patented?

A Yes, I think I am safe in saying that all of the flooded portion is patented land.

Q Of course that by knowing the amount of flooded land we could easily ascertain the percentage of this 17-15/16 sections that are patented.

A The entire area is patented.

Q The entire area, the flooded district, the question I had asked you, what portion of the 17-15/16 sections was patented that was flooded, if we know that the entire area is flooded then we have to take the ratio existing between the entire area and the 17-15/16 sections, in order to determine the percentage of the 17-15/16 sections?

A That is true.

Q I don't know that I understand exactly your estimate of the value of the National Forest land that would be flooded, I understood you to say there were about seventy-five acres, then you distinguished between two sections of the flooded area, do you state that average value of the entire seventy-five acres would be thirty to thirty-five dollars?

A Yes.

MR. COSGROVE: That is all. I desire to say at this time on behalf of the City of San Diego we consider this witness as fair in every particular, and that the figures he has given are in our opinion very reasonable and conservative, approximates of the values of the lands.

THOMAS F. McCORMICK, witness on behalf of United States, being first duly sworn by the Receiver, testified as follows:

BY MR. MANCHA:

Q What is your age? A 43.

Q what is your post office address? A Pala, Calafornia.

Q Your occupation? A Government employee, superintendent special disbursing agent.

Q Superinte dent of how many Indian Reservations? A Seven.

Q Is the El Capitan Indian Reservation included among the seven? A Yes.

Q How long have you been superintendent? A About two years and a half of the Capitan Grande Reservation.

Q Have you heard the testimony of Mr. Bauer, civil engineer? A Yes.

Q All of it? A Yes.

Q D d you assist Mr. Bauer in drawing up the table which has been introduced as United States Exhibit No. 4 giving an estimate of damage? A I did.

Q How do these figures correspond with your estimate? A Just the same.

Q You have a copy of that exhibit? A Yes.

Q Have you checked it up yourself? A Yes.

Q what is the number of homes, Indian homes on the

El Capitan Indian Reservation? A Twenty-nine.

Q The number of Indians, population? A One hundred and thirty-one.

Q How many houses would be flooded if the El Capitan dam was constructed? A seven.

Q How many fruit trees are growing on the El Capitan Indian reservation? A nearly four hundred, three hundred and eighty-five to be exact.

Q What is the ahmual value of crops raised on the El Capitan Indian Reservation? A Last year was about ten thousand five hundred dollars.

Q What is the value of the stock on that Reservation? A Eleven thousand four hundred and twenty dollars.

Q what does that include? A Horses, cattle, hogs, goats, mules.

Q What fowls are there, if any? A Chickens, turkeys and a few ducks.

Q About how many chickens, ducks and turkeys, etc? A Five hundred and forty.

Q Now in reference to the removal of the Indians, have you given that matter any serious thought? A Yes.

Q Please state briefly what your judgment is in reference to the practicability, possibility, of removing the Indians peacefully in case it should be decided for the public interest to do so? A I don't hardly believe that the Indians can ever be taken away from there peaceably, they will have the same trouble as they did with the Warner ranch Indians very likely, if they ever undertake to moventhem they will have to be moved by force,

I don't think they will ever consent specially if they think they are going to be forced out.

Q Did you ever talk to the two Indians mentioned by Judge Boone?

A Yes,

Q He testified, I believe, that they expressed a willingness to go, and state the result of your conversation with them.

A They have, they denied that they ever told Judge Boone, Sunday when I was down with the register and Receiver on that trip I stopped at the house, and one of them is a policeman, Jim Bonegas, I stopped to see him, he wasn't at home, I left a note for him to ask him if he had ever made this statement, either he or his brother-in-law Ramon Aimes, and I received a letter a couple of days, Monday -- Tuesday night I think it was, that neither had ever made such a statement.

Q How many others if any have you interviewed?

A I think nine in all, sir.

Q What was the disposition of these? A None of them had any desire to leave there whatever.

Q In fixing an estimate of two thousand dollars to remove the Indians, will you please state how you and Mr. Bauer arrived at that figure and what it really means.

A Well, we supposed they would not be taken any great distance, while their homes, on the road, traveling expenses here, of conveyances, things that would not take them any great ways.

Q Do you know of any place within such a short distance that could be purchased, the same acreage, say, for the price named in the estimate they could be moved to?

A No sir, nothing definite, there is one place if the Indians, if a dam is built and the Indians have to move why there is a place very near the willows, close to the Seguan Reservation, a very nice valley in there would put the Indians on the two Reservations, practically make one Reservation out of it.

Q You don't know do you, witness what the land could be purchased for in there? A No.

Q To be suitable for them? A No sir, never made any inquiries.

Q In arriving at this total what total did you get, you and Mr. Bauer, what is your estimate?

A One hundred and ninety-five thousand seven hundred and sixty-six dollars.

Q Does that include the Government buildings, twenty-nine new homes and other items? A No sir.

Q What is the grand total? A Two hundred and sixteen thousand five hundred and sixteen dollars.

