

FRATERNITY HISTORY

EL CAPITAN DAN

VOLUME V

MADE IN ITALY

FRATERNITY HISTORY

G E N E R A L

CITY'S PERSONNEL ORGANIZATION

SAN DIEGO CITY CIVIL SERVICE COMMISSION

EXAMINATION #596 ENGINEER-WATER DEVELOPMENT

SUMMARY OF EDUCATION AND EXPERIENCE

HAROLD WOOD

Please fill out concisely the following form relative to your education and experience. A complete detailed list of experience is not asked for; only experience of larger projects is to be listed. Read all questions contained in this form before beginning.

1. I attended college from 1907 to 1908 at (name of college)

Leland Stanford University

Graduated 1907 California School of Mechanical Arts

Subject of thesis was -

Graduate work -

Special research since graduation -

Advanced degrees if any -

2. I have had the following experience in connection with Water Supply Engineering and allied matters. (Give title of position location, year, salary, cost of work):

Division Engineer in charge of all preliminary surveys and design and construction of distribution system of Nevada Irrigation District, California. 1921, 1923, 1925 to 1928. Construction involved 175 miles of ditches, 15 miles of steel pipe, domestic supply to two towns, miscellaneous irrigation and hydraulic structures such as flumes and dams. Cost of distribution system construction about \$1,200,000. Valuation of about 150 miles of Pacific Gas & Electric Company's ditches in the above district. I also had a large part of the responsibility for the general design and execution of the entire project involving the expenditure of \$7,250,000.

Resident Engineer in charge of construction of Roosevelt Water Conservation District; 42,500 acres in Salt River Valley, Arizona, 1924-1925. Cost of construction about \$887,000.

Responsible charge in field of valuation of water supply system of City of Stockton, California, 1920. Valuation about \$1,476,000.

I designed and supervised construction of several water supply systems in Alameda County and for Richmond Wharf No. 1, Richmond, Calif.

My salary from July 1918 to June 1930 averaged about \$6000 plus traveling and living expenses when away from San Francisco. During this time I was associated in general civil engineering practice with Fred H. Tibbetts of S. F.

3. My important experience in irrigation work has been. (Give title of position, location, year, salary, cost of work):

Resident Engineer in charge of design and construction of 13 mile extension of main canal of Glenn-Colusa Irrigation District near Williams, California, 1924. Cost about \$200,000, and a portion of the irrigation system of Reclamation Districts No. 108, 70 and 2035, Sacramento Valley, California. Valuation, design and reconstruction of Byron-Bethany Irrigation District and Grenada Irrigation District, both in California. The pumping plant work of the above districts alone aggregated about \$1,250,000. 1919-1925. Salary same as in paragraph 2 above.

4. My important experience in operation and maintenance of power development work has been (Give title of position, location, year, salary, cost of work):

I had responsible charge of construction and putting into operation of Eklutna River hydro-electric development of Anchorage Light and Power Company, Alaska. 1928-1929. Cost \$650,000. Have been consulted several times on operation and increase load problems since putting plant into operation.

While on Nevada Irrigation District's construction I had to examine certain existing and newly constructed hydro-electric plants using said district's water both from standpoint of maintenance and operation. The construction and maintenance within the district required close co-operation with operation of hydro-electric plants using district water.

5. My important experience in the construction of dams, conduits, and tunnels has been, (Give title of position, location, year, salary, cost of work):

Nevada Irrigation District's work outline in paragraph 2 above involved construction of 4 diversion dams, 4 mile Milton-Bowman tunnel, Bowman Rockfill Dam (second largest when completed 1927) Bowman South Arch Dam and spillway and 11 mile conduit capacity 220 s.f. consisting of 2.5 miles flume, 4 tunnels, 2 siphons and side hill canal.

I was resident engineer on vehicular tunnel for City of Richmond, California, 1914-1915. Cost about \$350,000.

I was retained to report on concrete lining of Piedmont tunnel of Oakland, Antioch and Eastern Railroad, Oakland, California.

I was tunnel inspector for construction department of Southern Pacific Company 1909-1910.

My work in Alaska as stated in paragraph 4 above required an earth fill dam and a concrete arch diversion dam both built in the winter. Salary same as in paragraph 2.

6. I am a member of the following technical societies (Give approximate year of election and grade of membership):

Associate member of American Society of Civil Engineers and member of local section in San Francisco. Junion 1912. Associate Member 1915.

I am registered civil engineer for California-Certificate 939 and was registered in Arizona 1925.

7. I have contributed printed articles to journals, periodicals, etc. as follows (Title, year, number of pages):

Article on "Construction of D-S Eight Mile Canal of Nevada Irrigation District" in Western Construction News October 10, 1928.

Various bid summaries for Western Construction News pertaining to construction work with which I have had connection.

I have always contributed articles describing projects interesting to communities in which work is carried on.

8. My major experience with Boards of Direction, City Trustees, Legislative Bodies and Courts, in matters of expert engineering testimony, acceptance or rejection of engineering projects, etc. has been (Give name of project, year, cost of work):

In My active practice of civil engineering as associate of Fred H. Tibbetts for 12 years, I had to attend meeting of Boards of Directors of various irrigation districts and meetings of Boards of Trustees of Reclamation Districts No. 108 and No. 70, Knights Landing Ridge Drainage District and Sacramento River West Side Levee District.

I also had to attend many meetings of City Council of Richmond, California, in connection with Richmond Harbor Project.

I have had to attend several meetings of Bond Commission of State of California.

I have had to work with officials of State Department of Public Works of State of California in connection with water and dams.

I was called to give expert engineering testimony in Court of Contra Costa County, California, in connection with Richmond Harbor Project.

I assisted in preparation of and presentation of data before hearing of Federal Power Commission's representative in San Francisco in connection with application of Nevada Irrigation District.

For year and cost of works see statements above.

My experience as outlined in the attached sheets covers 23 years of civil engineering practice in responsible charge of design and construction of hydraulic structures and water development works. I am Associate Member of American Society of Civil Engineers and herewith attach letters relative to personality. I am a registered Civil Engineer in California - Certificate 939. My work has covered design and construction of concrete dams, conduits pipe lines and pumping plants, and for the last 10 years I have had responsible charge of work of considerable magnitude as shown by attached statements and photographs exhibits of my work. The following tabulation gives some of the detail of my work 1910 to 1933.

Project	Structure	Description	year	Cost
El Capitan reservoir dam, spillway and outlet works Resident Engineer	dam, spillway and outlet works	Hydraulic fill rock embankment type 220' high	1931	to date
		1180' on crest	1933	\$1,832,000
Bathing Zone breakwater at La Jolla Resident Engineer	Breakwater	306' long 21' maximum	1931	70,000
Anchorage Light and Power Co. Alaska Design, location engineering and superintendent of construction	Storage dam	Earth 240' long 14' high	1929	
	Diversions dam	Concrete 65' high		
	Tunnel	1900' long 7'x8'		
	Penstock	900' long 54" steel		
	Portal	Reinforced concrete with 54" butterfly		650,000
	Power house	Reinforced concrete 23'x60' for 2 units		
	Plant-unit	Horizontal turbine and 1250 K.V.A. generator		
	2 substations	Outdoor type		
	Transmission line	27 miles 33000 V.	1928	
	Rights of way	Surveys		
Nevada Irrigation District, Nevada and Placer Counties California Division Engineer	Canals and ditches	175 miles	1928	
	Canal & ditch structures	Headgates, checks drops		
	Pipe lines	15 miles-diameters 6"-48" steel		1,200,000
	Diversions dam	concrete-maximum height 20'		Distribution system
	Diversions dam	" " 90'		
	Diversions and storage on Bear River	Crest 880 feet		

I shared in responsibility for general design and execution of the entire project involving the following in addition to above:

Diversions dam	Concrete max.ht.49'	
Pipe line	Woodstave 84"	
Tunnel	4 Mi.long 9.5'x10'	
Storage dam	Rockfill-max.ht.167'	
Outlet tunnel	Including control	
Storage dam	Concrete-max.ht.137'	\$6,050,000
Diversions dam	Concrete-max.ht.23'	Mountain
Flume 2.5 mi.	Metal on wood bents capacity 220 s.f.	Division

	Canal & structures 7.5 miles 220 s.f. 3 tunnels about 1.2 miles total Rights of way Assisted in negotiations		
Roosevelt water Conservation District, Arizona	Pumping plant	2-600 H.P.+2-25 H.P. units installed Ult. 2 more 600 H.P.	1925 \$125,000
Resident Engineer	Pumping plant substation Discharge pipe	Outdoor type, bank 4-833 K.V.A. 66"-52' lift head of monolithic concrete	
Design and Location	Venturi meter Ditches and Canals Ditch and canal structures Transmission lines Sub-station 24 deep wells and electric driven pumps	In discharge pipe To serve 42500 acres Highway bridges 1 RR bridge Checks and headgates 37 mi. 11000 V. Outdoor type Automatic starters Turbine pumps	Total \$887,000
Glenn-Colusa Irrigation District Resident Engineer re-design	Main canal Structures for Canal Main pumping plant Main pumping plant Main canal check	13 mile extension RR Hwy. & Creek crossings etc. re-design only- capacity 1600 s.f. design for 3-72" units Ht. 14'-width 60' to pass dredges	1924 200,000 1920 ? 250,000
Grenada Irrigation District California Superintendent of construction and Resident Engineer	Valuation rebuilding system Main canal 2 flumes 3 pumping Drainage system Irrigation ditches	Existing system 4.5 miles & 2 flumes concrete lining reconstructed Built about 9 miles Rebuilt about 18 miles	1922 ? 150,000
Byron-Bethany Irrigation California	Main intake Canal 3 pumping pl. 1 pumping pl. Pipe lines Venturi meter 3 flumes Ditches Canals Ditch structures Siphon	Enlarged Enlarged and rebuilt Constructed Concrete reinforced 18"-60" diameters In 60" discharge line metal on timber bents several miles enlarged Several miles lines Check dams-headgates Highway crossings 42" diameter 400' long	1921 500,000
Reclamation District No. 108 California	River pumping Plant 2 river pumping plants and ditch systems	Irrigation-design	1918 1924

Design, location engineering and general supervision as Construction Engineer	River pumping plant	24" pump	1925	
	Main canal	5 mile extension	1924	
	Main canal structures	2-20' checks-concrete		\$300,000
	Rearrangements drainage pumping plant	Reversed 1-600 H.P. pump to pump in	1920	
Reclamation District No. 70 California Construction Engineer	Kower plant	1000 H.P. design	1920	
	Main pumping plant for drainage	Designed, moved and constructed		100,000
	Irrigation structures	Designing and rebuilding		
Reclamation District No. 2035 California	Main pumping plant on Sacramento river	Design 4-400 H.P. units		
	Main Irrigation Canal	about 4 miles 30' bottom width		?
	Booster Pump pl.	2-24" & 1-42" pumps		200,000
	Lateral system	45 miles		
City of Stockton California Resident Engineer	Water supply system	Field work on the valuation and new supply	1920	1,476,000
	Designing engineer	Sewage disposal 2 units including pumping pl. city	Pumping plants care for sewage of	1918
Richmond Harbor California Resident Engineer	Vehicular tunnel	740 feet long 35' inside concrete lining	1918	
	Highway Wharf with warehouse	1.5 mile-very heavy Reinforced concrete 70'x520' steel frame		1,300,000
	Sea walls RR Trestle	Inner & Outer harbor including spur tr.	1914	
Alameda County California Construction Engineer	Bridges, culverts	1 bridge alone-5 arches	1914	\$250,000
	revetments and highways			
	Water supply systems	Altamont Road, County hospital & tubucular hospital		
Design, location and superintendent of construction	Sewage disposal	Tubucular hospital	1910	\$1,000,000
The above list does not include numerous small water supply systems, preparation of reports and large amount of levee and levee structures construction and maintenance work on Sacramento River 1918-1925.				
Southern Pacific Co. Applegate, California	3 tunnels	Inspector for	1910	
	1 underpass	construction department		1909
Livermore Valley California Field assistant, levelman, draftsman	Underground water studies	Included mapping and well measurements		
	Reclamation	location of canals	1906	
Total				\$14,700,000

N O T I C E

PAYMENT OF WAGES TO REGULAR CITY
EMPLOYEES ON EL CAPITAN WORK

Regular City employees on El Capitan work will be paid on the fifth and twentieth of each month by the City's Accountant Bureau of Water Development, Room 208, 524 F Street.

PAYMENT OF WAGES TO TEMPORARY
EMPLOYEES ON EL CAPITAN WORK

Temporary City employees hired in accordance with the unemployment program and relayed every 10 days, will be paid on the first, eleventh and twenty-first day of each month at 4 o'clock P.M. at the City Auditor's office in the Golden West Hotel Building, at 3rd and G Streets. Brass checks must be presented to the paymaster as identification.

PAYMENT OF WAGES ON TIME SLIPS
TO CITY EMPLOYEES ON EL CAPITAN
WORK

Employees quitting or being laid off must secure a time slip from the City's Accountant, Room 208, 524 F Street. Time slips can not be issued until time reports covering days worked are received in the City's Accountant's office. Time slips will be paid at the City Auditor's office in the Golden West Hotel Building, 3rd and G Streets.

H. N. Savage
Hydraulic Engineer.

December 22, 1931

CIRCULAR LETTER NO. 63.

Subject: San Diego River Project, El Capitan Dam
and Reservoir construction. City Forces
Transportation.

Effective from and after December 31, 1931:

A limited amount of preliminary test pit and exploration work and clearing of the dam site of trees, shrubs, brush and other vegetable matter will be carried on with City forces in order to provide work for unemployed.

Pending the installation, operation and maintenance by the City of San Diego of temporary housing and mess accommodations for engineers, inspectors, etc., vicinity El Capitan dam site, the City will transport the City labor forces leaving the City barns at 6:30 A.M., returning daily.

No transportation for City employees other than for the above labor forces and for moving engineer instruments and equipment, will be provided by the City except under specific written authorization therefor.

H. N. Savage,
Hydraulic Engineer

HNS/p

December 24, 1931

TO THE HONORABLE, THE MAYOR AND COMMON COUNCIL
OF THE CITY OF SAN DIEGO, CALIFORNIA.

Subject: San Diego River Project, El Capitan Dam
and Reservoir Construction, City Forces,
Unemployed Labor Provisions.

Gentlemen:

Effective at ten day intervals from and after January 10,
1932, it is deemed fair alike to both the City unemployed labor
forces who may be employed on the El Capitan Dam and Reservoir
construction, and the taxpayers that,

The unemployed laborers be employed for the duration of
ten day intervals, and then be relieved with other unemployed
laborers, thereby making available employment to a successive
number of unemployed.

Very respectfully,

H. N. Savage,
Hydraulic Engineer.

HNS/f

December 24, 1931.

TO THE HONORABLE, THE MAYOR AND COUNCIL
OF THE CITY OF SAN DIEGO, CALIFORNIA

Subject: San Diego River Project, El Capitan Dam
and Reservoir Feature, Executive Policy.

Gentlemen:

Enclosed is draft of circular letter which is deemed advisable for setting up and limiting transportation with City motor vehicles of City forces employed in connection with the installation and construction of the El Capitan Dam, Reservoir and Pipe Line, which is deemed fair alike to the City forces who may be employed and to the City taxpayers;

Outlining and providing motor vehicle transportation for unemployed City labor forces between San Diego and El Capitan Dam and Reservoir work and for moving engineering instruments and equipment on the job.

Very respectfully,

H. N. Savage,
Hydraulic Engineer.

HNS/f
Encl.

December 31, 1931

CIRCULAR LETTER NO. 63 (SUPPLEMENT)

Subject: San Diego River Project, El Capitan Reservoir
Feature, City Forces Transportation.

1. City forces comprehended and effected by circular letter No. 63 may be transported as heretofore up to including January 5, A.M. only, after which provisions outlined in circular letter No.63 will obtain.

H. N. Savage.

HNS/f

July 28, 1932

From : Hydraulic Engineer
To : Resident Engineer
Subject: Personnel Policies

1. The City of San Diego's employees, engineers, inspectors, and others, connected with the El Capitan Dam construction job should refrain from unnecessary unofficial association with the contractor's employees.

2. City of San Diego's employees are reported to be chronically indulging in unofficial visits with the contractor's employees when both are on duty, which should be prohibited.

3. The purport of each and all conferences between City employees and contractor's employees should be reduced to writing by the City employee in his official daily diary record.

H. N. Savage.

HNS/f

September 12, 1932

Mr. Thomas L. Knott
Public Works Inspector
City of San Diego

Dear Mr. Knott:

Beginning this date you are assigned to the task of revamping the procedure being followed in connection with labor inspection at El Capitan and Mr. Joe Hamill is temporarily relieved from his duties as Inspector. He is assigned to work under the Director of Public Works until further notice.

Inspection and certification of prospective employes for the contractor prior to their being given employment, will be discontinued.

The contractor will be authorized to give temporary employment to any man whom he believes to be a citizen of the City of San Diego. The contractor will be required to furnish you, within twenty-four hours after giving employment to a man, with his name and address and a report on his employment status. Within forty-eight hours thereafter you will advise the contractor in writing regarding the man's status as a citizen, and in addition, when you know the man to be a non-resident, you will direct the contractor to replace him with a citizen.

Reports are to be submitted to the Manager before 5:00 P.M. Friday each week.

Your first report must include the names, addresses, and titles of all men now employed. The date of your first report is not set definitely, but you will submit it at the earliest convenient date.

Such additional instructions as may be necessary will be issued from time to time and copies will be furnished to Mr. H. N. Savage and Mr. Fred A. Rhodes.

Very truly yours,

A. V. Goeddal
City Manager

avg/dk

cc: Mr. H. N. Savage
Mr. Fred A. Rhodes

September 28, 1932

Mr. Richard Smith
Personnel Director
Civil Service Dept.
City of San Diego

Dear Mr. Smith:

Subject to your approval I am this date transferring Inspector Joseph H. Hamill from the Water Department to the Department of Public Works, and Inspector Thomas L. Knott from the Department of Public Works to the Water Department.

These transfers are arranged in accordance with Mr. H.N. Savage's wishes. As you know, Mr. Savage is charged with responsibility for enforcing the citizen-labor clause of the El Capitan Dam contract, and therefore it is deemed of vital importance to see that Mr. Savage is accorded every possible cooperation.

Copies of this communication are being furnished to the Hydraulic Engineer, the Director of Public Works, the members of the City Council, Mr. Hamill and Mr. Knott, and Mr. F. M. Stanley.

Very truly yours,

A. V. Goeddel
City Manager

avg/dk

November 15, 1932

CIRCULAR LETTER NO. 77

Subject: Fred D. Pyle, Engineer Water Department,
Division of Development and Conservation,
Responsibilities and Authority.

During my absences from my City of San Diego official headquarters, Mr. Fred D. Pyle, Engineer, Water Department, Division of Development and Conservation, is hereby authorized and directed to fully represent me and carry on administratively and effectively all official matters covered by Resolution No. 46186, and sign all correspondence and official documents over the title of Acting Hydraulic Engineer.

H. N. Savage.

HNS/f

cc Resident Engineer Harold Wood
R. C. Wueste
Accountant F. M. Stanley

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On this 16th day of November in the year, 1932, before me, H. N. Savage personally appeared, known to me to be the person whose name is subscribed to the above instrument.

VERNILE A. PARKER (Signature)
Notary Public.

December 14, 1932

From : Hydraulic Engineer
To : Resident Engineer
Subject: San Diego River Project, El Capitan Feature,
Resident Engineer's Itinerary

1. For the obvious purpose of better expediting the City's engineering supervision of the contractor's installation of El Capitan Dam, it is requested that before leaving the residency at El Capitan for any material length of time you advise this office of the duration of your absence in order that you may be advised of official visits when your presence on the job might be of constructive value.

H. N. Savage

HNS/f

H. W. ROHL & T. E. CONNOLLY
CONTRACTORS
4351 ALHAMBRA AVE., LOS ANGELES

January 23, 1933.

Mr. H. N. Savage
Hydraulic Engineer
City of San Diego, California

Dear Sir:

Re: El Capitan Reservoir Dam Spillway
and Outlet Works

Will you kindly advise the Contractor of the names of these persons who are authorized to represent you on the works and the scope of their authority. We made this same request in writing by our letter of November 14, 1932 to you.

Have you authorized either Mr. F. D. Fyle or Mr. Harold Wood to do anything in connection with the signing of estimates or issuance of orders or directions to the Contractor?

Very truly yours,

H. W. ROHL & T. E. CONNOLLY

By H. W. ROHL (signature)

January 24, 1933

Messrs. H. W. Rohl and T. E. Connolly
Contractors El Capitan Dam
4351 Alhambra Avenue
Los Angeles, California.

Subject: San Diego River Project, El Capitan
Feature. Authority of City's employes.

Gentlemen:

In compliance with your request dated January 23, 1933 for the names of those persons who are authorized to represent me on the El Capitan Reservoir Dam, Spillway and Outlet Works contract construction job and the scope of their authority;

You are advised that Resident Engineer Harold Wood and his staff of assistants, engineering aids and inspectors are authorized to represent and act for me to the extent contemplated by paragraph 7 of the Contract Specifications.

Also, that Engineer Fred D. Pyle performs engineering, inspection and supervision work as directed by me and during my absence is authorized to attend to official matters and to sign correspondence and official documents over the title of Acting Hydraulic Engineer as indicated by the attached copy of Circular Letter No. 77.

Very truly yours,

H. N. Savage,
Hydraulic Engineer.

HNS/f

cc H.W.Rohl & T.E.Connolly
El Capitan Dam
Contractor's Resident Representative
Resident Engineer

January 26, 1933

Mr. D. W. Albert, C.E.
2235 Garvin Avenue
Richmond, California

Subject: El Capitan Hydraulic fill dam, contract
construction, engineering administration

My dear Mr. Albert:

Contractor H. W. Rohl and T. E. Connolly's administrative, executive and personnel staff policies are continuing to evolve.

Alan Howe, C.E. of J. B. Lippincott's Los Angeles offices spent a portion of the second and third weeks of January in San Diego in conference with the contractors and on the El Capitan job.

Adolph Bock, whose education, training and experience is indicated on the attached statements, appeared on the El Capitan job about the middle of January and contractor T. E. Connolly advised the City's Resident Engineer that Mr. Bock had been employed and assigned to have charge of all the contract work in the immediate zone of the dam.

Ben F. Wells, the contractor's sometime general superintendent, has not been on the work for several weeks, and I am informed that he was seen apparently endeavoring to secure employment with either the San Gabriel No. 2 dam or the San Gabriel No. 1 dam contract construction work.

On January 23, 1933, contractor H. W. Rohl notified the Hydraulic Engineer in writing that O. C. Steves has now been "named as the designated agent of the contractor on occasions when the contractor is not represented on the works in person".

Recognizing and having in mind the dominating importance of having the available hydraulic fill material properly selected and properly placed in the El Capitan dam as provided for by the specifications, and necessary to insure a satisfactory and/or safe structure, and

Contractor H. W. Rohl's repeated declarations of his intention to place about 400,000 cubic yards of hydraulic placed material a month in the structure, and

Appreciating your justified ambition to responsibly participate in the construction of the last big dam, which our mutual professional friend, the late John R. Freeman, with your assistance, conceived the general design and layout of, and also

Realizing with you that this may be the last big dam which possibly either you or I may have an opportunity to participate responsibly in the construction of, and

Realizing the responsibility on my part for securing proper and necessary results in the construction of the El Capitan hydraulic fill dam, I deemed it dutiful when considering the contractor's bids to bring to the attention of the lowest bidder the necessity for the employment in his staff of a responsible engineer who had efficiently superintended the construction of dams of this type, and

Furthermore in reply to his inquiry deemed it a pleasurable duty to bring to his attention, as I had previously to several other potential bidding contractors, your qualifications and experience.

I am increasingly constrained to the impression that contractors H. W. Rohl and T. E. Connolly do not intend to employ you to superintend the hydraulic placing of the earth fill material in the El Capitan dam.

In case the contractors do not elect to so employ and assign you to responsible charge of the placement of this hydraulic fill material, and

Provided it will be agreeably convenient for you to do so, and

Provided further the salary you may be pleased to name to the City for your services is found to be fair, I shall be pleased to recommend that you be employed to collaborate with the City's Resident Engineer Harold Wood on the ground and with Engineer Fred D. Pyle and myself in advancing the construction by the contractor of the City's El Capitan dam in compliance with the provisions of the contract drawings and specifications to the end that the City's entitled requirements may be accomplished and the contractor be given a square deal.

Mr. Wood's salary, since adjustment due to the existing business and financial conditions throughout the world, is \$300.00 per month and housing accommodations.

Mr. Pyle's salary is \$365.00 per month.

Suitable housing accommodations for either your dormitory or housekeeping requirements could conveniently be made available as is being done for each Mr. Wood, Mr. E.D. Williams and the others.

It is indicated that the contractor may characteristically be planning and intending to commence the hydraulic placement of earth fill material in El Capitan dam practically without notice to the City. So far he has neglected since entering on the work to furnish the City with any outline or program of his construction policies and methods for carrying on the work.

I will appreciate having your reaction to the above statement and invitation at your earliest agreeable convenience, preferably by telegram.

Very truly yours,
H. N. Savage,
Hydraulic Engineer.

MNS/r

February 3, 1933

TO THE HONORABLE, THE MAYOR AND COUNCIL
OF THE CITY OF SAN DIEGO, CALIFORNIA.

Subject: San Diego River Project, El Capitan Feature
Personnel organization, Engineer Hydraulic
Fill

Gentlemen:

The contract construction work at the El Capitan reservoir dam is rapidly approaching its most critical stage, that of placing 1,500,000 cubic yards of earth in the middle portion of the dam by hydraulic methods.

While hydraulic fill dams properly constructed are among the safest types of dams, major difficulties have been encountered and actual disasters have occurred during the construction of several dams of this type due to variation in material available and utilized, and construction methods used, drainage and rapidity of construction.

A number of these dams have developed bad slides during construction, and these slides which occurred with little or no warning, and in some instances not only delayed the work for years, added materially to the cost. In the case of the Calaveras Dam of the Spring Valley Water Company, San Francisco, a slide occurred on the reservoir side of the dam on March 24, 1918. The dam was not completed until 1925.

The contractor has recently declared that it was his intention to place 400,000 cubic yards of hydraulic fill in the base of the dam per month. This is considered as being excessive and detrimental to the safety of the dam during construction.

The rate of progress is within the control of the engineer in accordance with the contract specifications and it is not deemed proper to restrict the construction program more than to insure the safety of the dam at all stages of the work.

Mr. D. W. Albert, of 2235 Garvin Avenue, Richmond, California, has been consulted as to his availability for employment by the City as Engineer to inspect and control the placing of hydraulic fill and has expressed his willingness to do so for \$350.00 per month. But few engineers in the United States have a wide range of experience with actual construction of hydraulic fill dams. Enclosed is copy of telegram from Consulting Engineer John R. Freeman to the Great American Indemnity Company, dated April 2, 1932; and copy of Mr. Albert's experience statement.

In view of the above it is deemed proper for the City to secure the services of Mr. Albert at the earliest practicable date.

RECOMMENDATION: It is recommended that the enclosed form of ordinance creating the position of Engineer Hydraulic Fill, salary \$350.00 per month, be adopted.

HNS/p

encls. (3)

Copy telegram John R. Freeman

Copy D. W. Albert experience statement

Form of ordinance.

cc-Mayor; Individual Councilmen; City Manager; City Attorney;
Civil Service Commission

Respectfully,

H. N. Savage

Hydraulic Engineer

EXPERIENCE STATEMENT

D. W. ALBERT

February 1931 to January 1932 - Resident Engineer, Carpenter & Serrano Irrigation District, Santiago Dam, rolled earth, \$600,000 Orange County, California.

July 1930 to December 1930 - Ridgewood Dam, semi-hydraulic fill C. S. Howard Company, San Francisco, California. Designing and Construction Engineer. \$100,000.

1925-1928 - Upper San Leandro Dam and Tunnel. Engineer in Charge of Construction. Bates & Borland, Contractors, Oakland, California. Hydraulic fill dam 2,000,000 yard structure, cost about \$3,500,000.

1923-24. Engineer in charge for Bates & Borland, Contractors Pitt River Camp, 3 tunnels. Cost about \$500,000.

1922-23. University of California Stadium, Berkeley, California. In charge of construction for Bates & Borland, contractors. Hydraulic fill construction; cost about \$400,000.

Also Consulting Engineer for W. A. Kramer, Contractor Priest Dam, Hetch Hetchy Project. Cost about \$750,000.

1917-1922 Engineer in charge of San Pablo Dam and tunnels for contractor Bates & Borland. Cost about \$4,000,000.

Also 1920-21 Consulting Engineer on the Messelback dam for W. A. Kramer, Contractor. Tom Means, Chief Engineer. Cost about \$400,000.

1915 Field Engineer Arboga Irrigation District near Marysville California. J. M. Howells, Chief Engineer.

1914-15 Yatkina and Little Tennessee River Project. Aluminum Company of America. Investigating Engineer for John R. Freeman under J. W. Rickie, Chief Engineer.

Also Consulting Engineer for W. A. Kramer, Contractor, Stephen E. Keefer, Chief Engineer, Paradise Irrigation District, Butte County, California. Hydraulic fill dam, cost about \$500,000.

1914. Great Western Power Company. Lake Almanor hydraulic fill dam. In charge of construction. John R. Freeman, Consulting Engineer.

1908-1913 British Columbia Electric Power Company. Assistant Superintendent of Construction for Quequitlam Dam and Bear Creek Dam and Tunnel. J. D. Schuyler and John R. Freeman, Consulting Engineers.

1906-08 Mexican Light & Power Company, Mexico City, Assistant Superintendent of Construction dams and tunnels. J. D. Schuyler Consulting Engineer.

1904-05 Alamoosa Hydraulic fill dam. Engineer in charge of construction for contractor S. S. Bernard, Colorado Springs. J. D. Schuyler, Consulting Engineer.

1900-04 Bay Power Company (now P. G. & E. Co.) Lake Francis Dam hydraulic fill. Assistant Superintendent of Construction. J. M. Howells and J. D. Schuyler, Consulting Engineers.

Associate Member Am.Soc.C.E.

2-8-33

From : Hydraulic Engineer
To : Civil Service Commission
Subject : San Diego River Project, El Capitan Feature
Engineer Hydraulic Fill

The Council on February 6, 1933, acting in accordance with my recommendation dated February 3, 1933, copy of which was passed to you with my letter to you dated February 3, 1933, adopted emergency ordinance No. 144 creating the position of Engineer Hydraulic Fill, with minimum salary of \$325.00 per month and maximum of \$350.00 per month.

In the absence of an eligible list for Engineer Hydraulic Fill, permission is requested for the temporary employment of Mr. D. W. Albert, 2235 Garvin Avenue, Richmond, California, as Engineer Hydraulic Fill, effective February 8, 1933.

H. N. Savage
Hydraulic Engineer

HNS/p
cc City Manager

February 8, 1933

Messrs. H. W. Sohl and T. E. Connolly
4351 Alhambra Avenue
Los Angeles, California.

Subject: San Diego River Project, El Capitan
Feature. Authority of City's employees.

Gentlemen:

Further replying to your request dated January 23, 1933 for the names of official employees of the City of San Diego authorized to represent the Hydraulic Engineer on the El Capitan Reservoir Dam, Spillway and Outlet Works contract construction work and the scope of their authority.

Supplementing my reply thereto dated January 24, 1933, outlining the authority of Resident Engineer Harold Wood and of Engineer Fred S. Kyle, and the City's other employees;

You are hereby advised that D. W. Albert, C.E. has been employed by the City of San Diego effective today and assigned as Engineer at El Capitan Reservoir Dam, Spillway and Outlet Works and will inspect excavation, stripping, borrow pit and quarry operations and control the placing of material in the hydraulic fill and rock embankment portions of the dam.

Furthermore, Mr. Albert will represent and assist the Resident Engineer and the Hydraulic Engineer as contemplated in Paragraph 7 of the Contract Specifications.

Very truly yours,

H. N. Savage,
Hydraulic Engineer.

HNS/f

cc H. W. Sohl & T. E. Connolly
El Capitan Dam
Contractor's Resident Representative
Resident Engineer
Engineer D. W. Albert

May 15, 1933

TO THE HONORABLE, THE MAYOR AND COUNCIL
OF THE CITY OF SAN DIEGO, CALIFORNIA.

Subject: City of San Diego, California,
Hydraulic Engineer H. N. Savage,
Conclusion of Service.

Gentlemen:

I would not choose to continue to carry on as
Hydraulic Engineer to the City of San Diego after my
contract expires, July 1, 1933.

Respectfully,

H. N. Savage
Hydraulic Engineer.

HN/f

SAVAGE TO STAY ON JOB AT CAPITAN, INDICATION;
HENNY FILES DAM REPORT

By Don Short

Hiram N. Savage will stick as hydraulic engineer for the city in charge of El Capitan dam supervision. This was the general impression in city hall circles today. Savage said this morning he would not be ready to advise the council of his decision today, but intimated it might be transmitted to that official body next Monday. Close friends of the veteran engineer ventured the opinion he would stay with the city until the dam is completed, although his contract expires on July 1, next.

Resumption of work at the dam is indefinite. Rohl & Connolly, contractors, asked the council yesterday for definite instructions when to proceed with the work. This request, however, was filed by the council and with no action apparent before Monday the work at the dam will remain practically at a standstill until orders are given either by Savage or by the council, it was stated today.

That the contractors are figuring on presenting the city with a bill for a huge amount for standby charges was indicated in the letter addressed to the council by T. E. Connolly yesterday. He also calls to the council's attention the possibility of the delay causing the city to lose next winter's rain crop, which he values at \$500,000.

The contractors had expected to complete the dam by some time next December, had they been allowed to proceed without the present delay. The council is advised, however, by city attorneys, that if the contractors push a lawsuit the precautions taken and by re-employing Savage the city would be well protected.

The council held a lengthy session yesterday afternoon, partly open and partly secret, when D. C. Henny, consulting engineer, reported that apparently there is no defect in the hydraulic fill, as claimed by Savage, and that he considered the work so far done perfectly safe to continue without removing the 12,000 cubic yards of rock said to be covering a dirt plane complained of by Savage.

While this report did not sustain Savage's contention, the four councilmen who called for the investigation made overtures to Savage to bury the hatchet and asked him to go ahead with the work.

Fear that the Reconstruction Finance Corporation, heretofore made public, might withhold future payments on the El Capitan bonds, unless the dam construction was in safe hands and in compliance with

the specifications, is said to have prompted the councilmen to make peace with Savage. Councilmen participating in a secret session were Mayor John F. Forward, Jr., Charles E. Anderson, Harry Warburton and Wayne Hood. Councilman Anderson asked for the executive session, saying he wanted to ask "some pointed questions". Councilmen LeRoy Goodbody, Al. W. Bennett and Dan Rossi refused to attend the secret conference and every effort to force them to attend proved futile.

Engineer Savage, City Attorney C. L. Byers and T. B. Cosgrove, special counsel to the city on water matters, attended the council and facts in connection with the Reconstruction Finance corporation deal pertaining to supplying money for completing the dam, were presented to the council by Cosgrove. He made a strong plea for harmony between the city's representatives, especially between the council and Savage, urging retention of Savage and warning of other difficulties with the contractors if Savage was not continued on the job.

Cosgrove's appeal to the council in behalf of Savage follows:

I have had connections here in a legal way just under 20 years and during that time the water development problems have always been more difficult to solve; usually they present the most difficult problems that the legislative body, the administrative body, the city attorney's office and the engineer's office have had to handle.

I was city attorney when Mr. Savage was engaged as the hydraulic engineer of San Diego in connection with the lower Otay dam, following its failure in 1916, and I have been continually since that time, either as city attorney or assistant to the city attorney, doing my utmost to meet and solve these problems, approaching them from the avenue of legal difficulties, as they have appeared and as they have been met and solved more or less to the satisfaction of the community. The city continues on; it flows on like the river. The incumbents, the mayor, the councilmen and the city attorneys change. They come; they do their best and they pass on, but the city, the real party at interest, does not change. It remains the same.

I have worked over several years pretty much, hand in hand with Mr. H. N. Savage, I have been over the watersheds of these streams of this county in little automobiles that he drove himself and in larger cars that a chauffeur drove, off and on for more than 15 years; sometimes it was once a week, sometimes once a month, sometimes every day and a part of the night. No one ever worked more diligently, more faithfully, more whole-souled than I worked with Savage in connection with the Otay dam. That work was let to a contractor just like the work on the El Capitan and the work progressed to a certain point under the plans and specifications; so far as the power of the council and the power of the hydraulic engineer was concerned practically the same as in this case, although it was an entirely different type of structure; but the supervision of the work and the compliance with the specifications was no different in that contract than in this.

The city took over that work. It took it away from the contractor and completed it and at the time the city took it over the contractor owed money to the banks in Los Angeles, whose representatives came to my office and stayed for two and three days. The contractor owed the banks in excess of \$150,000. There is not a more able trial lawyer in these United States than the bonding company's attorney, who appeared in the council chamber, representing the contractor. I was on the job with Savage; I saw the data he had, I knew the manner in which it was prepared and preserved and I knew we could go into court and establish the fact that the contractor had not complied with the specifications. He was not complying with the specifications and it was

quite reasonable to assume that he would not be able to comply with them.

There were five members of the council and the mayor. Four members and the mayor were decidedly opposed to interfering with the contractor, but I prepared the directions for Mr. Savage, as the engineer, to serve on the contractor, directing how they were to be served and they were served. Four members of the council came to me and told me not to do it, but we did it because the contractor was not complying with the specifications; and because we could prove it; because the hydraulic engineer had prepared his data and we had our facts.

