

WALTER LEROY HUBER
CIVIL ENGINEER

May 3, 1916.

Honorable Henry F. Ashurst,
Chairman of the Committee on Indian Affairs,
U. S. Senate,
Washington, D. C.

Dear Sir:-

I wish to call your attention to a Bill (S.5081) which was introduced by Senator Phelan of California on March 16, 1916, read twice and referred to the Committee on Military Affairs. I understand this Bill has since been taken out of the hands of the Committee on Military Affairs and referred to the Committee on Public Lands but, so far as I am aware, it has not been referred to your Committee, although its effect upon the Capitan Grande Indian Reservation should be disclosed, if not by an investigation of your Committee, then by a full report to the Public Lands Committee by the Office of Indian Affairs.

This Bill proposes to grant to the City of San Diego the use of certain lands, largely within the Capitan Grande Indian Reservation, for a reservoir. An application for the same lands for the same purpose is now being prosecuted before the U. S. Land Office by the City of San Diego as assignee of W. B. Hamilton. A protracted hearing before the Local Land Office at Los Angeles was recently completed on this application. The transcript of testimony comprises some 1157 pages of type-written matter and approximately 100 exhibits. In the evidence much technical engineering data was introduced, not

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only by the City of San Diego but by Guyamaca Water Company, protestants, and by the U. S. Office of Indian Affairs. The exhaust^{ive} record of this hearing, if it has not already been forwarded, will very soon be forwarded to Washington and will be available in the office of the Commissioner of the General Land Office. The office of Indian Affairs also has much data available, particularly since its engineers appeared under the direction of a Special Agent of the U.S. Land Office at the recent hearing. The original Hamilton application, which has now been assigned to the City of San Diego, was rejected by the Department of the Interior on April 29, 1915, upon the recommendation of and for the reasons reported by the Commissioner of Indian Affairs, which were that the construction and maintenance of the dam and reservoir would seriously injure the Indians of the Capitan Grande Reservation, because, it would flood and deprive them of the use of the total irrigable area of the Reservation and would thus deprive them of their homes and other improvements and necessitate their moving to other lands. Hamilton has since assigned to the City of San Diego any claims which he may have by virtue of his former application, and it was upon the claims so assigned that the Land Office held the recent hearing. At the hearing it was developed that the application of Hamilton was not made in good faith with any idea of his carrying the project through to its ultimate completion, but was a promotion scheme absolutely speculative in its character as far as he was concerned (Transcript - p. 338).

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At the recent hearing Mr. Owen W. Bauer, as civil engineer, employed by the U.S. Indian Service, testifying as a witness for the Government, introduced a table prepared by him (U.S. Exhibit IV) entitled "Estimated Damages Capitan Grande Reservation, Cal." with the statement that "Estimate includes amounts necessary to reimburse for relinquishment of lands, water rights and improvements, including removing Indians from Capitan Grande Indian Reservation, exclusive of burying grounds abandonment, and other indeterminable personal injuries to the Indians." The actual damage, as computed by this witness, and as will be verified by the testimony of Thomas F. McCormick, of the Office of Indian Affairs, amounted to \$216,516.00, no compensatory damage for personal injuries being included. At the conclusion of Mr. Bauer's testimony the record will show (Tr. 754) that the City Attorney of San Diego made the following statement: "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 land."

In the line of the above testimony by competent witnesses, together with the frank admission of the City Attorney of San Diego, I wish to call your attention ^{to} Section 5 of S. 5081 which provides that under no circumstances will the City of San Diego, if the grant is made, be required to pay more than \$100,000. to compensate the Mission Indians located on the Reservation. This measure, if it should become a law, would amount

to a direct grant from the Mission Indians to the City of San Diego of \$116,516.00 and, in addition, would necessitate an Indian eviction such as was pictured by Helen Hunt Jackson in "Ramona".

There is no question but that the reservation will have to be abandoned and the Indians moved elsewhere, if the lands in question are granted to the City either by grant of the Department of the Interior or by the enactment of Legislation such as was proposed by the two companion bills now before the 64th Congress, S. 5081 and H.R. 11,540. The statement of the City Attorney at the recent hearing (Tr. 37) indicates the position of the City in this regard when he says: "The City admits that the granting of this permit will flood, if not the entire tillable land of the Indians, such a large portion of it that the remaining portion would be uninhabitable from a sanitary standpoint, and we would not desire the Indians living on the rim of the reservoir, and we admit that the granting of the permit, for all practical purposes, will take from the Indians all of their tillable land, take from them all of their places of abode, and they would have to be moved from their location" ***** "the position the City of San Diego takes is the granting of this permit would compel the Government to remove the Indians to some other place." Mr. McCormick of the Office of Indian Affairs states that he does not think it would be possible to remove these Indians without using force.

Appreciating the condition of the Mission Indians of

California and realizing the fact that in the past they had been oppressed and abused by the whites in the name of advancement and progress, Congress passed an Act, which was approved by the President, and became a law on January 12, 1891, (26 Stat. 712), the title of which is indicative of the end sought: "An Act For The Relief of the Mission Indians in the State of California."