Q What does that include besides the lands? A It includes the schoolhouse, college for the Government employees, their twenty-nine new houses at three hundred dollars each for the Indians, a new church and the expense of keeping one hundred and thirty-one Indians for one year with their removal at fifty dollars, and the expense of

moving the Indians to their new home.

Q And that amount was estimated as what?

A Two thousand dollars.

Q Did you take into consideration the burying ground in arriving at this figure?

that is an impossibility to figure on;

A No sir,

Q What other matters if any has it been impossible for you to estimate in money, any damage they would suffer?

A The leaving of their dead behind them is the greatest thing, that is one of the main reasons I think there will be such trouble in trying to move them on account of that cemetery, it evidently will have to be moved if the dam is put in because it is a short ways from the reservoir site.

Q Do you know how many Indians have been buried there?

A No sir.

Q Approximately?

A No sir.

Q How long have they been burying them there?

A A century I suppose, at least.

Q You haven't any authority from the Indians or anyone else, or any assistance from anyone else except the Indian Service in arriving at those estimates?

A No sir

Q There are no owners of this patented land that have intimated any value, have they?

A No sir.

Q Do you consider the figures that you have given are a high or a low estimate?

A I think it is rather a low estimate.

Q You think you could have made a higher estimate and still been conservative?

A Yes.

Q How much higher?
if a million would not have been out of the road.

A Well, a quarter

Q supposing that you had made an estimate of a quarter of a million, would that include the burying ground?

A I would not, it is absolutely impossible to figure on the burying ground.

MR. ROBINSON: No cross examination for protestants.

BY THE REGISTER:

Q You spoke of the fact that you didn't think these Indians could be moved peaceably?

A Yes.

Q What has been the general experience of the Government in handling them when they had to be moved from other places?

A Always trouble, always, would rather do anything else than move a band of Indians.

Q Be no material difference than what would always occur?

A Yes, just what has happened at other places.

Q The usual occurrences?

A Yes.

CROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q What tribe of Indians are those up there?

A Mission.

Q Are they all Mission Indians? A Yes, I

think there is one Indian on the Reserve not a Mission Indian, he comes from Yuma.

Q That is the remnants of the tribe that used to be down at the old San Diego Mission? A I don't think they ever lived down at the Old Mission.

Q Where did they get that name from? A All those Indians all through there have the same name, they get the name from the old Spanish padres, they are always known as Mission Indians, missionaries worked among them years ago and established those Missions, a good many lived around San Luis Rey the same as the Pala Indians.

Q They are different tribes on every Reservation?

A yes, a little different in the language in some of them.

Q Are they all Mission Indians you have charge

of?

A Yes.

Q These are Mission Indians at Pala? A Yes.

Q Also Mission Indians at Willows? A Yes.

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REDIRECT EXAMINATION

BY MR. MANCHA:

Q Is there any statement you would like to make as superintendent of El Capitan and other Indian Reservations?

A No sir, I believe not.

MR. MANCHA: As the assistant chief engineer of the Irrigation Indian Service, Washington, D.C. is here, and as he accompanied the Hon. Register and Receiver and the protestants and the City of San Diego representatives on the inspection trip, I feel it incumbent upon me to call him and ask him a few general questions, to afford an opportunity to clarify any point that he may see fit to attempt to clarify, in order that both the protestants and the City of San Diego may ask him some questions if they so desire.

FRANCIS R. SCHENCK, witness on behalf of the United States, being first duly sworn by the Receiver, testified as follows

BY MR. MANCHA:

Q What is your post office address? A Indian Service, Washington, D.C.

Q Your occupation? A Assistant chief engineer, Indian Irrigation Service, United States Indian Irrigation Service.

Q You were present were you not with the Hon. Register and Receiver and both parties to this contest when the inspection of the land was made recently? A Yes.

Q Have you examined the City of San Diego's Exhibit No.13? A I have.

Q Assuming that the figures given by Mr. Cromwell the engineer of the City of San Diego are correct, upon the basis that he arrived at said figures, do you consider the basis on which he arrived at said figures a fair basis to represent the run off at El Capitan? A I think not.

Q Why not? A The table of run off data as given in this exhibit consists of six columns, the first of which are the quantity of water that has been measured out from other sources is given as run off from four different areas tributary to the Capitan damsite, the fifth column is one showing the quantity of water used for the various years

and the Guyamaca Flume, the Company's flume in some instances was made from the quantity used in the years when it was measured; and the sixth is the amount of water presumed to be available for storage by the City of San Diego in the El Capitan dam reservoir. The fact that the first four columns measure the water discharge from a much smaller and distant drainage areas as compared to the place where it could be stored would in my opinion give a good deal higher result than you could expect to obtain in actual conditions to be met, and that the sixth column would therefore be not a true statement of what would be actually accomplished if these figures are correct as given. There are three reasons for this, the first is that the run off in any small area is always larger than the , the visible run off is always larger than the run off of larger areas than some of the smaller ones; another is that the third column has been obtained by computing the quantity of run off from the area below the diverting dam on the San Diego river and the South Fork gauging station as being the same on the area tributary to the South Fork station, that area being considerably more distant from the high mountain peaks would, if conformed to the general conditions obtaining in Southern California, be found to be considerably less; and the third important factor is that the underground flow, which at present is used by the riparian owners below the El Capitan damsite, and which I understand

in any instance is supposed to be permitted to still be available for pumping to these riparian lands, is apparently included in these six columns for the total amount available in the Capitan reservoir.