Now I know about Savage coming back here and he knows I know about it and how much I had to do with it and he knows just as well as he knows my name or his name that if there is anyone in the world he can depend upon it is me, he knows that if I think he is right, I am with him. It does not make any difference who is against him. He does not have to do anything only to look back at what happened in this very building and in this very city to verify what I am saying.

I talked with Savage about El Capitan dam and about the particular feature wherein the contractor was refusing to comply with the specifications. I examined the evidence he had. I talked with the city attorney who was on the job and saw the conditions that prevailed at elevation 600 after the bulldozing and scarifying (engineering terms) had been done; I talked with Deputy City Attorney Daniels also, for he was there after the bulldozing and scarifying had been done and I entertained a very serious doubt as to whether or not the condition existed that had been reported to Savage that was then spoken of as a 2 1-2 foot layer of stratum of compact earth, decomposed granite and I said to Savage that we would stand by him in his demands for an uncovering of that material.

I told him what I thought the responsibilities were and that someone was going to sustain a very considerable loss. I said when it was uncovered we should have there a man or men who were impartial, experienced and learned in this science, who could appear in court; men who were dispassionate and disinterested, who would make ideal witnesses and who could state to the court with an unprejudiced viewpoint just what the facts were.

I met the man O'Shaughnessy as accidentally as though I would meet him now; I know him as well as I know Savage and hold him in as high esteem, but not higher than Savage. He came to my office as he always does in coming through Los Angeles. I always call on him in San Francisco.

I told him of the difficulties existing here and explained to him about the stratum of material concerning which it was said existed at this elevation 600 on the downstream face of the dam. I asked him if he would not call on Mr. Forward, with whom I knew he was intimate, and he called him on the telephone and was invited out to the dam to let him see it, so that we would have the benefit of his judgment. He was our friend and he did that

willingly because of his interest in this community.

I heard what he said. I asked him questions before all of you men. He said if that strata was there, it constituted a violation of the specifications. I brought up the matter of the 2½ feet of material. Asked him if he thought it was there; he said "No." I told Savage then before you, when the proposition got down to nine inches and did not constitute as thick a strata; a continuous layer of material from 2½ feet to a lozenge of nine inches that it did not appear as serious. He further stated it did not in his opinion materially affect the safety of the structure, but it did tend to lessen the safety more than if these lozenges were not there.

I told these councilmen that day that in my opinion if this went into court the next day, we did not, in the vernacular of the small boy, have a leg to stand on, and we would not get to first base. We could not convince anyone, with a man like O'Shaughnessy, who was not prejudiced in favor of the contractors, making the statements he did.

O'Shaughnessy thinks these contractors are hard gentlemen to deal with, and told me so in my office before I told him about the difficulties. With men like O'Shaughnessy, followed up with a man like Henny, saying that strata was not there, I was not going into court and be defeated and have Savage defeated, and I so told the council. If Savage had the data that he had at the time when he was building the lower Otay dam, I would say to put the contractors off the job right now, but he does not have that. The data are against him, insofar as to justify the expulsion of the contractors. There is no justification in taking the work over ourselves. The hydraulic engineer occupying the position that Savage occupies or a practicing attorney occupies as I occupy, has the same duty to perform. It is not a matter of right. There is no right without duty.

When I tried the lower Otay case, where Savage was the principal witness, my term of office expired and I was in San Bernardino trying the case and did not finish until two or three months afterward, and a new council came in and the rumor was that they were decidedly unfavorable to me. I had reason to believe they were quite antagonistic, or to say the least unfriendly, but does anyone think I could have sent down my resignation to the council and say "I am resigning? I am resigning on the 5th day of May, get someone else to go ahead with this law-suit." I would have been disbarred if I had tried it.

Now, here is Savage, than whom, in my opinion, there is no more competent an hydraulic engineer to be had in these United States. He has the responsibilities in connection with that dam out there. He prepared the plans and specifications. It was upon those plans and specifications that the contract was let.

We worked with Savage through two or three campaigns here when he wanted to build Mission Gorge. I did not want to build that, but I supported him because I submerged my opinion and judgment to his. I was not entitled to have even an opinion.

That dam up there now, the El Capitan, if these men know what they are talking about, is at a crucial state in its development and here is the man who drew the plans and specifications and is responsible for it and who was going to step out of the picture on the first of July. He has not the right to step out of that picture. It is a violation of the ethics of his profession to withdraw at this time.

I know he has not resigned, probably does not intend to resign in that sense in which I am discussing the term, but Savage's responsibilities are not to Forward, or Warburton, or any other member of this council; his responsibilities are to the citizens of this community; this city.

Now, he is dealing with a contractor who has the reputation of being the hardest to deal with on the Pacific coast, but Savage has a reputation too. No man more capable or efficient as a hydraulic engineer can be found in these United States, and no harder master in these United States, when it comes to building a dam to comply with plans and specifications, and that is the reason why he has obtained results on these big structures he is building. He knows you cannot build dams whether you represent the municipalities or the contractors, without quarrels and contentions; he has had a lot of them; he knows he will have a lot more of them. Just look about you. See what trouble they have on all of the structures of this character; of that magnitude.

He is trying to get all he can for us, as he honestly interprets the specifications for this city, and I certainly admire him for it.

This contractor is interested in the dam, not in the city. He is interested in putting up the dam as a credit to him as a contractor but wants to make money out of it, and he is interpreting the specifications accordingly. When he does that, he does what every contractor does. He is trying to see how cheaply he can do it.

Now, we do not have a difficult problem at all. Here is Forward complaining about the newspapers; their misquotations; their sharp jibes; he knows there never was a mayor that was not criticised or a city attorney either, for that matter. I think back about what they said of me, when I was city attorney; some of those things were terrible, but if you complain they go after you again; if you say nothing, they will stop.

What is the real trouble? This 600-foot elevation defect. I think Savage ought to now file that letter with the council that has not been filed because it was not proper to file it until we got Henny's report. It should be filed now, and the contractor ought to file his waiver, as suggested in the resolution the council proposed, and I think the work should go on and Savage should be just as observant as he has been. The contractor will give him a lot more trouble, and I think Savage is not going to be any particular joy to the contractor. They are both honest but they are representing different interests. Just like two lawyers. You should not have these shut-downs, but the type of structure will not be any worse through this trouble.

I am a part of this city, and I am sitting on the same bench with Savage and Byers. We want to make this contractor do something and have not the evidence sufficient to compel him to do it. Just admit that fact that the evidence is not sufficient. You could not convince any court that there is a detrimental layer of earth on that 600-foot elevation. Forget about it.

It is just my own individual, unbiased, friendly opinion, straight from my heart, that Mr. Savage has no right to resign. He has no justification for resigning. The vote of the city council at that meeting in the mayor's office - we were compelled to do that; I would have voted for that, because we did not have the facts at hand with which to do anything else.

We should go ahead; push on; get started; let Savage supervise the work; get that dam built. Today, as it now stands, it is a credit to both the engineer and the contractor.

I thank you for your indulgence; I had not counted on talking for a half hour. I am most happy to be with you on this occasion side by side with my friend.

May 26, 1933

TO THE HONORABLE, THE MAYOR AND COUNCIL
OF THE CITY OF SAN DIEGO, CALIFORNIA.

Subject: San Diego River Project, El Capitan
Reservoir Dam, Spillway and Outlet
Works, Hydraulic Engineer, Continuation
of Services.

Gentlemen:

For the duration of time during which your Honorable Body cooperates and supports the Hydraulic Engineer and his staff in legally and properly enforcing to a reasonable and required extent the engineering requirements of the City's El Capitan Reservoir Dam, Spillway and Outlet Works contract construction in accordance with the drawings and specifications, I deem it to be my duty under the controlling conditions in which the City finds itself--financial, legal and contractual--to consent to carry on as Hydraulic Engineer of the City of San Diego, California.

Very respectfully,

H. N. Savage
Hydraulic Engineer

HNS/f

June 14, 1933

TO THE HONORABLE, THE MAYOR AND COUNCILMEN
AND THE CITY MANAGER OF THE CITY OF
SAN DIEGO, CALIFORNIA.

Subject: City of San Diego Hydraulic
Engineer, Salary.

Gentlemen:

Provided the salaries officially established are sufficient to enable the City of San Diego to retain the-- prominently important to the City--highly qualified, efficient and loyal services of the Hydraulic Engineer's Staff of City Employees in connection with and throughout the completion of the City's El Capitan Reservoir Dam, Spillway and Outlet Works contract construction, I shall deem it my duty to the taxpayers of the City of San Diego under the existing financial depression to voluntarily return to the City's treasury, for such disposition as I may officially be directed, up to 20 per cent of my monthly salary.

Very respectfully,

H. N. Savage
Hydraulic Engineer.

HNS/f

6/26/33
copy /f

2763
COPY

June 14, 1933

TO THE HONORABLE, THE MAYOR AND COUNCILMEN
AND THE CITY MANAGER OF THE CITY OF
SAN DIEGO, CALIFORNIA.

Subject: City of San Diego Hydraulic Engineer
Contract.

Gentlemen:

In reply to official request for my reaction toward a renewal of my contract, Resolution No. 46186, adopted July 2, 1933, your attention is respectfully invited to my communication of May 15, 1933:

"I would not choose to continue to carry on as Hydraulic Engineer to the City of San Diego after my contract expires, July 1, 1933."

and,

To my communication dated May 26, 1933:

"For the duration of time during which your Honorable Body cooperates and supports the Hydraulic Engineer and his staff in legally and properly enforcing to a reasonable and required extent the engineering requirements of the City's El Capitan Reservoir Dam, Spillway and Outlet Works contract construction in accordance with the drawings and specifications, I deem it to be my duty under the controlling conditions in which the City finds itself--financial, legal and contractual--to consent to carry on as Hydraulic Engineer of the City of San Diego, California."

I respectfully state that I would be willing to accept renewal of my present contract with all the provisions and conditions therein unchanged, except in the following particular: viz.

The contract to be subject to termination by either party upon thirty days' written notice to the other.

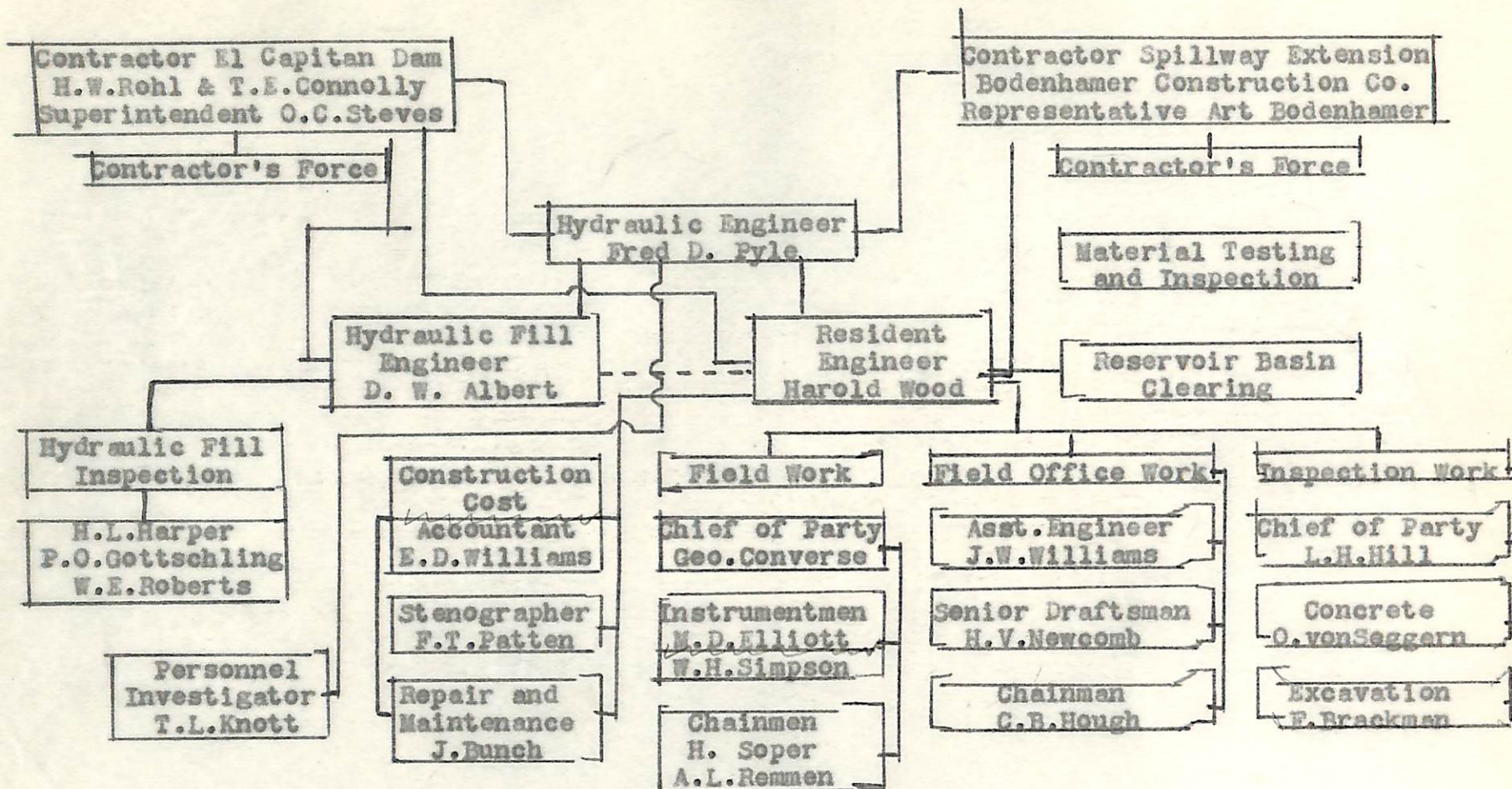
Very respectfully,

H. N. Savage,
Hydraulic Engineer.

HNS/p

July 1, 1934

SAN DIEGO RIVER PROJECT, EL CAPITAN FEATURE



Note: The above represents the organization at El Capitan Dam under normal working conditions, various temporary changes are made in the assignment of the personnel from time to time to meet conditions as they arise.

EL CAPITAN DAM
ORGANIZATION

August 21, 1954

From : Resident Engineer
To : Hydraulic Engineer
Subject: San Diego River Project, El Capitan Feature
General - Resident Engineer's routine duties

1. For the benefit of the record and for the Engineer who might in some event be required to carry on the duties of the Resident Engineer at El Capitan, this outline is made.

2. It should be noted that no actual control of the construction work rests with the Resident Engineer except that letters to the contractor may be written and signed by him stopping certain portions of the work which is not satisfactory under the contract specifications. This authority however has only been exercised after conference with the Hydraulic Engineer and the Hydraulic Fill Engineer. The authority was given on April 22, 1933 and the form of letters was given.

3. Following is tabulation of duties with details:

1. Inspection of contract work

Daily if possible. Phone reports on progress to San Diego office. Check up on City Staff's work.

2. Supervision of City's Camp

Water supply
Car maintenance
Sanitation and maintenance
Lights on when Caretaker is off
Check up at end of day on vault locking.

3. Instructions from Hydraulic Engineer

Usually by memoranda or telephone
Important matters by letter
Interoffice correspondence on green paper; yellow copy retained by office sending.
White copy of all correspondence and reports to San Diego office.

4. Cement

Check on cement hauled as being cement released by inspector at plant.

5. Ten Day Period Reports

Rough draft report on day following end of period leaving blanks to be filled in. Fill in blanks from data from cost accountant as same is available.

Report send to San Diego office not later than third day after end of period.

6. Progress Graphs

Rock embankment - post ten day truck count quantity to nearest 100 cubic yards and correct up monthly from estimates.

Hydraulic fill and rolled fill - post ten day truck count quantity to nearest 100 cubic yards and correct up monthly from estimates.

7. Supervision of City's staff

Confer each morning with Chief of Party
Review work under way in field office.
Review inspectors' daily reports.
Supervise clearing operations in basin.
Check up on photographs and special samples as are required.

8. Supervision of surveys

For layout of construction work.
For monthly estimates.
For public lands and establishment of witness corners for reservoir basin.

9. Monthly Estimates

Check roughly the quantities.
Check the extensions on calculation sheets.
Transmit calculations (original) to San Diego office.
Upon notice from San Diego office that estimates have been typed and are ready for checking, the estimates should be checked and signed in San Diego office.

10. Extra Work Orders

Sign, after checking, extra work bills in duplicate.
Attach bills, in duplicate, with signed supporting vouchers, to monthly estimate calculations and transmit same to San Diego office. (do not rely on messenger)

11. Filing of field office copies of correspondence, estimates, reports, etc.

Date of receipt and initials on all things received in field office.
File correspondence, estimates, reports, etc. in El Capitan vault.

12. Post daily diary

13. Requisition Supplies

Requisition supplies as required.
Check off and date and initial copy of requisition upon receipt of supplies.

14. Inventory of City's equipment at El Capitan

This should be done at the end of the fiscal year.

15. Samples

Transport or arrange for transportation and securing of samples as required.
Assist in making of special tests.

16. State Inspection

Conduct State's Engineers over the work
Report their visit and comments made in letter to Hydraulic Engineer.

17. Report Stakes set

Whenever construction work is staked out in the field for the contractor other than routine slope stakes, etc., a letter should be addressed to the Hydraulic Engineer giving location of stakes and division of work. The letter should also refer to last stakes set for this division of work.

18. Report materials moved into dam

Monthly or more frequently, as required, make letter statement of quantities of earth and from where taken when placed in the dam. The truck count yardage should be reduced by 18 per cent for bulking.

19. Memoranda for City's Consulting Engineer

Just before arrival of L. C. Hill prepare a memorandum giving pertinent facts in connection with the progress of the work since his last visit. A tabulation is the best way to present this data.

20. Visitors

Keep record of all official visitors and record in Ten Day Period Reports.

21. Movement of dam and spillway slope

Report by letter to Hydraulic Engineer at about 15-day intervals the movements measured in the dam and north spillway slope.

22. Remaining work to be done by contractors

List all work not fully completed so work may be done before final acceptance.

23. Probst Reports

Fill out Probst Reports on personnel for Civil Service as required.

24. Anticipated monthly estimate

Secure from Chief of Party and roughly check about the 20th of each month an anticipated progress estimate. Report this to the Hydraulic Engineer.

25. Excavation statement

Secure from Chief of Party a statement of excavation items between successive stations and transmit same to Hydraulic Engineer.

Harold Wood
Resident Engineer

HW/p

Oct. 1, 1934

From : Hydraulic Engineer
To : Civil Service Commission
Subject: San Diego River Project, El Capitan Feature, Personnel,
Promotion of J. W. Williams

Enclosed is copy of letter of resignation of Engineer Harold Wood, Resident Engineer on El Capitan Reservoir Dam, Spillway and Outlet Works, effective October 15, 1934.

Mr. Wood deserves much credit for the efficient manner in which he has performed the duties of Resident Engineer at El Capitan Dam since the Fall of 1931, and it is with regret that his resignation is accepted.

Mr. J. W. Williams has been at El Capitan Dam with Mr. Wood since construction work commenced in the Summer of 1932. He is well qualified to take up the duties of Resident Engineer and it is requested that his Civil Service status be changed from Assistant Civil Engineer at \$200.00 per month to Civil Engineer (Resident Engineer) at \$275.00 per month, effective October 16, 1934.

Fred D. Pyle
Hydraulic Engineer

APPROVED:

George L. Buck
City Manager

FDP/f

October 15, 1934

Messrs. H. W. Rohl & T. E. Connolly
Contractors El Capitan Dam
4351 Alhambra Avenue
Los Angeles, California

S-134

Subject: San Diego River Project, El Capitan
Project, City's Resident Engineer

Gentlemen:

The resignation of Mr. Harold Wood as Resident Engineer at El Capitan Reservoir Dam has been accepted, effective October 15, 1934, and you are hereby advised that commencing October 16, 1934, Mr. J. W. Williams will be Resident Engineer at El Capitan Reservoir Dam and will have the same authority that Mr. Wood had and will perform the same duties.

Very truly yours,

Fred D. Pyle
Hydraulic Engineer

FDP/f

TENURE OF CITY OFFICIALS

		FROM	TO
MAYOR:			
Walter W. Austin		5-4-31	5-2-32
John F. Forward Jr.		5-2-32	R. 8-1-34
Rutherford B. Irones		A. 8-2-34	R. 2-4-35
COUNCILMEN:			
J. V. Alexander		5-6-29	5-2-32
Ira S. Irely		5-6-29	5-2-32
Louis C. Maire		5-6-29	5-2-32
Joseph J. Russo		5-4-31	5-8-33
Alfred H. Stahel		5-4-31	5-2-32
	District No.		
A. W. Bennett	1	5-2-32	Incumbent
Dan Rossi	5	5-2-32	Incumbent
John R. Blakiston	4	5-2-32	5-8-33
Harry Warburton	4	5-8-33	Incumbent
Charles E. Anderson	6	5-2-32	R. 10-9-34
LeRoy E. Goodbody	2	5-2-32	R. 6-25-34
Wayne A. Hood	3	5-8-33	R. 7-2-34
W. H. Cameron	2	A. 6-27-34	Incumbent
A. S. Davis	3	A. 7-2-34	Incumbent
Richard I. Scollin	6	A. 10-16-34	Incumbent
CITY ATTORNEY:			
C. L. Byers		A. July 1931	Incumbent
CITY MANAGER:			
R. M. Gregory, Manager of Operation		5-20-31	5-20-32
H. H. Esselstyne, City Manager		5-20-32	7-5-32
A. V. Goeddel, Acting City Manager		7-5-32	7-21-32
A. V. Goeddel, City Manager		7-21-32	5-31-33
F. M. Lockwood, City Manager		5-31-33	8-20-34
George L. Buck, City Manager		8-20-34	Incumbent

A. Appointed by Council

R. Resigned

OFFICIAL VISITORS

December 23, 1931

Officials and other prominent citizens present at the
official start of work on the San Diego River Project
El Capitan Reservoir Dam Feature, the morning of
December 23, 1931

Officials of the City of San Diego

Walter W. Austin	Mayer
James V. Alexander	Councilman
Ira S. Irey	Councilman
Louis C. Maire	Councilman
J. J. Russo	Councilman
Alfred Stahel Jr.	Councilman
Robert M. Gregory	Manager of Operation
H. B. Daniels	Assistant City Attorney
A. V. Goeddel	Superintendent Purchasing Department
H. N. Savage	Hydraulic Engineer
Harold Wood	Resident Engineer

Officials of the County of San Diego

Edgar F. Hastings Supervisor

La Mesa, Lemon Grove & Spring Valley Irrigation District

Chester Harritt	General Manager
Douglas Harritt	
Eugene P. Hyatt	Engineer & Assistant Manager

Officials of the San Diego Chamber of Commerce

Joseph E. Dryer	President
Samuel E. Mason	Ex-President
Hal C. Hotchkiss	Ex-President
Arnold Klaus	Secretary

Citizens of San Diego

George Daley	Contractor
Colonel Ed Fletcher	
Samuel I. Fox	Merchant
Allen Klauber	Merchant
Edwin A. Mueller	Ex-State Senator
Eugene D. Williams	Former Purchasing Agent
Harry Collins	Construction equipment

Press

Harry T. Bishop	San Diego Union-Tribune
R. R. Lewiss	San Diego Sun
Fred E. McLeod	San Diego Herald

June 8, 1933

2775

From : Hydraulic Engineer

To : City Attorney

Subject: San Diego River Project, El Capitan Reservoir Dam, Spillway and Outlet Works, Contract Construction, Inspection Trips.

It is deemed fundamentally important that the City Attorney together with the City's Hydraulic Engineer, frequently visit and comprehensively familiarize himself on the ground with the outstanding facts and factors of the contract construction of the City's El Capitan Reservoir Dam, Spillway and Outlet Works.

Sometime City Attorney T. B. Cosgrove accompanied me at intervals of about thirty days to the City's Lower Otay Reservoir Dam and accessory construction work both during the operations of John Kennedy, Contractor, and the City of San Diego after the suspension of the contract throughout the completion of the work with City forces.

City Attorney Cosgrove gained, as he could in no other way, a valuable first hand knowledge and visual history of the work as it progressed. His legal collaboration was of material assistance in protecting and advancing the City of San Diego's administrative and executive engineering supervision of the work and the assembly, compilation and preparation of the feature history, as I am sure yours may be, provided you can find it agreeably convenient to accompany me to and over the El Capitan work at frequent intervals.

In anticipation of the City's requirements at the time of final settlement with the Contractor, I am carrying out my chronic habit of accomplishing a comprehensive feature history of the work as it proceeds, supported by daily reports from each of the Inspectors and Engineers, and particularly with observation and comments by the Resident Engineer, amplified as observed by the Hydraulic Engineer at each of his very frequent visits.

A Contractor's construction cost record is being obtained, assembled and compiled by the City's Resident Accountant.

Understanding that the City's Special Water Counsel T. B. Cosgrove is carrying on a court case in San Diego, it is felt that it would be timely and profitable if you and Mr. Cosgrove could arrange to join me in a visit and inspection of the El Capitan work while he is in San Diego, which I trust you may arrange for before he returns to Los Angeles, which I assume may be on or before the end of the week.

H. N. Savage
Hydraulic Engineer.

HNS/f

July 18, 1933

Mr. E. Court Eaton, Chief Engineer
Los Angeles County Flood Control District,
Los Angeles, California

Subject: San Diego River Project, Municipal
El Capitan Reservoir Dam, Spillway
and Outlet Works, construction.

My dear Mr. Eaton:

As a constructive professional cooperative measure, it is a dutiful pleasure to invite you and the officials of the Los Angeles County Flood Control District to visit and inspect the City of San Diego's municipal San Diego River Project, El Capitan Reservoir Dam, Spillway and Outlet Works construction.

The contract job is now about 60 per cent completed and is at about its most interesting stage for comprehensive inspection. Automobile way is available to each and every part of the work, including the floors of the rock quarry, hydraulic earth material borrow pit, and through the by-pass tunnel.

The Contractor at present is placing upstream and downstream rock embankment lifts of twelve and one-half feet wide and will resume hydraulic fill saturation, separation and placement of hydraulic fill material with four 8-inch pump hydraulic monitors about August 1, after which I think it would be most interesting for yourself and the other officials of the Los Angeles County Flood Control District to visit and inspect the work.

Enclosed is a courtesy card for yourself and your party at the San Diego (Athletic) Club where good dormitory and meal service is available at fair prices in a very well appointed club. It is suggested that you book in advance for such accommodations, if any, that you may desire to avail of at this club.

I will notify you soon after the Contractor resumes hydraulic fill placement in order that you may see the work going strong.

Contractor T. E. Connolly has been in residence in sole charge of the work for two months and is directing and accomplishing it in an efficient manner for the interests of both the Contractor and the City of San Diego.

Very truly yours,

H. N. Savage,
Hydraulic Engineer.

HNS/p
encl. (mailed direct by
San Diego Club)

COMMANDING OFFICE
ELEVENTH NAVAL DISTRICT
San Diego, California

13 November, 1933.

Mr. Hiram W. Savage,
Hydraulic Engineer,
City Hall,
5th & G Streets,
San Diego, California.

Dear Sir:-

On behalf of the members of the visiting party I would like to express my appreciation for the courtesy extended by your office towards this party of naval officers and their friends at El Capitan Dam on Friday, 10 November, 1933, and having them shown the features of this great project. I would also like to extend this appreciation to Mr. Pyle and Mr. Wood of your staff, who personally accompanied the party over the works, described the different important features as they went along and interestingly answered the barrage of questions asked by the visitors.

Very truly yours,

W. T. Tarrant
Rear Admiral, U.S. Navy
Commandant, Eleventh Naval District.

SAN DIEGO RIVER PROJECT, EL CAPITAN FEATURE

Official Inspection

From July 1, 1931 - February 23, 1935

Hydraulic Engineer H. N. Savage

October 3, 28, 1931

November 17, 1931

December 2, 23, 31, 1931

January 5, 6, 9, 13, 1932

February 3, 1932

March 15, 21, 25, 1932

April 3, 9, 19, 24, 27, 29, 30, 1932

May 3, 5, 6, 7, 11, 14, 18, 19, 21, 24, 30, 1932

June 10, 14, 17, 18, 20, 21, 23, 29, 30, 1932

July 5, 6, 9, 11, 14, 17, 19, 22, 25, 27, 30, 1932

August 1, 2, 8, 9, 10, 11, 16, 18, 19, 20, 22, 25, 27, 29, 1932

September 1, 3, 5, 7, 8, 10, 12, 14, 16, 17, 19, 21, 22,

24, 26, 27, 29, 1932

October 3, 6, 8, 10, 12, 13, 15, 17, 19, 24, 25, 27, 29, 1932

November 1, 2, 4, 5, 7, 8, 9, 10, 12, 1932

December 14, 16, 19, 21, 28, 30, 1932

January 6, 10, 11, 17, 18, 19, 27, 31, 1933

February 2, 3, 8, 10, 11, 14, 18, 21, 23, 24, 25, 1933

March 3, 7, 9, 16, 17, 18, 21, 24, 1933

May 1, 9, 10, 15, 20, 1933

June 1, 3, 6, 10, 13, 15, 19, 20, 22, 27, 30, 1933

July 5, 8, 10, 11, 12, 14, 19, 24, 27, 1933

August 7, 9, 14, 18, 22, 24, 26, 30, 1933

September 1, 7, 9, 15, 18, 20, 22, 26, 27, 29, 1933

October 2, 4, 6, 9, 11, 16, 18, 24, 26, 30, 1933

November 7, 8, 13, 14, 19, 23, 1933

December 6, 7, 10, 16, 19, 20, 1933

February 3, 7, 10, 14, 21, 27, 1934

March 1, 5, 9, 12, 14, 17, 19, 22, 23, 24, 27, 28, 1934

April 3, 20, 24, 26, 1934

May 7, 28, 1934

June 1, 4, 8, 12, 14, 18, 1934

Assistant Hydraulic Engineer Fred D. Fyle

April 9, 1932

May 21, 1932

June 30, 1932

July 30, 1932

August 10, 27, 1932

September 8, 17, 19, 1932

October 15, 17, 25, 1932

November 2, 8, 10, 1932

December 14, 19, 1932

January 27, 31, 1933

February 3, 8, 10, 11, 18, 25, 1933

March 17, 1933
 May 1, 9, 10, 20, 1933
 June 3, 10, 1933
 July 27, 1933
 August 9, 1933
 September 9, 1933
 October 6, 9, 1933
 November 13, 19, 1933
 December 7, 16, 19, 20, 1933

January 5, 9, 12, 17, 19, 22, 23, 30, 31, 1934
 February 2, 3, 7, 10, 17, 1934
 March 3, 5, 9, 19, 24, 1934
 April 6, 20, 21, 26, 27, 1934
 May 19, 1934
 June 2, 12, 14, 22, 28, 29, 1934

Hydraulic Engineer Fred D. Fyle

July 3, 6, 7, 10, 13, 21, 24, 26, 1934
 August 1, 2, 7, 8, 10, 11, 14, 16, 18, 19, 21, 24, 25, 27, 30
 September 4, 6, 8, 11, 13, 14, 16, 17, 19, 20, 22, 23, 26,
 27, 29, 30, 1934
 October 1, 4, 10, 13, 14, 19, 23, 31, 1934
 November 1, 7, 12, 14, 16, 21, 23, 24, 27, 1934
 December 1, 4, 7, 9, 12, 14, 15, 17, 20, 21, 22, 23, 26, 29
 January 8, 16, 22, 26, 29, 1935

City Testing Engineer J. Y. Jewett

March 21, 1932
 April 9, 1932
 June 18, 1932
 July 2, 10, 1932
 August 10, 27, 1932
 February 11, 27, 1933
 May 23, 27, 1933
 July 12, 1933
 October 6, 1933
 November 19, 1933
 December 19, 1933
 February 16, 1934

Assistant Engineer Paul Beermann

December 20, 1931
 January 23, 1932
 March 5, 1932
 April 9, 1932
 June 11, 1932
 July 10, 30, 1932
 August 13, 27, 1932
 October 1, 15, 1932
 November 19, 1932
 December 9, 23, 31, 1932

February 11, 13, 18, 25, 1933
 March 4, 25, 1933
 April 15, 1933
 May 13, 1933
 June 3, 17, 1933
 July 1, 29, 1933
 August 5, 19, 1933
 September 2, 1933
 October 8, 29, 1933
 November 8, 1933
 December 2, 16, 1933

February 12, 17, 1934
 March 3, 1934
 April 22, 1934
 May 19, 1934
 June 2, 23, 1934
 July 2, 28, 1934
 August 11, 25, 1934
 September 8, 17, 18, 22, 29, 1934
 October 13, 28, 1934
 November 28, 1934
 December 3, 11, 15, 22, 26, 29, 1934
 January 2, 9, 19, 26, 1935

City Attorney C. L. Byers

January 27, 1933
 April 6, 1933
 May 9, 12, 1933
 June 20, 1933
 August 2, 1933
 September 22, 1933
 October 6, 1933
 November 14, 1933
 December 7, 1933
 March 5, 9, 1934
 April 26, 1934
 July 21, 1934
 August 19, 1934
 October 4, 23, 1934
 November 14, 27, 1934
 December 1, 1934

Deputy City Attorney H. B. Daniel

September 17, 1932
 January 18, 1933
 February 10, 23, 1933
 April 1, 6, 1933
 November 13, 1933
 December 7, 20, 1933
 March 24, 1934

Assistant City Attorney Gilmore Tillman

September 21, 1932
 October 25, 1932
 November 8, 1932
 January 11, 1933

December 10, 1933
July 21, 1934

Deputy City Attorney J. J. Breckenridge

March 7, 1933
June 6, 1933
March 22, 1934
December 26, 1934

Special Water Counsel T. B. Cosgrove

January 27, 1933
June 20, 1933
August 2, 1933
September 1, 22, 1933
October 9, 1933
November 13, 14, 1933
December 10, 1933

February 3, 1934
March 24, 1934
August 19, 1934
December 1, 1934

Consulting Geologist Dr. J. P. Buwalda

September 9, 1933
November 13, 1933
August 19, 1934
December 1, 1934

Consulting Engineer D. C. Henny

May 9, 20, 21, 23, 1933

Consulting Engineer Louis C. Mill

November 17, 1931
December 19, 1932
January 31, 1933
May 10, 1933
July 14, 1933
September 9, 1933
October 6, 7, 1933
November 19, 1933
December 19, 20, 1933
January 22, 1934
February 7, 1934
March 19, 1934
July 21, 1934
August 7, 8, 18, 19, 1934
September 20, 1934
October 4, 1934
December 1, 1934

Consulting Engineer Dr. C. D. Marx

October 26, 28, 1931

Consulting Geologist Dr. G. F. Tolman

October 28, 1931

Mayor Walter W. AustinDecember 23, 1931
March 9, 15, 1932
October 12, 1932
December 10, 1933Mayor John B. Forward Jr.July 9, 1932
August 25, 1932
February 3, 1933
May 9, 12, 1933
June 22, 1933
August 26, 1933Mayor Rutherford B. Irons

August 16, 1934

CouncilmenCharles E. AndersonSeptember 17, 1932
December 8, 1932
March 3, 1933
May 9, 12, 1933
August 7, 30, 1933
September 29, 1933
December 6, 1933
April 24, 1934J. V. AlexanderDecember 23, 1931
March 15, 1932A. W. BennettMay 5, 1932
September 17, 1932
January 19, 1933
February 10, 1933
May 9, 1933
August 7, 1933
April 26, 1934John R. BlakistonMay 7, 1932
June 4, 22, 1932
September 17, 1932W. H. CameronJuly 7, 1934
August 16, 1934A. S. Davis

August 16, 1934

CouncilmenLeroy E. Goodbody

September 17, 1932

May 9, 1933

Wayne A. Hood

May 9, 12, 1933

June 1, 1933

August 7, 30, 1933

September 29, 1933

December 6, 1933

April 20, 1934

June 20, 1934

Ira S. Irey

December 23, 1931

March 15, 1932

May 19, 1932

September 14, 1932

June 30, 1933

Louis C. Maire

December 23, 1931

March 15, 1932

August 8, 1932

Dan Rossi

May 5, 12, 1932

September 17, 1932

May 9, 1933

August 7, 1933

December 10, 1933

April 27, 1934

August 16, 1934

Joseph J. Russe

December 23, 1931

January 5, 1932

March 15, 1932

April 19, 1932

May 6, 12, 1932

September 17, 1932

November 2, 1932

December 8, 1932

January 11, 19, 1933

February 25, 1933

March 9, 1933

Alfred H. Stehel Jr.

March 15, 1932

September 17, 1932

March 9, 1933

Harry Warburton

July 14, 1932

September 1, 1932

May 9, 1933

December 6, 1933

April 26, 1934

August 16, 1934

City ManagerR. M. Gregory

December 23, 1931

March 8, 1932

H. H. Esselstyne

June 10, 1932

A. V. Goeddel

September 17, 1932

February 21, 1933

F. M. Lockwood

July 12, 1933

August 2, 1933

October 18, 1933

December 6, 1933

June 27, 28, 1934

July 21, 1934

George L. Buck

September 6, 1934

October 4, 23, 1934

December 6, 1934

January 22, 1935

Director of Public Works Fred A. Rhodes

February 2, 1933

May 9, 12, 1933

August 7, 1933

February 22, 1934

June 27, 1934

August 8, 1934

Water CommissionerAlbert V. Mayrhofer, President

March 9, 1933

May 9, 17, 1933

July 23, 1933

August 9, 1933

February 27, 1934

March 18, 1934

August 10, 1934

October 1, 1934

January 16, 1935

Charles T. Chandler

March 9, 1933

August 9, 1933

August 10, 1934

January 16, 1935

Samuel I. Fox

December 23, 1931

September 22, 1932

May 9, 1933

August 9, 1933

September 17, 1933

December 6, 1933

R.F.C. Supervising Engineer J. H. Roper

July 12, 1933
August 7, 1933
September 14, 1933
October 24, 25, 1933
December 7, 1933

January 19, 1934
February 16, 1934
March 19, 1934
April 17, 1934
May 24, 1934
July 27, 1934
August 24, 1934
September 23, 30, 1934
November 28, 1934

MISCELLANEOUS

SOUTHERN CALIFORNIA TELEPHONE COMPANY

San Diego, Calif.

