

P. O. Box 241, El Cajon, Calif.,

April 7<sup>th</sup>, 1935.

Senator El Fletcher, State Capitol Bldg.,  
Sacramento, California.

Dear friend El Fletcher:-

Your letter of March 28<sup>th</sup> relative to Philip Martin has just been received. I will do my best to give you the information which you have requested.

It seems that Philip Martin and other ranchers attended a meeting at Lakeside some two or three weeks ago and that the said meeting was addressed by Pyle, who as you know took Mr. Savage's plan as Hydraulic Engineer for the City of San Diego. I am informed that Martin asked Pyle some questions and left the said meeting considerably upset as to the water right situation. I am further informed that Martin then went to see attorney S. S. Kahn, lawyer for E. W. Scripps, (without any authority or letter of introduction) and that Kahn referred Martin back to Curtis Kelly. It seems that Martin failed to get anywhere with either Kahn or Kelly.

Philip Martin and many other people out here have expressed strong opposition to Judge Loupling's being retained to handle this water question. This is apparently the reason why Martin has retained Mint Francis in the matter. Ballentine tells me that Martin was very fearful that if the suit was not

filed before March 31<sup>st</sup>, 1935<sup>(2)</sup> (which is exactly five years from the date of the Supreme Court Decision) the ranchers could not thereafter file suit at all. Apparently Martin became all excited about that point and got several land owners to join with him in instituting action in Superior Court through Mint Francis.

I want to make it perfectly clear that I was not consulted in any of this and it is my belief that unless Mint Francis can get Judge Loupling to join him in the action as associate counsel and the matter taken into Federal Court, (and not under any circumstances in any State Court) Philip Martin and the other parties will get licked in the first round.

I have brief for years to settle this matter during which time I have spent a considerable sum of money and a very great deal of time. I believe I could have defeated Byers in Washington three years ago before the Public Lands Committee. Byers has since told me that he realized that I had him licked and he has thanked me for letting a "dumb guy" go back there. The only way to have kept the "dumb guy" from going back there was to have tied him up to keep him home. He paid all of his own expenses.

Many people out here have expressed suspicion of me and have accused me of representing you, or the City of San Diego. It is true that I have devoted far more time and money to this cause than my small investment will ever justify. The truth is that I have been working entirely in endeavoring to right the wrong that has been done to the poor landowners - for their good far more than my own. I am sure that you realize that people sometimes fail to thank us or appreciate our

earnest efforts - I am sure that you have often experienced the same thing. <sup>(3)</sup>

It is my opinion that the Federal Court should be petitioned to adjudicate the water rights as between the city of San Diego and the landowners. The so-called Paramount Right Decision does not give the city full right to all the water and the respective right should be determined and adjudicated by an order from the Federal Court. A Federal Court would not refuse such a petition and such an adjudication would be made as would prove very favorable to all landowners. Such an application to the Federal Court for such a Court order (or advice of the Court) would not entail much expense and matter would it be possible for the city to oppose it. Judge Cushing will handle this very reasonably and successfully, I believe.

I wrote Mr E. W. Scripps and asked him to let me know when he wanted me to talk with S. S. Wain. My letter has now been gone for over a month and I have received no reply. No doubt I will be hearing from him in due course. Perhaps Mr Scripps also received one of Philip Martin's letters and agreement and thinks it came from me. If so, I am not surprised I have not heard from him as the Martin proposition is entirely different from the plan I discussed with Mr Scripps.

I believe it would be fair and just for each landowner to contribute fifty cents per acre to a fee (part of which would be contingent upon success) for an equitable settlement in Federal Court. This is the plan of finance advocated by me. I further believe that since West Francis has been retained by Martin and has already started suit against the city in Superior Court, it is of greatest importance that you and E. W. Scripps reply to Martin's letter (by writing to West Francis) stating that you will join in by contributing fifty cents per acre if Judge Cushing is retained

as Associate Counsel in a Federal Court action. And if such action is successful in restoring the water rights, you will pay fifty cents per acre for each acre of riparian land so benefited and owned by you on San Diego River. Such an offer would make a real inducement for West Francis to invite Cushing into the case. In my opinion Cushing is the only man who can lick the city in this matter. If Cushing is left out, I predict the landowners will suffer failure - not because of any lack of effort upon the part of Philip Martin or West Francis, but because of lack of the necessary inside knowledge. I believe it to be of vital importance that this suggestion be immediately made to E. W. Scripps. Young Scripps impressed me as being thoroughly honorable and I would sincerely dislike seeing him ~~lose~~ his water rights on Santa Rosa because of the ignorance and mistakes of other people. <sup>(4)</sup>