Q From your examination and inspection of these lands would you care to state approximately to what extent those three points that you have mentioned would affect the accuracy of those figures?

A Of course I could only state it approximately, the exact determination is improbable, impossible to make, it might easily amount to fifty per cent of column No. 6, reducing the quantity given there to one-half of that shown.

Q What would be the more accurate test of the run off at El Capitan than the basis upon which that table was made?

A Of course the most accurate way would be to have the gauging station at the dam site, but probably those figures are not available from that point, so that the data which were available I should say that the figures given at the Lakeside gauging station as furnished by the Geological survey, would be nearer the true conditions to be met with at El Capitan dam for the storage of water.

Q How would the run off at the gauging station that you have mentioned, compare with the run off at El Capitan taking into consideration natural conditions?

A That is the Lakeside gauging station?

Q The Lakeside, yes.

A During the flood season, during the period of high flow probably the Lakeside station readings would be slightly larger than the run off at El Capitan dam site, due to the inflow from the six or seven miles of tributary territory, that is six or seven miles along the river channel territory tributary to that, but during the low water season the flow at El Capitan dam site would doubtless be larger than it would at the Lakeside gauging station.

Q How would the run off at Santee gauging station compare with the run off at El Capitan?

A I don't believe I am familiar enough with that condition to be able to give that information.

Q Do you know whether the run off in 1915, of the San Diego river was a fair average of the run off?

A It was not, considering any long period of years, it was largely in excess of the average.

Q Referring to City of San Diego's Exhibit No. 14, which gives the run off at Santee for the year 1915, for the year ending September 30, 1915, I will ask you if that is a fair statement of the run off taking one year with another?

MR. COSGROVE: Before the witness answers the question, and in order that the reviewing officers be not misled by the evidence, I want to say that the exhibit was not offered in evidence for any such purpose, was simply offered in evidence for what it shows the tremendous run off of that

particular year, and that it was followed up by further questions, which showed that just taking that one year that the run off would have been sufficient to have supplied the city with water for a period of approximately five years. We certainly do not desire to be understood as contending that that represents the average at all, but that it is far above the average.

A It is not.

Q Are the United States Geological gauging station records at Lakeside available for a number of consecutive years up to the present?

A They are for several consecutive years, but I have not seen the ones for the last two or three years, I presume they have been made but they are not published and I have not attempted to find out whether they were on hand.

MR. COSGROVE: I would like the record to show at this time the City of San Diego is willing and agrees that Mr. Oldberg, a member of the Indian office, superintendent of Irrigation of the Indian office may at the adjourned meeting introduce the entire records of run off at the Santee station on the San Diego river.

MR. MANCHA: And any other records and figures, geological figures, gauging station figures which he believes will set up the fact as to what the run off at El Capitan is taking one year with another.

MR. COSGROVE: Yes.



Q Assuming that there are four thousand acres of riparian lands which are supplied with the flood waters of the San Diego river, how much seepage, daily seepage would it take to charge those sands so that those pumps could still operate, if you are prepared to answer that question.

A I could not tell the actual quantity but the minimum amount which would need to be actually withdrawn from the underground gravel beds for the irrigation of four thousand acres, would be something in the neighborhood of ten thousand acre feet or approximately a continuous flow of fifteen cubic feet per second, every day in the year, but to have available this amount of water in a large subterranean reservoir system of water bearing strata a much larger quantity of water would have to be received by the gravel beds, there is only a portion, of course, of the whole inflow, may be withdrawn by the pumping plant, some of it being necessarily wasted into the ocean through the underground strata.

Q In making an estimate of ten thousand acre feet what if anything did you allow for evaporation what per cent?

A I assumed that about two acre feet per annum for each acre of irrigated land was needed, and that the evaporation from the surface of the ground would amount to approximately twenty-five per cent more than the two acre feet.

Q Making allowance for the estimate which you have



before you, Mr. Cromwell's estimate, on the basis made by him in comparison with the basis which you suggest, and taking into consideration the waters that would be needed to charge the sands of the San Diego river, to supply four thousand acres or more of riparian lands, would you be in a position to state the approximate run off, taking one year with another at the El Capitan dam?

A I would not be prepared to state in actual quantities, but the difference between that included in Column No.6 on Exhibit No.13, assuming those figures to be accurate and the amount in my opinion which could be reasonably expected to be available for storage, would be very considerable.

Q Have you made any comparative study of the two systems proposed respectively by the City of San Diego and the Cuyamaca Water Company, that is, the development of those waters in one large reservoir, or in a number of smaller reservoirs?