December 31, 1931.

Mr. H. N. Savage, Hydraulic Engineer
City of San Diego
524 F Street
San Diego, Calif.

Dear Mr. Savage:

We have completed our survey in connection with the proposed extension of our telephone lines to the El Capitan Dam Site and in view of the fact that the City will retain service permanently at the dam after its completion we are agreeable to making the necessary extension under our regular line extension plan. Under this plan we will build 750 feet at our expense and the balance of the distance will be charged for at the rate of \$1.00 per 100 feet or fraction thereof.

While we do not know the exact location of the City's camp it appears that an extension of 8976 feet will be necessary which would make our charge to you \$83.00.

After making the above line extension we will be in a position to provide El Cajon Suburban service at \$3.25 per month for a desk telephone or \$3.00 per month for a wall instrument. The standard installation charge of \$3.50 will apply also in addition to the line construction costs.

We estimate that it will take about 45 days to make the above line extension following receipt of advice from you that the basis is satisfactory to the City.

Yours very truly,

A. E. Scott
District Manager

January 7, 1932

From : Harold Wood
 To : Hydraulic Engineer
 Subject : San Diego River Project, El Capitan Reservoir Dam
 and Pipe Line Feature, fixing position of dam

1. In line with letter on fixing position of El Capitan dam, dated December 29, 1931, survey of the 560, 600, 650, 700 and 766 foot elevation contours has been made and plotted to scale of 1" to 100'.

2. From this drawing four locations of dam were made and quantities estimated for each. The axis "A" being the Freeman axis as shown on drawing 2391-D1 Axis B, C & D were each 100 feet at the south end respectively westerly from each adjacent axis.

3. The quantities for each of the positions of the dam are as follows:

Axis	Feet south end is westerly from Freeman's	Total Cubic Yards	Difference Cubic Yards	Total Reduction Cubic Yards
A	0	2,221,794		
B	100	2,181,410	40,384	40,384
C	200	2,152,814	28,596	68,980
D	300	2,141,776	11,038	80,018

A study of the dam in the various positions with respect to adjacent topography was made and particularly with respect to the point of the hill at the intersection of the northwesterly slope of the dam. This study seems to indicate the advisability of locating the south end of the axis 200 feet westerly, measured along the 766 foot contour, from the south end of the Freeman axis. The north end remains fixed as established by Mr. Freeman and shown on drawing 2391-D1.

4. RECOMMENDATION: It is recommended that the El Capitan dam be located with its axis at north and coincident with the Freeman axis and its south end 200 feet westerly, measured along the 756 foot contour, from the south end of the Freeman axis.

Harold Wood

HW/p

A.F.E.
 H. N. Savage
 1/7/32

November 27, 1934

Messrs. H. W. Rohl & T. E. Connolly
Contractors El Capitan Dam
4351 Alhambra Avenue
Los Angeles, California

S-141

Subject: San Diego River Project, El Capitan
Feature, Contractor's dams, control of

Gentlemen:

Two low dams have been constructed by you upstream from the intake portal of the bypass tunnel to store water for your use in the construction of El Capitan Reservoir Dam; also you have installed several outlets, consisting of pipe and control gates, through these dams, as well as certain pipe lines and pumps in the vicinity of the dams.

You are hereby directed to leave these two dams and the outlet works intact.

You may continue to take such water from the reservoir above these dams as you may require for your construction purposes.

At your convenience you may remove all your pumps, pipe lines and other equipment, except such pipe and gates as may be in place under or in the dams as a part of your control works.

For such pipe and control gates as may be left in place as directed by the engineer a reasonable salvage value will be paid.

Very truly yours,

Fred D. Pyle
Hydraulic Engineer

FDP/f
cc H.W.Rohl & T.E.Connolly, El Capitan Dam
Contractor's Resident Representative
City's Resident Engineer

HYDRAULIC FILL DAMS WHICH HAVE GIVEN OR INDICATED TROUBLE.

COPY

Index No.	Name	Location	Projected Height Feet	Trouble Experienced	Uncompleted Height or Height when trouble Developed	Year Completed
1	Linville	North Carolina	168	Failed - 44,000 cu.yd. slide on downstream side	142	1919
2	Paddy Creek	North Carolina	165	In distress on upstream side during construction	--	1918
3	Catawba	North Carolina	120	Levee failed during construction	41.5	1919
4	Calaveras	California	210	Failed - 800,000 cu.yd. slide on upstream side	170	1916*
5	Necara No.2	Mexico	185	Failed twice during construction - slides on upstream side	172	1909
6	San Pablo	California	170	Section redesigned 3 times to secure greater stability	125	1920*
7	Crane Valley	California	150	Failed through drain after completion	150	1911
8	South Haiwee	California	82	Leaked considerably through abutments	--	1912
10	Lower San Fernando	California	142	Core not solidifying properly	125	1916*
11	Dry Canyon	California	61	Leaked considerably through abutments	--	1912
17	Lake Francis	California	50	Original dam failed immediately after completion (Rebuilt)	50	1899
21	Santo Amaro	Brazil	59	350 cu.yd. slide on downstream side	--	1908
22	Terrace	California	175	Leakage between hydraulic fill and dry fill	--	1912

Hydraulic Fill Dams which have given or indicated trouble (continued)

Index No.	Name	Location	Projected Height Feet	Trouble Experienced	Uncompleted Height or Height when trouble Developed	Year Completed
24	Coquitlam	Pennsylvania	103	Showed signs of distress and work stopped	---	1913
26	La Mesa	California	66	Considerable leakage through dam	66	1897
28	Shaeffer	Colorado	96	Material did not consolidate - core material squeezed out	---	1911
29	Paradise	California	98	Drainage through toes very great	---	1917
36	Snake Ravine	California	64	First dam failed, 30 ft. high-second dam slid 1,000 feet downstream	64	1898**
39	Marshall Lake	Colorado	72	Dike failed and hydraulic material slid out	---	1908
40	Little Bear Valley	California	201	Contraction cracks in core wall	181	1907
54	Bear Creek	Vancouver B.C.	57	Levee failed	---	1912
58	Upper Helenano	Hawaii	55	Failed - slide, downstream side	55	1913
66	Waialea	Hawaii	98	Leaked during first year	98	1905
67	Laguna #4	Mexico	80	Leaked upon using reservoir	80	----
--	Cobble Mountain	Massachusetts	235	Safety questioned		1932
--	Escondido	California		Excessive leakage near north end		

* Not completed

** Abandoned

Information from "Tabulated Data, Dams Built Wholly or in Part by Hydraulic Methods, Office of J. B. Lippincott"

4-10-35
P

2792

CITY OF SAN DIEGO, CALIFORNIA

Water Bond Elections

June 27, 1896
\$1,500,000

For acquisition by City for the use of said city and its inhabitants of and from the Southern California Mountain Water Company of a water right, reservoir sites, a meter house site and rights of way and for the construction by said city of water works for the use of said city and its inhabitants.

YES 2540
NO 1184

April 12, 1901
\$ 800,000

For main pumping station and wells at Old Town, pipe lines to Old Town reservoir, Moreno, Pacific Beach and La Jolla; Point Loma and University Heights reservoirs; Point Loma Upper and Lower reservoirs; all water rights on the land in Mission Valley pumping areas; rights of way for pipe lines for distributing system; N 1/2 of lot 10 and S 1/2 of lot 11 Carruther's Addition and right of way over lot 2.

YES 2372
NO 140

April 25, 1901
\$ 199,000

For extensions and improvements to water distributing system

YES 1596
NO 767

July 22, 1905
\$ 71,400

Acquiring and paying for El Cajon water lands

YES 1157
NO 919

252,000

Acquisition, establishment and construction of El Cajon water system and pipe line

YES 775
NO 1242

54,000

Replacing 30th Street water main from El Cajon Avenue to National Avenue

YES 1622
NO 409

75,000

Constructing and completing B Street reinforced concrete conduit

YES 1331
NO 561

March 12, 1907
\$ 77,100.56

Constructing cast iron water pipe from intersection of 5th Street and University Avenue to Old Town reservoir.

YES 1362
NO 259

265,891.45

Taking up old pipe and installing cast iron water pipe in city streets

YES 1403
NO 218

127,000.00

University Heights reservoir

YES 1346

9,000.00

La Jolla Park reservoir

1,933.71

Girard street pipe line

7,200.00

Repair reservoir acquired from Pacific Beach Co.

4,700.00

Repair Upper and Lower Point Loma reservoirs

151,933.71

NO 261

<u>August 9, 1910</u>			
\$ 340,000.00	Addition to water system of the City	Yes	4178
		No	778
<u>May 7, 1912</u>			
\$ 340,000.00	Extension and repair of water system	Yes	3629
		No	731
<u>October 21, 1911</u>			
\$ 645,000.00	Improvements of and additions to City present water system and engineering expense for acquisition of additional water impounding system	Yes	4672
		No	2178
200,000.00	Acquisition and construction of emergency system for pumping of water from the bed of the San Diego River	Yes	6071
		No	980
60,000.00	Filtration plant	Yes	4731
		No	2014
75,000.00	Acquisition of water pipe and appurtenances thereto to be used in extension of City's present water distributing system	Yes	5914
		No	1112
<u>December 10, 1911</u>			
\$ 645,000.00	Improvements of and additions to City's present water system and engineering expense for the acquisition of an additional water impounding system.	Yes	5079
		No	1100
60,000.00	Filtration plant	Yes	4994
		No	1103
<u>May 5, 1914</u>			
\$1,500,000.00	Acquisition of water works and water rights including lands, dam, dam site, reservoir, reservoir site, rights of way and the right to use wagon roads, telephone lines and other property rights in connection with said water works and property, situate in the County of San Diego, State of California.	Yes	10773
		No	1541
<u>March 11, 1916</u>			
\$ 100,000.00	Construction of additional wells and pumps in San Diego River to be diverted to the use and for purpose of constructing and completing a conduit between Morona Reservoir and Dulzura Creek.	Yes	4548
		No	460
75,000.00	Construction of a small reservoir at the end of Bonita pipe line, be diverted to the use and purpose of installing units of the Chollas and Bonita pipe lines in Sweetwater Valley and the installation of wells, pumps and sumps in Mission Valley.	Yes	4490
		No	497
100,000.00	Construction of wooden pipe line and flume between Dulzura Creek and Upper Otay reservoir and to outlet tunnel of Lower Otay reservoir.	Yes	4145
		No	781

November 17, 1916

\$ 682,200.00	Acquisition, construction and completion of a concrete dam at the Lower Otay dam site.	Yes 9393
		No 4549

February 21, 1917

\$ 682,200.00	Acquisition, construction and completion of concrete dam at Lower Otay dam site.	Yes 7513
		No 3304

November 25, 1919

\$1,000,000.00	Acquisition, construction and completion of masonry dam at the Barrett dam site	Yes 8003
		No 530

200,000.00	Acquisition, construction and completion of improvements and extensions to San Diego-Otay woodstave pipe line and for acquisition, construction and completion of extensions and additions to water distributing system within the city.	Yes 7777
		No 641

April 5, 1921

\$ 500,000.00	Completion of Barrett Dam	Yes 14645
		No 1132

March 20, 1921

\$ 325,000.00	Acquisition, construction and completion of improvements, extensions and additions to water distributing system, by purchase and installation of cast iron water mains in certain streets and the purchase and construction of a steel stand pipe of an approximate capacity of 1,200,000 gallons to be located adjacent to University Heights reservoir.	Yes 12376
		No 2452

April 3, 1923

\$ 400,000.00	Acquisition, construction and completion of a second main water conduit from Lower Otay reservoir to Bonita eye	Yes 9125
		No 1692

September 10, 1924

\$3,000,000.00	Acquisition of lands, dam site, reservoir reservoir sites, rights of way, pipe line conduits and water filtering plant for a dam and the acquisition, construction and completion of a dam of the arched gravity section masonry type at a point known as Mission Gorge Dam Site No. 2 located on the San Diego River.	Yes 4750
		No 7485

400,000.00	Acquisition of lands, dams, dam sites, reservoir, reservoir sites, rights of way pipe lines, pumping plants and conduits for the purpose of developing, impounding conserving and storing the waters of the San Diego River and its tributaries on the San Diego River and distributing the waters of said San Diego River and its tributaries for the use of the inhabitants of the City of San Diego.	Yes 4974
		No 6743

November 18, 1924

\$4,500,000.00

Acquisition of lands, dam site, reservoir, reservoir site, rights of way, pipe lines, conduits and water filtering plant for a dam and the acquisition, construction and completion of a dam of the arched, gravity section, masonry type, at a point known as El Capitan dam site No. 2 located on the San Diego River and the acquisition, construction and completion of a pipe line from El Capitan dam to the University Heights Reservoir for the purpose of developing, impounding, conserving, storing and distributing the waters of the San Diego River and its tributaries for the use of the inhabitants of the City of San Diego.

Yes 18131

No 6624

March 24, 1925

\$ 400,000.00

Acquisition, construction and completion of a second main water conduit from the Lower Stay reservoir to the Benita Wye be diverted to the use and for the purpose of acquisition, construction and completion of improvements, additions, extensions and betterments to the water distributing system and water impounding and conveying system of the City

Yes 16974

No 3614

October 8, 1925

\$ 500,000.00

Acquisition of an option to purchase the San Dieguito Water System for the purchase price of \$3,750,000, said option to be granted to said City by the terms and provisions of a certain proposed contract of lease between said City and the San Dieguito Water Company.

Yes 11690

No 1010

October 19, 1926

\$2,000,000.00

Acquisition, construction and completion of two masonry dams, one at the Sutherland damsite on the Santa Ysabel Creek and one at the San Vicente damsite on the San Vicente Creek and for the acquisition of lands, reservoirs, reservoir sites, water rights, water bearing lands, rights of way and water pumping plants and for the acquisition, construction and completion of pipe lines and conduits connecting said Sutherland dam and reservoir with the San Vicente dam and reservoir, and a pipe line and conduit from said San Vicente reservoir to a connection with the City's distributing water mains to be located at Lakeside.

Yes 16417

No 1381

November 22, 1927

\$ 250,000.00

Acquisition, construction and completion of extensions and additions to the water distribution system of the city.

Yes 12083

No 8650

March 19, 1929
\$2,750,000.00

Acquisition, construction and completion of pipe line from Otay Reservoir to University Heights reservoir; enlarge Chollas Heights reservoir; Morena reservoir dam spillway and safe duty enlargement; pumps, pipe lines and wells and rights of way for pumping from bed of San Diego River; completion of filter units at Otay reservoir; Torrey Pines reservoir and University Heights reservoir; acquiring water rights and rights of way and making preliminary borings and excavations for construction of reservoir at Warren dam site, and for water-bearing lands and rights of way in Via Juana River Valley; securing land and making preliminary borings and excavations for increasing height of dam and capacity of Barrett reservoir and securing rights of way; preliminary borings, excavations and surveys for dam or dams on San Diego River and obtaining necessary lands and rights of way therefor; purchasing water-bearing lands in San Dieguito River Valley; purchasing minor rights of way and securing options on land needed in connection with various and sundry portions of City water system; preliminary borings, excavations and rights of way for completing and increasing capacity of Hodges reservoir.	Yes 16734 No 9470
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Amend Section 13 1/2 Chapter II Article VI of the City Charter. Amendment removes limitation in the charter with respect to amount of bonds which may be issued for water purposes and provides that for such purposes bonds may be issued amounting not to exceed 25 per cent of assessed value of all real and personal property of City in addition to bonds issued for other purposes when authorized by vote of 2/3 of electors voting at an election held for that purpose.	Yes 18790 No 9731
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July 16, 1929
\$2,100,000.00

250,000.00

Otay Reservoir-San Diego Second Main Pipe-line; Chollas Heights reservoir enlargement; Morena reservoir dam spillway and safe duty enlargement.	Yes 17551 No 3433
Acquisition and investigations San Diego River; additional filtration and purification units; acquisition and investigations in connection with Warren, Barrett, Morena, drainage areas of San Diego and Via Juana Rivers; engineering and investigations at Hodges and below Hodges; investigations on Via Juana, San Diego and San Dieguito rivers and their tributaries.	Yes 16496 No 4251

August 11, 1931

- \$ 350,000.00 To be diverted from Otay Reservoir-San Diego second main pipe line, Chollas reservoir enlargement, Morena reservoir spillway and safe duty enlargement unexpended balance to the construction of a diversion dam at damsite No. 2 across the San Diego River adjacent to the west boundary line of the El Cajon Ranch and installation of pumping plant and moving portions of 36-inch pipe line. Yes 10272
 No 11151
- \$ 375,443.88 To be diverted from the above unexpended balance to acquisition of San Diego River Mission reservoir lands in Rancho El Cajon. Yes 10085
 No 11141
- \$ 160,000.00 To be diverted from the above unexpended balance to strengthen Hodges reservoir dam in compliance with requirements of State Engineer. Yes 13492
 No 7837

December 15, 1931

- \$ 350,000.00 To be diverted from unexpended money raised by the sale of the Pipeline and Reservoir Bonds heretofore authorized by vote of the people at an election held on the 16th day of July 1929 for the purpose of the construction and enlargement of a dam and reservoir of increased capacity at Chollas Heights be expended for the purpose of constructing a dam of the type to be approved by the State Engineer of California pursuant to the requirements of law, in the locality known as the El Capitan Dam and Reservoir Site. Yes 17295
 No 3460
- Shall the money raised by the sale of the El Capitan Dam Bonds heretofore authorized by vote of the people at an election held on the 18th day of November 1924 for the purpose of constructing an arched gravity section, masonry type of dam at El Capitan Dam Site No. 2, the acquiring of lands and rights of way, and the construction of pipe lines and filtration plant, be expended for the purpose of constructing a dam of a type to be approved by the State Engineer of California pursuant to the requirements of law, in the locality known as the El Capitan Dam and Reservoir Site, the acquiring of lands and rights of way, and the construction of pipe lines and filtration. Yes 17387
 No 3345

November 6, 1914

- | | | | |
|---|------------|---|-----------------------|
| | | Shall the contract between the United States of America and the City of San Diego, executed by the Mayor of said City on the 2d day of October 1914, a full true and correct copy of which is on file in the office of the City Clerk of said City, bearing Document No. 289436, to which attention is directed for the full terms, specifications and provisions thereof, and which contract in general provides that the United States will construct a canal from a dam in the Colorado River to Imperial Valley so as to provide a designed Capacity of one hundred fifty-five (155) cubic feet of water per second to be used by the City of San Diego, and that payment by said City for such work will be that proportion of the total original construction cost and operation and maintenance cost that the capacity provided in said canal; said payments to be made in not to exceed thirtyeight (38) annual installments, and which involves the payment of money out of the appropriations of thirtyeight (38) fiscal years, commencing with the calendar year next succeeding the year when notice of completion of all work provided for in said contract is given to the City, be approved, ratified and made effective by the electors of said City. | Yes 32327
No 19923 |
| 9 | 96,000.00 | For the reconstruction and strengthening of the buttresses of the multiple arch dam at Hodges reservoir in the County of San Diego, by a system of reinforced concrete columns, stretched and diagonal beam reinforcing and the construction of a spillway discharge apron all as required by the State Engineer of the State of California. | Yes 29084
No 24082 |
| 8 | 350,000.00 | For the acquisition of lands, rights of way, pipe lines and conduits, and the acquisition, construction and completion of the El Capitan Reservoir road from the El Capitan damsite around the reservoir to a connection with the existing road above said El Capitan reservoir; and the acquisition, construction and completion of a main pipe line from the El Capitan Dam to a connection with the City of San Diego's existing El Capitan-Lakeside-University Heights reservoir main pipe line, for the purpose of developing, conserving and distributing the waters of the San Diego River and its tributaries for the use of the inhabitants of the City of San Diego. | Yes 28365
No 24759 |

RESERVOIR CLEARING

December 21, 1931

TO THE HONORABLE, THE MAYOR AND COMMON COUNCIL
OF THE CITY OF SAN DIEGO, CALIFORNIA.

Subject: San Diego River Project, El Capitan Dam and
Reservoir Feature, starting of work
Resolution No. 57705

Gentlemen:

The following data relative to the starting of work at El Capitan Dam and Reservoir are submitted in compliance with Resolution No. 57705, reading as follows:

"That the Hydraulic Engineer be and he is hereby instructed to prepare and submit by Monday, the 21st inst., such data as may be necessary to have started at once the work of clearing up the El Capitan dam site and reservoir site, such work to be done by force account, and all to be preparatory to the construction of the dam, such data to include the type of labor and supervision needed, etc., the Hydraulic Engineer to cooperate with the Civil Service Commission as to the labor to be employed."

The most urgent work at the El Capitan reservoir damsite is:

A. Additional test pits and exploratory tunnels to determine the proper location of the diversion and outlet tunnel and the possibility of its location under the south abutment in conformity with suggestion of the State Engineer's Consulting Engineer, Louis C. Hill; and

B. The clearing of trees, shrubs and brush from the damsite and a portion of the adjacent reservoir basin.

The test pit and allied exploration, and the work of clearing the damsite can be undertaken immediately.

Until practicable to provide housing and mess accommodations, it will be possible for the City to transport the employees temporarily from the City of San Diego.

It will be necessary to install and maintain simple housing and mess camp for the City's engineers and inspectors in the immediate vicinity of the damsite and it may also be practicable to install temporary camp buildings and mess for the City's labor forces employed during the test pit explorations and clearing.

It is deemed advisable to dismantle the entire Sutherland City camp buildings and use such material therefrom as may be practicable in the erection of the City's housing and mess camp at the El Capitan damsite. The reclamation and utilization of

To the Honorable, the Mayor
and Common Council

-2

12/21/31

the Sutherland camp buildings may not materially decrease the cost of the contemplated El Capitan camp installation. However, it will provide more labor and require less new material, and, incidentally, it will make it possible to eliminate insurance and dispense with services of watchmen at the Sutherland camp.

The moving of the camp from Sutherland and the installation of an engineer and labor camp can be undertaken immediately. It is estimated that with a relatively efficient group of 12 to 15 men, it may take three weeks or more to complete the work.

Requirement exists for the immediate clearing of about thirty-five acres at the dam and spillway site. It is anticipated that this work and the subsurface exploration work may require the services of 20 men for about forty days.

In addition about 540 acres in the reservoir basin may be cleared, including the lands owned by the City, and lands to be acquired from the Irrigation District. It is estimated that a relatively experienced group of 50 men will be required for about one hundred days to do this work.

The necessary labor for the above work can be secured through regular channels from the Civil Service Commission, but warning should be issued to guard against labor moving to lakeside or to the vicinity of the work in anticipation of securing employment in advance of their notification of such employment by the Civil Service.

In clearing there will be much brush and limbs of trees that should be burned. There will be some wood which should be cut and corded for future use in the City Camp.

Funds will be required to the extent of \$10,000 for the establishment and maintenance of camp and the operation of the mess; \$20,000 for starting the test pits and tunnels and the clearing of the damsite and adjacent portion of the reservoir basin; and \$5,000 for continuation of engineering work. Additional funds will be required from time to time for clearing and for engineering work.

As an emergency exists requiring the initiation of the work at the earliest practicable date, it is recommended that funds as above to the extent of \$35,000 be made available at once.

Respectfully,

M. N. Savage,
Hydraulic Engineer.

MNS/p

El Capitan Grande Reservation

December 22, 1931

TO THE HONORABLE COMMON COUNCIL
CITY OF SAN DIEGO, CALIFORNIA:

GENTLEMEN:

We the undersigned members of the El Capitan Grande Indian Tribe, living at El Capitan, respectfully petition your Honorable Body that we be given employment in the clearing of the El Capitan Dam Reservoir Site.

Owing to the long delay in settling this question we have been prevented from improving our lands, as we expected to be moved at any time, and this has brought a real hardship upon the tribe.

As yet no land has been purchased by the Government for us so we are without a home and feel that we are entitled to be given employment to keep us from starving.

Yours respectfully,

RAMON AMES

BOB QUITAC

Committee for Indians.

(Signatures)

C. F. Coleman
Richard Curo
John Duarte
Lucas Quitac
Steve Prieta
John Prieta
Vincent Mesa
Joe Bunggas
John Benegas
H. Banegar
Charlie Maggison
Joe Watch X
Alfred Maggino
Elario Mesa X
Yoidro E. Lachappa
John Curo
Isbel Rodriguez
Victor Rodriguez
Kie Curo X
Bill Banegas

December 29, 1931

TO THE HONORABLE, THE MAYOR AND COMMON COUNCIL
OF THE CITY OF SAN DIEGO, CALIFORNIA

Subject: Document No. 273534, petition of El Capitan
Grande Indians for employment on land clearing

Gentlemen:

Your reference Document No. 273534, petition of El Capitan Indians, by Ramon Ames and Bob Quitac, representatives for employment on land clearing, which you have referred to the Hydraulic Engineer "to take up with Government Agent Ellis as to situation about transfer of Indians".

When recently in Washington, D.C., the transfer of the Capitan Grande bank of Mission Indians from El Capitan reservoir basin was prominently featured with the Commissioner of Indian Affairs and his Staff, legal, engineering and executive, and constructive cooperation was given all the Office of Indian Affairs Agencies in addition to the best possible cooperation in response to their official interrogations.

Since returning to San Diego I have had two conferences with C. L. Ellis, Superintendent of Indian Reservations in Southern California. In response to my invitation, it is understood that Mr. Ellis will come to San Diego in the immediate future to collaborate in advancing the moving of the Indians and in making available for clearing the reservoir lands already granted in the El Capitan reservoir basin and now occupied in part by the Indians.

Returned herewith is Document No. 273534.

The Common Council's Resolution No. 57656, dated December 9, 1931, directing that employment be given solely to residents of San Diego in connection with El Capitan work, both City and contractor's forces, unless modified will obviously prohibit the utilization of residents outside of the City, either Indians or others, in connection with the El Capitan work.

Ramon Ames and Bob Quitac, Committee for Indians, presenting the petition report that they are unable to sell to exceed an average of one cord of stove length of wood per month and that they receive only \$10.00 a cord for the wood when cut, sawed, split and piled on the Reservation.

Whenever the officials of the Bureau of Indian Affairs provide the Indians with a substitute reservation, arrangements should and probably will be made whereby the Indians will be employed in the fullest practicable way in connection with the development of the new reservation and of their individual homes and public buildings required.

Respectfully,

H. N. Savage,
Hydraulic Engineer.

HNS/mf
encl.
Document No. 273534

February 17, 1932.

To the Honorable Commissioner of Indian Affairs,
Washington, D. C.

Subject: Capitan Grande Indian Reservation,
Lands granted to the City of San
Diego, Clearing.

Sir:

The City of San Diego is endeavoring in every practicable way to provide work for the army of local unemployed and impoverished laborers.

Prominent among the works initiated by the City in this connection is the clearing of trees, brush, shrubs and other vegetable matter from the surface of the ground in the City's El Capitan reservoir basin.

The clearing work beginning at and including the damsite, is being advanced up the reservoir basin, but limited so far to only reservoir lands owned by or under contract to the City of San Diego.

Insofar as practicable, without in any way interfering with the present or contemplated fullest desired use and occupancy by the Indians of the lands already granted to the City, the City is particularly desirous, in order to provide work for the unemployed, to continue the clearing work, including portions of the granted lands.

The City's desires and reasons therefor as above outlined have already been informally brought to the attention of Indian Reservation Superintendent Mr. C. L. Ellis of Riverside, and to Special Agent Miss Mary Gilbert McGair, now headquartered at San Diego.

A comprehensive survey has been made of the 1940 acre tract in the Reservation already granted to the City for the purpose of determining, locating and indicating on a drawing the lands and habitations of the Indians. Copy of this map has already been furnished to Special Agent McGair.

So far all wood resulting from the clearing suitable for fuel is being hauled in eight foot lengths by the City and delivered to the local San Diego Salvation Army yard where the unemployed are provided with an opportunity by sawing and splitting the wood to earn meals and lodging. The wood subsequently being gratuitously furnished to impoverished people who are unable to perform or obtain work.

Very respectfully,

H. N. Savage,
Hydraulic Engineer.

HNS/f
cc Common Council
Superintendent C.L.Ellis
Special Agent Miss Mary G. McGair

February 17, 1932

TO THE HONORABLE, THE MAYOR AND COMMON COUNCIL
OF THE CITY OF SAN DIEGO, CALIFORNIA.

Subject: Capitan Grande Indian Reservation, Lands
granted to the City of San Diego, Clearing.

Gentlemen:

For the purpose of continuing to provide mutually gainful production for both the unemployed and the City of San Diego, when in Washington I invited the cooperation of the Office of Indian Affairs with the City of San Diego in continuing with the clearing in the Capitan Reservoir Basin on the 1940 acres of Capitan Grande Indian Reservation lands already granted to the City of San Diego.

Under the provisions of the Congressional Act of February 28, 1919, it was provided that the "Indians of the Capitan Grande Indian Reservation shall be permitted to reside on, occupy, and cultivate the lands of their present reservation up until within ninety days of the time when water for storage purposes will be turned into the reservoir to be constructed hereunder, provided such occupancy by the Indians will not materially hinder the construction of the dam and storage work, which fact is to be determined by the Secretary of the Interior".

Before traveling to Washington, D. C. the last time, I had the matter of the clearing of the granted lands up with the Indian Reservation Superintendent Mr. C. L. Ellis at Riverside and since my return with both Mr. Ellis and Special Agent Miss Mary Gilbert McGair. I informally understand that Miss McGair is cooperating with the City in advancing an arrangement whereby the City may continue to clear trees, brush, shrubs and other vegetable matter from a portion of the lands already granted.

Enclosed is copy of letter to the Commissioner of Indian Affairs, dated February 17, 1932.

Very respectfully,

H. H. Savage,
Hydraulic Engineer.

HHS/f
encl.

UNITED STATES
DEPARTMENT OF THE INTERIOR

OFFICE OF THE SECRETARY
WASHINGTON

L - C
10286-32

Mar -3 1932

The Honorable

The Secretary of the Interior.

My dear Mr. Secretary:

There is transmitted herewith letter dated February 17, 1932, from H. H. Savage, Hydraulic Engineer, City of San Diego, California, stating that in so far as practicable and compatible with the interests of the Indians the City desires to continue the work of clearing the lands within the Capitan Grande Indian Reservation granted to it for reservoir purposes by the Act of February 28, 1919 (40 Stat.L., 1206).

The last provision to section four of the Act of February 28, 1919 above cited, reads as follows:

. That if such dam be built the Indians of the Capitan Grande Reservation shall be permitted to reside on, occupy, and cultivate the lands of their present reservation up until within ninety days of the time when water for storage purposes will be turned into the reservoir to be constructed hereunder, provided such occupancy by the Indians will not materially hinder the construction of the dam and storage work, which fact is to be determined by the Secretary of the Interior.

In view of the above quoted provision no reason is seen why permission should not be granted to the city to clear the lands within the reservoir site previously acquired by it, and it is so recommended, subject to the condition that in doing such clearing work, the lands, fences, homes or other property used by individual Indians shall not be interfered with or disturbed, and subject also to the condition that the city is not to establish at this time a camp within the reservation itself for the purpose of performing such work.

Sincerely yours,

(Sgd) C. J. Rhoads

Commissioner

Approved: Mar -4 1932

(Sgd) Jos. M. Dixon

First Assistant Secretary
Inclosure 157103

March 10, 1932

TO THE HONORABLE, THE MAYOR AND COMMON COUNCIL
OF THE CITY OF SAN DIEGO, CALIFORNIA

Subject: San Diego River Project, El Capitan Feature
Cost of clearing

Gentlemen:

On March 7, 1932, your Honorable Body requested that a statement be made of the original estimated cost of clearing the El Capitan reservoir basin, and of the cost of completing the clearing on the basis of the present method of doing the work being continued.

The estimate submitted with letter dated September 13, 1931 provided \$35,000.00 for clearing 1580 acres of the reservoir basin. It was assumed that the clearing would be let by contract and the contractor perform the work in the most economical manner, i.e. using tractors, high lines and other suitable equipment, and receiving in payment the \$35,000 and all wood.

By Resolution No. 57705, dated December 16, 1931, the Council requested the Hydraulic Engineer to prepare and submit data as to cost and labor necessary to have the work of clearing the El Capitan reservoir and dam site done by force account.

On December 21, 1931, this data was submitted and it was indicated that the clearing of about 540 acres in the dam site and reservoir basin, including City-owned lands and lands to be acquired from the La Mesa, Lemon Grove & Spring Valley Irrigation District, would require fifty men 100 days, which would indicate a cost of about \$25,000, or an average cost of about \$46.00 per acre.

To date 380 acres, or 70 per cent of this 540 acres have been cleared and the brush and slashings burned, and there are now on the ground about 5,000 cords of wood in random length logs. This work cost \$13,500, or \$35.50 per acre.

On the basis of clearing to date, and taking into account the possibility that a large amount of timber now on the ground may not be sold, it is indicated that the total cost of the clearing of the about 1580 acres will be about \$60,000 if the work is performed under the present method.

Respectfully,

Fred D. Pyle
Acting Hydraulic Engineer

FDP/p

April 4, 1932

TO THE HONORABLE, THE MAYOR AND COMMON COUNCIL
OF THE CITY OF SAN DIEGO, CALIFORNIA.

Subject: San Diego River Project, El Capitan
Reservoir Basin, Clearing.

Gentlemen:

A total of about 6,000 cords of wood, about 75% of which is understood to be live oak, has been fallen in the El Capitan Reservoir Basin and cut into more or less 8 foot lengths by the City forces.

It is the expectation that the contractors will have the flood bypass tunnel required by drawings and specifications completed before the winter flood runoff season of 1932-33, and the base of the dam constructed well up above the crown of the tunnel, thereby diverting the flood runoff from the San Diego River drainage basin above the El Capitan dam site through the tunnel. In order to prevent the tunnel discharge from being entirely clogged up by the floating logs already cut down, it is imperative that not only the logs already cut be cleared out of the reservoir by hauling away or burning but that any and all other dead and/or otherwise down trees or logs and miscellaneous drift wood be removed from the reservoir basin by hauling away or burning before the flood runoff season of 1932-33.

It will not be necessary to fall the remaining standing trees, which it is estimated will provide about 10,000 additional cords of wood, until after the flood runoff season of 1932-33.

Comprehensive effort has been made to find purchasers for the fallen and sawed into about 8 foot length trees already cut down but so far with no quantity success.

RECOMMENDATION: It is recommended that all the fallen and down logs and wood in the reservoir basin above the dam and outside of the Indian Reservation lands be offered to any and all citizens of San Diego, including wood dealers, who may care to remove any and/or all of it, with the proviso that one out of five loads of average quality and quantity of the fallen and down trees and logs be delivered to the Salvation Army without compensation to the City of San Diego.

Respectfully,

H. N. Savage,
Hydraulic Engineer.

HNS/r

(recommendation authorized by Resolution No. 58253 dated 4-4-32)

May 9, 1932

TO THE HONORABLE, THE MAYOR AND COMMON COUNCIL
OF THE CITY OF SAN DIEGO, CALIFORNIA

Subject: Resolution No. 58314, San Diego River
Project, El Capitan Feature, wood

Gentlemen:

Resolution No. 58314, as to advisability of moving wood with City forces at City expense from El Capitan Reservoir basin as a commercial venture;

It is roughly estimated that the oak, sycamore and cotton-wood trees recently cut down by the City with City forces in the El Capitan reservoir basin would produce about 6,000 cords of wood.

So far the City has been unable to give away to exceed a total of about 1,000 cords of this wood to wood dealers and individuals for their subsequent disposition and/or use.

Complaints are being made by several of the gratuitous wood haulers that the value of the wood does not justify them in delivering even one out of five loads to the Salvation Army without compensation therefor.

In view of the unusual quantity and distribution of wood from this source throughout the City, which is now on sale and being stocked for burning, and the difficulty wood dealers will experience in disposing of the wood they have salvaged, and the further fact that the wood will soon dry out and either make its working up into fireplace and stove wood extremely expensive and/or will automatically kiln dry to less value for fuel, it is not seen how the City would be justified in incurring the expense of competing with wood dealers and users who have practically free permit to help themselves, and

Furthermore, there will be about 10,000 cords of additional wood to be cut and necessarily removed from the El Capitan reservoir basin within the next two and one-half years.

Respectfully,

H. N. Savage,
Hydraulic Engineer.

HNS/f

June 1, 1932

Commissioner of Indian Affairs
Department of the Interior
Washington, D. C.

Subject: City of San Diego, San Diego River
Project, El Capitan Reservoir and
Dam Feature, clearing

Dear Mr. Commissioner:

The City of San Diego recently contracted for the installation of its projected San Diego River Project, El Capitan Reservoir Dam, Spillway and Outlet Works at an aggregate item cost of \$2,332,860.00.