The Act in question provides, among other things, for the appointment of "three disinterested persons as Commissioners to arrange a just and satisfactory settlement of the Mission Indians residing in the State of California, upon reservations which shall be secured to them as hereinafter provided."

Section two of said act states in part: "That it shall be the duty of said Commissioners to select a reservation for each band or village of the Mission Indians." * * * * "which reservation shall include, as far as practicable, the lands and villages which have been in the actual occupation and possession of said Indians, and which shall be sufficient in extent to meet their just requirements."

Section three provides: "That the Commissioners, upon the completion of their duties, shall report the result to the Secretary of the Interior, who, if no valid objection exists, shall cause a patent to issue for each of the reservations selected by the Commission and approved by him in favor of each band or village of Indians occupying any such reservation which patents shall be of the legal effect, and declare that the United States does and will hold the land thus patented, subject to the provisions of

section four of this act, for the period of twenty five years, in trust, for the sole use and benefit of the band or village to which it is issued, and that at the expiration of said period the United States will convey the same or the remaining portion not previously patented in severalty by patent to said band or village, discharged of said trust, and free of all charge or incumbrance whatsoever."

The provisions of this Act were complied with. The Capitan Grande Band of Indians, under patent issued March 10, 1894, are the owners of the equitable title to all of the lands within the Capitan Grande Reservation, which are enumerated in S. 5081 with the exception of the E. 1/2 of S.E. 1/4 of Sec. 21, T. 14 S. R. 2 E., S. B. M. (an area of approximately 9.83 acres within the flood line).

The Government of the United States holds the legal title to said lands in trust for the Indians. The patent above referred to reads, in part, as follows:

"NOW KNOW YE, THAT THE UNITED STATES OF AMERICA, in consideration, of the premises and in accordance with the provisions of the third section of the said Act of Congress approved January twelfth, eighteen hundred and ninety one, hereby declares that it does and will hold the said tracts of land selected as aforesaid (subject to all the restrictions and conditions contained in the said Act of Congress of January twelfth, eighteen hundred and ninety one) for the period of twenty five years in trust, for the sole use and benefit of the said Capitan Grande Band or Village of Mission Indians, according to the laws of California, and at the expiration of said period the United States will convey the same or the remaining portion not patented to individuals, by patent to said Capitan Grande Band or Village of Mission Indians as aforesaid, in fee simple discharged of said trust and free of all charge or incumbrance whatsoever" * * *

The language of this document is plain and unambiguous and, I

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think, is capable of but one construction, and that construction absolutely precludes the allowance of the provisions of S.5081. I also wish to direct your attention to the testimony of Mr. Francis R. Schenck, Assistant Chief Engineer of the U.S. Indian Irrigation Service, who, as witness for the Government at the recent hearing, while testifying regarding the relative merits of the system proposed by the City of San Diego and that of the Cuyamaca Water Company, whose plans will ultimately utilize all of the waters of San Diego River for domestic and irrigation uses, made the following statement:

"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 El Capitan Reservation?

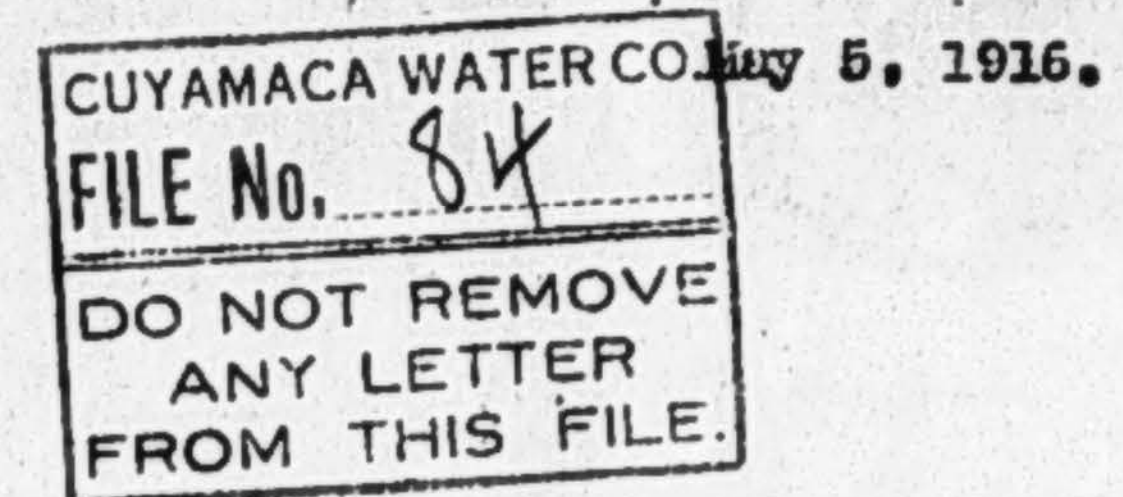
A. I would like if possible to answer that question which I was not able to, I felt in the way in which it was propounded and this bringing in the effect upon the Capitan Grande Indian Reservation, I think I can answer it, that is, from the evidence I have seen and the testimony I have heard, and the 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 Cuyamaca Water system, and whatever water they might, the City of San Diego might be able to acquire thereby, to justify us yet in the abandoning of the Capitan Grande Indian Reservation." (Tr. 774)

Finally, I wish to urge you, as Chairman of the Committee on Indian Affairs, to cause a full investigation of this measure, which as shown above, would work a great and needless hardship upon the Capitan Grande Indians except that, since it violates the patent to the Indians, it must be illegal and, therefore, inoperative.