A I have given it very casual consideration only but from my knowledge of the conditions, both before this matter now under investigation was initiated, and hearing the testimony and examining the different exhibits, referring only to this particular watershed, I should say that the project of storing the water on the upper reaches of the San Diego river were more practicable from a hydraulic engineer's standpoint than in the larger basin at the point at the El Capitan damsite.

Q what are your reasons for that?

A Those are practically the ones we stated when I said that in answer to the first question in regard to the reasons for not agreeing with the figures as given in Column No.6 of Exhibit No.13 showing the amount of water available for storage in the El Capitan reservoir, also from the evidence introduced at the hearing, I would suppose that the construction of the dam at the other, at the higher damsite was more feasible and could be done more economically, assuming the testimony in regard to the damsite to be accurate.

Q Taking into consideration the greatest ultimate public good, economical use of the water, have you compared the two systems sufficiently to enable you to state what in your knowledge would conserve the greatest public good in years to come, the development of the El Capitan dam or the utilization of the flood waters of the practically same watershed for the development of that water in a small or in a large number of smaller reservoirs?

A Theoretically and not considering at all the present conditions, I should say that the development of small reservoirs is preferable, as far as my examination of the exhibits and the testimony which I heard, I do not feel well informed as to the demands of the Cuyamaca Water Company will be called upon to supply, that is the point I feel myself I did not receive the information that would

enable me to state definitely whether they have demand for all the water, reasonable and prospective demand for all the water that they might be able to develop.

Q Are you sufficiently familiar with the watershed and the contour of the country to state whether or not there are other available reservoir sites which could be utilized economically by the City of San Diego in increasing its water supply without the construction of the El Capitan dam?

A The word economical would probably have to be defined, there are undoubtedly other water supplies available, some which I should judge would be within the limits of practical cost.

Q What experience, witness, have you had in the construction of reservoirs and irrigation systems?

A I have been seven years, not continuously in that work, for the Government Service and in the Indian Irrigation Service; previous to that time was engineer on various water developments in the southwest.

Q You understand, do you not, just what the proposed plan is in the erection of a dam at El Capitan by the City of San Diego, the height of the dam, the flooded area?

A Yes, with respect to the reservoir itself I think I understand all the contemplated improvements.

Q You have examined the survey have you of Mr. Sackett showing the flood line of the proposed reservoir?

A I have seen the map and one of the exhibits, I presume the one to which you refer.

Q If it is a fair question, would you care to state from the standpoint of an engineer, or water engineer, whether it would be feasible and practicable for the City of San Diego to go to the expense necessary to acquire the property rights and to ultimately construct a one hundred and sixty foot dam at El Capitan as proposed, as an engineer employed by the City of San Diego, if it is a fair question would you recommend that as a feasible project, taking into consideration the other opportunities, if any, which the City of San Diego has to meet her needs in a water supply for the future?

A I would not want to testify to that, I am making a little explanation, my idea was I would develop the points as a Government engineer, who might be called upon to advise either with the Secretary or have the Secretary of the Interior-- or give opinions which would reach him, and the evidence which I have given with respect to the water supply which San Diego expects to obtain was to develop the fact that in my opinion the amount would be less than that indicated, but as to the needs of San Diego for this water and the practicability of their developing it, I do not feel that I should be expected to reply to that, I haven't the data to give a valuable answer.

Q That is the question that now confronts the Hon. Register and Receiver, and while I am representing the Government here only for the purpose of assisting and bringing out facts which will enable the reviewers of the record to pass accurately upon the record, I feel it is my duty to ask these questions in order that both parties may develop any further facts by this witness which they can. Have you examined the table marked Protestants' Exhibit W, showing the, purporting to show the total run off of the San Diego river above the El Capitan Reservoir site and the utilization of same by the Guyamaca water Company's system when fully developed, and if so, will you please state whether that is a fair table and also what weight if any should be given to it in showing the available water?

A I have examined Exhibit W and also investigated to a certain extent the facts upon which this table bears, and do not feel that the need of the Guyamaca Water Company to the quantity of water here given, even fully developed, that is, the evidence to my mind is not at all conclusive that even what I would call prospective rights to this ~~much~~ ^{xx} water from the Guyamaca Company having been shown, however, of course there is no doubt that all the water that they can store and develop could be used to advantage some place tributary to their system, but as to their claim of need for this much water I should think that it should be

predicated upon some sort of a right, such an extension of irrigated areas to include those within the areas now irrigated which do not receive water of some smaller more or less pressing need which would require the use of this water as indicated.

Q As the representative of the Indian Service is there any statement that you would like to make in reference to the effect it will have upon the Indians in the El Capitan Reservation?

A I would like if possible to answer that question which I was not able to, I felt in the way in which it was propounded and this bringing in the effect upon the Capitan Grande Indian Reservation, I think I can answer it, that is, from the evidence I have seen and the testimony I have heard, and the knowledge which I had already of the facts and conditions, I believe I can say that I am not convinced that the benefit which San Diego would derive from the use of this water, being a smaller amount in my estimation, a smaller amount than they have estimated upon would be enough more valuable than the benefit that San Diego might derive from the ^{development of the} Guyamaca Water system, and whatever water they might, the City of San Diego might be able to require thereby, to justify us yet in the abandoning of the Capitan Grande Indian Reservation.