The contractor has announced that before December 31, 1932, he expects to have the San Diego River winter flood runoff carrying bypass tunnel driven through the left abutment of the dam site and concrete lined, and the upstream portion of the dam heightened to about 80 feet above foundation, an estimated sufficient height of dam to divert and pass through the tunnel a maximum flood peak runoff from the El Capitan San Diego River drainage basin up to about 24,000 cubic feet of water per second.

The contractor for the installation of the dam may endeavor to hold the City of San Diego responsible for clearing from the reservoir basin all dead and down trees, brush and fallen timber and the equivalent of about 6,000 cords of tree wood which has already been cut down and up incident to clearing the El Capitan dam site and the adjacent thereto reservoir basin lands outside of the Capitan Grande Indian Reservation boundary lines.

It is obviously also may be equally incumbent upon the City of San Diego to clear all dead and down trees, including trees recently cut down by the Indians and cut up into fireplace and stove wood lengths and size, in the El Capitan reservoir basin along the San Diego River valley floor and adjacent thereto within the Capitan Grande Indian Reservation.

Unless cleared, the dead and down trees and firewood, in case of a major flood runoff would, to a major extent, necessarily float down the river and thereby seriously threaten, if not entirely clog up the bypass tunnel being driven by the contractor through the left abutment of the dam site together with the possible overtopping of the combined earth and rock fill dam and the destruction of the completed portion thereof.

Members of the Capitan Grande Band of Mission Indians living along the San Diego River valley in the Reservation have been in the habit of intermittently cutting oak trees for wood for sale. Any down trees, particularly if reduced to fireplace and/or stove wood size and lengths, if not removed from the reservoir basin

Commissioner of Indian Affairs

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6/1/32

before the inevitable winter river flood runoff, would be an added menace to the bypass tunnel as also would be the small limbs and other refuse from the trees.

The City may find itself under the necessity of burning, if not otherwise removed, all the dead and down trees from both the reservoir lands outside the Indian Reservation and from along the valley of the river within the reservation.

Your attention and constructive cooperation is respectfully invited to enable the City of San Diego to do such clearing and removing of dead and down trees, brush, cut wood and vegetable matter from the reservoir basin as may properly be required within the Indian Reservation in order to insure protection to the dam construction work by the contractor which may be accomplished by December, and which may represent an expenditure of \$500,000, and also a very material delay in his progress of the work.

With sincere feelings of high esteem and personal regard for yourself, Mr. Assistant Commissioner Scattergood and the members of your Staff, I am

Very sincerely yours,

H. H. Savage,
Hydraulic Engineer.

HNS/r

cc C. L. Ellis
Riverside, California

El Capitan Dam
October 21, 1932

From : Resident Engineer
To : Hydraulic Engineer
Subject : San Diego River Project, El Capitan Feature
Reservoir basin clearing 1932-33

As suggested in our recent conference, the clearing and burning of dead and down wood and brush along the San Diego River above the El Capitan reservoir dam should properly be undertaken in November 1932. The necessity for this clearing was well shown by the flood of October 11, 1932, which brought down logs and trash to the tunnel.

The work had best be organized on the basis of City forces on a per diem basis of pay. These forces to be furnished tools and usable supplies for the work but shall transport and "find" themselves.

Three locations for possible camp sites have been selected in case some men wish to camp in the reservoir basin. These camp sites are located as follows:

1. On Chocolate Creek above the Irrigation District's siphon.
2. On the flat north of South Fork and between the road and river.
3. Opposite the old school.

There is running water available at each of these sites and we have three portable toilets, one for each camp.

The organization should probably consist of the following:

- 1 Foreman
- 15 Laborers
- 1 Tool sharpener
- 1 Tractor operator
- 1 First aid man

At least the foreman, tractor operator, first aid man and tool sharpener should be retained for the full duration of the work.

The equipment needed should probably be as follows:

- 1 - 60 H.P. tractor
- 2 - Log chains or cables with clevises and hooks
50' and 250' long
- 1 - Steel snatch block
- 1 - Cable sling
- 6 - 7' saws

-2-

8 - Axes
 3 - Shovels
 6 - Forks
 2 - Kant hooks
 4 - Torches
 6 - Canteens - 1 gallon
 1 - Tool box and lock
 1 - Light truck
 Oil for truck
 1 - Gasoline drum with lock cock and lock
 1 - First aid kit
 1 - Grindstone - foot power
 1 - Saw filing clamp rig
 1 - Dozen saw files 8" mill type
 Fuel oil as required for burning

The necessary arrangements should be perfected with the Indians to permit this work.

The 17 to whom permits for cutting wood were issued should be notified that no cutting will be permitted by them after November 1, 1932. The following form letter is recommended to be mailed to each not later than October 28, 1932:

"Permission was granted you to cut standing trees for wood from the El Capitan Reservoir Basin. This is to notify you that it is necessary to revoke this permit as no more wood cutting by individuals will be permitted after November 1, 1932 because all slashings, down and dead timber must be removed to prevent this material reaching the outlet tunnel of the El Capitan Dam."

It is recommended that the clearing and burning of dead and down timber, slashings and brush which might be dislodged by waters of the San Diego River and its numerous minor tributaries, be carried out with equipment and labor forces as here tabulated and the work to begin on November 1, 1932.

HW/D

Harold Wood
Resident Engineer

El Capitan Dam

November 19, 1932

From : Resident Engineer
To : Hydraulic Engineer
Subject : San Diego River Project, El Capitan Feature
Reservoir basin clearing

City forces will begin on November 21, 1932, on the disposal by burning of all dead and down timber, logs and brush from the El Capitan reservoir basin.

The work to be done was reviewed on the ground by the Resident Engineer in company with Mr. F. C. Burk, City Foreman and Topographer P. O. Gottschling on November 19, 1932.

The work will be carried out in the following sequence of areas which are considered in the order of importance:

1. Outlet tunnel to damsite 1.
2. Damsite 1 to mouth of Chocolate Creek.
3. Chocolate Creek area.
4. Mouth of Chocolate Creek to South Reservation line.
5. South reservation line to east and west center line of Section 4 and east to the road.
6. South Fork area east of the road.
7. San Diego River bottom from center Section 4 to north line Section 33.
8. North line Section 33 to Fiesta grounds.
9. Fiesta grounds to upper end of reservoir.
10. Sides of basin center Section 4 to north line Section 33.

All progress and instructions will be referred to the above ten divisions of the area of the reservoir basin.

Harold Wood
Resident Engineer

87
3-19-35
copy/p

2815

UNITED STATES DEPARTMENT OF AGRICULTURE
Forest Service
CLEVELAND NATIONAL FOREST

0
Fire Cleveland
Cooperation
City of San Diego

Descanso, California

December 1, 1932

Water Development Department,
City of San Diego.

Permission is herewith given to burn piled brush, logs
and debris within the El Capitan Reservoir site.

Provided that:

An experienced man in fire protection work acceptable
to the U. S. Forest Service is put in charge of the burning.

No burning within 30 feet of standing brush is done.

No burning piles are left unattended until out.

No burning to be done in low humidity east wind weather.

Three men are in attendance during the burning.

Three back pack pumps of water (until the tank truck
is available), 3 shovels, and 2 cutting tools are on
hand at time of burning.

J. B. Stephenson
District Ranger

cc Resident Engineer

August 17, 1933

From : Hydraulic Engineer
To : Civil Service Commission
Subject : Ordinance No. 283

In order to comply with the provisions of Ordinance No. 283 by the employment of "needy citizens as may be consistent with the efficient accomplishment of the clearing of the El Capitan "eservoir", it is an obvious dominating requirement that only men reasonably physically qualified and actually experienced in axe work and falling and logging trees of relative size and the enjoyment of health can efficiently accomplish clearing work in El Capitan reservoir.

The potential danger to individual axe men and to other axe men falling and logging trees if undertaken by inexperienced axe men is obvious.

H. N. Savage
Hydraulic Engineer

MNS/r

January 10, 1934

From : Resident Engineer
To : Hydraulic Engineer
Subject : San Diego River Project, El Capitan Feature
Clearing reservoir basin 1933-34

Clearing of El Capitan reservoir basin was resumed on August 1, 1933 and has continued to date.

Cutting of all river bottom timber such as willow, cottonwood and sycamore has been accomplished from the southerly line of Capitan Grande Indian Reservation (south line of sections 5 and 4, Township 15 south, Range 2 east) to the east and west center line of section 15, Township 14 south, Range 2 east, or to a point about 1 mile north of Sand Creek or 7.5 miles above the dam, excepting area occupied by Indians in South Fork and in north half of section 33.

Burning of logs and slashings in the river bottom has been practically completed for about 5.5 miles above the dam. About 14 piles of logs re-piled and re-fired for the third time are now burning in this area.

Logs are piled ready for burning to point 6.5 miles above the dam or about 0.5 mile north of Sand Creek. North of this point the logs are being dragged from the river bed to high ground.

It is anticipated that the present funds available after January 1, 1934 (\$1,650.00) will be sufficient to complete the burning of logs and slashings to a point 7 miles above the dam in areas not occupied by Indians. Logs in the river bottom to a point 7.5 miles above the dam or as far as cut, will be left on high ground out of river bed.

All slashings have been burned in the Chocolate Creek area.

Considerable maintenance work was necessary on the Chocolate Creek road to keep this open particularly following rains of December 13, 14 and 15, 1933. Some work was done in ditching water to culverts during the storm of December 30 to January 1 inclusive.

Upon the completion of work about January 20, 1934 when the present funds available will be spent, there will remain the following to be done to complete all reservoir basin clearing:

1. Clearing South Fork and Indian-occupied area in north half section 33.
2. Cutting timber from point 7.5 miles above dam - center section 15 to upper end of basin about 1/2 mile.
3. Removing logs for upper mile of reservoir basin above high water.
4. Disposal of all oaks on sides of reservoir.

A total of \$42,070.21 has been spent to November 20, 1933 on clearing reservoir basin, or about \$26.63 per acre on a basis of total area of 1,580 acres.

Harold Wood, Resident Engineer.

October 2, 1934

From : Resident Engineer
To : Hydraulic Engineer
Subject : San Diego River Project, El Capitan Feature
Reservoir basin clearing

1. On October 1, 1934 the Resident Engineer made an inspection of El Capitan reservoir basin with Foreman L. B. Hayward in order that Mr. Hayward might have the benefit of the Resident Engineer's past experience in the reservoir basin clearing operations and to acquaint him with the clearing required to be completed.
2. On July 17, 1934 the Resident Engineer prepared an estimate to complete the removal of trees in the reservoir basin. This showed two main areas - the South Fork and the Bipo areas - the latter about four to 4.5 miles above the dam. Both these areas are Indian occupied and could not be worked on last season. They are estimated to contain a total of about 44 acres. The remainder of the clearing is made up of scattered logs and a few cottonwoods along the side of the basin and in extent about 79 acres and the area at the extreme north end of the reservoir of about 40 acres.
3. Mr. Hayward was advised to start at the south end of the area in the Chocolate Creek and to progress the work up the reservoir. He was told that no clearing was required west of the center of Section 8.
4. The City's cabin on the old Henderson place was examined and found to be in rather poor repair. It was locked and apparently was being occupied. Two latrine pits remain to be cared for at this location.
5. An inspection was made up South Fork Canyon. Mr. Hayward was shown the several approach roads to this area and the flow line elevation was indicated with reference to the South Fork flume.
6. An inspection of the scattered oaks and trees between South Fork and Bipo place near the north line of Section 33 was made. The Bipo area was examined.
7. The scattered clearing remaining on the upper slopes of the reservoir basin between Bipo's area and the old CCC camp was inspected as was also the conditions at the abandoned CCC campsite. The camp buildings have been removed. The buildings at Ramon Ames' ranch were standing but doors and windows had been removed. The hog pen and shelter were pointed

out to Mr. Hayward. The garbage and latrine pits at the CCC camp were filled in but there is no evidence of any burning having been done. A large pile of old roofing paper, sawdust and camp refuse remain to be burned as well as several hundred cottonwood logs hauled to the camp from the City's last season's clearing.

8. The trees in the extreme upper end of the reservoir basin remaining standing should probably be left standing to prevent the accumulation of silt lower down in the reservoir basin. The logs below the flow line of the reservoir which were left from last season's clearing operations should be destroyed.

9. The refuse around the truck driver's camp and repair yard near the center of section 8 should all be destroyed after the work on the dam is completed.

10. It is considered advisable that a crew of about 15 men under a foreman be employed on the remaining clearing. The work should be undertaken as soon as there is cool weather. The use of the tractor should be delayed until the ground is wet and until just before the burning is done. This has the advantage of leaving the logs on the ground to dry the greatest length of time and also permit those desiring wood to haul it before it is necessary to start the burning.

11. Clearing in South Fork and Bipe areas cannot be done until the Indians are removed.

12. It is recommended that a definite date be fixed by the City as being the date provided in the agreement between the City and the Government when the City may exercise jurisdiction over the reservoir basin Government lands. The Department of Indian Affairs and the several Government agencies should be furnished copies of this information.

Harold Wood
Resident Engineer

HW/p

October 16, 1934

From : Hydraulic Engineer
To : Resident Engineer
Subject : San Diego River Project, El Capitan Feature,
Clearing Reservoir Basin.

No timber should be cut in the El Capitan reservoir basin by City forces in carrying on clearing operations above elevation 760; and

Private individuals should not be permitted to cut or remove any timber from City owned lands above elevation 760.

I am under the impression that some timber is now being cut above elevation 760 in the Chocolate Creek area. This should be stopped and the areas posted.

Fred D. Pyle
Hydraulic Engineer

FDP/I

RIGHTS OF WAY

U. S. FOREST SERVICE

11/1/32
copy /f

2822

December 17, 1931

U. S. Department of Agriculture
Forest Service,
Room 310, Federal Building
San Diego, California.

Attention: Mr. L. H. Anderson, Forest Supervisor

Subject: San Diego River Project, El Capitan Dam,
U. S. Forest, Special Use Permit.

Gentlemen:

The Department of Agriculture Cleveland National Forest, Forest Service, on August 9, 1926 granted to the City of San Diego a Special Use Permit within the Cleveland National Forest in the NE 1/4 of NE 1/4 Section 7, and NW 1/4 of Section 8, Township 15 south, Range 2 east, S.B.M., the land lying outside of the flow line of the El Capitan municipal reservoir for the purpose of providing a spillway to reservoir, site for a construction and maintenance camp, and a right of way for road and telephone line.

Construction has not been completed on this project and a further extension of three (3) years is requested in which the City may progress its projected construction.

Very respectfully,

H. N. Savage,
Hydraulic Engineer.

JWW/p

STIPULATIONS SUPPLEMENTAL TO FORM 832

15. A fire line 15 ft. wide shall be constructed and maintained along upper side of the road and a fire line 40 ft. wide constructed and maintained around the construction camp.
16. The permittee shall take all possible precautions to prevent pollution of all waters in the vicinity of this tract. All cans and other refuse must be burned or buried. If refuse is not burned fly tight garbage pits must be provided.
17. All flues from ceiling through roof must be of terra cotta pipe with stove pipe completely through terra cotta, or of terra cotta pipe encased in galvanized iron pipe. Hoods shall be placed over all outlets.
18. The permittee shall clear and keep clear the premises of all inflammable brush, undergrowth, and other debris, but shall burn no debris without consent of a Forest officer.
19. The permittee shall allow Forest officers the free use of the line for official business to the nearest switchboard or exchange outside of the Forest.
20. The permittee shall string wires at least 10 feet above the ground and at all road and trail crossings at least 14 feet above ground.
21. The permittee shall remove wires or otherwise dispose of them to the satisfaction of the Forest officers, in case of abandonment of line.
22. The permittee shall have the exclusive right to use this road for such periods as in the discretion of the Forest Supervisor such exclusive use is necessary.
23. The road shall at all times be open to the free use of Forest officers and others designated by them.
24. After construction work of the dam is completed, the area embraced in this permit will be reduced to what is actually needed for maintenance of the work at the reservoir.
25. The area shall be cleaned up in good shape when construction work is completed.

8. Construction work under this permit shall begin within one month, be completed within five years from the date of the permit, and this use shall be actually exercised at least 15 days each year, unless the time is extended or shortened.

9. In case of change of address, permittee shall immediately notify the Forest Supervisor.

10. The charges for this use may be readjusted whenever necessary to place this permit on a basis consistent with the charge to other permittees for like privileges. A general readjustment will be made at the end of five years from the date of issuance of permit and at the end of each five-year period thereafter.

11. No National Forest timber may be cut or destroyed without first obtaining a permit from the Forest Supervisor.

12. Upon the abandonment, termination, or revocation of this permit, and in the absence of an agreement to the contrary, the permittee, if all the rental charges due the Government have been paid, may, within a reasonable period to be determined by the issuing officer, remove all structures which have been placed on the premises by him, except where the material was furnished by the Forest Service, but upon failure to remove the structures within that period they shall become the property of the United States.

13. This permit may be transferred with the approval of the officer by whom it was given or his successor, subject to such conditions as may be imposed at the time of transfer. It shall terminate upon breach of any of the conditions herein or at the discretion of the District Forester or the Forester.

14. The permittee shall provide, whenever requested by the Forest officers, a way across the land covered by this permit for the free ingress or egress of Forest officers and for users of National Forest land and purchasers of National Forest products.

The stipulations on attached sheet are made a part of this Permit.

August 9, 1926.

J. E. ELLIOTT (Signature)

FOREST SUPERVISOR

DEPARTMENT OF AGRICULTURE

U. S. FOREST SERVICE

SPECIAL USE PERMIT

L
Uses, Cleveland
City of San Diego
Spillway, Construction Camp,
Road and Telephone Line
8/7/26

Permission is hereby granted to City of San Diego of San Diego, California to use the following-described lands: Approximately 67.2 acres of Government land, lying within the Cleveland National Forest in the NE-1/4 NE-1/4 Section 7 and NW-1/4 of Section 8, T. 15 S., R. 2 E., S.B.M., the land lying outside of the flow line of the El Capitan Municipal Reservoir for the purpose of providing a spillway to reservoir, site for a construction and maintenance camp, and a right-of-way for road and telephone line, as shown on map filed in the Forest Supervisor's office in San Diego, Calif. subject to the following conditions:

1. The permittee shall pay No charge under Regulation L-2 (h).
2. The permittee shall comply with the regulations of the Department of Agriculture governing the National Forest, shall observe all sanitary laws and regulations applicable to the premises, and shall keep the premises in a neat and orderly condition and dispose of all refuse and locate outhouses and cess-pools as required by the Forest officers.
3. This permit is subject to all valid claims.
4. The permittee shall take all reasonable precaution to prevent and suppress forest fires.
5. The permittee, if engaged in business, shall conduct same in an orderly manner and in accordance with all requirements of the laws of the State of California, as well as the laws of the United States.
6. The permittee shall pay the United States for any damage to its property resulting from this use.
7. The permittee shall fully repair all damage, other than ordinary wear and tear, to roads and trails in the National Forests caused by the permittee in the exercise of the privilege granted by this permit.

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
CLEVELAND NATIONAL FOREST

December 22, 1931.

L
Uses, Cleveland
City of San Diego
Spillway, Construction Camp,
Road & Telephone Line
8/7/26

City of San Diego,
Water Development Department,
524 F Street,
San Diego, California.

Attention, Mr. H. N. Savage,
Hydraulic Engineer.

Gentlemen:

Reference is made to your letter of December 17, 1931, in which you request an extension of time on the Special Use Permit issued by the Cleveland National Forest under date of August 9, 1926, to the City of San Diego for certain uses on Government lands in the NW-1/4 NW-1/4 of Section 8 and the NE-1/4 NE-1/4 of Section 7, T. 15 S., R. 2 E., S.B.M., in connection with construction of the El Capitan Dam.

We wish to advise your Department and the City of San Diego that permit referred to is now reopened and the time for completion of the construction work is hereby extended to December 31, 1934.

This extension of time, of course, is granted subject to the same terms and stipulations as covered by the original permit issued on August 9, 1926.

Attached we are returning your copy of the permit which Mr. Williams had attached to your letter requesting extension of time.

Very truly yours,

L. H. ANDERSON (Signature)

L. H. ANDERSON,
Forest Supervisor.

Inclosure

U. S. FOREST SERVICE
DEPARTMENT OF AGRICULTURE

SPECIAL USE PERMIT

L
Uses, Cleveland
City of San Diego
Construction Engineer's Camp
12/18/31

Permission is hereby granted to City of San Diego, Water Development Department of 524 F Street, San Diego, California to use the following-described lands: Approximately 6.2 acres of Gov't land near center of $3\frac{1}{2}$ NW-1/4 of Section 7, T. 15 S., R. 2 E., S.B.M., described as follows:- Beginning at a point on the south or left bank of the San Diego River, California, said point bearing S. $40^{\circ} 27'$ W. 2218 feet from the north quarter corner of section 7, T. 15 S., R. 2E., S.B.M., and about 180 feet upstream from a road crossing said river, thence S. $11^{\circ} 51'$ W. 310 feet, thence S. $71^{\circ} 23'$ W. 500 feet, thence N. $18^{\circ} 37'$ W. 630 feet to the south or left bank of the San Diego river; thence easterly along the south or left bank of said river to the point of beginning and containing 6.2 acres, being entirely within the South half of the northwest quarter of said Section 7, for the purpose of constructing and maintaining an Engineer's Camp for construction of El Capitan Reservoir dam and pipe line; camp to consist of office, dormitory, bath-house, engineer's cottage, mess-house, garage and six tent-houses. Area to be fenced against stock.

subject to the following conditions:

1. The permittee shall pay No charge under Regulation L-2 (B) & (H).
2. The permittee shall comply with the regulations of the Department of Agriculture governing the National Forest, shall observe all sanitary laws and regulations applicable to the premises, and shall keep the premises in a neat and orderly condition and dispose of all refuse and locate outhouses and cess-pools as required by the Forest officers.
3. This permit is subject to all valid claims.
4. The permittee shall take all reasonable precautions to prevent and suppress forest fires.
6. The permittee shall pay the United States for any damage to its property resulting from this use.

7. The permittee shall fully repair all damage, other than ordinary wear and tear, to roads and trails in the National Forests caused by the permittee in the exercise of the privilege granted by this permit.

8. Construction work (or occupancy and use) under this permit shall begin within one month, be completed within 3 years from the date of the permit, and this use shall be actually exercised at least 6 months each year, unless the time is extended or shortened.

9. In case of change of address, permittee shall immediately notify the Forest Supervisor.

10. The charges for this use may be readjusted whenever necessary to place this permit on a basis consistent with the charge to other permittees for like privileges. A general re-adjustment will be made at the end of five years from the date of issuance of permit and at the end of each five-year period thereafter.

11. No National Forest timber may be cut or destroyed without first obtaining a permit from the Forest Supervisor.

12. Upon the abandonment, termination, or revocation of this permit, and in the absence of an agreement to the contrary, the permittee, if all the rental charges due the Government have been paid, may, within a reasonable period to be determined by the issuing officer, remove all structures which have been placed on the premises by him, except where the material was furnished by the Forest Service, but upon failure to remove the structures within that period they shall become the property of the United States.

13. This permit may be transferred with the approval of the officer by whom it was given or his successor, subject to such conditions as may be imposed at the time of transfer. It shall terminate upon breach of any of the conditions herein or at the discretion of the District Forester or the Forester.

14. The permittee shall provide, whenever requested by the Forest officers, a way across the land covered by this permit for the free ingress or egress of Forest officers and for users of National Forest land and purchasers of National Forest products.

15. At termination of this permit, such of the buildings and improvements as deemed necessary for administrative purposes of the Cleveland National Forest by the Forest Supervisor, will be left on the area by the permittee and will become the property of the United States Forest Service; no reimbursement is to be made by the U. S. Forest Service for any such buildings and improvements selected.

Stipulations on attached sheets are made a part of this permit.

December 21, 1931

L. H. ANDERSON (Signature)

Forest Supervisor

Uses, Cleveland
City of San Diego
Engineer's Construction Camp
12/18/31

STIPULATIONS SUPPLEMENTAL TO FORM 832

16. - Under this permit the permittee shall not rent or otherwise commercialize this site. If it is wished to do so, a commercial permit must first be obtained from the Forest Supervisor.
17. - Disorderly or otherwise objectionable conduct by the permittee or others occupying the premises with the permission of the permittee, shall upon proof thereof, be cause for revocation of the permit.
18. - The permittee shall take all possible precautions to prevent pollution of the waters of all streams in the vicinity of this tract. All cans and other refuse must be buried or burned. Fly tight garbage pit must be provided.
19. - Waste water from sinks or baths must be piped into a fly-tight cesspool, located as directed by the Forest officer.
20. - Latrines and cesspools shall be in accordance with the requirements of the State and County Boards of Health.
21. - All flues from ceiling through roof or walls must be of terra cotta pipe with galvanized stovepipe completely through terra cotta; or of terra cotta pipe encased in galvanized iron. Spark arresters satisfactory to the Forest Service shall be placed over all outlets. See blue prints attached.
22. - The permittee shall clear and keep clear the premises of all inflammable brush, undergrowth and other debris, but shall burn no debris without consent of a Forest officer. Permittee shall construct a 50-foot fire-break around the exterior boundary of the area, and the firebreak shall be kept clear of all inflammable material during the period of this permit.
23. - This permit shall be in effect only during the period of construction of El Capitan Dam and Pipeline, and the area shall be cleaned up to the satisfaction of the Forest officer in charge when use is terminated.
24. - No less than three large fire extinguishers fully charged and in readiness for instant use will be kept at all times in the camp. Not less than ten shovels, six axes and twelve canteens in good condition will be kept in camp

for firefighting use; this equipment to be stored and labeled "For fire fighting use only", as directed by Forest officer in charge and will be subject to his inspection at all times.

25. - The permittee shall require its employees, both independently and at the request of Forest officers, to do all reasonably within their power in prevention and suppression of fires.
26. - The permittee shall allow Forest officers of the Forest Service free and unrestricted access in, through and across lands covered by this permit in the performance of their official duties.
27. - Barb wire may not be used to enclose the land used under this permit. Smooth wire (without barbs) may be used for any fencing necessary.
28. - To eliminate fire hazard, the area allotted to the permittee must be cleared of all dead leaves, needles, grass, and the shrubbery trimmed, as directed by the Forest officer, not later than May 1 of each year.

U. S. FOREST SERVICE
DEPARTMENT OF AGRICULTURE

SPECIAL USE PERMIT

L
Uses, Cleveland
City of San Diego,
Sand, Gravel, Stone, 1/11/32

Permission is hereby granted to The City of San Diego, Water Development Department of San Diego, Calif. to use the following-described lands: Lots 5, 6, 11, 12, 13 & 14, and the E 1/2 SW 1/4, and the SE 1/4, of Section 6, also the NW 1/4 SE 1/4 of Section 7, being in Twp. 15 S., R. 2 E., S.B.M., amounting to approximately 520.96 acres for the purpose of obtaining materials (stone, rock, gravel, sand, dirt, etc.) for use in connection with construction of El Capitan Dam, Reservoir, Pipeline and Road.

subject to the following conditions:

1. The permittee shall pay Free Use; under Reg. L-2(K).
2. The permittee shall comply with the regulations of the Department of Agriculture governing the National Forest, shall observe all sanitary laws and regulations applicable to the premises, and shall keep the premises in a neat and orderly condition and dispose of all refuse and locate outhouses and cesspools as required by the Forest officers.
3. This permit is subject to all valid claims.
4. The permittee shall take all reasonable precautions to prevent and suppress forest fires.
5. The permittee, if engaged in business, shall conduct same in an orderly manner and in accordance with all requirements of the laws of the State of California, as well as the laws of the United States.
6. The permittee shall pay the United States for any damage to its property resulting from this use.
7. The permittee shall fully repair all damage, other than ordinary wear and tear, to roads and trails in the National Forests caused by the permittee in the exercise of the privilege granted by this permit.
8. Construction work (or occupancy and use) under this permit shall begin within twelve months, be completed within five years from the date of the permit, and this use shall be actually exercised at least ---- days each year, unless the time is extended or shortened.

9. In case of change of address, permittee shall immediately notify the Forest Supervisor.

10. The charges for this use may be readjusted whenever necessary to place this permit on a basis consistent with the charge to other permittees for like privileges. A general re-adjustment will be made at the end of five years from the date of issuance of permit and at the end of each five-year period thereafter.

11. No National Forest timber may be cut or destroyed without first obtaining a permit from the Forest Supervisor.

12. Upon the abandonment, termination, or revocation of this permit, and in the absence of an agreement to the contrary, the permittee, if all the rental charges due the Government have been paid, may, within a reasonable period to be determined by the issuing officer, remove all structures which have been placed on the premises by him, except where the material was furnished by the Forest Service, but upon failure to remove the structures within that period they shall become the property of the United States.

13. This permit may be transferred with the approval of the officer by whom it was given or his successor, subject to such conditions as may be imposed at the time of transfer. It shall terminate upon breach of any of the conditions herein or at the discretion of the District Forester or the Forester.

14. The permittee shall provide, whenever requested by the Forest officers, a way across the land covered by this permit for the free ingress or egress of Forest officers and for users of National Forest land and purchasers of National Forest products.

Continued on attached sheets Numbers 1 to 4, inclusive

January 29, 1932

L. H. ANDERSON (Signed)

Forest Supervisor.

Continuation Sheet #1 of Special Use Permit designated:

"CITY OF SAN DIEGO, SAND, GRAVEL, STONE, 1/11/32"

15. Oil shall be used exclusively as fuel in the operation of all locomotives and steam equipment employed for the removal of sand and gravel, or for any other purpose.

16. All such equipment shall further be equipped with a spark arrester of an acceptable type.

17. The flues of all buildings, including all cook houses, constructed under this permit shall be equipped with spark arresters or screens of acceptable type.

18. Before any building is erected in pursuance of this permit, the ground within 100 feet shall be cleared of all brush or other inflammable material, including grass, which shall be disposed of in accordance with the instructions and under the supervision of the Forest officer in charge, or his authorized representative.

19. The permittee shall dispose of all brush and refuse accumulating upon said area at such times and in such manner as may be required by the Forest officer.

20. The permittee shall require its employees, contractors and employees of contractors, both independently and at the request of Forest officers, to do all reasonably within their power in prevention and suppression of fires.

21. The permittee shall pay the United States depository, or other designated officer, on demand for any or all damage caused by fire or otherwise to the United States by reason of the use and occupancy of the land under this permit. When any fires shall occur on or within two hundred feet of such area, it shall be conclusively presumed to have resulted from said use, occupation, or construction work unless the permittee shall show affirmatively that the fire was set by other than itself, its employees, or contractors, or the employees of such contractors, and that every steam locomotive, engine and boiler, used on said area at the time of such fire, used oil exclusively for fuel and was equipped with an efficient spark arrester and that the flues of all buildings were equipped with efficient screens or spark arresters.

22. This liability for damage shall not be affected by any provision of any contract, which the permittee may make in connection with the construction of the dam above mentioned, or for other use of the area. The permittee shall be held liable for all damages notwithstanding such contract.

23. The permittee shall pay all permittees of the Forest Service for damages done to their premises, caused by the use and occupancy of said area, and in case an agreement as to damage cannot be reached, it shall be determined by the Forest Service.

24. The permittee shall allow Forest officers of the Forest Service free and unrestricted access in, through and across lands covered by this permit in the performance of their official duties. And the Forest Service may, without charge, construct or permit to be constructed in, through and across the lands covered by said permit, roads, trails and other means of transportation, transmission and conduit lines, not inconsistent with the enjoyment of the use by the permittee, its successors or assigns.

25. During the period between March 1 and November 30 of each year, no smoking shall be allowed by any employees of the permittee, contractors or employees of contractors, within fifty feet of any brush, grass or other inflammable material, except within the limits of established camps; provided, that in times of emergency this period may be extended at the discretion of the Forest Supervisor. Any employee of the permittee, contractor or employees of contractors, violating this provision, shall be immediately discharged or transferred to work outside of the National Forest. Unless smoking is prohibited and prevented, except as above specified, during the period of construction the permittee shall be responsible for all fires resulting from smoking either by its agents, or its contractors or their agents.

26. In case of emergency, the permittee, contractors, or employees of contractors of the permittee, locally in charge, shall, upon request, place at the disposal of the Forest officers for fire fighting purposes, all construction crews or other employees locally available, including those engaged in construction of the El Capitan Dam. Such employees while employed on fire fighting will be paid by the Forest Service at the regular schedule of rates applying for fire fighting unless it shall be shown that the fire upon which they are employed originated upon the permittee's area or through its agency or negligence.

27. During the period of the construction of the dam, all steam equipment operating within 300 feet of any brush or grass covered area, shall be equipped with a connected steam force pump of not less than one inch discharge; 300 feet of serviceable hose; six large pails; six shovels; three axes; and a constant supply of not less than the equivalent of twelve barrels of water.

At least one tank truck of not less than 500 gallons capacity equipped with necessary pumps and with not less than 1,000 feet of suitable hose, shall be available in this area for immediate use.

28. From March 1 to November 30 of each year, no engine or other steam excavating or grading contrivance in actual use, operating within 300 feet of any brush or grass covered area, will be left during the noon hour without a watchman, and during the same period of each year, this permittee shall employ a night watchman for each such engine to guard against the escape of fire therefrom. Provided, that stipulations 27 and 28 shall not apply to gasoline or electrically operated equipment.

29. During the period covered by this permit, there shall be available in the main construction camp at the El Capitan Project, a complete fire fighting outfit for one hundred men; consisting of 100 one-gallon canteens; 50 axes; 70 shovels; 50 ten-inch mill files; 50 lanterns; and 2 foot-power grinders. This equipment to be kept intact and for the use of crews on suppression of fires.

30. From May 1 to November 30 of each year during the period of the building of said El Capitan Project, for the protection of the surrounding area from fire, a chief fire warden shall be appointed by the Forest Supervisor, whose duty it shall be to inspect and supervise the work done by the permittee, his contractors, or sub-contractors, in the clearing of the area of brush and other inflammable material, and the disposal thereof, and to direct the suppression work on any fires which may start, also to enforce both fire and other Forest Service regulations and stipulations. The salary of the chief fire warden shall be at a rate of not to exceed \$150 per month, and will be paid by the permittee when certified by the proper Forest official. If deemed necessary by the Forest Supervisor, he shall be furnished living quarters. He shall be appointed a Forest officer and work under instructions of the District Ranger.

31. When, in the judgment of the Forest officer in charge, it is dangerous to burn or to have fire burning, all burning operations will cease and existing fires will be extinguished and no burning will be done until the situation is relieved and permission is obtained from the Forest officer.

32. All fires within this area will be confined to those used under boilers of equipment used in connection with excavation and transportation of materials and for similar purposes. No open fires will be allowed during any period of the year except those necessary for the disposal of brush or debris, and then only with the permission and under the direct supervision of the Forest officer in charge.

33. If fire is used in clearing on the site during any period from March 1 to November 30, one or more pumps together with sufficient hose to reach all parts of the area, as deemed necessary by the Supervisor to safeguard the area from fire, shall be installed by the permittee. The make and capacity of said pumps shall be approved by the Forest Supervisor.

34. The permittee, employees of the permittee, contractors or employees of contractors, will observe all National Forest, State and County regulations, laws and ordinances pertaining to care with fire. No blasting will be done other than with the use of electric detonators.

35. The permittee will furnish the office of the Forest Supervisor, 310 Federal Building, San Diego, California, by January 15 of each year, a report showing, by classes of materials total yardage of materials removed under this permit during the preceding calendar year.

Dated: 2/12/32

(Signed) L. H. Anderson

Forest Supervisor.

Accepted this Day of , 1932.

CITY OF SAN DIEGO, WATER DEVELOPMENT DEPARTMENT

By Hydraulic Engineer

Mayor, City of San Diego.

cc to Descanso Ranger

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
CLEVELAND NATIONAL FOREST

January 28, 1932.

L
Uses, Cleveland
City of San Diego

Mr. H. N. Savage, Hydraulic Engineer,
City of San Diego, Water Development Dept.,
San Diego, California.

Dear Sir:

Reference is made to your letter of January 11, 1932, and Special Use application requesting permanent use for the City of San Diego, of certain government lands within the Cleveland National Forest in and adjoining the proposed El Capitan dam and reservoir site in San Diego Canyon. The lands as described were:

Lot 2 (SW-1/4 of NW-1/4); SE-1/4 of NW-1/4; NE-1/4 of SE-1/4; in Section 7, and about 67.2 acres in NE-1/4 of NE-1/4 of Section 7; NW-1/4 of NW-1/4 of Section 8; and E-1/2 of SW-1/4 of SE-1/4; S-1/2 of NE-1/4 of SE-1/4 of Section 5. All in Twp. 15 S., R. 2 E., S.B.M.

This office referred your letter and the application to our Regional Forester's office at San Francisco for advice as to what action should be taken.

The following information has been received from the Regional Forester's office:-

"Forest Service Regulations and Policies oppose the granting of more lands than are essential for the adequate protection of similar projects and would prefer that the City file application for such lands as are actually necessary for the construction and maintenance of the El Capitan dam and reservoir, under the Act of February 1, 1905 (33 Stat., 628).

"The Forest Service would agree to any reasonable restrictions in use of the adjacent National Forest land that would protect the interests of both the City of San Diego and the general public. We will cooperate with the City in every way possible in the protection of its municipal water development, but do not believe all of the

lands in the vicinity of the dam and reservoir should be controlled by the City."