April 23<sup>rd</sup> the city votes on an amendment to the City Charter to create a Water Board, Power Board and Sewage Disposal Board. If this carries, the city will in due course attempt to have it ratified by the State Legislature. Section 1 of the proposed amendment states in part "and the said city is hereby declared to have the full and free use of all of the water of the San Diego River from its source to its mouth and all of its tributaries both above ground and below xxxxxx." Even if this amendment carried by majority vote, the State Legislature should refuse to ratify it for the reason that it is obviously a trick on the part of the city to get the State Legislature to ratify something in the way of San Diego River Water Right which even the so-called State Supreme Court Paramount Right Decision did not clearly define as entirely belonging to the said city.

Now closed, I apologize for writing you at

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such length upon this subject - also for the fact that I have not had this letter typewritten. I am leaving for the state of Utah for two weeks business trip early in the morning - consequently there is no time to type this letter.

Every thing contained in this letter is for your information and must of course be treated confidential. I congratulate you upon the splendid work which you are performing for the people of your district. You have always done splendid work, you possess remarkable ability and you have a wonderful family.

I will return home on or about April twelfth.

Sincerely yours  
Wm. P. Cousin

P.S. I enclose some news paper clippings. Read them if you wish, but please return them at your convenience. I will obtain the papers containing the items for you if you like.  
S.D.R.

**Riparian Owners  
Are Not Injured**

Phillip P. Martin has received from the house of representatives in Washington, a copy of an amendment to the bill granting to the city of San Diego certain rights in the El Capitan Grande Indian reservation for dam and reservoir purposes which states in section 2 of the amendment: "Nothing contained in section 1 hereof shall be held, deemed or construed as affecting, altering or in anywise changing the rights of the riparian land owners under the provision in the act approved Feb. 28, 1919." This report, although contrary to San Diego reports, is authentic and should be of great interest to owners along the river.

**COURTS UPHOLD RULE  
RIPARIAN LAW DEAD**

SAN FRANCISCO, March 1 (A.P.)—The state supreme court today affirmed its far-reaching decision overturning the theory of riparian water rights in existence in California for 50 years. On Feb. 1 the court declared "the right to waste water is no longer included in the riparian rights of California and water resources must be put to the greatest beneficial use of which they are capable." A number of landowners in Gordon valley tried to stop the city of Vallejo from impounding flood waters of Gordon Valley creek. Today they were denied a rehearing.  
Tribune 3/1/35

# EXPLAINS JOKER IN DAM BILL

Conference Set for June 9  
After City Attorney Breaks  
With Cosgrove; Blames  
Laxity in Past Litigation.

The widely heralded victory, in San Diego river water litigation is a hollow one and the battle which has required 16 years to date will have to be fought over again before the city can safely invest its money in development of the upper reaches of the river, City Attorney Frank H. Heskett told the mayor and council yesterday.

Hitting straight from the shoulder, Heskett said that laxity in conducting the litigation has left 25 riparian owners on the river in a position to keep the city in court indefinitely, and that the El Capitan dam bill passed by congress years ago might be construed so that the city would have to furnish water to everyone on the river below the dam, leaving virtually nothing for the city.

**START ELECTION PLANS**

Thunderstruck, the council set on foot plans for calling a special election to make El Capitan bond funds available for development at Los Padres, which has been recommended by all the expert engineers the city has ever retained on river problems. The same election probably also will call for transfer of surplus Otay pipe line and Chollas reservoir enlargement funds to the river development, as the city attorney ruled that these transfers could not be made without a vote of the people. A two-thirds majority will be required for the transfer.

A conference was set for June 9 to determine the course the procedure should take to develop water for the city in the quickest way.

In informing the council of his views on the river situation Heskett broke sharply with T. B. Cosgrove, who has been employed as special water counsel. Heskett refused to permit the attorney to dictate the city's water policy or the policy of the city attorney's office.

**CITES CITY'S MISTAKE**

"The city made a mistake in paying the government \$361,000 for Cap-



**Ed Fletcher Papers**

**1870-1955**

**MSS.81**

**Box: 72 Folder: 17**

**Writings and Interviews - Water History - "Oldtimers" interviews and letters re history (see also R. Choate and T. Van Dyke correspondence) - Robinson, Thomas B.**



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