Q You have heard the testimony of Mr. McCormick today?

A Yes sir.

Q And Mr. Bauer?

A Yes sir

Q Is there any statement made by either of these two gentlemen which you would like to correct, ^{or} which does not coincide with your views?

A No Sir, as far as I am familiar with the matters they testified about I agree with them.

MR. MANCHA: That is all.

MR. ROBINSON: No cross examination.

CROSS EXAMINATION

on behalf of the City of San Diego

BY MR. COSGROVE:

Q This Exhibit W of the Cuyamaca Water Company, the protestant here, shows a larger net safe yield of water above the El Capitan damsite than the City's Exhibit No. 13 to which you have been referring, does it not Mr. Schenck?

A It does in some instances, but my testimony with respect to Exhibit 13 was only assuming ^{the} figures here given were correct, I would not draw the same deductions as to the quantity available.

Q Calling your attention to the third column of Protestants Exhibit W, headed WATER WHICH WOULD HAVE BEEN UTILIZED BY THE CUYAMACA WATER COMPANY'S SYSTEM IF FULLY DEVELOPED WITH ALLOWANCE FOR RIPARIAN OWNERS, which shows over a period of twenty-one years an average of eighteen thousand acre feet, does it not?

A Yes.

Q And that is in excess of what our exhibit shows for that same period of time, according to your hydrograph you have of that cumulative mass curve?

A No sir, Column 6 of Exhibit 13 gives four hundred and thirty-eight thousand acre feet for a period of twenty-two years, or an average of approximately twenty-thousand acre feet per annum, whereas the column to which you refer on Exhibit W shows an average of eighteen thousand acre feet per annum

Q If you will deduct from this twenty thousand feet per annum which our column shows the amount of water which you think would be necessary to supply the lower riparian owners, which Mr. Lee has deducted in his estimate but which is not deducted in ours, if you will then in addition to that deduction, deduct your evaporation loss, which Mr. Lee has deducted and which we haven't deducted, would you still say no?

A I did not testify at all as to the accuracy of any of these figures, I assumed that these were correct.

Q The point I was bringing out was this: as comparing the exhibit of Mr. Lee, the engineer who prepared that Exhibit W with our exhibit, showing the same runoff at El Capitan damsite, and without admitting that either are correct, Mr. Lee's Exhibit shows a greater average safe yield at El Capitan after evaporation losses are taken into consideration, and after lower riparian property owners are taken into consideration than our exhibit shows, does

it not?

A I have not attempted to check up the various factors involved in these tables, and if the city's exhibit, the City of San Diego's Exhibit No.13 does not contain as large figures as would be warranted in using I would advise that they be modified before the facts to which I testified are as given.

Q Of course that does not answer my question at all, does not have any bearing on it. The cumulative mass scale shows what we consider the safe net yield at the El Capitan damsite over a period of years there, you have examined that, haven't you? A Yes.

Q That shows the net safe yield of eight million gallons for a period of time, and sixteen million gallons for the other period of time, does it not? A Yes.

Q Well, now, that is less than Mr. Lee's average yield over that entire period of time of twenty years and a little better than twenty or twenty-one years which according to his figures is eighteen thousand acre feet per year, isn't that correct?

A Apparently, yes so.

Q So if we have exaggerated the figures why Mr. Lee has exaggerated them more than we have?

A That brings out the point to which I wish to call attention in my judgment, that these figures strike me as being inaccurate, such might either decide I am mistaken or substantiate them in such a way either case will be presented

as strongly as possible.

Q Passing that point and taking up these tables that the City has used, I will ask you have you examined the City of San Diego's Exhibit No.12, I show you the exhibit?

A I have looked at it, yes sir.

Q Now referring to City of San Diego's Exhibit No.13, the run off for area marked No.1 in City of San Diego's Exhibit No.12 is the actual measurement that has been taken, is it not? A Yes.

Q And the same is true of Area No.2 is it not? A Yes.

Q And the same is true of Area No.3 is it not? A Yes sir.

Q So far as these three areas are concerned, areas 1, 2 and 3, the City of San Diego's Exhibit No.12, there is no speculation, those are records? A What I wish to call attention to--

Q You may call attention to that if you will let me finish with that, we will proceed more rapidly. Did I not correctly state the proposition before I interrupted you? A Yes.

Q Area No.4 of course is an approximation? A Yes.

Q And this table which accompanies our exhibit 13 shows that this approximation was arrived at by using the same run off as the past records show for Area No.3?

A yes sir.

Q Now if as was brought out on direct examination of Mr. Cromwell, if this No. 4, if the watershed there does not have the same amount of rainfall and run off, then of course the record is proportionately too high, and if it is greater it is to the same extent too low, of course the natural supposition is that Area No. 4 would be less than Areas No. 2 and 3, isn't that correct? A Yes.