The Act of February 1, 1905; under Section 4, provides for rights of way through National Forests for dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals for municipal purposes, and reads as follows:-

"SEC.4. That rights of way for the construction and maintenance of dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals, within and across the forest reserves of the United States, are hereby granted to citizens and corporations of the United States for municipal or mining purposes, and for the purposes of the milling and reduction of ores, during the period of their beneficial use, under such rules and regulations as may be prescribed by the Secretary of the Interior, and subject to the laws of the State or Territory in which said reserves are respectively situated."

Application for use of lands under this Act should be made in the form of a map and field notes, in duplicate, and must be filed in the local land office, in this case with the Los Angeles U. S. Land Office.

This office will be glad to give any assistance possible.

Very truly yours,

L. H. ANDERSON (signature)

L. H. ANDERSON,
Forest Supervisor.

CC: to Regional Forester
Descanso Ranger

11/1/32
copy /f

2840

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
SPECIAL USE APPLICATION

Application is hereby made for permit to use the following described lands: Lot 2 (SW 1/4 of NW 1/4), SE 1/4 of NW 1/4, NE 1/4 of SE 1/4 in Section 7; about 67.2 acres in NE 1/4 of NE 1/4 Section 7 and NW 1/4 of NW 1/4 Section 8; E 1/2 of SW 1/4 of SE 1/4 and S 1/2 of NE 1/4 of SE 1/4 Section 5; all in Township 15 south, Range 2 east, S.B.B. & M.

for the purpose of (See attached sheet)

Construction of intended improvements will begin within immediately and be completed within _____ months; the premises will be used at least permanently each year; the contemplated improvements will cost approximately Five and one-half million dollars and will consist of the following:

CITY OF SAN DIEGO

By H. N. Savage

January 11, 1932

Hydraulic Engineer

Special Use Permit, comprahending Lot 2 (SW 1/4 of NW 1/4) SE 1/4 of NW 1/4, NE 1/4 of SE 1/4 in Section 7; About 67.2 acres in NE 1/4 of NE 1/4 Section 7 and NW 1/4 of NW 1/4 Section 8; E 1/2 of SW 1/4 of SE 1/4 and S 1/2 of NE 1/4 of SE 1/4 Section 5; All in Township 15 south, Range 2 east S.B.B. & M. applied for by the City of San Diego is permanently required by the City for the construction and perpetual operation and maintenance thereof by the City of San Diego of the El Capitan Dam and Reservoir and Pipe Conduit for the conservation and carrying to the City of San Diego in perpetuity, water resources of the San Diego River Drainage Basin, and for the relocation, construction and permanent operation and maintenance of public highways to the El Capitan feature and around the dam and reservoir.

Recently, when in Washington D.C. applying for 920 acres of additional reservoir lands in the Capitan Grande Indian Reservation and additional reservoir lands and 40 acres in the Cleveland National Forest for the El Capitan Reservoir Feature, the forestry officials advised that under the present policies of the Forest Service they would not recommend that the Congress grant the City of San Diego the fee of the additional reservoir lands required within the Cleveland National Forest, but that upon direct application thru proper agencies to the Forest Service for free use permit, the fullest cooperation could be depended upon from the Forest Service.

The City of San Diego is negotiating to purchase outright from the present owners also Lot 1 (NW 1/4 of the NW 1/4), NE 1/4 of the NW 1/4 and the W 1/2 of the NE 1/4 of Section 7, Township 15 south, Range 2 east S.B.B. & M. from which to obtain materials necessary for the construction of the dam, and also a suitable site for the contractor's construction camp, and for the further purpose of protecting the work and adjacent vicinity perpetually from trespassers.

The City is already clearing the damsite of all trees, shrubs, brush and vegetable matter and will probably continue to utilize the labor in clearing the floor of the reservoir basin along the lower river valley.

The City is also salvaging and moving the former engineers and inspectors camp buildings in their entirety from the abandoned Sutherland dam feature of the San Dieguito River Project, for installation on the Forest Service lands as hereinabove applied for. It is understood that the installation and perpetual operation and maintenance of the Sutherland camp buildings originally cost the City of San Diego over \$25,000. The buildings are all immediately required for the City's forces, engineers inspectors and unemployed labor, and they will likely be maintained permanently by the City for residences for the City's employees in operating and maintaining the dam and reservoir.

The City and the contractor may employ a combined labor force during the construction period of upwards of two years of about 200 laborers and a City force perpetually thereafter for the operation and maintenance of the dam and reservoir.

The City of San Diego will be under the necessity of constructing a public highway over the dam and around the reservoir to serve the public in place of the highway now running along the San Diego River valley, thru the dam and reservoir sites, to provide for travel from the present highway up the San Diego River over the left or south abutment of the dam, and, after passing over the dam, continue around the reservoir occupying the flume bench now being used by the La Mesa, Lemon Grove & Spring Valley Irrigation District, which is to be abandoned as soon as the reservoir is put into operation. The City of San Diego proposes to widen the flume bench sufficiently to provide a satisfactory public highway.

July 18, 1932

U. S. General Land Office
Los Angeles, California.

Subject: San Diego River Project, El Capitan
Feature, Right of way over Public
Lands.

Gentlemen:

Application is being made for perpetual use of certain lands in the Cleveland National Forest required for the construction, maintenance and perpetual operation of the City of San Diego's El Capitan Reservoir Dam, Spillway and Outlet Works, and El Capitan-San Diego pipe conduit.

Maps and field notes have been prepared in compliance with regulations issued in Circular No. 1237 of the United States Department of the Interior, General Land Office.

Very truly yours,

H. N. Savage,
Hydraulic Engineer

HNS/p
Encls. (4)
Drawing WD-409 Sheets 1, 2, 3, 4
Drawing WD-387
Application and field notes

IN THE MATTER OF THE APPLICATION OF THE
CITY OF SAN DIEGO, A MUNICIPAL CORPORATION
FOR A RIGHT OF WAY FOR THE CONSTRUCTION
AND MAINTENANCE OF DAM AND RESERVOIR FOR
MUNICIPAL AND DOMESTIC PURPOSES.

The City of San Diego, a municipal corporation,
respectfully petitions the Secretary of the Interior of
the United States as follows:

I.

That the petitioner is a municipal corporation organized
and existing under and pursuant to Section Eight of Article
Eleven of the Constitution of the State of California.

II.

That the petitioner is duly and regularly authorized by
the Charter of the City of San Diego and by the Constitution
of the State of California to develop, impound, conserve and
distribute for municipal purposes water in the County of San
Diego, State of California.

That the City of San Diego has been decreed by the
Courts of highest and final jurisdiction in fee simple the
prior and paramount right to the use of all the water (surface
and underground) of the San Diego River, including its tribu-
taries from its source to its mouth, by decision of the
California State Supreme Court March 31, 1930 (77 Cal. Dec. 766)

III.

That said petitioner is now constructing a dam and
reservoir for the purpose of developing water for municipal
uses on the land hereinafter described, conveying water to
the City of San Diego, roads and constructing permanent
headquarters for resident reservoir forces on the lands
hereinafter described and that maps of said proposed
development insofar as it relates to and affects the lands
of the United States of America, together with field notes
and description of the survey locating said proposed works
on said Government land, together with certificate of the
Engineer in Charge, Bureau of Water Development of the
City of San Diego certifying the amount of water flowing in
the San Diego River at the El Capitan Damsite during the
years 1883-1931, the amount of water in acre feet available
for storage and diversion, the amount of water which the
City proposes to divert annually from the stream or streams
affected, the period of time during which the water is to
be diverted, and the means of conveyance of said water to
the Municipal Corporation is filed herewith and made a part
hereof and by reference thereto.

IV.

The land under control of the United States Government, over which the City seeks right-of-way for purpose of storing, conserving, impounding and conveying water in perpetuity for municipal use, constructing headquarters, etc., is described as follows to-wit:

All of NE 1/4 of NE 1/4 of Section 7 and NW 1/4 of NW 1/4 Section 8 excepting such portions below the 160 foot contour granted June 6, 1924 by the Department of the Interior;

All of the S 1/2 of NW 1/4 of Section 7, except flume right of way and except right of way for public highway 40 feet in width;

All of NE 1/4 of SE 1/4 of Section 7;

All of the E 1/2 of SW 1/4 of SE 1/4 and S 1/2 of NE 1/4 of SE 1/4 of Section 6;

All in Township 15 south, Range 2 east, S.B.B. & M.

Wherefore, the City of San Diego respectfully petitions the Secretary of the Interior to grant to said City under the Act of February 1, 1905 entitled "An Act providing Right of Way through National forests for dams, reservoirs, water plants, ditches, flumes, pipes, tunnels and canals for municipal, mining purposes", a right of way for the purposes hereinabove described in order to conserve, impound, store, use and convey water in perpetuity for municipal and domestic purposes.

THE CITY OF SAN DIEGO

By John F. Forward Jr. (Signature)

Mayor of the City of San Diego

G. L. Byers (Signature)

City Attorney of the City of
San Diego

STATE OF CALIFORNIA)
) SS.
 County of San Diego)

John F. Forward Jr., being first duly sworn, deposes and says: That he is Mayor of The City of San Diego, a municipal corporation, petitioner in the foregoing application and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information or belief and as to those matters he believes it to be true.

John F. Forward Jr. (Signature)

Subscribed and sworn to before
 me this 12th day of July 1932.

W. E. Stevens (Signature)

Notary Public

STATE OF CALIFORNIA)
) SS.
 County of San Diego)

H. N. Savage, being first duly sworn, deposes and says: That he is the Engineer in Charge Bureau of Water Development of the City of San Diego, that he has had occasion and opportunity to study the records of the rainfall and runoff of the San Diego River watershed;

That the amount of water flowing in said San Diego River at the El Capitan Damsite, the proposed point of diversion by the City of San Diego, during the preceding years is, from observation and interpolation, about as follows:

Season	Acre Feet	Season	Acre Feet
1883-4	280,000	1907-8	9,099
1884-5	14,000	1908-9	39,448
1885-6	57,000	1909-0	18,326
1886-7	14,000	1910-1	10,991
1887-8	8,800	1911-2	12,005
1888-9	17,300	1912-3	1,691
1889-0	32,000	1913-4	10,452
1890-1	54,000	1914-5	48,977
1891-2	23,300	1915-6	194,335
1892-3	12,200	1916-7	25,900
1893-4	3,900	1917-8	7,800
1894-5	83,000	1918-9	3,900
1895-6	0	1919-0	37,600
1896-7	12,500	1920-1	1,535
1897-8	0	1921-2	100,231
1898-9	0	1922-3	12,999
1899-0	0	1923-4	2,589
1900-1	2,000	1924-5	3,147
1901-2	1,600	1925-6	16,192
1902-3	7,800	1926-7	100,700
1903-4	0	1927-8	4,700
1904-5	32,400	1928-9	6,703
1905-6	67,005	1929-0	9,176
1906-7	44,796	1930-1	1,866

That there will be available in said reservoir for storage and diversion 186,740 acre feet, and it is proposed to divert annually water from the San Diego River at El Capitan Damsite the entire flow of the River for municipal and domestic uses.

That the area of the San Diego River watershed above the El Capitan Damsite, exclusive of the twelve square miles of Cuyamaca Reservoir drainage area, is 178 square miles; inclusive of Cuyamaca Reservoir drainage area is 190 square miles.

That the average annual rainfall at the San Diego River diverting dam as observed from July 1904 to July 1931 is 18.12 inches.

That the estimated average yearly runoff from 1883 to 1931 at the said damsite exclusive of reservoir evaporation is 30,166 acre feet.

That the ultimate proposed dam will have a maximum storage height not to exceed 235 feet, length of dam about 1240 feet and the base width at streambed surface about 1440 feet.

That said water will be conveyed to said City by means of a closed pipe line to a distributing reservoir in the City of San Diego.

H. N. Savage (Signature)

H. N. Savage
Engineer in Charge, Bureau
of Water Development, City
of San Diego, California.

Subscribed and sworn to
before me this 12th day
of July 1932.

W. E. Stevens (Signature)
Notary Public

FIELD NOTES
OF THE SURVEY WITHIN
CLEVELAND NATIONAL FOREST RESERVE

Portion of NE 1/4 of NE 1/4 Section 7 and Portion of
NW 1/4 of NW 1/4 Section 8, Township 15 south, Range
2 east, S.B.B. & M. proposed to be utilized by the

CITY OF SAN DIEGO
a Municipal Corporation

In the development and storing of water for municipal
and domestic supply

Portion of Survey commenced June 22, 1921 and completed
October 18, 1921, and surveyed by J. W. Williams,
Engineer Bureau of Water Development, City of San Diego
and

Portion of survey commenced January 22, 1932 and
completed February 5, 1932 under the direction of
H. N. Savage, Engineer in Charge, Bureau of Water
Development, City of San Diego, California.

Address of Claimant:

City of San Diego

H. N. Savage, Engineer in Charge,
Bureau of Water Development

524 F Street

San Diego, California.

Beginning at Station 1, being the corner common to Sections 5, 6, 7 and 8, Township 15 south, Range 2 east, S.B.B. & N., the true point of beginning!

Thence N 88° 21' E 1310.1 feet to Station 2
 S 1° 09' W 1315.25 " " 3
 S 88° 59' W 604.14 " " 4 being a point on the intersection of the 160 foot contour with the south boundary of the NW 1/4 of Section 8!

Station	Bearing	Distance	Point of beginning
5	N 50° 08' W	132.39 feet to Station 5	
6	N 36° 41' W	84.2	
7	S 88° 44' W	130.4	
8	N 75° 45' W	111.3	
9	N 66° 21' W	147.6	
10	N 71° 38' W	132.6	
11	N 61° 55' W	18.31	
12	N 61° 55' W	139.17	
13	N 59° 19' W	109.9	
14	S 88° 32' W	96.3	
15	N 83° 55' W	194.6	
16	S 75° 45' W	126.7	
17	S 47° 01' W	138.4	
18	S 21° 28' W	148.8	
19	S 69° 22' W	112.5	
20	S 1° 28' W	127.22	
21	S 89° 23' W	375.02	
22	N 0° 38' W	1299.2	
1 the true	N 89° 23' E	1873.55	

AREA

The total area included within the line as surveyed is 67.2 acres.

INSTRUMENTS

The survey was made with a C. L. Berger transit with a 6 inch plate reading to 30".

The courses of a portion of the survey were run from the true meridian determined by solar observations taken in 1921 as shown on "Field Notes of the Survey of El Capitan Dam and Reservoir Site" on the City's application for Reservoir Lands to United States Land Office filed February 28, 1922 and bearing original United States Land Office No. 038015 and the remainder of the courses were taken from the true meridian determined by solar observations taken January 22, 1932.

The distances on the 160 foot contour line and others shown on above application No. 038015 were measured in 1921 with a 200 foot steel tape. The remaining distances were

measured in 1932 with a 100 foot steel tape.

The 160 foot reservoir contour was run in 1921 with a
W + L. E. Gurley twenty two inch wye level in good adjustment.

FINAL OATH OF SURVEYOR

STATE OF CALIFORNIA)
(SS.
County of San Diego)

J. W. Williams, being first duly sworn, deposes and says:

That he is Engineer in the Bureau of Water Development of the City of San Diego, California; that the survey of the El Capitan reservoir and damsite included the survey of portions of NE 1/4 of NE 1/4 of Section 7 and Portion of NW 1/4 of NW 1/4 Section 8, all in Township 15 south, Range 2 east, S.B.B. & M., and as shown on map and "Field Notes of the Survey of El Capitan Dam and reservoir sites" accompanying the City's application for reservoir land to United States Land Office, filed February 28, 1925 and bearing original United States Land Office No. 038015, and was made within the period of June 22, 1921 to October 18, 1921, and was made by him in conformity with instructions from the City Attorney, and that the foregoing is a true and correct copy of a portion of the original field notes of said survey, and that it correctly represents and describes the works in the accompanying application and the location of streams in the immediate vicinity.

J. W. Williams (Signature)

J. W. Williams
Engineer Bureau of Water
Development, City of
San Diego, California.

Subscribed and sworn to before me
this 12 day of July 1932.

W. E. Stevens (Signature)
Notary Public

STATE OF CALIFORNIA)
) SS.
 County of San Diego)

H. N. Savage, being first duly sworn, deposes and says that the portion of the NE 1/4 of the NE 1/4 of Section 7 and portion of NW 1/4 of NW 1/4 of Section 8, Township 15 south, Range 2 east, S.B.B. & M., and which was not shown on map and in field notes of the "Survey of El Capitan Dam and reservoir sites" accompanying the City's application for reservoir land to United States Land Office, filed February 28, 1925 and bearing original United States Land Office No. 038015, was surveyed under his directions in the period of January 22, 1932 to February 5, 1932, and that the foregoing is a true and correct copy of the original field notes of said survey, and that it correctly represents the works described in the accompanying application and the location of streams in the immediate vicinity.

H. N. Savage (Signature)
 H. N. Savage
 Engineer in Charge Bureau
 of Water Development,
 City of San Diego, California.

Subscribed and sworn to before me
 this 18th day of July 1932.

W. R. Stevens (Signature)
 Notary Public

FIELD NOTES
OF THE SURVEY WITHIN
CLEVELAND NATIONAL FOREST RESERVE

S 1/2 of NW 1/4 of Section 7, Township 15 south,
Range 2 east S.B.B. & M., in the County of San Diego,
State of California, proposed to be utilized by the

CITY OF SAN DIEGO

a Municipal Corporation

In the carrying of water to the City of San Diego,
in perpetuity from the water resources of the
San Diego River drainage basin, El Capitan Reservoir
Feature and for permanent headquarters for resident
reservoir forces.

Survey commenced September 5, 1931

Survey completed May 19, 1932 under

direction of H. N. Savage, Engineer in Charge
Bureau of Water Development
City of San Diego.

Address of Claimant:

City of San Diego

H. N. Savage, Engineer in Charge
Bureau of Water Development

524 F Street

San Diego, California.

N 87° 02'	W 129.45	feet to Station 14, thence
S 66° 44'	W 220.16	" " " 15, "
N 73° 16'	W 204.82	" " " 16, "
S 82° 44'	W 123.78	" " " 17, "
N 69° 46'	W 72.11	" " " 18, "
N 76° 16'	W 52.77	" " " 19, "
N 80° 30'	W 121.63	" " " 20, "
S 80° 56'	W 131.93	" " " 21, "
N 86° 57'	W 179.35	" " " 22, "
N 72° 11'	W 150.97	" " " 23, "
N 77° 11'	W 187.59	" " " 24, "
N 84° 01'	W 176.84	" " " 25, "
N 58° 01'	W 117.46	" " " 26, "
N 86° 41'	W 94.23	" " " 27, "
N 66° 51'	W 121.22	" " " 28, "
N 61° 08'	W 103.19	" " " 29, "
N 43° 18'	W 66.59	" " " 30, "
N 52° 24'	W 7.63	" " " 31, being a point

on the north line of S 1/2 of NW 1/4 Section 7 and being
 N 2° 45' 40" E 1291.37 feet; thence
 N 89° 35' 31" E 303.89 feet from the west 1/4 corner of
 Section 7.

AREA

The area applied for and included in the S 1/2 of the NW 1/4 of Section 7, Range 2 east S.B.B. & M., is 80.25 acres excepting therefrom right of ways of San Diego flume and County Road.

INSTRUMENTS

This survey was made with a C. L. Berger transit with a six inch plate reading to 30".

The courses were run from the true meridian determined by solar observations taken January 22, 1932.

The distances were measured with a one hundred foot steel tape.

FIELD NOTES
OF THE SURVEY WITHIN
CLEVELAND NATIONAL FOREST RESERVE

NE 1/4 of SE 1/4 of Section 7, Township 15 S,
Range 2 east, S.B.B. & M., in the County of
San Diego, State of California, proposed to
be utilized by

THE CITY OF SAN DIEGO
a Municipal Corporation

In the development and storing of water for
municipal and domestic supply

Survey commenced January 22, 1932

Survey completed January 28, 1932

Surveyed under direction of

H. N. Savage
Engineer in Charge
Bureau of Water Development
City of San Diego

Address of Claimant:

City of San Diego

H. N. Savage, Engineer in Charge
Bureau of Water Development

524 F Street

San Diego, California.

Beginning at Station 1, the true point of beginning, being the east 1/4 corner of Section 7, Township 15 south, Range 2 east S.B.B. & M.,

Thence S	0° 22' 40"	E	1300.76	feet to	Station 2	
"	S 89° 34' 20"	W	1314.67	"	"	3
"	N 0° 05' 20"	E	1299.67	"	"	4
"	N 89° 31' 30"	E	1303.64	"	"	1 the

true point of beginning.

AREA

The total area included in the NE 1/4 of SE 1/4 of Section 7, Township 15 south, Range 2 east, S.B.B. & M., is 40 acres.

INSTRUMENTS

This survey was made with a C. L. Berger transit with a six-inch plate reading to 30".

The courses were run from the true meridian determined by solar observations taken January 22, 1932.

The distances were measured with a one hundred foot steel tape.

FIELD NOTES
OF THE SURVEY WITHIN
CLEVELAND NATIONAL FOREST RESERVE

E 1/2 of SW 1/4 of SE 1/4, and S 1/2 of NE 1/4
of SE 1/4 of Section 5, Township 15 south, Range
8 east, S.B.B. & M., in the County of San Diego,
State of California, proposed to be utilized by

THE CITY OF SAN DIEGO

a municipal corporation

In the Development and Storing of Water
for municipal and domestic supply

Survey commenced January 22, 1932

Survey completed April 7, 1932

Surveyed under direction of

H. N. Savage
Engineer in Charge
Bureau of Water Development
City of San Diego

Address of Claimant:

City of San Diego

H. N. Savage, Engineer in Charge
Bureau of Water Development

524 F Street

San Diego, California.

Beginning at the south quarter corner of Section 5, Township 15 south, Range 2 east, thence N 87° 58' 30" E 675.56 feet to station 1, the true point of beginning!

Thence N 0° 04' 45" E 1289.09 feet to station 2
N 87° 04' 52" E 670.61 " " 3
S 0° 09' 36" E 1299.37 " " 4
S 87° 58' 30" W 675.56 " " true point
of beginning, and

Beginning at the south quarter corner of Section 5, thence N 0° 19' 14" E 1278.82 feet; thence N 87° 04' 52" E 1241.22 feet to station 5, the true point of beginning!

Thence N 0° 09' 36" E 649.68 feet to station 6
N 86° 37' 46" E 1236.39 " " 7
S 0° 37' 36" E 660.00 " " 8
S 87° 04' 52" W 1241.22 " " 5 the true point of beginning.

The 235 foot contour line, equals Elevation 768 U.S.G.S. datum, where it traverses the E 1/2 of SW 1/4 of SE 1/4 of Section 5, is described as follows:

Beginning at the south 1/4 corner of Section 5, thence N 87° 58' 30" E 1141.80 feet to the true point of beginning, being a point on the south boundary line of Section 5 and designated station 11!

Thence N 5° 10' 00" W 85.90 feet to station 12
N 23° 59' 30" W 89.36 " " 13
N 42° 56' 20" E 28.84 " " 14
N 29° 54' 20" W 25.85 " " 15
N 31° 32' 30" E 30.78 " " 16
N 6° 24' 46" W 50.86 " " 17
N 60° 18' 55" E 56.90 " " 18
N 18° 03' 23" E 66.76 " " 19
N 15° 52' 45" W 88.40 " " 20
N 40° 19' 31" E 135.95 " " 21
N 2° 22' 45" E 129.93 " " 22
S 87° 30' 51" E 46.11 " " 23
N 56° 03' 45" E 40.61 " " 24
N 17° 05' 15" E 31.61 " " 24A being a point on the east boundary line of the E 1/2 of SW 1/4 of SE 1/4 Section 5, and said point being N 0° 19' 14" E 1278.82 feet!

Thence N 87° 04' 52" E 1241.22 feet
S 0° 09' 36" E 618.65 " " from the south 1/4 corner of Section 5.

The 235 foot contour line, equal Elevation 768, U.S.G.S. datum, where it traverses the S 1/2 of NE 1/4 of SE 1/4 of Section 5, is described as follows:

Beginning at the S 1/4 corner of Section 5,
 Thence N 0° 19' 14" E 1278.82 feet
 " N 87° 04' 52" E 1465.24 feet to the true point
 of beginning, being a point on the south boundary line of
 the S 1/2 of the NE 1/4 of Section 5 and designated
 Station 24A;

Thence N 13° 00' 15" E 23.68 feet to Station 25
 " S 47° 11' 25" E 31.85 " " 25A being
 a point on the south boundary line of S 1/2 of NE 1/4
 of SE 1/4 of section 5 and said point being N 0° 19' 14"
 E 1278.82 feet; thence N 87° 04' 52" E 1493.97 feet from
 the S 1/4 corner of Section 5; and

Beginning at the S 1/4 corner of Section 5 N 0° 19'
 14" E 1278.82 feet; thence N 87° 04' 52" E 2556.68 feet to
 the true point of beginning, being a point on the south
 boundary line of S 1/2 of NE 1/4 of SE 1/4 of Section 5 and
 designated Station 24A;

Thence N 31° 41' 26" E	28.37 feet to Station 22	52
" S 70° 11' 25" E	51.60 "	53
" N 48° 54' 55" E	47.75 "	54
" N 13° 56' 05" W	68.51 "	55
" S 63° 27' 17" E	41.93 "	56

being a point on the east boundary line of S 1/2 of
 NE 1/4 of SE 1/4 of Section 5 being S 0° 37' 36" E 5305.51
 feet from the northeast corner of Section 5, Township 15
 south, Range 2 east, S.B.B. & M.

AREA

The area applied for and included in the E 1/2 of SE 1/4
 of SE 1/4 of Section 5, Township 15 south, Range 2 east S.B.B. & M.
 is 20 acres
 The area applied for and included in the S 1/2 of
 the NE 1/4 of SE 1/4 Section 5, Township 15 south, Range
 2 east, S.B.B. & M. is 20 acres
 Total 40 acres

INSTRUMENTS

This survey was made with a C. L. Berger transit with a
 6 inch plate reading to 30 seconds.

The courses were run from the true meridian determined
 by solar observation taken January 22, 1932.

The distances were measured with a two hundred foot steel
 tape.

The water line was run with an A Metz eighteen inch
 eye level in good adjustment.

STATE OF CALIFORNIA)
) SS.
County of San Diego)

H. N. Savage, being first duly sworn deposes and says:
that the survey described as follows:

Beginning at the N 1/4 corner of Section 7, Township 15 south, Range 2 east, S.B.B. & M., thence S 0° 36' 14" W 1289.90 feet to the true point of beginning; thence around the S 1/2 of NW 1/4 of Section 7, Township 15 south, Range 2 east to the true point of beginning being S 0° 36' 14" W 1289.90 feet from the N 1/4 corner of Section 7, Township 15 south, Range 2 east, and

Beginning at the true point of beginning, being the east 1/4 corner Section 7, Township 15 south, Range 2 east S.B.B.&M. around the NE 1/4 of SE 1/4 of Section 7, Township 15 south, Range 2 east to the true point of beginning, being the east 1/4 corner Section 7, Township 15 south, Range 2 east, and

Beginning at S 1/4 corner of Section 5, Township 15 south Range 2 east, thence N 87° 58' 30" E 675.56 feet to the true point of beginning thence around the E 1/2 of SW 1/4 of SE 1/4 to the true point of beginning, and

Beginning at the S 1/4 corner of Section 5, Township 15 south, Range 2 east thence N 0° 19' 14" E 1278.82 feet, thence N 87° 04' 52" E 1341.22 feet to the true point of beginning thence around the S 1/2 of NE 1/4 of SE 1/4 Section 5, Township 15 south, Range 2 east, S.B.B.& M. to the true point of beginning.

Was made under his direction and that the foregoing is a true and correct copy of the original field notes of said survey.

H. N. Savage (Signature)
H. N. Savage
Engineer in Charge
Bureau of Water Development
City of San Diego, California

Subscribed and sworn to before me
this 12th day of July 1932.

W. E. Stevens (Signature)
Notary Public

RIGHTS OF WAY

CAPITAN GRANDE INDIAN RESERVATION

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

WHEREAS, the San Diego Flume Company of the City and County of San Diego, which was organized on the 17th day of May (1886) Eighteen hundred and eighty six, under and by virtue of a charter granted and issued by the Secretary of said State of California, under the laws of said State relating to corporations, on the said seventeenth day of May Eighteen hundred and Eighty-six, a copy of which is hereto annexed duly certified, said corporation as organized consisting of the following named corporators, to-wit: S. H. Marlette and Milton Santee of the County of Los Angeles, Geo. D. Copeland, T. S. Van Dyke, Howard Brittenden and R. H. Stretch, of the City and County of San Diego, the present organization being as follows:

George D. Copeland	President
W. E. Robinson	Vice President
L. F. Doolittle	Secretary
Consolidated National Bank of San Diego	Treasurer

Directors: - Geo. D. Copeland
W. E. Robinson,
A. W. Hawley
G. F. Judson and
W. H. Ferry,

has entered upon certain lands in the said County of San Diego, which have been reserved by the United States Government and set apart for the occupancy, use and enjoyment of that part of the Mission Indian Tribes of California, generally known as the Capitan Grande Indians, and situated within the reservation known as the Capitan Grande reservation, composed of the following Townships and sections, to-wit: Tp. 14 S., R. 2 E., Secs. 10, 11, 14, 15, 22, 23, 25, 26, 27, 28, 33, 34 and 35.

Tp. 15 S., R 2 E., Secs., 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10

Tp. 14 S., R. 3 E., Secs 31 and 32, Tp. 15 S., R. 3 E., Secs. 5 and 6, and has constructed and built, and is now constructing and building a diverting reservoir and head works for a water system, and a flume for conducting water on, under and through said reservation, said flume crossing above as it passes through said reservation both the north and south branches of the San Diego River and other smaller tributaries thereto, having for its effect the diversion of said River and branches from their original beds or channels, for the distance of thirteen miles and conveying the same through said reservation for the supplying of the City of San Diego and for other purposes; And Whereas said Company hereby declares itself solvent and able to respond in damages to the full value of the lands so as aforesaid appropriated by it, and such other damage as may result from the construction and use of said water works and flume, either to the

right of said Government or the Indians now occupying, or that may hereafter occupy said lands, and has signified its willingness to pay to the Government of the United States for the use of said Indians or other use, a reasonable value for the land and water appropriated and used by said Company, and for said Easement with all the usual rights of land and water and of ingress, egress and regress, the same for the purpose of maintaining and keeping and to secure to the Indians thereon or to be thereon the rights to use and the use of waters from said flume to be turned upon their land at the expense of said company.

This contract therefore, made and entered into by and between the Government of the United States of America, of the one part, and the said San Diego Flume Company, of the other part, WITNESSETH:

That the said United States for and in consideration of One Hundred Dollars per mile, to wit: One thousand three hundred dollars for the distance of thirteen miles (13 estimated) traversed by said flume, and in the further consideration that the said Company and its successors and assigns shall well, truly and faithfully furnish at its own expense and at such places and points along said flume, and at and during such times and periods of time as the Indians thereon may desire, or the Indian Agent may request, an ample and sufficient supply and quantity of water for the use of said Indians, either for agricultural or other purposes - meaning domestic and for stock - the said Indians consenting thereto - said flume being manifestly, if completed, of vast and lasting utility to the public, particularly the City of San Diego and likewise manifestly facilitating the use of their said streams and increasing the value of the same for the purposes of the Indians, hath through and by said Agent Joseph W. Preston, by and with the approval of the "Commission" of Indian Affairs, acting also on behalf of the Government of the United States, consenting to said right of way and water appropriation, doth grant, bargain, sell and convey to the said San Diego Flume Company, its assigns and successors, the sale, right, title, use and enjoyment of the reservoir head works, and water rights aforesaid, and a right of way through the Townships and Sections aforesaid, as now projected and designed with all the necessary lands for head works, rights and privileges usual and appurtenant to the same.

The said United States hereby reserves for the use of the Indians for their stock and other purposes. It is hereby stipulated that should said Company its assigns or successors, neglect, fail, or refuse to comply with all or any of the terms of this Instrument reasonably constructed and within reasonable time after notice of such failure, that it shall forfeit all further right, title or interest to said right of way and the use thereof, and the said lands shall revert to the Government as if this instrument had not been made.

It is further stipulated on behalf of said company that the furnishing of water by said Company to the Indians shall not be

construed to furnish or allow the Indians to furnish either directly or indirectly to any other person or persons.

Signed, sealed and delivered and executed in triplicate in presence of

JOSEPH W. PRESTON (SS)
U. S. Indian Agent

this the 16th day of Jany 1888.

Attest:
L. F. Doolittle
Secretary

SAN DIEGO FLUME COMPANY
By George D. Copeland (LS)
President

State of California,)
County of San Diego) ss

On this 16th day of January, in the year one thousand eight hundred and eighty eight, before me W. G. Morgan, a Notary Public in and for the said County of San Diego, personally appeared George D. Copeland, President of the San Diego Flume Company and Joseph W. Preston U. S. Indian Agent, personally known to me to be the same persons described in and whose names are subscribed to the within instrument, and they acknowledged to me that they executed the same

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

A. C. MORGAN
Notary Public

We, Geo. D. Copeland, President, W. E. Robinson, Vice President, and A. W. Hawley, directors, being a majority and quorum of the Board of Directors of the San Diego Flume Company, do hereby certify that George D. Copeland, whose signature appears above as President of said Company, and that his signature, which is genuine, to the above and foregoing instrument is binding upon said Company.

GEORGE D. COPELAND
WILLIAM E. ROBINSON
ALLEN W. HAWLEY

Received for record June 23nd 1888, at 20 minutes past 4 o'clock P.M. at request of Grantees.

E. G. Haight
County Recorder
By Jno F. Forward
Deputy

(PUBLIC - NO. 306 - 65TH CONGRESS)
(S. 3646.)

An Act Granting to the city of San Diego certain lands in the Cleveland National Forest and the Capitan Grande Indian Reservation for dam and reservoir purposes for the conservation of water, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the south half of the northeast quarter of the northwest quarter and the north half of the southwest quarter of section eight; the west half of the southwest quarter of the southwest quarter and the west half of the northeast quarter of the northwest quarter of section nine, all in township fifteen south, range two east, San Bernardino base and meridian, within the Cleveland National Forest; and the southeast quarter of the southwest quarter and the southwest quarter of the southeast quarter of section fifteen; the northeast quarter of the southeast quarter of section twenty-one; the northwest quarter of the northeast quarter, the northwest quarter, the north half of the southwest quarter, and the southwest quarter of the southwest quarter of section twenty-two; the west half of the northwest quarter of section twenty-seven; and the east half of the northeast quarter, the southwest quarter of the northeast quarter, and the southeast quarter of section twenty-eight; and the northeast quarter, the west half of the southeast quarter, the east half of the southwest quarter, and the southeast quarter of the northwest quarter of section thirty-three, all in township fourteen south, range two east, San Bernardino base and meridian; also the north half of the southwest quarter and the southwest quarter of the southwest quarter of section three, and lots two, three, six, seven, eight, nine, ten, eleven, and the south half of section four, all in township fifteen south, range two east, San Bernardino base and meridian, within the Capitan Grande Indian Reservation, and all within the county of San Diego and State of California, are hereby granted to the city of San Diego, a municipal corporation in said county and State, for dam and reservoir purposes for the conservation and storage of water, whenever said city shall have provided compensation as hereinafter specified for all property rights and interests and damages done to Mission Indians located upon the Capitan Grande Indian Reservation: Provided, That the lands herein granted shall not be sold, assigned, transferred, or conveyed to any private person, corporation, or association; and in case of any attempt to sell, assign, transfer, or convey, or upon a failure to use and apply said lands exclusively to the purposes herein specified, this grant shall revert to the United States.

Sec. 2. That the lands herein granted are and shall be subject to all legal rights heretofore acquired by any persons

persons, or corporation in or to any of such lands shall be interfered with or abridged, except with the consent of the owner or owners, or claimant or claimants thereof, or by due process of law and just compensation paid to such owner or claimant: Provided, That the rights and claims of the Mission Indians of the Capitan Grande Indian Reservation, located upon the lands herein described and affected by the grant herein, shall be protected and provided for as hereafter set forth in section three of this Act.

Sec. 3. That the law of eminent domain of the State of California is hereby extended over and made to apply to said lands, and the Secretary of the Interior or his duly authorized representative is hereby directed to appear on behalf of, in the name of, and to represent the Capitan Grande Band of Indians and the United States in any proceedings instituted by the city of San Diego to condemn the interest of said Indians in said lands: Provided, That any judgment or order of condemnation entered in such proceeding shall be binding upon said Capitan Grande Band of Indians only upon the approval by the Secretary of the Interior of the terms of said judgment: Provided further, That the Secretary of the Interior shall require from the city of San Diego in addition to the award of condemnation such further sum which, in his opinion, when added to said award, will be sufficient in the aggregate to provide for the purchase of additional lands for the Capitan Grande Band of Indians, the erection of suitable homes for the Indians on the lands so purchased, the erection of such schools, churches, and administrative buildings, the sinking of such wells and the construction of such roads and ditches, and providing water and water rights and for such other expenses as may be deemed necessary by the Secretary of the Interior to properly establish these Indians permanently on the lands purchased for them; and the Secretary of the Interior is hereby authorized to expend the proceeds or any part thereof, derived from this grant for the purposes above enumerated, for the exclusive use and benefit of said Indians: And provided further, That the grant made in this Act shall not become effective until payment has been made of the sums herein provided for.