Yours truly,

WLH:EW

W. L. Huber



Hon. Henry F. Ashurst,
U. S. Senate,
Washington, D. C.

My dear Senator:-

I am in receipt of a copy of a letter written by Mr. W. L. Huber under date of May 3rd to you. This letter was written without my knowledge or consent. Mr. Huber was for years in the Government Service and I consider him thoroughly reliable and his statements as well.

The Cuyamaca Water Company is owned by James A. Murray, William G. Henshaw and myself. The City of San Diego is trying to take an unfair advantage of us, cloud the title to our water rights which we have had possession of for 30 years and put to beneficial use and this trouble is all being made by a bunch of politicians in San Diego who have it in for me.

The City of San Diego has not the finances and won't have for years to come to build this water system even if we made them a present of the Cuyamaca Water Company's system together with the El Capitan Dam site and over half of the reservoir site which we own. It would cost them nearly one million dollars to get the riparian rights from the dam site to the ocean and two or three million more to build the dam and pipe line to the City. Their bonding capacity now is less than one and one-half million and they are going to vote one million dollars in bonds within two or three months to build the Lower Otay Dam and the Barrett Dam, so they will have practically no bonding capacity left within the next twelve months.

They have three years supply of water on hand to say nothing of their pumping plants and with the building of Lower Otay and Barrett Dams, they claim they will have five or six years supply.

I understand you are a member of the Lands Committee. This matter has all been presented to the Land Office and you can get a report from the Secretary of the Interior as to the real condition. All I ask is if this question ever comes up, that I be allowed to present our case before the Public

Hon. Henry F. Ashurst.
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Lands Committee.

You remember of my meeting you at Yuma. I am president of the San Diego - Arizona Highway Association, and thanks to you as much as to any one, we secured the Yuma bridge and I hear you have lately got through the Senate the \$10,000 for the road through the Yuma Indian Reservation as you promised me at the luncheon table that day.

I promise you that every statement that I have made, I can and will make good and all I ask is that we get a square deal.

Thanking you for anything you can do for us in the matter, I am,

Yours very truly,

Manager.

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HENRY F. ASHURST,
Arizona.

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LETTERHEAD OF
UNITED STATES SENATE,
Washington, D.C.

May 8, 1916.

Mr. W. L. Hubert,

First National Bank Building,
San Francisco, Calif.

My dear Sir:

I have your favor of 3rd instant wherein you direct my attention to S. 5081, introduced by Senator Phelan, and I wish to thank you for the information contained in your letter. I shall keep the matter in mind and when the bill reaches the calendar will consult your data in order to be fully advised.

Cordially yours,

(Signed) HENRY F. ASHURST.

May 17, 1916.

Hon. Henry F. Ashurst,
Washington, D. C.

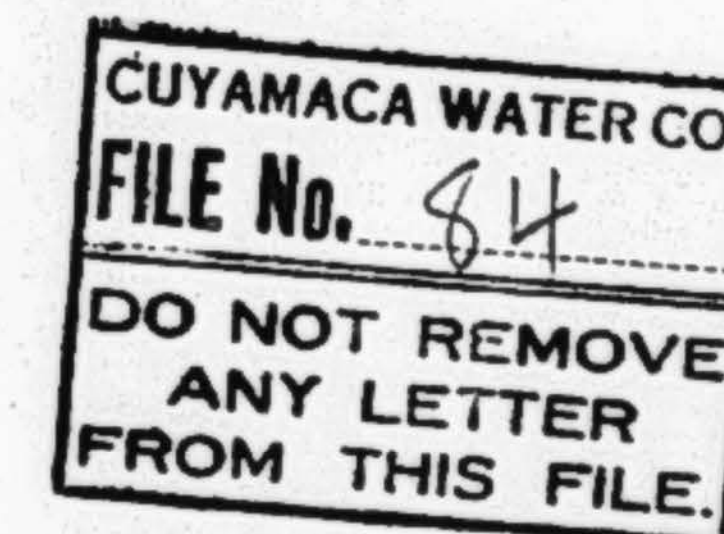
My dear Senator:

This will introduce to you my partner and friend, Mr. James A. Murray. Any information that you can furnish him relative to Senate Bill No. 5081 will be appreciated.

Thanks for what you have done for us in the matter of a road through the Indian Reservation at Yuma on the Southern National Highway. You have certainly delivered the goods.

Yours very truly,

F-S



Ed Fletcher Papers

1870-1955

MSS.81

Box: 1 Folder: 14

General Correspondence - Ashurst, Henry F.



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