Q Did you ever see the exhibit that was prepared by Mr. Lee and submitted to the Railroad Commission of the State of California, showing the drainage area of the San Diego river and showing the amount of rainfall at the different gauging stations, and rainfall stations on the San Diego river? A I never saw it before.

Q Well, now, just look at this exhibit which I am showing you at this time, comparing it with City of San Diego's Exhibit No. 12, and assuming that the exhibit of Mr. Lee which you are looking at is correct, and that the amount of rainfall shows that the various points are correct, the amount of run off at No. 4 would not be more than at the very most twenty per cent less than it would in No. 3 do you think?

A That would follow according to this map, the rainfall on the area No. 4 is probably twenty or twenty-five per cent less than that on the South Fork, but a slight decrease of the amount of rainfall may easily lead to considerable decrease in the run off.

Q That is a matter of complex calculation after going through very carefully? A Yes, I want to state the method of arriving at ~~that~~ Column, Table 13, three different factors entering into it, all of which would tend to indicate a greater amount than the data from which they were derived would indicate in my estimation.

Q In arriving at that conclusion as to the inaccuracy of our Exhibit No. 13, you took into consideration the fact we allowed thirty per cent loss from the run off in Area No. 1? A Yes.

Q You took that into consideration? A Yes.

Q You think that is a liberal allowance, do you? A I should think probably it was.

Q Now I understood you to state that you considered the development on the San Diego river as proposed by the Guyamaca Water Company more advisable than the erection of a dam and reservoir such as the City of San Diego proposes at the El Capitan damsite, I would like to know if you arrived at that conclusion if you would arrive at that conclusion disregarding the Indian Reservation, or do you have that in mind when you arrived at that conclusion?

A My conclusion included the qualifying word "theoretically" considered, not the needs of either San Diego or the Guyamaca Water Company, but theoretical consideration from an engineering standpoint, including the necessary abandoning of the land of the Indian Reservation under the San Diego

plan and not under the other.

Q Then your opinion in this matter takes into consideration the difficulty that is being experienced by reason of the Indian Reservation?

A Yes.

Q It does not take into consideration the needs of the municipality of San Diego nor the lack or need of the Cuyamaca Water Company, if there is any lack or need?

A No sir.

Q In other words your opinion then is not based upon evidence that has been introduced in this case but simply based upon the theoretical development of the San Diego River?

A That is practically the answer to the question as propounded.

Q So the opinion then properly represents this, that if you were called upon to formulate a scheme for the development of the San Diego river, and you had in mind merely the amount of run off and rainfall as shown by the exhibits and a dam and reservoir as shown by the exhibits, that the scheme proposed by the Cuyamaca would appeal to you more than the scheme proposed by the City of San Diego.

A Yes.

Q You didn't intend to be understood as stating as your opinion that the facts in this case brought out by the evidence were the criterion by which you made up your opinion?

MR. MANCHA: I object, it calls for a conclusion practically an adjudication of the record in order to answer

that question, passing upon the conflicting testimony that has been introduced in support of both sides, I think it is hardly a fair question.

MR. COSGROVE: I respectfully submit what I am attempting to ask is a question which will bring out the facts upon which the witness states his opinion, the witness has expressed an opinion here that, unless it is properly explained, he has already explained it perhaps, as of a far reaching effect. I desire to say, Mr Mancha, that in view of the present state of this case with reference to its development and the extent to which the city and the protestants have gone, and taking into consideration the testimony that this witness has given, that I am surprised that a Government official or a Government representative would object to the representative of the City of San Diego attempting to show this matter in as favorable a condition as I am able to, particularly in view of the fact that this witness is assistant engineer to the Indian Department whose permission and consent we must acquire.

MR. MANCHA: I have no objection to the witness answering the question if he assumes to do so, but I think it is hardly fair to ask the witness a question which would involve his passing upon the evidence submitted in this case, and I respectfully suggest that the question be propounded to the witness again and that he be, that he answer

it if he desires to do so.

Q (Question read.)

A I can perhaps answer it so it would be satisfactory to all concerned, I don't want to be placed in the position of having attempted to decide my answer was fair, even intended to develop what I thought were to be omissions or misconceptions of the condition, my answer given to each question of Mr. Casgrove referred to did take into account the testimony, but also other data which I have at hand, and the question as I remember it, referred to the engineering possibilities rather than the needs of the two parties at issue, though, of course, influences both needs.

Q Now you are acquainted with the structures of the Cuyamaca Water Company? A Yes.

Q You know their location on the San Diego river? A Yes.

Q Now the City of San Diego is put to the necessity of going somewhere for water, let us suppose, and after consulting with some engineers as testified here they have decided to go on the San Diego river, do you think they ought to go some place other than the El Capitan damsite, if you don't want to answer that just say so.

A I think I would not be prepared to answer that.

Q You say if we went up the river to any of these little reservoir sites up the river we would be above the Cuyamaca Company's point of diversion at the diverting dam?

A Yes.

Q Would not that interfere with the diversion of their water, wouldn't we probably have a lot of litigation about that?

A I have no doubt you would.

Q In addition to that, Mr. Schenck, are not these reservoirs in the mountains so small that we would have to build a great number of them in order to give us any practical benefit?