Sec. 4. That within one year after the approval of this Act the city of San Diego shall commence condemnation proceedings to acquire the lands herein described and shall diligently prosecute such proceedings to a final judgment. Within two years after the approval by the Secretary of the Interior of any such judgment of condemnation the city of San Diego shall institute, and thereafter shall diligently prosecute, proceedings for the issuance and sale of municipal bonds to defray the amount necessary to satisfy any such judgment of condemnation, paying such additional sum as the Secretary of the Interior may require, as provided for in section three, and providing for the acquisition, construction, and completion of a dam, reservoir, pipe line, and appurtenances thereto necessary or convenient to the storage and conservation of water upon the lands herein described for the

purposes set forth in this bill. Within six months from the time of payment into the city treasury of the moneys realized from the sale of municipal bonds issued as herein provided the city of San Diego shall commence the construction of said dam and reservoir, and the same shall be prosecuted diligently, and in the event that the Secretary of the Interior shall find and determine that there has not been diligent prosecution of the work, or that said condemnation proceedings have not been commenced and diligently prosecuted, or that municipal bonds have not been issued and sold as herein provided, then he may declare forfeited all rights of the grantees herein and request the Attorney General, on behalf of the United States, to commence suits or proceedings in the proper court having jurisdiction thereof for the purpose of procuring a judgment declaring all rights to be forfeited to the United States, and upon such request it shall be the duty of said Attorney General to cause to be commenced and prosecuted to a final judgment such suits or proceedings: Provided, That the Secretary of the Interior shall make no such findings and take no such action if he shall find that the issuance or sale of municipal bonds or the construction or progress of the dam or reservoir had been delayed or prevented by the act of God or the public enemy or by legal, engineering, or other difficulties that could not have been reasonably foreseen and overcome, or by other special or peculiar difficulties beyond the control of said grantee: Provided further, That in the exercise of the rights granted by this Act the grantee shall at all times comply with the regulations herein authorized, and in the event of any material departure therefrom the Secretary of the Interior or the Secretary of Agriculture, respectively, may take such action as may be necessary in the courts or otherwise to enforce such regulations: Provided further, That if such dam be built the Indians of the Capitan Grande Reservation shall be permitted to reside on, occupy, and cultivate the lands of their present reservation up until within ninety days of the time when water for storage purposes will be turned into the reservoir to be constructed hereunder, provided such occupancy by the Indians will not materially hinder the construction of the dam and storage work, which fact is to be determined by the Secretary of the Interior.

Sec. 5. That said reservoir, when constructed, shall be maintained and controlled by the city of San Diego for the use and benefit of said city and the inhabitants thereof and of such other municipalities within the county of San Diego, State of California, as may be now or hereafter furnished with water by said city of San Diego, and for the use and benefit of riparian owners along the San Diego River below the lands herein described and for the benefit of persons, corporations, or municipalities situated along or adjacent to the pipe lines of said city of San Diego for the conservation and storage of water for domestic, irrigation, or municipal uses: Provided, That the city of San Diego shall sell to the United States for the use of the War and Navy Departments such water as the War and Navy Departments, or either of them, may elect to take, and shall deliver

the same through its system in or near the city of San Diego to the mains or systems of such military or naval reservations in that vicinity as may be designated by the Secretary of War or the Secretary of the Navy, or both, under such rules and regulations as they or either of them may prescribe. In payment of such water and the delivery thereof the United States shall pay to said city of San Diego a rental to be calculated at a fixed rate per one thousand gallons, said rate not to exceed the actual cost of such water to said city for all water so furnished as determined by meter measurements: Provided, however, That the grantee shall at all times comply with and observe on its part all of the conditions specified in this Act, and in the event that the sums are not reasonably complied with and carried out by the grantee upon written request by the Secretary of the Interior it is made the duty of the Attorney General, in the name of the United States, to commence all necessary suits or proceedings in the proper court having jurisdiction thereof for the purpose of enforcing and carrying out the provisions of this Act: Provided, That the city of San Diego is authorized to assign all its rights, powers and privileges under this Act to any public water district formed under the laws of California.

Sec. 6. That this Act is a grant upon certain express conditions specifically set forth herein, and nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the State of California relating to the control, appropriation, use or distribution of water used in irrigation, or for municipal or other uses or any vested rights acquired thereunder, and the Secretary of the Interior and the city of San Diego in carrying out the provisions of this Act shall proceed in conformity with the laws of said State.

Sec. 7. That the grantee shall file with the Secretary of the Interior, within six months after the approval of this Act, its acceptance of the terms and conditions of this grant.

Approved, February 28, 1919.

(COPY)

August 19, 1922.

Schedule showing estimated cost of property establishing the Capitan Grande Indians permanently upon lands to be purchased for them, in accordance with sections 3 and 4 of the Act of February 28, 1919 (40 Stat. L., 1206).

<u>Item</u>		
1.	Purchase of additional lands The Barona Ranch	\$125,000
2.	Erection of suitable homes, 29 houses at \$600 each	17,400
3.	Erection of school house	2,500
4.	Erection of church	2,500
5.	Erection of administrative buildings (necessary alter- ations in present ranch build- ings only)	1,500
6.	Construction of roads, such as necessary to make Indian houses accessible 5 mi at \$1,000	5,000
7.	Construction of ditches, 6 mi. of concrete pipe at \$3,000	18,000
8.	Providing water and water rights, this includes the construction of 1 new well, pumping plant and reservoir needed, repairs and replacements to existing pumping plants, pipe lines and the bringing in of electric power lines and installation of motors to provide dependable equipment	20,000
9.	For other expenses:	
	(a) Investment, to cover operation charges for pumping the equiv- alent of the gravity water now received, \$3,000 per annum at 5%	60,000
	(b) Investment to cover replacement of \$3,200 worth of pumping equip- ment every 10 years at 5%	5,000
	(c) Investment to cover annual taxes for 25 years not now required on Capitan Grande Res'n. Pres- ent assessed valuation Barona Ranch, \$20,000, assume increase to an average of \$30,000 which at \$4 per \$100 would require in- vestment at 5% of	17,000

(d) Incidental expenses, legal, travel, engineering, in connection with moving the Indians and establishing them in new homes and providing subsistence to needy ones until crops could be raised

\$ 10,000

TOTAL ESTIMATE AS OF PRESENT DATE
LESS JUDGMENT OF MAY 27, 1921
ADDITIONAL AMOUNT REQUIRED

\$283,900

75,000

\$208,900

Estimated increase in cost two years hence. All indications point to a revival of activity in back country property in the near future when prices of ranch lands may advance to a marked degree. Estimated advance in two years 20% on \$125,000.
Estimated increase on other items, none

25,000

TOTAL ADDITIONAL GRAND TOTAL
REQUIRED

\$308,900

233,900

Excerpt from report of Supervising Engineer Herbert V. Clotts, dated August 19, 1922, making the following appraisement of the value of the land, improvements, water rights, and other property of the Capitan Grande Indians involved in the water project of the City of San Diego, California, authorized by the Act of February 28, 1919 (40 Stat. L., 1206).

Bottom lands, including Conejos, for which water is available, 230 acres at \$200	\$ 46,000
Water right for above, 46 mil at \$2000	92,000
Irrigation works constructed	6,243
Dry farming land 910 acres at \$50	45,500
Grazing land, 17597 acres at \$5	87,985
Indian houses and improvements, 29 at \$300	8,700
Reservoir site as such, irrespective of the value of the land and improvements for other purposes, considered as an asset belonging to the land granted to the Indians	<u>75,000</u>
	\$361,428

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

No. 20372.

Dept. 4.

THE CITY OF SAN DIEGO, a municipal
corporation,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA and
the CAPITAN GRANDE BAND OF MISSION
INDIANS,

Defendants.

FINDINGS OF FACT
and
CONCLUSIONS OF LAW.

This cause came on regularly for trial on the 27th day of May, 1921, before the Court, without a jury, a trial by jury having been duly waived by the parties, and S. J. Higgins, City Attorney, and Arthur F. H. Wright, Deputy City Attorney, appearing as attorneys for the plaintiff, and Martin Bryan, Assistant United States Attorney, appearing as attorney for the defendants, the cause having been tried and submitted to the court on the issues arising under the complaint of the plaintiff and the answers of the defendants, and after the introduction of the evidence the cause is submitted to the court for its decision, and from the evidence introduced the court hereby finds the facts as follows, to-wit:

I

That the plaintiff, the City of San Diego, a municipal corporation, has the right to acquire the lands, property and rights described in plaintiff's complaint by condemnation and by the above-entitled action and special proceeding for public use as a municipal water system.

II

That the Common Council of The City of San Diego by and through Ordinance No. 7833 of the ordinances of The City of San Diego, entitled, "An ordinance determining and declaring that the public interest, convenience and necessity of The City of San Diego, California, and of the inhabitants thereof, require the construction and maintenance of a dam and reservoir in and upon certain portions of the Cleveland National Forest and the Capitan Grande Indian Reservation and lands adjacent thereto, in the County of San Diego, State of California, and that the public interest, convenience and necessity demand the acquisition of certain portions of said lands to be used by said City in the construction and maintenance of a dam and for reservoir purposes

over lands flooded by the construction and maintenance of said dam, and declaring the intention of The City of San Diego to acquire said lands, properties and rights under eminent domain proceedings, and directing the City Attorney of The City of San Diego to commence an action in the Superior Court of the County of San Diego, State of California, for the purpose of condemning and acquiring said lands," adopted on the 25th day of August, 1919, and approved on the 25th day of August, 1919, determined and declared that the public interest, convenience and necessity of said The City of San Diego and the inhabitants thereof, for public use, and for the impounding, conserving and delivering of water to said The City of San Diego for municipal purposes, required the construction of a dam and reservoir in and upon certain portions of the Cleveland National Forest and the Capitan Grande Indian Reservation, and lands adjacent thereto, in the County of San Diego, State of California, more particularly described as set forth in said complaint, and that said Common Council by and through this ordinance further determined and declared that the taking and acquiring by said The City of San Diego of the lands and property more particularly described in said complaint was and is deemed necessary for the acquisition, construction and completion of additional water impounding and conserving facilities to be used for the purpose of impounding, conserving and delivering water to The City of San Diego and the inhabitants thereof for municipal purposes; that such use is a public use, and for such public use it is necessary that said The City of San Diego condemn and acquire the fee simple of the following described lands situated in the County of San Diego, State of California, to-wit:

The south half of the northeast quarter of the northwest quarter and the north half of the southwest quarter of section eight; the west half of the southwest quarter of the southwest quarter and the west half of the northeast quarter of the northwest quarter of section nine, all in township fifteen south, range two east, San Bernardino base and meridian, within the Cleveland National Forest; and the southeast quarter of the southwest quarter and the southwest quarter of the southeast quarter of section fifteen; the northwest quarter of the northeast quarter, the northwest quarter, the north half of the southwest quarter of section twenty-two; the west half of the northwest quarter of section twenty-seven; and the east half of the northeast quarter, the southwest quarter of the northeast quarter, and the southeast quarter of section twenty-eight; and the northeast quarter, the west half of the southeast quarter, the east half of the southwest quarter, and the southeast quarter of the northwest quarter of section thirty-three, all in township fourteen south, range two east, San Bernardino base and meridian; also the north half of the southwest quarter and the southwest quarter of the southwest quarter of section three, and lots two, three, six, seven, eight, nine, ten, eleven, and the south half of section four, all in township fifteen south, range two east, San Bernardino base and meridian, within the Capitan Grande Indian Reservation, and all within the County of San Diego and State of California.

III

That the taking and acquiring by said City of said lands and property hereinbefore more particularly described is deemed necessary for the acquisition, construction, completion, maintenance and operation by said City of a municipal water system; that the acquisition, construction, completion, maintenance and operation of said municipal water system is a public use; that for such public use it is necessary that said City condemn and acquire said lands and property hereinbefore particularly described; that in and by said Ordinance No. 7833, said Common Council instructed the City Attorney of said City to commence this action in the Superior Court of the State of California, in and for the County of San Diego, and to prosecute said action to a final judgment, against the owners and claimants of said lands and property, for the purpose of condemning and acquiring said lands and said property for the use of said City, and for the purpose of acquiring, constructing, completing, maintaining and operating a municipal water system for the use of the public.

IV

That the acquisition, construction, completion, maintenance and operation of said municipal water system upon and in connection with the lands and property hereinbefore described is a public use, and that for such public use it is necessary that said The City of San Diego condemn and acquire a fee simple title in and to the property hereinbefore particularly described, for the use of said City in constructing and maintaining thereon a dam and reservoir.

V

That the City of San Diego is authorized to institute and prosecute this proceeding to a final judgment by an Act of the Congress of the United States, adopted February 17th, 1919, and approved by the President of said United States on February 28th, 1919.

VI

That the lands and property hereinbefore described, sought to be acquired and taken by said The City of San Diego in this Proceeding, include the whole of the above described property.

VII

That the United States of America and the Capitan Grande Band of Mission Indians are all the owners and claimants of said lands and property hereinbefore described and situated in the County of San Diego, State of California, which it is necessary to condemn and acquire for said municipal water system, and that said The United States of America and the Capitan Grande Band of Mission Indians were all the owners and claimants of said lands hereinbefore described at the time of the commencement of this action.

VIII

That the market value at the date of the trial of this proceeding, May 27th, 1921, of the land sought to be acquired and condemned by the plaintiff, The City of San Diego, in this action, all as more particularly described in plaintiff's complaint, was the sum of seventy-five thousand dollars (\$75,000.00).

CONCLUSIONS OF LAW.

From the Foregoing facts the Court declares the following Conclusions of Law:

I

That plaintiff The City of San Diego is entitled to a final judgment against said defendants condemning the lands, properties and rights described in plaintiff's complaint to public use, for the uses and purposes in said complaint described and hereinbefore set forth, upon just and full compensation to be made to said defendants, or paid into court for said defendants, as hereinbefore ascertained and assessed.

II

That said judgment or order of condemnation entered in this proceeding shall be binding upon said The United States of America and Capitan Grande Band of Mission Indians only upon approval by the Secretary of the Interior of the terms of said judgment.

III

That upon the payment of said sum of seventy-five thousand dollars (\$75,000.00), or in case said sum of seventy-five thousand dollars (\$75,000.00) is not deemed sufficient by the Secretary of the Interior of the United States of America, then and in that event upon the payment of said seventy-five thousand dollars (\$75,000.00) together with such additional sum as may be required by the Secretary of the Interior of the United States of America, plaintiff shall be entitled to a final order of condemnation which shall describe the property condemned and the purposes of such condemnation, which property shall be as described in the complaint herein, and which purposes shall be as stated in the complaint herein.

IV

That the defendants are allowed and awarded against said plaintiff their costs and disbursements expended and laid out in said action.

Let judgment be entered accordingly.

Done in open court this 10 day of June, 1921.

C. N. Andrews (Signature)
Judge of said Superior Court

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO.

No. 31799

THE CITY OF SAN DIEGO, A Municipal Corporation,)

Plaintiff,)

vs.)

THE UNITED STATES OF AMERICA AND
THE CAPITAN GRANDE BAND OF MISSION
INDIANS.)

Defendant.)

Approval of Decree.

WHEREAS, Section three of the Act of February 28, 1919 (40 Stat. L., 1206) extending the law of eminent domain of the State of California over the lands of the Capitan Grande Band of Indians for the purpose of enabling the City of San Diego to acquire a Municipal Water Supply, provides,-

That any judgment or order of condemnation entered in such proceeding shall be binding upon said Capitan Grande Band of Indians only upon the Secretary of the Interior of the terms of said judgment:

Provided further, That the Secretary of the Interior shall require from the City of San Diego in addition to the award of condemnation, such further sum which in his opinion, when added to said award, will be sufficient in the aggregate to provide for the purchase of additional lands for the Capitan Grande Band of Indians, the erection of suitable homes for the Indians on the lands so purchased, the erection of such schools, churches and administrative buildings, the sinking of such wells and the construction of such roads and ditches, and providing water and water rights and for such other expenses as may be deemed necessary by the Secretary of the Interior to properly establish these Indians permanently on the lands purchased for them; and

WHEREAS on the 10th day of June, 1921, there was handed down in the above entitled case a decree awarding the Capitan Grande Band of Indians the sum of \$75,000 plus each additional amount as may be required by the Secretary of the Interior, and providing that such decree shall be binding upon the parties only upon approval of the decree by the Secretary of the Interior.

NOW, THEREFORE, The Secretary of the Interior having made or caused to be made, an exhaustive investigation for the purpose of determining the amount necessary to carry out the provisions

of said Act of February 28, 1919, hereby fixed the total amount required in the sum of \$361,428, and the decree in the above entitled case is hereby approved on condition that the City of San Diego, in addition to \$75,000 award therein, pay the sum of \$286,428.

In witness whereof The Secretary of the Interior has hereinto affixed his hand and official seal this 22nd day of December, 1922.

Albert B. Fall,
Secretary

Filed January 29, 1923.

Received a copy of the within approval this 29th day of January, 1923.

S. J. Higgins,
City Attorney
San Diego, California.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
IN AND FOR THE COUNTY OF SAN DIEGO.

No. 31799

THE CITY OF SAN DIEGO, a
municipal corporation,

Plaintiff,

-vs-

THE UNITED STATES OF AMERICA
and the CAPITAN GRANDE BAND OF
MISSION INDIANS,

Defendants.

APPROVAL OF DECREE

WHEREAS Section three of the act of February 28, 1919 (40 Stat. L., 1206), extending the law of eminent domain of the State of California over the lands of the Capitan Grande Band of Indians for the purpose of enabling the City of San Diego to acquire a municipal water supply, provides -

That any judgment or order of condemnation entered in such proceeding shall be binding upon said Capitan Grande Band of Indians only upon the approval by the Secretary of the Interior of the terms of said judgment: Provided further, that the Secretary of the Interior shall require from the City of San Diego in addition to the award of condemnation such further sum which, in his opinion, when added to said award, will be sufficient in the aggregate to provide for the purchase of additional lands for the Capitan Grande Band of Indians, the erection of suitable homes for the Indians on the lands so purchased, the erection of such schools, churches, and administrative buildings, the sinking of such wells and the construction of such roads and ditches, and providing water and water rights and for such other expenses as may be deemed necessary by the Secretary of the Interior to properly establish these Indians permanently on the lands purchased for them; and

WHEREAS On the 10th day of June, 1921, there was handed down in the above entitled case a decree awarding the Capitan Grande Band of Indians the sum of \$75,000 plus such additional amount as may be required by the Secretary of the Interior

and providing that such decree shall be binding upon the parties only upon approval of the decree by the Secretary of the Interior;

NOW, THEREFORE, The Secretary of the Interior having made or caused to be made, an exhaustive investigation for the purpose of determining the amount necessary to carry out the provisions of said act of February 28, 1919, hereby fixes the total amount required in the sum of \$361,428, and the decree in the above entitled case is hereby approved on condition that the City of San Diego, in addition to the \$75,000 awarded therein, pay the sum of \$286,428.

IN WITNESS WHEREOF The Secretary of the Interior has hereunto affixed his hand and official seal this 22d day of December, 1922.

ALBERT B. FALL
Secretary

(SEAL)

(ENDORSED) FILED:
Jan 29 1923
J. B. McLEES, CLERK
By L. L. Bailey, Deputy

September 25, 1929

Hon. M. W. Conkling,
City Attorney,
City Hall,
San Diego, Calif.

Subject: Capitan Grande Indian Reservation,
El Capitan Reservoir Basin lands
Act of the U. S. Congress, Senate
(S. 3646).

My dear Judge:

In paragraph 5 of the Act it is stated that, "The reservoir, when constructed, shall be maintained and controlled by the City of San Diego for,

(a) The use and benefit of said City and the inhabitants thereof and of such other municipalities within the County of San Diego, State of California, as may be now or hereafter furnished with water by said City of San Diego, and

(b) For the use and benefit of riparian owners along the San Diego River below the lands herein described, and

(c) For the benefit of persons, corporations, or municipalities situated along or adjacent to the pipelines of said City of San Diego for the conservation and storage of water for domestic, irrigation or municipal uses, and

(d) For the use of the War and Navy Departments such water as the War and Navy Departments may elect to take.

Material question is frequently arising regarding the City's optional right, if using the Indian lands in constructing the reservoir, to furnish water to riparian owners and to furnish water for the benefit of persons, corporations or municipalities situated along or adjacent to the pipelines, or is it mandatory upon the City, if using Indian lands, to upon request from riparian right owners or upon request of persons, corporations or municipalities situated on the pipelines, to furnish water thereto.

When securing right of way for the El Cajon-San Diego University Heights Reservoir pipeline, across the Bell-Lloyd Tract vicinity La Mesa Reservoir, as a condition of securing the right of way the City obligated itself to furnish to the land owning corporation about one million gallons per day in perpetuity in case the El Capitan Reservoir should be constructed.

I am not advised whether the City, in obligating itself to furnish this water was influenced solely by a desire to secure right of way for the pipeline, or whether in addition to its desire to secure right of way to pipeline it recognized as a fact that the land owning corporation could demand of the City water service as prescribed under the Act of Congress, granting the City permit to condemn lands in the Capitan Grande Indian Reservation.

Yours very truly,

H. N. Savage,
Hydraulic Engineer.

HNS/t

October 15, 1929.

Commissioner of Indian Affairs,
Washington, D. C.

Subject: City of San Diego, Municipal Water Supply,
Reservoir Flowage Lands.

Dear Sir:

Early in 1919 the United States Congress granted the City of San Diego permission to initiate condemnation proceedings through the California State Courts vs. the United States of America and the Capitan Grande Band of Mission Indians, for the acquisition of Indian reservation lands for El Capitan Reservoir then projected by the City of San Diego for construction.

The local California Superior Court handed down its decree June 10, 1921.

Under date of December 22, 1922, Secretary of the Interior Albert B. Fall approved the decree of the California State Superior Court and fixed the total amount required to be paid by the City of San Diego for the lands it sought to condemn and for providing suitable water supply, administrative buildings, homes, schools, churches, etc., at \$361,428.

The City of San Diego has been endeavoring to acquire by condemnation the privately owned El Capitan dam site lands and adjacent reservoir flowage lands and the case has been in the courts practically continuously for several years and the City has not yet obtained a legal right to condemn the required dam site and adjacent flowage lands.

There is in the City's files a copy of a draft deleted and amplified of the original Senate Bill S. 3646 entitled "An Act to grant rights of way over Government lands for dam and reservoir purposes for the conservation and storage of water to be used by the City of San Diego, California, and for other purposes".

There is not in the City's files a copy of the Act as approved by the President.

There is a copy in the City files of the local California Superior Court Decree dated June 10, 1921, advancing the condemnation proceedings authorized by the Act of the U. S. Congress, the Court's decree being supplemented by a Decree of Secretary of the Interior Albert B. Fall, dated December 22, 1922.

There is no record in the City's files, or in the local Superior Court files of a final action by the court subsequent

to the Secretary of the Interior's approval of the Court's decree, which it is understood was a proper procedure to be accomplished by the local Superior Court.

In case any other known to you legal or Federal proceedings or official documents have been promulgated by the Secretary of the Interior, or the office of Indian Affairs, or by the courts, concerning this grant to the City of San Diego for permit to condemn lands in the Capitan Grande Indian Reservation, I desire to be favored with copies thereof for immediate official use.

The City of San Diego electors, soon after the Decree of Secretary of the Interior Albert B. Fall dated December 22, 1922, authorized a bond issue to acquire reservoir flowage lands and construct the El Capitan Reservoir and Dam described in the Act of the U. S. Congress and to condemn and acquire other flowage and dam site lands involved in connection with, and necessary for the construction of a dam at the El Capitan Site.

Since the City has endeavored aggressively through the courts to secure the required dam site and adjacent reservoir flowage lands, it is assumed that the City has progressed the matter in a manner satisfactory to the office of Indian Affairs and to the Secretary of the Interior under the Congressional Grant Act and the Superior Court Decree and the Decree by the Secretary of the Interior.

Notwithstanding the delay on part of the City by reason of its inability to secure by agreement or condemnation El Capitan dam site lands, it is assumed that the City's status as to Capitan Grande rights of way upon payment of \$361,428, may have continued in full force and effect and will continue unless otherwise advised until the City can by condemnation secure legal title to the other necessary dam site and adjacent reservoir flowage lands.

You will have my gratitude for compliance deemed appropriate by you at your earliest convenience in providing the information necessary for official use in order that I may--in an understanding manner--endeavor to advance the City of San Diego's urgently required additional water conservation, the solution of which after five years absence I have been commandeered from Europe back to San Diego to accomplish.

Since the City of San Diego does not have a copy of the Act of the United States Congress as approved by the President and dated, presumably February 1919, granting the City of San Diego permit to initiate condemnation proceedings against the United States of America and the Capitan Grande Band of Mission Indians you are respectfully invited to forward a copy for official use.

Also for official use, if public property, a copy of the report to the Commissioner of Indian Affairs by its engineers

and appraisers is desired, indicating the several zones of local territory and prices considered for purchase for new homes for the Indians which should properly be elsewhere if the City of San Diego utilizes the specific Capitan Grande reservation lands for the conservation of water for municipal purposes.

Very respectfully,

H. N. Savage,
Hydraulic Engineer.

HNS/f

277658
UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
WASHINGTON

OCT 23 1929

Mr. H. N. Savage,
Hydraulic Engineer, City of San Diego,
San Diego, California.

My dear Mr. Savage:

The receipt is acknowledged of your letter of October 15, 1929, making request for certain data and information regarding the proceedings instituted by the City of San Diego, California, under the Act of February 28, 1919 (40 Stat. L., 1206), to acquire certain lands within the El Capitan Indian Reservation, in that State, for dam and reservoir purposes, for the conservation of water and for other purposes.

A pamphlet copy of the Act cited is inclosed herewith, and your attention is particularly invited to the limitation and forfeiture provisions contained in section four thereof.

There is no record here of the promulgation of any legal or Federal proceedings or official documents subsequent to the approval December 22, 1922, by the then Secretary of the Interior of the decree of the Superior Court of the State of California mentioned in your letter, nor of the payment of the sum of \$361,428.00 required of the City by the terms of such decree and approval.

It is understood that the City has encountered considerable legal difficulty in acquiring the land and water rights of the Cuyamaca Water Company and others (278 Pac. 840), which are involved in this project, and that further court proceedings will be necessary in connection therewith; also, that bonds for the purpose of defraying the cost of the project have been voted and issued, but that their sale is being deferred until the City is in a position to proceed with construction work. Under these circumstances there is no disposition at present to question the right of the City to proceed under the Act cited. However, it is pointed out that seven years have elapsed since the amount to be paid by the City was fixed by this Department, and it seems only fair to expect that the City should agree to a reopening of the proceedings supplemental to the condemnation heretofore had in the State court so as to permit a modification of the finding of December 22, 1922, should it be found that the sum of \$361,428.00 is now inadequate to enable this Department to comply with sections three and four of the Act.

A memorandum copy of schedule dated August 19, 1922, showing the then estimated cost of carrying out the provisions of sections three and four of the Act cited relating to the Indians; also, memoranda showing itemized appraisement of the then value of the lands, improvements, water rights and other property of the Indians, upon which this Department's finding of December 22, 1922, was based, are inclosed.

Sincerely yours,

C. J. RHOADS (Signature)

Commissioner.

Approved: OCT 23 1929

JOS. M. DIXON (Signature)

First Assistant Secretary.

November 11, 1929.

TO THE HONORABLE, THE MAYOR AND COMMON COUNCIL
OF THE CITY OF SAN DIEGO, CALIFORNIA

Gentlemen:

In compliance with Resolution No. 51772 authorizing and directing me to file at earliest convenience my conclusions and recommendations regarding future water development in the San Diego River.

I addressed a letter to the Commissioner of Indian Affairs dated October 15, copy of which is enclosed, for the purpose of ascertaining from ranking officials of the Department of the Interior and of the Office of Indian Affairs their interpretation of the present status of the Act of the U. S. Congress authorizing the City of San Diego to initiate condemnation proceedings against the United States Government and the Capitan Grande Indian Reservation Band of Mission Indians, and of the Secretary of the Interior's supplemental findings in the matter.

When in Washington, D. C. October 21 to 26, I followed up the inquiry indicated in my letter of October 15, first hand, and with all the ranking officials concerned in the Department of the Interior and the Office of Indian Affairs with the result indicated in letter dated October 23, from Honorable C. S. Rhoads, Commissioner of Indian Affairs and approved October 23, by Joseph M. Dixon, Assistant Secretary of the Interior, copy of which is also enclosed.

Very respectfully,

H. N. Savage,
Hydraulic Engineer.

HNS/b.
Encl. (2)

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON.

Jun 7 - 1930

The Mayor and City Council of the
City of San Diego,
San Diego, California.

Gentlemen:

There is inclosed copy of letter dated May 16, 1930, from Miss Ruth C. Drew, Secretary, La Mesa, Lemon Grove & Spring Valley Irrigation District, La Mesa, California, with copy of inclosed petition of the district for an order rescinding, vacating, and setting aside the finding of this Department dated December 22, 1922, in the matter of proceedings instituted by the City of San Diego, California, under the Act of February 28, 1919 (40 Stat. L., 1206), to acquire certain lands of the Capitan Grande Band of Mission Indians for reservoir purposes.

Will you please advise whether you desire to file a showing in this matter, and if so, the approximate date when its receipt may be expected?

Very truly yours,

(Signed) Jos. M. Dixon

First Assistant Secretary.

Inclosure 15669.

Directors

R. Bruce Carmichael, La Mesa No. 1
R. M. Levy, La Mesa, No. 2
Wm. H. West, Lemon Grove, No. 3
Wm. H. Sperry, Spring Valley, No. 4
Frank R. Beatty, El Cajon, No. 5

Officers

Frank R. Beatty, President
C. Harritt, General Manager
C. L. Grogan, Treasurer
Ruth C. Drew, Secretary
Ira C. Robinson, Assessor-Col-
lector
Stearns, Luce & Forward
Attorneys.

LA MESA, LEMON GROVE & SPRING VALLEY
IRRIGATION DISTRICT

105 South Spring Street
LA MESA, CALIF.

(Indian)

(Dept. of the Interior)
(RECEIVED)
(May 21 1930)
(Secy's Off. Appts.)
(N & LB & Filed)

May 16th, 1930.

(INTERIOR DEPT.)
(RECEIVED)
(May 21 1930)
(OFFICE OF)
(THE SECRETARY)

(OFFICE OF INDIAN)
(AFFAIRS)
(RECEIVED)
(May 21 1930)
(27078)

The Honorable Ray Lyman Wilbur,
Secretary of the Interior,
Washington, D. C.

Sir:

I herewith transmit petition of the La Mesa,
Lemon Grove & Spring Valley Irrigation District and the
resolution of the Board of Directors thereof, relating
to the building of a dam by the City of San Diego at
El Capitan.

Respectfully,

(Signed) Ruth C. Drew
Secretary
LA MESA, LEMON GROVE & SPRING
VALLEY IRRIGATION DISTRICT.

AJL:RD

IN THE DEPARTMENT OF THE INTERIOR, UNITED STATES OF AMERICA.

-----oOo-----

IN THE MATTER OF APPROVAL OF)
 DECREE UNDER ACT OF FEBRUARY)
 28, 1919, 40 Stats. L, 1206.)

PETITION FOR RESCISSION OF
 ORDER OF APPROVAL.

(OFFICE OF INDIAN)
 (AFFAIRS)
 (RECEIVED)
 (May 21, 1930)
 (27078)

TO THE HONORABLE RAY LYMAN WILBUR,
 SECRETARY OF THE INTERIOR,

SIR:-

Comes now the LA MESA, LEMON GROVE & SPRING VALLEY IRRIGATION DISTRICT, by the President of its Board of Directors pursuant to resolution of said Board, and respectfully petitions the Secretary of the Interior for an order rescinding, vacating and setting aside the order of the Secretary, dated December 22, 1922, which said order conditionally approved the finding of the Superior Court of the State of California, in and for the County of San Diego, that the City of San Diego had the right to condemn certain lands of the Capitan Grande Band of Mission Indians for the purpose of flooding the same by the construction of a dam at El Capitan on the San Diego River.

In support of this petition and as reasons for the granting thereof, a certified copy of a resolution adopted by said Board of Directors is attached hereto and by this reference incorporated herein and made a part hereof, and all of the recitals and statements contained in said resolution are hereby adopted as allegations of this petition.

WHEREFORE, your petitioner, the said La Mesa, Lemon Grove & Spring Valley Irrigation District, respectfully prays that an order be made vacating and setting aside the said order of December 22, 1922.

LA MESA, LEMON GROVE & SPRING VALLEY
 IRRIGATION DISTRICT.

By Frank R. Beatty
 President

RESOLUTION AUTHORIZING PETITION TO SECRETARY
OF THE INTERIOR FOR RESCISSION OF ORDER OF
DECEMBER 22, 1922, RELATING TO THE BUILDING
OF A DAM BY THE CITY OF SAN DIEGO AT EL CAPITAN.

WHEREAS, the Secretary of the Interior on the 22nd day of December, 1922, made and issued his order reading as follows:

"WHEREAS Section 3 of the Act of February 28, 1919 (40 Stat. L. 1206) extending the law of eminent domain of the State of California over the lands of the Capitan Grande Band of Indians for the purpose of enabling the city of San Diego to acquire a municipal water supply provides: "That any judgment or order of condemnation entered in such proceeding shall be binding upon said Capitan Grande Band of Indians only upon the approval by the Secretary of the Interior of the terms of said judgment: Provided further, That the Secretary of the Interior shall require from the city of San Diego in addition to the award of condemnation such further sum which, in his opinion, when added to said award, will be sufficient in the aggregate to provide for the purchase of additional lands for the Capitan Grande Band of Indians, the erection of such schools, churches, and administrative buildings, the sinking of such wells and the construction of such roads and ditches, and providing water and water rights and for such other expenses as may be deemed necessary by the Secretary of the Interior to properly establish these Indians permanently on the lands purchased for them," and

Whereas on the 10th day of June, 1920, there was handed down in the above entitled case a decree of \$75,000.00, plus such additional amounts as may be required by the Secretary of the Interior, and providing that such decree shall be binding upon the parties only upon approval of the decree by the Secretary of the Interior.

Now, therefore, the Secretary of the Interior having made or caused to be made an exhaustive investigation for the purpose of determining the amount necessary to carry out the provisions of said Act of February 28, 1919, hereby fixes a total amount required in the sum of \$361,428.00 and the decree in the above entitled case is hereby approved and conditioned that the city of San Diego in addition to the \$75,000.00 awarded therein pay the sum of \$361,428.00.

In Witness Whereof the Secretary of the Interior has hereunto affixed his hand and official seal this 22nd day of December, 1922.

Albert B. Fall,
Secretary.

and

WHEREAS, at the time of the making of said order no decree of any court had been made or entered as in said order recited, but findings of fact and conclusions of law had, on the 10th day of June, 1921, been signed by a Judge of the Superior Court of the State of California, in and for the County of San Diego wherein it was recited that the City of San Diego had a right to acquire the lands, property and rights, described in the complaint, by condemnation in the action pending therefor as a municipal water system, and was given the right to institute and prosecute the proceedings therefor by the provisions of the Act of February 28, 1919, and that the market value of the lands sought to be acquired and condemned was the sum of \$75,000.00, and as a conclusion of law that the City of San Diego was entitled to a judgment upon the payment of said sum of \$75,000.00, with such additional sum as may be required by the Secretary of the Interior; and

WHEREAS, said sum of money has not been paid, nor has any part thereof been paid and no judgment has been made or entered in said action; and

WHEREAS, the Act of Congress of February 28, 1919. (40 Stats L. 1206) by Section thereof provided that the lands therein granted to the City of San Diego "shall be subject to all legal rights heretofore acquired by any person, persons or corporation, in or to the above described premises or any part thereof and now existing under and by virtue of the laws of the United States, and no private right, title, interest or claim of any person, persons or corporation, in or to any of such lands shall be interfered with or abridged except with the consent of the owner or owners, or claimant or claimants thereof, or by due process of law and just compensation paid to said owner or claimant;" and

WHEREAS, the La Mesa, Lemon Grove & Spring Valley Irrigation District is a duly organized political subdivision of the State of California exercising municipal functions under the provisions of the California Irrigation District Act, and as such succeeded to all the rights and property of the San Diego Flume Company, a public utility, among which rights and property is included a right of way across said lands sought to be condemned in the Capitan Grande Indian reservation for a water flume in accordance with conditions prescribed by the Secretary of the Interior and accepted by

said San Diego Flume Company August 20, 1892, all as contained in a grant to said San Diego Flume Company dated September 16, 1892, pursuant to the provisions of Section 8 of the Act of January 12, 1891, 26 Stats. L, 712, 714, and such rights as may have been acquired by said San Diego Flume Company under that certain contract entered into on behalf of the Capitan Grande Band of Mission Indians and the United States of America, by Jos. W. Preston, United States Indian Agent, and by the San Diego Flume Company, dated January 16, 1888, wherein it is recited that subject to the approval of the Commissioner of Indian Affairs the United States doth "grant, bargain, sell and convey to the San Diego Flume Company, its assigns and successors the sole right, title, use and enjoyment of the reservoir, headworks and water rights aforesaid, and a right of way through the townships and sections aforesaid as now projected and designed with all the necessary lands for headworks, rights and privileges usual and appurtenant to the same," and in which contract the said Flume Company was required to pay the sum of \$1300.00 and agree to supply to the Indians of said reservation water for the use of the Indians for agriculture and other purposes; and

WHEREAS, the said City of San Diego did not make the La Mesa, Lemon Grove & Spring Valley Irrigation District, or its predecessors in interest, parties to said action in said state court brought by it for the purpose of condemning the lands in said action described under the provisions of said act of February 28, 1919; and

WHEREAS, the said City of San Diego has not obtained the consent of the La Mesa, Lemon Grove & Spring Valley Irrigation District, nor the consent of its predecessors in interest to flood the lands which it was seeking to condemn in said action, nor has it brought any suit against said Irrigation District or its predecessors in interest for the purpose of condemning or otherwise acquiring the rights conveyed by said grant of September 16, 1892, or by the previous contract of January 16, 1888, nor has the said City of San Diego compensated or offered to compensate the said La Mesa, Lemon Grove & Spring Valley Irrigation District, for any rights acquired or owned by it in and to the lands or the waters referred to in said grant and said contract; and

WHEREAS, by section 5 of said act of February 28, 1919 (40 Stats. L, 1206), it was provided that the reservoir to be constructed by the City of San Diego as authorized by said act, should be maintained and controlled by the City for the use and benefit of said city and the inhabitants thereof "and of such other municipalities within the County of San Diego, State of California, as may be now or hereafter furnished with water by said City of San Diego, and for the use and benefit of riparian owners along the San Diego River below the lands herein described, and for the benefit of persons, corporations, or municipalities situated along or adjacent to the pipe lines of said City of San Diego;" and

WHEREAS, at the time of the adoption of said act of February 28, 1919, and at the present time there are two municipal corporations in the County of San Diego, in addition to this Irrigation District, which is a public corporation for municipal purposes, and several unincorporated towns, having no other source of water supply than the San Diego River; and

WHEREAS, this Irrigation District is the duly constituted public agency for the distribution of water to said incorporated and unincorporated towns, and also for the distribution of water to some four thousand acres of land upon which are growing citrus orchards and other products, and the only source of water supply therefor is the waters of the said San Diego River; and

WHEREAS, the said municipalities and unincorporated towns and lands have for more than forty years been receiving water from this Irrigation District and its predecessors in interest, which said water has been taken and distributed under various appropriations of water under the local laws, customs and usages and by virtue of authority of the Congressional Act of July 26, 1866, and the provisions of said grant and contract of September 16, 1892 and January 16, 1888; and

WHEREAS, in the opinion of this Board of Directors, the rights so acquired by this Irrigation District and its predecessors in interest to take and distribute said waters pursuant to said appropriations, and said grant and contract, was contemplated by the Congress of the United States in the enactment of said Section 2 of said act and in Section 5 of said act; and

WHEREAS, the said City of San Diego, subsequent to the adoption of said act of February 28, 1919, and in the year 1923, commenced in action in the Superior Court of the State of California, in and for the County of San Diego, against the Cuyamaca Water Company, the predecessor of this Irrigation District, in which it alleged that it was the owner of a prior and paramount right to the "use of all, or any portion, of the waters of said San Diego River necessary or convenient for the use of said City of San Diego and the inhabitants thereof," and that the said Cuyamaca Water Company was without any right, title or interest in or to any part of the waters of the San Diego River "save in subordination and subject to said paramount right" of the plaintiff and that by the bringing of said action the said City of San Diego intended to repudiate, and did repudiate, and thereby sought to avoid the requirements of sections 2 and 5 of said act of February 28, 1919, and by the bringing of said action and the prosecution thereof has failed and refused to comply with the letter or spirit of said act of February 28, 1919; and

and as such Secretary I have charge of the books, records and files of said District, and particularly of the minute book of said District; and I do hereby further certify that on Thursday, the 15th day of May, 1930, the foregoing resolution was duly passed and adopted by the Board of Directors of said District, and I do hereby further certify that the foregoing is a full, true and correct copy of said resolution and as the same is duly entered on the minute book of the Board of Directors of said La Mesa, Lemon Grove & Spring Valley Irrigation District.

And I do hereby certify that Frank R. Beatty is the President of the Board of Directors of said District, and that his signature hereinafter affixed is his genuine signature, and that the seal hereto attached is the regularly adopted and official seal of said Irrigation District.

(SEAL) IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District at my office in the City of La Mesa, in said County and State this 15th day of May, 1930.

(Signed) RUTH C. DREW

STATE OF CALIFORNIA,)
) SS.
 COUNTY OF SAN DIEGO.)

I, FRANK R. BEATTY, do hereby certify that I am the duly elected, qualified and acting President of the La Mesa, Lemon Grove & Spring Valley Irrigation District, and that Ruth C. Drew is the duly appointed, qualified and acting Secretary of said District, and as such secretary has charge of the books, records and files of said District, and particularly of the minute book of the proceedings of the Board of Directors of said District, and that the signature of said Ruth C. Drew hereto attached is here genuine signature and that the seal of said District hereto affixed is the regularly adopted and official seal of said District.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of May, 1930.

(Signed) FRANK R. BEATTY

ENDORSED:

IN THE DEPARTMENT OF THE IN-
 TERIOR, UNITED STATES OF
 AMERICA.

IN THE MATTER OF APPROVAL OF
DECREE UNDER ACT OF FEBRUARY
28, 1919 (40 Stats. L, 1206)

PETITION FOR RESCISSION
OF ORDER OF APPROVAL

STEARNS, LUCE & FORWARD
Attorneys-at-Law
Suite 1220 San Diego
Trust & Savings Bldg.
San Diego, California.

Office of Indian Affairs	
Received	
May 28,	1930
28328	

TO THE HONORABLE RAY LYMAN WILBUR,
SECRETARY OF THE INTERIOR
WASHINGTON, D. C.

SIR: -

WHEREAS, Section 5 of the Act of Congress, approved February 28, 1919, under which the City of San Diego purposes to build a dam at El Capitan provides:

"Sec. 5. That said reservoir, when constructed, shall be maintained and controlled by the city of San Diego for the use and benefit of said city and the inhabitants thereof and of such other municipalities within the county of San Diego, State of California, as may be now or hereafter furnished with water by said city of San Diego, and for the use and benefit of riparian owners along the San Diego River below the lands herein described and for the benefit of persons, corporations, or municipalities situated along or adjacent to the pipe lines of said city of San Diego for the conservation and storage of water for domestic, irrigation, or municipal use."

and

WHEREAS, the City of San Diego is contesting in the courts the rights of the parties referred to in said section 5 to use any party of the waters of said river; and

WHEREAS, the undersigned citizens of the City of San Diego believe the interests of said city and of its back country can best be served by an adjustment and settlement of the conflicting claims to the use of said waters;

NOW, THEREFORE, the Secretary of the Interior is respectfully petitioned to so modify the order of December 22, 1922, issued under authority of said Act of Congress, as to require the City of San Diego to file with the Secretary its declaration of intention to comply with the provisions of said act or make proof of agreements for the protection of, or service to the beneficiaries referred to in said section 5 of said act.

The communication was signed by Col. Ed Fletcher, C. W. Wilson, Matt F. Heller, G. A. Davidson, George Burnham, E. E. Hendy, F. M. White, Harrison G. Sloan, M. T. Gilmore, J. W. Sefton, Jr., and about 180 others.

City Attorney
CITY OF SAN DIEGO

San Diego, California

December 27, 1930.

To the Honorable, the Mayor and Common Council
of The City of San Diego, California.

Gentlemen:

With respect to my recent visit to Washington, taken at your request, I respectfully report that your check for payment of the Indian Reservation lands at El Capitan was given to the Secretary of the Interior, and I hold his receipt therefor.

The Honorable Secretary stated that immediate investigation would be made of the matter, and that if there was no change in the situation requiring the payment of additional funds in order to accomplish the same result in caring for the Indians which might have been done with such funds at the time the amount was originally fixed the check would be accepted, and due patent made to the city of such lands. Immediate directions were given to the Indian Department to make the necessary investigations, and I am satisfied that within sixty days the Secretary will award these lands to the City.

With respect to the application of the City for Hoover Dam electrical energy, * * *

Respectfully,

M. W. Conkling (Signed)

City Attorney.

MWC/S

CITY OF SAN DIEGO
City Attorney

San Diego, California

December 27, 1930.

To the Honorable, the Mayor and Common Council
of the City of San Diego, California.

Gentlemen:

With respect to my recent visit to Washington, taken
at your request, I respectfully report that your check for
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given to the Secretary of the Interior, and I hold his re-
ceipt therefor.

My report stated that the immediate investi-
gation should be made of the matter, and that if there was
any change in the status of the matter, the payment of additional
funds in order to complete the same should be in carrying for
the lands which have been done in such funds as
the time the amount was originally fixed the check would be
accepted, and that payment made to the city of such lands.
Immediate action was given to the Indian Department to
make the necessary investigations, and am satisfied that
within sixty days the Secretary will advise these lands to

DOCUMENT NO. 264358

Filed Dec. 29, 1930.

ALLEN H. WRIGHT,
City Clerk

COMMUNICATION

From

City Attorney reporting on
his trip to Washington, D. C.

With respect to the application of the City for
Hoover Dam electrical energy, * * *

Respectfully

M. W. Conkling (Signed)

City Attorney.

January 19, 1931.

Honorable M. W. Conkling
City Attorney
San Diego, California.

Subject: San Diego River Project, El Capitan
Reservoir Basin Flowage Lands Required.

My dear Judge Conkling:

Receipt is acknowledged of your letter dated January 17, requesting a description of the lands, if any, that will be needed if a dam is constructed at El Capitan Dam Site No. 2.

Provided the City of San Diego does not overflow lands in the El Capitan Reservoir Basin higher than elevation 713, reservoir contour 160, which is the controlling limit comprehended by the Act of the U. S. Congress, dated February 17, 1919, authorizing the City to condemn and acquire lands in the Capitan Grande Indian Reservation, there will be needed in addition to the lands which the City of San Diego has purchased; and the flowage rights which the City of San Diego has obtained a permit to use from the U. S. Land Office and the U. S. Forest Service; and the lands in the Capitan Grande Indian Reservation which the City is endeavoring to acquire under the Act of the U. S. Congress dated February 17, 1919, the 190 acre tract of land which will be required in part each for dam site and flowage lands and for which condemnation proceedings were initiated about five years ago, the lands being described as follows:

SW-1/4 of NE-1/4 Sec. 8, T 15 S, R 2 E, S.B.M.
S-1/2 of NW-1/4 Sec 8, T 15 S, R 2 E, S.B.M.
SE-1/4 of NE-1/4 Sec. 7, T 15 S, R 2 E, S.B.M.
E-1/2 of SW-1/4 of NE-1/4 Sec. 7, T 15 S, R 2 E, S.B.M.
SE-1/4 of NW-1/4 of NE-1/4, Sec 7, T 15 S, R 2 E, S.B.M.

There will also be required an 80 acre tract which may be owned by the Irrigation District, the Cuyamaca Water Company or by some individual, described as follows:

W-1/2 of SE-1/4 Sec. 8, T 15 S, R 2 E, S.B.M.

However, if the City of San Diego should proceed to construct a dam to impound water to elevation 750, reservoir contour 197, as studied by John R. Freeman, Consulting Engineer, and set forth in his report dated May 22, 1924, there will be required in addition to the above lands, sixteen additional 40-acre tracts in the Capitan Grande Indian Reservation.

Very truly yours,

H. N. Savage,
Hydraulic Engineer.

HNS/f

9/23/32
copy/f

2902

Department of the
Interior.

THE SECRETARY OF THE INTERIOR
WASHINGTON

Feb 21 1931

Mr. M. W. Conkling,
City Attorney,
San Diego, Calif.

My dear Mr. Conkling:

Again referring to your letter of December 9, 1930, tendering certified check No. 1, dated November 26, 1930, drawn on the Treasurer of the City of San Diego, amounting to \$361,428.00, in payment for lands in the Capitan Grande Indian Reservation, you are advised that on February 14, 1931, this Department dismissed the petitions of the La Mesa, Lemon Grove & Spring Valley Irrigation District, the City of El Cajon, California, and Mr. Ed Fletcher and certain other persons as citizens of San Diego, that the formal order of this Department dated December 22, 1922, as to the amount required to comply with the provisions of the act of February 28, 1919 (40 Stat. L., 1206), be vacated and set aside.

This action was taken expressly without prejudice to any action which the petitioners may now have pending or which they may hereafter initiate in the courts.

On the same date the sum of \$361,428.00, covered by the above mentioned check, was formally accepted as full compliance on the part of the City of San Diego with those provisions of the act of February 28, 1919, requiring payment to be made for the Indian lands granted thereby.

Very truly yours,

(Signed) Ray Lyman Wilbur
Secretary.

OFFICE OF
CITY ATTORNEY
CITY OF SAN DIEGO

San Diego, California

February 27, 1931.

To the Honorable, The Mayor and Common Council
of The City of San Diego, California.

Gentlemen:

You are respectfully advised that by letter dated February 21st, 1931, the Secretary of the Interior has advised me that on the last mentioned date the sum of \$364,428.00, heretofore tendered by the City, was by him formally accepted in full compliance on the part of the City with the provisions of the Act of February 28th, 1919, requiring payment to be made for the Indian lands in the Capitan Reservation granted thereby.

Your attention, however, is called to the fact that by the terms of the Act of Congress in question these lands are granted to the City upon certain conditions, and that one of the conditions is that the city shall diligently prosecute proceedings for the issuance and sale of municipal bonds, and proceed with the construction of the dam and reservoir provided for. I see no reason why the city should not proceed at once with the sale of these bonds, as required by the Act of Congress, and respectfully recommend that such action be taken, or that proceedings be instituted to secure from the Government an extension of time or a change in the conditions of the grant.

Respectfully,

M. W. CONKLING (Signature)

City Attorney.

MWC/S

DEPARTMENT OF THE INTERIOR

Memorandum For the Press

For release to Morning papers Monday, July 20, 1931.

No decision will be made regarding the El Capitan Mission Indians until a careful review and general survey is made of the entire situation. Land belonging to the Capitan Grande Indians was sold to the city of San Diego under an act of Congress of February 28, 1919, and \$361,428 has been paid by the city for water and reservoir rights, into the United States Treasury for the account of these Indians, through the Department of the Interior.

As the City has shown no hurried effort to decide just where or when the dam is to be located there is no need for haste in behalf of the Indians to come to any quick or snap judgment as to where these Indians are to be relocated in the future. By the terms of the act referred to the Indians have the right to occupy and cultivate the reservoir site up to within ninety days of the time when water for storage purposes will be turned into the proposed reservoir, and undoubtedly it will be several years before any Indians will have to move. In fact considerable time will be required for the construction of the dam, after a decision is made by the city of San Diego and final plans of the dam have been prepared.

This was the conclusion reached in the Office of Indian Affairs, Washington, D. C., following a preliminary survey which Assistant Commissioner, J. Henry Scattergood, asked Miss Mary McGair, field representative, to make when he was in California last May. Since Mr. Scattergood's visit to California an effort has been made to stampede the Indian Office into making a quick decision on one of several ranches near San Diego, which have been offered to the Department of the Interior as possible reservation sites. The one especially pressed upon the Department, had been originally offered for a sum of several hundred thousand dollars. Just recently the owners of the ranch have telegraphed that they would accept exactly half of the original offer, and then it was learned that this ranch was to be sold in the near future under a mortgage foreclosure which mortgage is for considerably less than the last offer from the ranch owners.

Several petitions asking that this ranch be bought have been sent to Washington, signed by a number of the Indians living at Capitan Grande Village, who are now living on the land sold to the city of San Diego. Part of Miss McGair's work on this problem consisted of checking the names of these petitions with the April 1, 1931, census rolls on the El Capitan Group. In checking over the petition Miss McGair found that twenty-three out of the fifty-four petitioners who signed their own names were minors, a majority of these being between the ages of two and

ten years. The total number of petitioners only represented about 57 per cent of the inhabitants of Capitan Grande Village, and only about 33 per cent of the total number of inhabitants of the whole reservation, including the inhabitants of the village of Los Conejos, whose land is not on the area to be flooded by the reservoir of the city of San Diego, if and when built under present tentative plans.

Here another problem presents itself. The Capitan Grande Reservation is about seventeen thousand acres. One thousand nine hundred and four acres of this land has been sold to the city of San Diego. Two bands of Indians live on the reservation, the Capitan Grande group, who are on practically all of the land to be flooded, and the Los Conejos group who are on another part of the reservation but who are still on the water shed feeding the proposed reservoir. Is the city of San Diego going to object to a group of Indians staying on land which is the San Diego river water shed, where there is a possibility of pollution of the city's water supply?

If the Government only has to move the one group and not the other how is the amount of money to be divided? The Capitan Grande Village group did not consider the Los Conejos band in getting up a petition for the purchase of a ranch elsewhere and so apparently do not consider that the Conejos group have any right to share, yet the \$361,428 paid by the city represents appraising evaluation of the whole reservation, including Los Conejos. Additional legislation may be necessary before final disposition of the matter is had.

During a recent discussion of the whole problem Mr. Scattergood said, "Here we have a lot of money for a comparatively small group of Indians. We have plenty of time, there is no rush or haste. We should be able to evolve a plan to which we could point with pride and which would be an outstanding piece of work in the administration of Indians affairs. We want to know what all of the Indians themselves want. We are going to ask them to express themselves and we will endeavor, as far as possible to carry out their wishes."

No per capita cash payment has ever been discussed or will it be contemplated. The Indians have been asked to discuss their plans freely among themselves, in order that they may have the first chance to express themselves as to whether they wish to have the money used for the purchase of individual or family home sites or whether they prefer to remain together as a tribe. Perhaps in the final solution there will be a combination of the two ideas with some wishing to individually settle elsewhere and a group wishing to remain together. It has been suggested that when the time comes for the adult Indians to make a decision for themselves and the minors in their charge, an advisory committee of non-government employed citizens of California be

organized to work with Indian Service employees in ascertaining that these Indians are thoroughly acquainted with plans proposed and what their choices may be.

(P.N. 55302)

October 29, 1931.

TO THE HONORABLE, THE MAYOR AND COMMON COUNCIL
OF THE CITY OF SAN DIEGO, CALIFORNIA.

Subject: San Diego River Project, El Capitan
Reservoir Feature, Additional Right
of Way.

Gentlemen:

The Act of the United States Congress approved by the President February 28, 1919 granted to the City of San Diego right to use lands in the Capitan Grande Indian Reservation up to reservoir contour 160.

The drawings and specifications now developed for an El Capitan Dam provide for the fixed lip of the reservoir spillway to be at elevation 750, reservoir contour 197.

When recently in Washington, D. C., regarding the City and/or County of San Diego's participation in the Colorado River Project, All American Canal feature, I initiated conference with the Office of Indian Affairs and learned that the Indian Office Officials deemed it proper and necessary for the City of San Diego, if desiring to utilize lands in the El Capitan reservoir basin above reservoir contour 160, to initiate and accomplish an Act of Congress authorizing the use by the City of such additional lands.

On returning to San Diego, I contacted U. S. Congressman Honorable Phil D. Swing and he suggested that an Act be drafted amending the original Act, to permit the City to use for storage purposes the additional lands required above reservoir contour 160.

Congressman Swing is not expected back in San Diego before returning to Washington but has advised that he will be in Los Angeles November 3 A.M., available for conference regarding the amended Congressional Act he has suggested the City of San Diego may initiate.

A letter has been addressed to Honorable T. B. Cosgrove, Special Counsel for the City of San Diego, and inviting him to collaborate with the Hydraulic Engineer and any other City officials who may be authorized to take part in the conference with Congressman Swing.

Mr. Cosgrove's previous accomplishments of the original Act of Congress makes it obviously desirable that his assistance be obtained.

RECOMMENDATION: It is recommended that the Hydraulic Engineer be directed to attend a conference with Congressman Phil D. Swing at Los Angeles, November 3.

Very respectfully,

H. N. Savage,
Hydraulic Engineer.

HNS/r

October 29, 1931

Honorable T. B. Cosgrove
Special Counsel, City of San Diego
Rowan Building
Los Angeles, California.

Subject: San Diego River Project, El Capitan
Reservoir Feature, Capitan Grande Indian
Reservation, additional flowage lands.

My dear Mr. Cosgrove:

The lands granted to the City of San Diego by ("Public 306, 65th Congress, S-3646), An Act granting to the City of San Diego certain lands in the Cleveland National Forest and the Capitan Grande Indian Reservation for dam and reservoir purposes for the conservation of water, and for other purposes," approved February 28, 1919 (40 Stat., L., 1206) are shown on the City of San Diego's Drawing WD-256, "EL CAPITAN DAM AND RESERVOIR SITE AND LOCATION OF IRRIGATION DISTRICT'S FLUME", copy of which was passed to you about June 1930.

The Act, S-3646, is understood to limit the City's present reservoir storage rights to below elevation U.S.G.S. 713, reservoir contour 160, since a dam storing water in the reservoir to a higher level would flood lands not granted by the Act to the City for its use.

The drawings and specifications, as now developed for an El Capitan reservoir dam, provide for the fixed spillway lip of the reservoir to be at elevation 750, reservoir contour 197, and the top of the parapet of the dam to be at elevation 770, reservoir contour 217, which engineering research indicates is the most economical maximum storage of water for net safe duty delivery which can be conserved from the flood runoff of the San Diego River drainage basin tributary to the El Capitan Reservoir.

Out of abundant caution and in anticipation of possible future requirements not at this time known or possible to accurately and positively determine, it is deemed justified to apply for permit for the City to utilize lands in the El Capitan reservoir basin up to elevation 788, reservoir contour 235.

Enclosed is:

Tabulated descriptive list of the additional lands desired for reservoir purposes above elevation 713, reservoir contour 160;

Copy of Senate Bill S-3646, approved by the President February 28, 1919 (40 Stat. L., 1206); also

Copy of letter from the Commissioner of Indian Affairs to H. N. Savage, dated October 23, 1929, and approved by Jos. M. Dixon, First Assistant Secretary, accompanied by copy from the Indian Office files dated August 19, 1922, of "Schedule showing estimated cost of property establishing the Capitan Grande Indians permanently upon lands to be purchased for them, in accordance with Sections 3 and 4 of the Act of February 28, 1919", and "Excerpt from report of Supervising Engineer Herbert V. Clotts, dated August 19, 1922", submitting an appraisal "of the value of the lands, improvements, water rights, and other property of the Capitan Grande Indians involved in the water project of the City of San Diego, California authorized by the Act of February 28, 1919"; also

Your attention is invited to the item in report of Supervising Engineer Herbert V. Clotts, "Grazing land, 17597 acres at \$5 per acre" which is understood to be the gross area of the Capitan Grande Indian Reservation, indicating that the entire reservation is included.

Since the City of San Diego has paid the total price indicated in Supervising Engineer Herbert V. Clotts' appraisal and report, it is thought that the City may be justified in asking Congress to permit the utilization for reservoir purposes of such additional lands as may be required by the City if a reservoir dam is constructed ultimately to store water to elevation 788, reservoir contour 235.

At a recent conference in the Office of Indian Affairs at Washington, D.C., it was indicated to me that an Act of the Congress amendatory to the Act approved February 28, 1919, would be proper and necessary for the City of San Diego to initiate and accomplish for the purpose of securing the permit to use the additional lands desired in the reservoir basin.

United States Congressman Honorable Phil D. Swing has been contacted and has proffered his cooperation with the City of San Diego in securing an Act amending the original Act, to permit the City to use for storage reservoir purposes the additional land now desired.

Before Congressman Swing returns to Washington it is obviously important to have an official conference with him, which he has set for November 3, 1931 A.M., Alexandria Hotel, Los Angeles, and it is deemed important, and if agreeably convenient for you to do so, for you to collaborate with the Hydraulic Engineer, and the City Attorney if he finds it convenient to take part, in presenting to the Congressman the City's requirement to use additional flowage lands in Capitan Grande Indian Reservation and in the adjacent Cleveland National Forest.

3
Enclosed is Indian Office memorandum for the Press, released July 20, 1931, concerning the present status of the Capitan Grande Indians and the Indian Office's contemplated policies in connection with their transfer to another location and/or an assembly of independent allocations if and when the Electors authorize the installation of a reservoir dam at the El Capitan site.

Yours very truly,

H. N. Savage,
Hydraulic Engineer.

HNS/p

Encls. (6)

List of additional land required Cleveland National Forest
and Capitan Grande Indian Reservation

Copy of Senate Bill S-3646

Copy of letter from Commissioner Indian Affairs 10-23-29

Copy of Indian Office files 8-19-22

Excerpts from Report of Supervising Engineer Herbert V. Clotts
8-19-22

Indian Office Memorandum for Press, released 7-20-31

cc City Attorney

November 24, 1931.

TO THE HONORABLE, THE MAYOR AND COMMON COUNCIL
OF THE CITY OF SAN DIEGO, CALIFORNIA.

Subject: San Diego River Project, El Capitan
Feature, Additional Reservoir Lands
Desired above Reservoir Contour 160.

Gentlemen:

Based on information obtained from the Office of Indian Affairs during several conferences when I was last in Washington, September 18-22, 1931, and supplemented by successive conferences with U. S. Congressman Phil D. Swing at one which Mayor Walter W. Austin, City Attorney C. L. Byers and Special Water Counsel T. B. Cosgrove and myself attended in Los Angeles November 4, 1931, a conclusion was reached that an amendment to the Act of the United States Congress approved February 28, 1919 (40 Stat. L., 1206) was deemed to be the proper method of procedure under which the City of San Diego may endeavor to secure authority from the Federal Government to use certain lands in the Capitan Grande Indian Reservation above Reservoir Contour 160, required for the City's projected reservoir to store water to Elevation 750, Reservoir Contour 197.

Enclosed is a UNITED STATES LAND OFFICE DESCRIPTION FOR INCORPORATION IN (PARAGRAPH ONE) OF A DRAFT OF AN ACT AMENDING AN ACT OF CONGRESS APPROVED FEBRUARY 28, 1919 (40 Stat. L., 1206) deemed to comprehend and comply with the understandings reached at the several conferences in Washington, D. C. and with Congressman Swing and the City of San Diego's Mayor and attorneys as above.

Enclosed also is drawing, "SAN DIEGO RIVER PROJECT, CAPITAN GRANDE INDIAN RESERVATION, LANDS GRANTED-LANDS REQUIRED" WD-365, on which thereis indicated in colors:

"Capitan Grande Indian Reservation Exterior
Boundary Lines, shown"



"Deeded Lands Purchased by the City of
San Diego in the El Capitan Reservoir
Basin. shown"



"Lands Granted by the U. S. Congress to the
City of San Diego in the El Capitan Reser-
voir Basin, shown"



"Additional National Forest and Indian
Reservation Reservoir Lands Required
by the City of San Diego in El Capitan
Reservoir Basin, shown"



Duplicate original copies of this communication; preliminary draft of an Act for incorporation in Paragraph one amending the Act of Congress approved February 23, 1919, and drawing WD-365 are being passed to each: City Attorney C. L. Byers; Special Water Counsel T. B. Cosgrove, and informally to U. S. Congressman Honorable Phil D. Swing, for such editing as may be deemed advisable by the City's Attorneys and for such further appropriate action as your Honorable Body may direct.

Very respectfully,

H. N. Savage,
Hydraulic Engineer.

HNS/f
Encls. (2)
Draft of Act Amending an Act
Drawing WD-365

November 24, 1931

Honorable Phil D. Swing
U. S. Congress
Washington, D. C.

Subject: San Diego River Project, El Capitan Feature
Additional Reservoir Lands required.

My dear Mr. Swing:

Enclosed under separate cover is duplicate original of my letter of even date to the Honorable, the Mayor and Common Council of the City of San Diego, California, outlining the City of San Diego's requirement to use an additional 920 acres of reservoir lands in the Capitan Grande Indian Reservation, and 40 acres of additional reservoir lands in the adjacent Cleveland National Forest for the City's under contemplation San Diego River El Capitan Reservoir Feature:

Also draft of U. S. Land Office description of additional land required as above for incorporation in Paragraph 1 of a projected draft of an amendment of the Act of Congress approved February 28, 1919 (40 Stat. L., 1206);

Also DRAWING SAN DIEGO RIVER PROJECT, CAPITAN GRANDE INDIAN RESERVATION, LANDS GRANTED - LANDS REQUIRED. WD-365.

The City's Attorneys stated at the time of our conference in Los Angeles November 4, 1931, that they would draft the substitute paragraph 1 for the amendment deemed appropriate of the Act of the U. S. Congress approved as above.

It is recalled that each you and I had independently been constrained to the expectation that the City of San Diego would be required to pay a substantial additional amount in order to secure the use of the required additional 920 acres of land in the Capitan Grande Indian Reservation for reservoir purposes. It had been my assumption that the City might properly have to pay something approaching a pro rata amount per acre for the 920 acres now required, to the pro rata of the San Diego Court's decree of \$75,000 for the 1940 acres subsequently granted to the City of San Diego by the United States Congress approved February 28, 1919, as above.

It is further recalled that one of the City's Attorneys was pronounced in declaring to you that the \$361,428 amount determined by the Secretary of the Interior and paid by the City of San Diego should and would cover all the lands the City might desire to use in the Indian Reservation and that no additional

amounts should now be required to be paid by the City in order to insure it the use of the additional 920 acres now under consideration.

It is still further recalled that equally pronounced assurances were given to you by one of the City's Attorneys that the City of San Diego would provide you with City official personnel assistance in Washington to collaborate with you in advancing the amendment to the United States Congress Act approved February 28, 1919 (40 Stat. L., 1206).

It is assumed that you will make formal requisition well in advance to the Mayor and Common Council for such City personnel assistance as you may deem required and likely to be of most assistance to you in advancing the City's desire to obtain the rights to utilize for reservoir purposes 920 acres additional area in the Capitan Grande Indian Reservation, and 40 acres additional area in the Cleveland National Forest, all as shown on Drawing WD-265, by the accomplishment of an amendment to the Act of the United States Congress approved February 28, 1919, as above.

Enclosed for your appropriate information is copy of my letter dated October 15, 1929 to the Commissioner of Indian Affairs, subject "City of San Diego Municipal Water Supply, Reservoir Flowage Lands"; and

Copy of the Commissioner of Indian Affairs letter dated October 23, 1929, replying thereto.

Respectfully,

H. N. Savage,
Hydraulic Engineer.

HNS/p

Encls. (2)

Letter to Commissioner of Indian Affairs 10/15/29

Reply from Commissioner of Indian Affairs 10/23/29

December 7, 1931.

To the Honorable,
The Commissioner of Indian Affairs,
U. S. Department of the Interior,
Washington, D. C.

Attention: Attorney J. R. T. Reeves, Chief Counsel.

Subject: San Diego River Project, El Capitan Reservoir
and Dam Feature, Lands.

My dear Mr. Commissioner:

Agreeable with my oral conferences with Special Counsel J. R. T. Reeves in Washington, September 22, enclosed is print of Drawing WD-372, also letter size print, on which is indicated in colors the controlling acreages involved in the City of San Diego's projected El Capitan reservoir basin and the Capitan Grande Indian Reservation lands already granted and additional lands required.

An arrangement is being advanced whereby the City of San Diego may impound and deliver water from the El Capitan Reservoir to the Irrigation District, thereby eliminating the requirement for further maintenance of the Irrigation District's conduit flume and "U" pipes along the left side of the Reservoir.

In case the above arrangement is perfected it is thought that the bench now occupied by the flume may be widened and serve as a public highway.

Very respectfully,

H. N. Savage,
Hydraulic Engineer.

HNS/f
Encl.
WD-372 (2)

February 17, 1932

Honorable Phil D. Swing
United States Congressman
Washington, D. C.

Subject: City of San Diego Municipal Water Development
San Diego River Project, El Capitan Feature,
980 Acres Additional Reservoir Lands.

My dear Mr. Swing:

Enclosed is copy of the City of San Diego's Resolution No. 58000, authorizing and directing the City Attorney and the Hydraulic Engineer to travel to Washington, D. C. and advance the acquisition of additional El Capitan reservoir lands.

It is understood that Attorney Albert J. Lee, in the same connection, will also travel to Washington in the interest of the La Mesa, Lemon Grove & Spring Valley Irrigation District.

It is my plan to have a conference with the California State Engineer at Sacramento February 19, at which time it is hoped that his formal and final approval can be materially advanced if not finally obtained of the general drawings and specifications for the installation of the El Capitan Dam and Spillway and accessory structures.

It is my further plan to leave Sacramento February 19, P.M. and arrive in Washington February 23, A.M.

Mr. Phil Martin of Santee, a riparian owner, has telephoned me that he expects a notification from the House and/or Senate Committee on Public Lands four or five days in advance of a hearing by either of the Committees on the El Capitan lands, HR 229.

I am highly gratified over the Imperial Valley electors large majority vote for the All American Canal contract and naturally relatively equally so in behalf of the ultimate inevitable requirements of the City and County of San Diego for additional water supply through the All American Canal, and relatively abundant pleasure for the Congressmen who have made the Swing-Johnson Bill an actuality which is unprecedented potentiality.

With sincere feelings of high personal esteem and valuation, I am

Very cordially yours,

HNS/f
Encl. Resolution #58000

H. N. Savage,
Hydraulic Engineer.

April 1, 1932

To the Honorable,
The Commissioner of Indian Affairs,
Washington, D. C.

Subject: City of San Diego, San Diego River Project,
El Capitan Reservoir Feature, Reservoir
Lands, Captain Grande Indian Reservation.

Sir:

It is understood that the House Committee on Public Lands favorably reported on the City of San Diego's application and the Office of Indian Affairs' concurrence in a grant by the Congress of 920 acres of land in the Captain Grande Indian Reservation to the City of San Diego as set forth in the Amended Bill applied for and prepared jointly by the City of San Diego's Agencies and the Office of Indian Affairs. It is further understood that the House of Representatives has passed the Bill.

It is the impression that the Senate Sub-Committee on Public Lands may have reported favorably on the Amended Bill, although no information regarding the Sub-Committee's action has been received in this office.

Senator Hiram W. Johnson telegraphed a reply on March 26, as follows:

"I think that ultimately the Senate will pass your Bill. I am sorry I cannot prophecy as to the date when this will be done."

The City of San Diego has invited bids for the installation of its projected El Capitan Reservoir Dam, Spillway and Outlet Works to be opened April 11. The estimated cost of the work is, roughly, approaching \$3,000,000.

Your immediate reaction is respectfully invited regarding the status of the Amended Bill and the prospects for its passage by the Senate, and the action you deem prudent for the City to take in immediately awarding a contract for the installation of the dam following the receipt of bids April 11. The City's urgent requirement for the conservation of additional water supply and the relatively greater urgency of providing work for the local army of unemployed actuates the City of San Diego officials in super-aggressively awarding the contract for the Dam at the earliest practicable date.

2
With sincere feelings of high esteem for the Commissioner and Assistant Commissioner and Staff of the Office of Indian Affairs, and with feelings of high appreciation for the splendid cooperation which the Office of Indian Affairs exemplified with the City of San Diego's needs in collaborating in the development of and progressing the Amended Bill to and through the Congress, I am

Very respectfully yours,

H. N. Savage,
Hydraulic Engineer.

HNS/f

United States
Department of the Interior
Office of Indian Affairs
Washington

Apr 9 1932

Mr. H. N. Savage,
Water Development Department,
San Diego, California.

Dear Mr. Savage:

We have your letter of April 1, 1932, relating to pending legislation in Congress authorizing the City of San Diego to acquire for reservoir purposes an additional area of 920 acres of the Capitan Grande Indian Reservation.

The bill H. R. 10495 as amended passed the House of Representatives on March 23, 1932, and on the following day was referred to the Senate. Informal inquiry on April 7 elicited from the Clerk of the Public Lands Committee in the Senate that the subcommittee handling the measure had not yet submitted its report. We, of course, are in no position to prognosticate when final action may be taken on the bill in the Senate.

Concerning your inquiry relative to the desire of the City to prosecute construction work following the receipt of bids on April 11, it would seem that since the City has acquired 1940 acres of this reservation that constitute the principal reservoir area, it would be in a position to undertake and prosecute as rapidly as conditions would permit the construction of the reservoir seeing to it, of course, that no injustice or damage is suffered to the Indian lands outside of the City's present area until after such Indian lands have been acquired by the City.

We wish to assure you of our appreciation of your cooperation in connection with the pending legislation and that we will do everything possible to facilitate the final settlement of this matter.

Sincerely yours,

J. Henry Scattergood (Signed)
Assistant Commissioner.

We appreciate your kind words & thank you too for all your help from your end in protecting the Indians' interests. Kind regards.

J. H. S.

April 18, 1932.

TO THE HONORABLE, THE MAYOR AND COMMON COUNCIL
OF THE CITY OF SAN DIEGO, CALIFORNIA.

Subject: San Diego River Project, El Capitan Lands
920 Additional Lands Required.

Gentlemen:

Following is purport of letters from Major General
Joseph E. Kuhn, dated Washington, D. C., April 11-12, 1932:

I had invited General Kuhn, immediately upon his
arrival in Washington, D. C. to favor the City of San Diego
by contacting each the Office of Indian Affairs and United
States Senator Hiram W. Johnson to learn and report the
status of the City's El Capitan reservoir 920 acres addi-
tional reservoir land requirement provided for in the City's
amended El Capitan Bill now before the United States Congress.

General Kuhn's letters dated April 11-12, advise that:

He had had a satisfactory conference with J. Henry
Scattergood Assistant Commissioner of Indian Affairs, who
reported his belief that the passage of the City's Bill
in a short time is practically assured, and

That the Indian Office, on account of the Indians'
interests involved, is just as anxious to expedite the
passage of the Bill as is San Diego.

The General contacted Senator Hiram W. Johnson's office
and was advised that the Senate had adopted the House Bill;
that a hearing had already been had before a Sub-Committee
of the Senate of the Senate Public Lands Committee; that no
objection had been made to the Bill, and

To the Honorable, the Mayor and Common Council.

That the next step is reported of the Sub-Committee to the full Committee, which was expected to next meet April 12, when it is hoped the matter would be favorably considered.