A Yes.

Q Then we have to get water into the system, they are so far up the river that we would have to build pipe lines from each one of them, or have one down below, would not that cost be almost prohibitive, don't you think?

A My opinion is if you could acquire water rights or have them that the cost might not be more than the cost of the system proposed, my testimony so far has been intended to suggest that San Diego may be counting on more water than the evidence as interpreted by me would indicate, as exists for the City of San Diego, and not only I would not want to advise the relinquishment of the Capitan Grande Reservation which has been testified to by those more familiar with the Indians than I, without a good deal of confusion, and retard the Indians in their development, unless the City of San Diego is going to benefit a commensurate amount, taking everything into consideration.

Q Now, another thing the City of San Diego ought to take into consideration is the fact that this Cuyamaca Water Company is a public utility of the State of California,

...serving three or four municipalities, itself, is it not incumbent upon us to locate, or attempt to locate where we will do them the least harm, certainly if we located down below everything that they have tried to take from that point which they according to their own testimony, expect to develop last, we are not putting ourselves in a position where we are subject to criticism as interfering with them, do you think?

A No sir, I might say except where it is perfectly evident that some injustice is attempted, I did not feel I was interested in that only as it concerned the Indians, the Government's rights.

Q Of course we understand that if all we had to do was to go and develop the San Diego river and there was nobody there we might go at it differently, I suppose you took into consideration in this matter the fact that there is already there on the San Diego River conserving a large portion of water, a public utility company that is serving water to municipalities, and we can't go in and jump in front of them, this Cuyamaca Water Company, this El Capitan water proposition is down below them, so that according to their development we would not get anything until it went clear by them, don't you think that is a fair and square position for the City of San Diego to take in the matter?

A I would not attempt to advise the City of San

Diego what to do, my effort now is to point to the fact the Secretary of the Interior - of course I don't speak for him at all officially except as an employee of the Government, no particular reason why I should know what he would decide at all, but undoubtedly he might have to be convinced that the benefit which will accrue to the City of San Diego is of sufficient magnitude to warrant the abandonment of the Capitan Grande Reservation, and if there are inaccuracies in any exhibits that will work to the detriment of the City of San Diego, if I am not mistaken; in view of this particular case which we have here if it undoubtedly can be proved why the record may be made such that whatever evidence is introduced can be accepted at its face value.

Q You state this might be inaccurate to the extent of fifty per cent?

A Yes.

Q Even if it were inaccurate to the extent of fifty per cent it would still show we would have a net safe yield from that system of four million gallons a day from 1893 to 1904 and eight million gallons per day thereafter, would it not?

A Yes sir, I think so.

Q Now if we could get for three million dollars a system that would deliver to the City of San Diego that amount of water, in view of the expense that the City of San Diego has been put to heretofore in getting that amount of water, would it not be a good proposition for us?

A I should not wonder if it would be.

Q This also should be taken into consideration, should it not, Mr. Schenok, there were two periods during this period of twenty-one years past when the run off at El Capitan was so great that there was a tremendous amount of water lost and went into the sea, well, now, if the chart is inaccurate to the extent of fifty per cent then this great amount of water which runs into the sea six or seven would have been practically all caught, and that should be added to our eight million daily net safe yield, should it not? A. Yes, I donot want to be considered as being unfavorable to the plan at all, it is just a discrepancy that developed there, if I am mistaken about this why of course it should be brought out, because taking these figures as given in 13, the deductions which I have made from them I am sure are correct, if there are modifications necessary ~~at~~ increase your figures or decrease, it ought to be sustained.

Q You take this proposed development as contemplated by the Cuyamaca Water Company, you heard them say that they expected to put seventy feet of masonry on top of the diverting dam, didn't you?

A I heard the testimony.

Q That is what you expected to do, did you see that damsite up there?

A Yes.

Q What do you think about that?

A I would want to make a thorough investigation before considering that as a site for a high dam.

Q It is not apparent it is a site for a high dam, is it?

A No sir.

Q Did you hear the hydraulic engineer, Captain Harris who built that dam, testify concerning the bed rock or absence of bedrock there?

A No sir.

Q You heard them talking about building a one hundred and fifty foot dam up at Boulder Creek, I believe it was, did you?

A I heard them talking about a one hundred and fifty foot dam, I don't remember of the name.

Q Do you know how much water they impounded behind that dam?

A I recollect somewhere in the neighborhood of less than ten thousand acre feet.

Q Would you consider the erection of a one hundred and fifty foot dam in that section of San Diego County to impound ten thousand acre feet of water an advisable scheme?

A It would have to be a remarkable good damsite to warrant that.

Q If all of this water that is scattered around in these smaller reservoirs could be stored in one large reservoir like the El Capitan, wouldn't there be a pronounced benefit to the Company or the municipality that desired to use it if they wanted to use it further down?

A There would if everything else were equal, but in the plan being considered it is not possible to do that, that is, storage on the upper reaches would provide more water than if the water were allowed to run down the channel and be stored in the lower one, I believe that the less

would be greater and the expense of building the lower dam I believe would be more than that of all the upper ones.

Q Were you ever on the damsite of these upper dams?

A No sir.

Q What makes you think you believe the cost of erecting the upper damsite would be greater if you have never been there?

A Because I have been on the lower one and that looks to me like a very expensive proposition, and the other one I know from, at least from hearsay and several years past are better than that.

Q You have in mind haven't you that the aggregate capacity of all of the dams including the Capitan as proposed by the Cuyamaca water Company above that point, is about one-third of the capacity of the proposed El Capitan as proposed by the city?

A Yes, but of course the times when the river would yield enough water to make that larger capacity of any use or would be half filled between, especially if all the rights which have been admitted by the San Diego and the Cuyamaca Company are provided for.

Q We would have filled it last year's overflow, wouldn't we?

A I expect you would.

Q We would have at the present consumption in that one reservoir alone, allowing for seepage and evaporation

at least a five years' supply right there, wouldn't we, Mr. Schenk?

A It would take me a few moments to find out, I will take your word for it.

Q The reason I have said so capable engineers have so testified?

A Yes.

Q Now you stated I understood you to say that there were other available reservoirs in the City of San Diego, some within the limits of practical cost, will you please tell us where they are, if you please?

A Well, they are practically every stream in San Diego County, and even some in Riverside County are within the limits of practical cost to the ultimate development of San Diego, the Temecula river and San Luis Rey river.

Q Let us take the Temecula river, do you know anything about the lower riparian ownership below the Temecula damsite?

A Nothing.

Q In making this statement do you take into consideration the fact that the City of San Diego is in the same watershed as the San Luis Rey or the Temecula? That ~~that~~ affect it vitally.

Q Do you know the law of the State of California with respect to transferring water from one watershed to another?

A I am not familiar with the new law, under the old law you could get it out if you had enough lawyers on

your side.

Q Where are some of the available reservoirs on the San Luis Rey that are within the limits of practicable cost for the City of San Diego? A I don't

think you can find reservoirs on the San Luis Rey, you can divert it the same as the Granddido Company does, or basins you can store water.

Q Whereabouts would you make the point of diversion? A Some place in the canon below Warner's dam.

Q I understood you to say in response to a question put by Mr. Mancha to the effect there were other available reservoirs in the El Capitan, some for the use of the City of San Diego, some within the limits of practical cost, I haven't yet heard you mention one.

A I don't think I replied to the question, water supplies was my intention.

Q If there are no reservoirs how can we store our water?

A I don't say there were no reservoirs.

MR. COSGROVE: That is all.

CROSS EXAMINATION

on behalf of the protestants

BY MR. ROBINSON:

Q Referring to the City of San Diego's Exhibit No. 15, Column No. 6, doesn't that column show the available water after diversion by the Cuyamaca Water Company?

A Yes.

Q Referring to Column No. 5, Protestants' Exhibit W

doesn't that show the total run off available?

A I should not think so from the heading given, it shows the amount which would have been utilized by the Cuyamaca Water Company.

Q Do you consider that those two columns are comparable. A Not necessarily.

Q Mr. Lee's average yield is not comparable to the City's safe yield, is it, not strictly so?

A It might not be.

MR. ROBINSON: That is all.

BY THE REGISTER:

Q Considerable has been said from a sentimental standpoint of the Indians in this hearing, how do you stand on that? A well, of course we

are working for the Indian Bureau and are trying to civilize the Indians as rapidly as possible, and anything that is done to delay that in my opinion should be done for a very good cause, but I would not at all say that it should stand in the way of the development of a large city like San Diego. It

should be given weight, I don't think that is one of the principal things that needs to be considered, from my standpoint as an engineer, what I feel the things I wish to call attention to are things of an engineering nature which were not clear to me.

Q You would be more inclined to the greatest good for the greatest number? A Yes.

Q The white man has not been letting the Indians stand in his way in the matter of progress?

A Not much, that would not be much of an argument, I think the Indians will be given the consideration to which they are entitled, but that can be shown.

Q If everyone who was damaged shall be recompensed regardless of whether he was an Indian or a white man, and the life or death of a great city was at stake, you would not let a little sentiment stand in your way?

A No, I don't know as to emphasizing that sufficiently, what I had in mind in testifying at all was to call attention, I had better say there are two things to me which have appeared as being of sufficient importance and not developed along the lines that would satisfy me, of course I may have missed some of the testimony, that is in the Cuyamaca Water Company's Exhibit W, the third column that they submitted convincing evidence that they could reasonably be expected to need as much water as they have indicated, and the other was perhaps the optimistic view of the City of San Diego as to the quantity of water they would have available from the data given.

Q As a matter of expense, if that would be the only way of getting the water almost any expense would be justified, would it not?

A Certainly.

THE REGISTER: I believe that is all.

THE REGISTER: This case is adjourned 4:07 P.M.

January 7, 1916, until February 9, 1916, at 10 A.M.

Ed Fletcher Papers

1870-1955

MSS.81

Box: 59 Folder: 2

**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 2**



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