Senator Johnson is reported to be fully aware of the earnest desire of the City of San Diego to have the matter expedited and promises to do all in his power to help.

Respectfully,

H. N. Savage,
Hydraulic Engineer.

HNS/m

T E L E G R A M

1932 APR 25 PM 10 38

S261 10 NM GOVT-HF WASHINGTON DC 25

H N SAVAGE=
HYDRAULIC ENGR SAN DIEGO CALIF=

GLAD ADVISE SENATE TODAY PASSED EL CAPITAN BILL WITHOUT
AMENDMENTS=

PHIL D SWING.

11/2/32
copy /f

2924

T E L E G R A M

SB233 7 GOVT- SC WASHINGTON DC 25 149P

1932 APR 25 AM 11 10

H N SAVAGE-

SAN DIEGO CALIF-

SENATE HAS JUST PASSED EL CAPITAN BILL-

HIRAM W JOHNSON

An Act amending an Act of Congress approved February 28, 1919 (40 Stat. L., 1206), granting the City of San Diego certain lands in the Cleveland National Forest and the Capitan Grande Indian Reservation for dam and reservoir purposes for the conservation of water, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the east half of the southwest quarter of the southeast quarter and the south half of the northeast quarter of the southeast quarter of section five; the south half of the northeast quarter of the northwest quarter and the north half of the southwest quarter of section eight; the west half of the southwest quarter of the southwest quarter and the west half of the northeast quarter of the northwest quarter of section nine, all in township fifteen south, range two east, San Bernardino base and meridian, within the Cleveland National Forest; and the southwest quarter of the southwest quarter, the east half of the southwest quarter, the northwest quarter of the southeast quarter and the west half of the northeast quarter of the southeast quarter of section eleven; the north half of the northwest quarter and the southwest quarter of the northwest quarter of section fourteen; the southeast quarter of the southwest quarter, the southwest quarter of the southeast quarter, the east half of the southwest quarter of the southwest quarter, the northeast quarter of the southwest quarter, the east half of the northeast quarter of the northwest quarter, the east half of the southeast quarter of the northwest quarter, the northeast quarter, the north half of the southeast quarter and the southeast quarter of the southeast quarter of section fifteen; the northeast quarter of the southeast quarter of section twenty-one; the northwest quarter of the northeast quarter, the northwest quarter, the north half of the southwest quarter, the southwest quarter of the southwest quarter, the west half of the northeast quarter of the northeast quarter and the south half of the northeast quarter of section twenty-two; the west half of the northwest quarter of section twenty-seven; the east half of the northeast quarter, the southwest quarter of the northeast quarter, the southeast quarter, the east half of the northeast quarter of the southwest quarter, the east half of the southeast quarter of the southwest quarter and the east half of the northwest quarter of the northeast quarter of section twenty-eight; and the northeast quarter, the west half of the southeast quarter, the east half of the southwest quarter, the southeast quarter of the northwest quarter, and the east half of the northeast quarter of the northwest quarter of section thirty-three, all in township fourteen south, range two east, San Bernardino Base and meridian; also the north half of the southwest quarter, the southwest quarter of the southwest quarter, the west half of the northwest quarter of the southeast quarter, the west half of the southwest quarter of the southeast quarter, and the north half of the southeast quarter of the southwest quarter of section three, and lots two, three, six, seven, eight, nine, ten, eleven, and the south half of section four, all in township fifteen south, range two east,

San Bernardino base and meridian, within the Capitan Grande Indian Reservation, all within the County of San Diego and State of California, are hereby granted to the City of San Diego, a municipal corporation in said county and state, for dam and reservoir purposes for the conservation and storage of water, whenever said city shall have provided compensation as herein- after specified for all property rights and interests and damages done to Mission Indians located upon the Capitan Grande Indian Reservation; Provided, That the lands herein granted shall not be sold, assigned, transferred, or conveyed to any private person, corporation, or association; and in case of any attempt to sell, assign, transfer, or convey, or upon a failure to use and apply said lands exclusively to the purposes herein specified, this grant shall revert to the United States.

(PUBLIC - No. 119 - 72D CONGRESS)

(H. R. 10495)

AN ACT

Amending an Act of Congress approved February 28, 1919 (40 Stat. L. 1206), granting the city of San Diego certain lands in the Cleveland National Forest and the Capitan Grande Indian Reservation for dam and reservoir purposes for the conservation of water, and for other purposes, so as to include additional lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of an Act of Congress approved February 28, 1919, granting the city of San Diego certain lands in the Cleveland National Forest and the Capitan Grande Indian Reservation for dam and reservoir purposes for the conservation of water and other purposes, be amended to read as follows:

"That the south half northeast quarter northwest quarter and the north half southwest quarter section 8; the west half southwest quarter southwest quarter and the west half northeast quarter northwest quarter section 9, all in township 15 south, range 2 east, San Bernardino base and meridian, within the Cleveland National Forest; and the southwest quarter southwest quarter, the east half southwest quarter, the northwest quarter southeast quarter and the west half northeast quarter southeast quarter section 11; the north half northwest quarter and the southwest quarter northwest quarter section 14; the southeast quarter southwest quarter, the southwest quarter southeast quarter, the east half southwest quarter southwest quarter, the northeast quarter southwest quarter, the east half northeast quarter northwest quarter, the east half southeast quarter northwest quarter, the northeast quarter, the north half southeast quarter and the southeast quarter southeast quarter section 15; the northeast quarter southeast quarter section 21; the northwest quarter northeast quarter, the northwest quarter, the north half southwest quarter, the southwest quarter southwest quarter, the west half northeast quarter northeast quarter, and the south half northeast quarter section 22; the west half northwest quarter section 27; the east half northeast quarter, the southwest quarter northeast quarter, the southeast quarter, the east half northeast quarter southwest quarter, the east half southeast quarter southwest quarter, and the east half northwest quarter northeast quarter section 28; and the northeast quarter, the west half southeast quarter, the east half southwest quarter, the southeast quarter northwest quarter, and the east half northeast quarter northwest quarter section 33, all in township 14 south, range 2 east, San Bernardino base and meridian; also the north half southwest quarter, the southwest

quarter southwest quarter, the west half northwest quarter southeast quarter, the west half southwest quarter southeast quarter, and the north half southeast quarter southwest quarter section 3; and lots 2, 3, 6, 7, 8, 9, 10, 11, and the south half section 4, all in township 15 south, range 2 east, San Bernardino base and meridian, within the Capitan Grande Indian Reservation, all within the county of San Diego and State of California, are hereby granted to the city of San Diego, a municipal corporation in said county and State, for dam and reservoir purposes for the conservation and storage of water, whenever said city shall have provided compensation as hereinafter specified for all property rights and interests and damages done to Mission Indians located upon the Capitan Grande Indian Reservation: Provided, That the lands herein granted shall not be sold, assigned, transferred, or conveyed to any private person, corporation, or association; and in case of any attempt to sell, assign, transfer, or convey, or upon a failure to use and apply said lands exclusively to the purposes herein specified, this grant shall revert to the United States: Provided, however, That proceedings to acquire the nine hundred and twenty acres of additional land granted by this Act, as herein amended, by eminent domain of the State of California as authorized by the provisions of this Act herein contained, may at the option of the city of San Diego be dispensed with, and if the said city so elects and upon payment by said city as compensation for such lands, rights, interests, and damages of the additional sum of \$35,567.20, the Secretary of the Interior of the United States is hereby authorized and directed to issue to said city a patent in fee simple conveying all the rights, titles, and interests of the said Indians and of the United States in and to all of the lands herein above described: Provided further, That no provisions of this Act and nothing done in carrying out its provisions, as between the United States, said Mission Indians and their grantees, shall in any wise limit or terminate any rights within the Capitan Grande Indian Reservation of any person, persons, or corporations heretofore granted or conveyed under or by authority of the laws of the United States.

"No provisions of this Act and nothing done in carrying out its provisions shall have the effect of terminating or limiting the rights of said Capitan Grande Indians or of the United States in or to the lands or in the waters flowing in or along the lands remaining in and forming a part of the Capitan Grande Reservation after the city of San Diego has acquired title to the lands herein granted: Provided, That in the event the Indians of the Capitan Grande Reservation, or any of them, are located on additional land or lands purchased by the United States for them and situate within the watershed of the San Diego River, the said Indians or any of them or the United States in their behalf shall have the right to transfer to such additional land or lands, in whole or in part, such water rights as they or the United States possess

3.

on the Capitan Grande Indian Reservation, and subject to the conditions hereinafter provided shall have the same right to develop and use a like quantity of water on such additional land or lands as they have heretofore had the right to develop and use within said reservation: Provided further, That the total quantity of water developed and used by the said Indians or by the United States in their behalf, including the use continued on the diminished reservation, shall not exceed in the aggregate the total quantity of water which said Indians or the United States in their behalf have heretofore had the right to develop and use within the Capitan Grande Indian Reservation.

"The grant herein to the said city of San Diego is hereby expressly made subject to such rights, which rights shall not be subject to loss by non use or abandonment thereof so long as the title to said lands remains in the Indians or in the United States.

"The funds paid and those to be paid by the said city of San Diego as compensation to the Capitan Grande Indians for their lands shall, in addition to the uses in the Act of February 28, 1919 (40 Stat. L. 1206-1209), for the removal of said Indians as a tribe, be available also for reestablishing individually or as a group or groups the Capitan Grande Band of Indians, including those residing within the Conejos Valley of the retained reservation, on tract or tracts of land to be acquired by purchase or otherwise for them, and for the acquiring of water rights including cost of transferring in whole or in part their present water rights to such other lands, construction of necessary water works, including the development of a water supply, for domestic and irrigation purposes, purchasing or building homes, purchasing of household furnishings, farm equipment, livestock, and other improvements for the benefit of these Indians under such rules and regulations to be prescribed by the Secretary of the Interior: Provided, That those Indians desiring to remain on that part of the Capitan Grande Reservation not disposed of under this Act may remain thereon and receive such benefits there."

Sec. 2. Nothing contained in section 1 hereof shall be held, deemed, or construed as affecting, altering, or in anywise changing the rights of the riparian owners under the provisions in the Act approved February 28, 1919.

Approved, May 4, 1932

POSTAL TELEGRAPH

S195 9 GOVT- HF WASHINGTON DC 5 608P

1932 MAY 5 PM 3 26

H N SAVAGE-
HYDRAULIC ENGINEER SAN DIEGO CALIF-

GLAD ADVISE PRESIDENT SIGNED MY EL CAPITAN BILL YESTERDAY

PHIL D SWING

10/2/32
copy /f

2931

T E L E G R A M

COPY MESSAGE RECEIVED FROM NAVAL COMMUNICATIONS

May 7, 1932. 8:30 AM

Hon John F. Forward Jr.
Mayor San Diego, Calif.

Bill Granting City additional Capitan Grande lands for
reservoir approved by President May 4th. Appreciate early
advice whether City elects to pay additional sum \$35,567.20
fixed by act or proceed under eminent domain laws.

Scattergood
Ass't Commissioner

May 23, 1934

Mr. John Collier
Commissioner of Indian Affairs
Department of the Interior
Washington, D. C.

Subject: City of San Diego, California, Ceded Capitan Grande Indian Reservation reservoir lands, possession August 3, 1934.

Dear Sir:

Practically two months have already elapsed since your letter dated March 29, 1934 advising that:

"The matter of acquiring land upon which to locate the remainder of the Indians of the Capitan Grande Reservation is receiving immediate attention, and it is expected that a selection will be made in the near future".

The Act of Congress of February 28, 1919 (40 Stat. 1206) provides the City of San Diego with possession of the ceded Capitan Indian Reservation reservoir lands ninety days before water for storage purposes will be turned into the reservoir.

The contract for the construction of the El Capitan reservoir dam required its completion by October 31, 1934.

The City of San Diego will necessarily have much clearing of reservoir site to do after the Indians have been removed.

There now remains only about two and one-half months of time in which for the Office of Indian Affairs to complete the removal of the Indians remaining in the El Capitan reservoir site, erect the necessary new homes, develop and distribute adequate water supply, transfer and install the live Indians and their effects in the new homes and remove the over sixty remains of dead Indians from the El Capitan reservoir site.

Transfer of the Conejos and King Creek Bands of Indians living some five miles away from the El Capitan reservoir is not of any immediate concern to the City of San Diego.

Neglect on part of the Office of Indian Affairs to accomplish the removal of the Indians, alive and their accessories, and remains of dead Indians; and

Neglect on part of the City of San Diego to clear the reservoir and prepare it for the storage of water by October 31, 1934 for a municipal population of upwards of 164,000 and for United States Army, Navy and Aviation military purposes will, if not all timely accomplished, prove embarrassing to all parties concerned and may result in grave consequences.

Very truly yours,

H. N. Savage
Hydraulic Engineer.

HNS/f
cc John W. Dady
Riverside, Calif.

Fred D. Pyle

September 23, 1934

Mr. John W. Dady, Superintendent
Mission Indian Agency
Riverside, California.

Subject: Capitan Grande Indian Reservation,
El Capitan Reservoir Requirements.

Dear Mr. Dady:

A review of the correspondence in this office shows that on August 4, 1933 the late H. H. Savage, then Hydraulic Engineer for the City of San Diego, called your attention to the requirements of the City for the full use of that portion of the Capitan Grande Indian Reservation purchased from the Government and the requirement for the Office of Indian Affairs to complete the removal of the few remaining Indians living on lands which will be flooded by the reservoir and the removal of the remains of about 70 Indians buried in an Indian Cemetery which will also be flooded.

This situation was repeatedly brought to your attention in letters of February 17, 1934, March 20, 1934, April 17, 1934 and to the attention of Mr. John Collier, Commissioner of Indian Affairs in letters dated March 21, 1934, April 3, 1934, May 23, 1934 and June 11, 1934, copies of which were sent to you.

It is expected that the concrete plug will be placed in the bypass tunnel at El Capitan Dam during the last half of October, 1934, after which the reservoir will begin filling and may flood the cemetery at any time. This would create an unhealthy and insanitary condition.

It is, therefore, of utmost importance that the Indian remains in the cemetery be removed before the bypass tunnel is plugged.

The City has made full payment to the Government, amounting to \$396,995.20 for the land required in connection with the construction and use of the El Capitan reservoir and has a deed for same.

During the past year no progress appears to have been made by the Office of Indian Affairs in removing the remaining about 15 Indians and about 70 Indian remains interred in the cemetery.

It is imperative as a health and sanitation measure that steps be taken to immediately remove the Indian remains now interred in the cemetery which will be flooded by the El Capitan impounding reservoir, the dam for which is now nearing completion; and

That the Indians still living in the area which will be flooded be immediately moved.

Very truly yours,

Fred D. Kyle
Hydraulic Engineer.

FWD/E

cc Commissioner of Indian Affairs

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
FIELD SERVICE

Mission Indian Agency
Riverside, California
October 2, 1934

Mr. Fred D. Pyle
Hydraulic Engineer in Charge
City of San Diego
San Diego, California

Dear Mr. Pyle:

I am in receipt of your letter of September 28, a copy of which you forwarded to the Commissioner of Indian Affairs, in which you again refer to the imperative need of removing the remains of the deceased persons interred in the Indian cemetery at the Capitan Grande Village located on the Capitan Grande Indian Reservation.

You are correct in stating that no progress appears to have been made by us in effecting the removal of these bodies. We have, however, made repeated efforts to secure the consent of the Indians of the Capitan Grande group to permit the removal of these bodies to another cemetery. We have not only used our own efforts, but, at a meeting called for that purpose, asked Father Dillon to use his good offices to obtain a consent to have the bodies removed. As you well know there are persons in San Diego who have been operating against the Government in its efforts to have the Indian people of the reservation consider tracts of land beside Baron Long Ranch. Apparently these same persons have held up the Government's efforts to effect the removal of the bodies.

Tomorrow, October 3, represents the last day of the extension which you gave us and the remainder of the Capitan Grande band are supposed to have been moved from your territory and the bodies also should have been removed. Families still living in the territory purchased by the City have been repeatedly told by this office and through Mr. Fry, that they should consent to some plan to move from the purchased territory and consent to the removal of the bodies. We have been prepared to purchase tents for these families so that they can move temporarily to some location until they can make up their minds to purchase some tract of land which the Washington Office can approve as to price, location and worth. So far, we have not been able to get their consent to do this.

The telegram which you sent to the Commissioner was given to Mr. Fry yesterday to read to the leaders of the Capitan Grande group in the hopes that your urgent request would bring them to the realization that they should consent to the removal of the bodies at once. As soon as they consent to the removal, we are prepared to act at once and attend to the removal in a respectful and careful manner.

Mr. Fred B. Pyle

10/2/34

Without authorization from the Washington Office I cannot see my way clear to attend to the removal of the bodies and force the 14 individuals represented by the Capitan Grande band from their present home. Although we will do so if we receive wired instructions from the Washington Office to do this. We have wanted to effect the removal of the bodies and the removal of the families in a peaceful manner with the consent of the interested persons.

What action you take after tomorrow is a matter for you and the officials of the City to decide. I am sending a copy of this letter to the Commissioner of Indian Affairs with a request that I be instructed how to act to comply with your request. As you know, this matter has been before the Office for several years and worthy representatives of the Washington Office have been here and have made their reports to the Commissioner. I will be glad to advise you at once just what instructions are received from the Washington Office.

As you probably know, the Commissioner has been willing to re-open the question of the Indians purchasing Baron Long Ranch due to the reduction in price from \$150,000 to \$125,000. A petition prepared in the Washington Office will be before the Indian people tomorrow, giving them the privilege of consenting to the purchase according to the terms of the petition; and if a sufficient number of Indians sign and the Office consents to the purchase of the Baron Long Ranch, our difficulties will then be finished regarding the removal of the bodies. I am positive the Indians will consent to the immediate removal of the bodies if the Baron Long property is purchased.

Very truly yours,

JOHN W. DADY (Signature)

John W. Dady
Superintendent

c
CC Commissioner of Indian Affairs

Mission Indian Agency
Riverside, California
October 2, 1934

Commissioner of Indian Affairs
Washington, D. C.

Sir:

Enclosed herewith is a letter which I have sent to Fred S. Pyle, Hydraulic Engineer of the City of San Diego, California, in reply to a letter from him dated September 28, copy of which is enclosed. This letter was received last evening. I am respectfully requesting the Office to advise me how to proceed in order to comply with the request made by Mr. Pyle.

By the time this letter reaches the Office, we will know how many Indians have signed the petition which is to be presented to them tomorrow. We will advise the Office by wire how many have signed the petition. With the facts before the Office, the Office can then know how to advise me to proceed with the removal of the bodies--with or without the consent of the Indians. The Office may be sure that the removal will be effected respectfully and carefully.

For several months we have been urging the removal of the bodies to the cemetery at Los Conejos. Mr. Roy Nash and myself inspected the location where the bodies can be buried. There is a level spot immediately in the rear of the Los Conejos Cemetery. We promised to clear the land, remove the bodies in a respectful manner, and properly fence the new site.

Every effort has been made for a long time to induce the Indians to consent to the removal of the bodies, but, so far, the only statement which they will make is that until the Baron Long property is purchased, they will not consent to the removal of the bodies.

Very respectfully,

John W. Dady
Superintendent

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10/8/34
copy /f

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UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS

Field Service

Mission Indian Agency
Riverside, California
October 5, 1934

Mr. Fred D. Pyle
Hydraulic Engineer
City of San Diego
San Diego, California

Dear Mr. Pyle:

Enclosed is a copy of the petition prepared by the Washington Office which was presented October 3 to the Indians of the Conejos band and the Capitan Grande band on the approved roll of members of El Capitan Grande Reservation. Seventy-three shares were represented by the signatures attached to the petition. It is possible that a few more may sign. These remaining individuals will be interviewed within the next few days. The signed petition is being forwarded to the Washington Office today and if additional signatures are secured, the Office will be advised at once so that it will be possible for them to give their decision the early part of next week.

I am also sending you a copy of an agreement signed by the interested members of the Capitan Grande group regarding removal of the bodies from the cemetery. You will note by this that if the Office accepts the number who signed the petition as a sufficient number to purchase the Baron Long Ranch, the bodies can be removed shortly after the Washington Office comes to an agreement about the purchase of the ranch.

I will keep you advised of conditions and decisions by the Washington Office.

Very truly yours,

JOHN W. DADY (Signature)

John W. Dady
Superintendent

c
Incs-2

PETITION OF THE MISSION INDIANS OF THE CAPITAN GRANDE BAND AND THE CONEJOS BAND ON THE APPROVED ROLL OF MEMBERS OF EL CAPITAN GRANDE RESERVATION TO THE SECRETARY OF THE INTERIOR.

We, the undersigned Mission Indians of the Capitan Grande Band and the Conejos Band on the approved roll of members of the Capitan Grande Reservation, respectfully petition the Secretary of the Interior to use the necessary portion of our funds for the purchase of the Baron Long Ranch for \$125,000. Having previously petitioned the Commissioner of Indian Affairs for the purchase of this property at \$150,000, we know that this ranch is fully worth the lower price, and now understand it can be purchased at this price.

The Commissioner of Indian Affairs hitherto has denied our petition for the purchase of the Baron Long Ranch on the grounds that there was insufficient money in our fund to pay so high a price (\$150,000 originally asked) for the entire ranch. He has stated that (based on the original \$150,000 price) there would not be enough money left to protect the land against future erosion damage, to enlarge and rebuild the irrigation system, to build and furnish homes for all the families and to buy implements and livestock in addition to setting aside a reserve fund the earnings of which will be used to cover the maintenance and operating cost of the irrigation system. We are most anxious to have the Baron Long Ranch for our future home. In order to make possible its purchase for us at the reduced price, we are willing to give, free of cost, without any wage payments to us, the labor of the able-bodied men and youths of the band for the following purposes:

1. The protection of the land against erosion and for the building of all works considered necessary by the Soil Erosion Service to restore the land to its original condition.
2. For the rebuilding and enlargement of the irrigation system.
3. For the wrecking and salvaging of excess barns, fences, and other structures.
4. For the construction of the church and of other community buildings.
5. For the plowing, leveling, cultivating and other needful operations on community fields.

By our signatures we, the adult male members of the band, agree to give our labor for these purposes without charge, freely and willingly, except that we stipulate that we shall not be called on for more than twelve days' unpaid labor in any one month. We, the adult male signatories, hereby promise to perform such free labor whenever called upon to do so by the Superintendent or his representative. And further we waive all claims to damages for our homes, improvements and crops located on our present

reservation, excepting that the appraised damages, based on similar damages credited the "Barona" group should be credited the owners of the houses and improvements yet to be abandoned now located at the Capitan Grande Village within the area purchased by San Diego City for which no damages have been credited the owners. Should any of the adult male signatories refuse to live up to his promise and decline to perform necessary labor for the common benefit when so directed, the Superintendent is hereby authorized to hire a substitute against the individual share of the delinquent in the common fund.

We urgently request that the purchase of the Baron Long Ranch at the price mentioned above and on the conditions herein specified be made as soon as possible so that we may be ready to grow crops and raise livestock by next spring.

C O P Y

EL CAPITAN GRANDE RESERVATION
SAN DIEGO COUNTY, CALIFORNIA
October 3rd, 1934

We, the undersigned, being members of the El Capitan Grande Band of Mission Indians, do hereby agree to the removal of the remains of our deceased relatives now interred in the cemetery now located near the El Capitan Grande Village to the cemetery at Los Conejos Village, or such other place as can be mutually agreed upon by us and Superintendent John W. Dady, when, and only when, we are assured to our own satisfaction that the Baron Long Ranch will be purchased for our people and those of the Los Conejos Band who have signified that their desire to purchase said Baron Long Ranch. It being understood that the final resting place of our relatives shall be in the new cemetery to be located on the Baron Long Ranch if and when purchased.

Signed:

Ventura Paipa	Guadelope Wysoke (thumb mark)
Fruto Paipa (thumb mark)	Maria L. A. Paipa " "
Isabella Lachappa " "	
Stephen Paipa Wilkinson	
Prudencia Romero Hyde	Witness to above signatures.
Jesus Paipo	(Sgd) Thomas Lucas
Juan Diego Lachappa	
Victor Paipa	(Sgd) Wm. Horace Veith, Clerk

RIGHTS OF WAY

SUMMARY - COSTS

EL CAPITAN RESERVOIR LANDS

Cost of all reservoir and damsite lands and rights of way required for the El Capitan reservoir project:

Lands acquired and paid for prior to April 30, 1932

1.	564 acres deeded lands purchased in reservoir basin prior to 1-1-31	\$29,850	
2.	1940 acres of land in Capitan Grande Indian Reservation, and 141 acres in Cleveland National Forest, for flowage to elevation 713, reservoir contour 160, granted by U.S. Government (40 Stat. L.1206)	\$75,000	
	Moving Capitan Grande Indians to adjoining Padre Barona Ranch	<u>286,428</u>	361,428
3.	40 acres deeded lands purchased from State of California		200
4.	153 acres deeded lands at damsite and in reservoir basin acquired from La Mesa, Lemon Grove & Spring Valley Irrigation District by agreement and exchange of 10,000 acre feet of storage facilities		0
5.	9.5 acres under perpetual permit from Department of the Interior		0
6.	227 acres at damsite and vicinity Application for perpetual permit pending from Department of Interior		0
7.	520 acres at vicinity damsite held under temporary permit - not required permanently		0
			<u>391,478</u>

Lands required and optioned or granted after April 30, 1932

8.	248 acres deeded lands at damsite and vicinity from Cuyamaca Water Company et al	40,000	
9.	40 acres deeded from J. W. Wiley	2,000	
10.	80 acres deeded from Wm.R. Darling	5,000	
11.	920 acres additional lands above El. 713 reservoir contour 160 required from Capitan Grande Indian Reservation and granted by U.S. Government H.R.10495 approved May 4, 1932	<u>35,567.20</u>	<u>82,567.20</u>

Total

\$474,045.20

COST OF PROJECT

December 16, 1933

TO THE HONORABLE, THE MAYOR AND COUNCIL
OF THE CITY OF SAN DIEGO, CALIFORNIA.

Subject: San Diego River Project, El Capitan Feature
Cost of El Capitan Dam. Resolution No. 61188

Gentlemen:

The following statement of the estimated cost of El Capitan Reservoir Dam is submitted in accordance with Resolution No. 61188 reading as follows:

"That the City Attorney and the Hydraulic Engineer are hereby authorized and directed to file a complete report on the alleged increased cost of El Capitan Dam, from both the legal and technical aspects."

ESTIMATE SEPTEMBER 14, 1931

The Hydraulic Engineer, in letter addressed to the honorable, the Mayor and Common Council of the City of San Diego, dated September 14, 1931, copy attached, estimated the cost of El Capitan Dam to be \$2,805,735 plus 15% for contingencies and engineering, or a total of \$3,226,595.25. The fee paid to the State of California with the application for construction of the El Capitan Dam was computed on a basis of \$3,226,595.25.

After this estimate was made the state Engineer made mandatory requirements that the siphon spillways be eliminated and that the spillway capacity be increased to provide, with pondage above spillway lip, for a flood of 102,500 cubic feet per second instead of 76,000 cubic feet per second which had been provided for by the Hydraulic Engineer and which was twice the 1916 flood. The State Engineer also required change of location of the bypass tunnel to the south side of the dam, materially lengthening the tunnel. The Common Council established minimum wage rates in excess of those used in making the estimate.

BIDS RECEIVED APRIL 11, 1932

On April 11, 1932, the following bids were received:

- H.W.Rohl, T.E.Connolly.....\$2,332,860.00
- Utah Construction Co..... 2,594,050.00
- Northern State Contracting Co. and
Butler Brothers 2,853,065.50
- L.E.Dixon and Hall-Johnson Co..... 2,999,260.00
- Foley Brothers, Inc. L.Y.Lawler, and
J.C.Maguire 3,633,271.50

To the Honorable, the Mayor
and Council

-2

12/16/33

Contract was entered into on April 23, 1932 with H.W. Rohl and T.E. Connolly for the construction of El Capitan Reservoir Dam, Spillway and Outlet Works. On a basis of the estimated quantities stated in the bid schedules which was for the purpose of comparing bids, and at the prices bid the contract cost would have been \$2,332,860.00, exclusive of the cost of appurtenances to be furnished by the City, contingencies and engineering which, at 15 percent of the above or \$349,929.00, made the total estimated cost of El Capitan Reservoir Dam, Spillway and Outlet Works \$2,682,789.00 at the time the contract was entered into.

As the construction of the dam proceeded, many conditions arose and many additional requirements were placed on the work, most of which tended to increase the cost.

The principal items of increase were due to the following:

- (a) Increase in stripping of dam foundation, especially in the base of the dam, to meet the mandatory requirements of the California State Engineer.
- (b) The amount of material from both stripping and tunnel excavation that had to be wasted was greatly increased because foundation was not ready at the time these materials were being excavated, due to the increased stripping required by the California State Engineer.
- (c) All Class 1, 3, 4 and 5 materials wasted were further increased because of swell.
- (d) Tunnel excavation quantities were necessarily increased due to increase in length requiring timbering over the length estimated.
- (e) Excavation for cutoff trenches under dam was materially increased to meet the requirements of the California State Engineer.
- (f) Spillway excavation was greatly increased to meet the requirements of the California State Engineer.
- (g) Embankment quantities both Class 1 and Class 2 materially increased due to the additional excavation required for foundation in the base of the dam by the California State Engineer.
- (h) Concrete tunnel lining was necessarily materially increased due to increase in tunnel footage requiring timbering and therefore increase in the thickness of lining.

(i) Concrete lining of spillway increased to meet the requirements of the California State Engineer.

(j) Deficiency of clay in local borrow pit material going into the hydraulic fill made it necessary to limit the amount of spillway excavation which could be placed in the hydraulic fill thus materially increasing the amount of spillway excavation wasted and increasing the amount of material necessary from borrow pit.

(k) Increased pressure grouting deemed necessary by the Hydraulic Engineer and by Deputy State Engineer Geo. W. Hawley in the bypass outlet tunnel, due largely to the fact that all of the tunnel from the entrance portal of the tunnel past the axis of the dam required timbering.

(l) Requirement for additional concrete at junction of core wall of the dam with spillway.

(m) Due to omission of core wall and the parapet wall at the top of the dam it is necessary to increase the height of the embankment 4 feet and maintain the same width of 26 feet.

Decrease in estimated costs were brought about by the following changes:

(n) Omission of the thin portion of the concrete core wall except for a height of about 36 feet across the base of the dam and about 24 feet on the abutments, approved by the California State Engineer.

(o) Change in design of outlet tower from octagonal shape, with variable diameter, and located directly over the outlet tunnel and back of tunnel intake, to round tower of smaller diameter, 12 feet on the inside, and located on the north side of the tunnel and about 56 feet from the tunnel approach, approved by the California State Engineer.

EL CAPITAN SPILLWAY EXTENSION

The drawings and specifications which are a part of the contract between the City of San Diego and H. W. Mohl and T. M. Connolly for the construction of El Capitan Reservoir Dam, Spillway and Outlet Works, show the dimensions of the spillway to Station 7+40, and contain the following note:

"Detailed structural drawings for the spillway channel, discharge end, are to be developed and submitted for approval by State Engineer before construction."

and

"Extend lining as directed by the Engineer."

To the Honorable, the Mayor
and Council

-4

12/16/33

The California State Engineer required that the spillway discharge channel be extended and concrete lined to Station 15+50 and that a further reach of discharge channel be excavated but not lined from Station 15+50 to the San Diego River at Station 24+50.

H. W. Rohl and T. E. Connolly brought action (Case No. 76082) in the Superior Court of the State of California for "declaratory relief" to relieve the contractor from requirement to construct the spillway extension below Station 7+40. The Court, by judgment entered December 5, 1933 in Judgment Book No. 93 page 57, ordered, adjudged and decreed that the construction of the spillway channel extension west of Station 7+40 was not covered by the existing contract and that the contractor was under no legal obligation as to the construction of the spillway extension beyond Station 7+40.

The spillway extension will be constructed under separate contract.

ESTIMATE OF DECEMBER 15, 1933 OF TOTAL COST OF
EL CAPITAN DAM

H. W. Rohl & T. E. Connolly contract earnings	\$2,720,143.00
Spillway extension contract earnings	200,000.00
Appurtenances and contingencies	54,265.00
Bypass travel around dam	15,350.00
Supervision, engineering, inspection, legal	<u>137,689.00</u>
Total	\$3,127,447.00

Attached is a tabulation showing a comparison between the contract bid schedule, based on estimated quantities for comparison of bids, as contained in the contract between the City of San Diego and H. W. Rohl & T. E. Connolly for the construction of El Capitan Reservoir Dam, Spillway and Outlet Works, and the contract final total earnings as now estimated.

CONTRACTOR'S OBJECTIONS AND PROTESTS

The contractor protests monthly in writing to the Hydraulic Engineer the quantities and classifications shown in the monthly estimate. These protests have been general and not specific except as to a deduction of 3544 cubic yards from schedule item 5 "Embankment Class 2, earth, clay, sand, gravel and other embankment originating in borrow pit only including sorting and placing in hydraulic fill measured in embankment."

Respectfully submitted,

H. N. Savage,
Hydraulic Engineer.

HNS/p
encls. (2)
Copy letter 9-14-31
Tabulation

September 14, 1931

TO THE HONORABLE, THE MAYOR AND COMMON COUNCIL
OF THE CITY OF SAN DIEGO, CALIFORNIA.

Subject: San Diego River Project, El Capitan Feature,
Submission of Drawings, Specifications and Costs
in accordance with Resolution No. 57121.

Gentlemen:

Enclosed is drawings, specifications and estimates of cost for the construction of a hydraulic fill-rock embankment dam as the El Capitan reservoir feature of the San Diego River Project to store water to Elevation 750 feet, Reservoir Contour 197 in accordance with the requirements of your Resolution No. 57121, as follows:

"That the hydraulic engineer in charge of water development be and he is hereby directed to bring in immediately plans, specifications and estimates of cost for the construction of an hydraulic earth and rock fill dam at El Capitan site on the San Diego River; also the necessary extension of the recently constructed pipe line and the construction of a tunnel of sufficient capacity to serve a dam of not less than 197 feet in height, and that the legal department be and it is hereby instructed to take the necessary steps immediately to clear the way for the City's work to proceed."

The specifications have been completed subject to changes and additions which may become necessary to conform to the State Engineer's requirements and to the State law regarding wage scales.

The specifications have not been submitted to the City Attorney for approval as to either form or legal requirements.

The cost estimates are materially less than those previously submitted since contract prices as influenced by cost of materials and equipment are less than heretofore.

Very respectfully,

H. H. Savage,
Hydraulic Engineer.

HHS/E
Encls.
Drawings & Specifications
Cost Estimate

SAN DIEGO RIVER PROJECT EL CAPITAN FEATURE

COST OF WATER AT SAN DIEGO

Hydraulic fill-rock embankment dam, to store water to elevation 750, reservoir contour 197; capacity 118,000 acre feet; area 1,500 acres; net safe duty about 11.6 million gallons daily; water delivered to University Heights filter plant thru present Lakeside-University Heights pipeline and new connection thereto from El Capitan to Lakeside.

ESTIMATED COST TO COMPLETE

RESERVOIR BASIN:

(a) Capitan Grande Indian Reservation flowage rights additional for storage to contour 197.....	\$ 38,572
(b) Flowage lands in private ownership 120 acres at \$200	32,000
(c) Reconstruction County road, 1.3 miles at \$13,000..	169,000
(d) Reconstruction Irrigation District flume, siphons	250,000
(e) Clearing reservoir basin.....	<u>15,000</u>
Total reservoir basin	524,572

DAM: Hydraulic fill-rock embankment. Spillway north side of dam.

(a) Dam:				
Hydraulic fill	1,557,000 cubic yards	at	\$0.50	778,500
Rockfill and riprap	850,000 "	"	1.00	850,000
(b) Stripping surface	204,000 "	"	0.625	127,500
(c) Tunnel:				
Excavation				
solid rock	17,300 "	"	9.00	155,700
cut and cover	12,500 "	"	3.75	46,875
earth	4,000 "	"	" in embankment	
Concrete lining	3,350 "	"	at 10.50	35,175
Concrete walls	17,300 "	"	7.50	129,750
(d) Spillway:				
Excavation placed and charged in rockfill & embankment				
Trimming	14,000 cubic yards	at	0.375	5,250
Concrete				
siphon spillway	5,000 "	"	15.00	75,000
overflow section	10,000 "	"	11.25	112,500
lining	7,800 "	"	13.50	105,300
Steel anchor rods for lining	50 tons	"	75.00	3,750
(e) Core Wall:				
Concrete	10,300 cubic yards	"	11.25	115,875
Steel posts and brackets	248 tons	"	120.00	29,760
Steel reinforcement	1,064 "	"	75.00	79,800
Excavation	13,000 cubic yards	"	5.00	65,000
(f) Outlet works.....				40,000
(g) Drainage system.....				25,000
(h) Grouting under core wall and spillway.....				<u>25,000</u>
Total dam				2,305,735

CONDUIT:

Use existing Lakeside-University Heights pipeline and

(a) 8 miles 36" pipeline El Capitan to Lakeside at \$50,000.....	\$ 400,000
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FILTER PLANT:

Use existing University Heights filter plant....

Sub-total cost to complete	<u>3,730,307</u>
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Contingencies and engineering 15%	<u>559,546</u>
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Estimated cost to complete	\$ 4,289,853
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Expended to date - lands, pipeline and filter plant	\$ 1,723,778
--	--------------

29,850
81,284,500
48,000
<u>161,428</u>
81,723,778

Total annual cost at San Diego \$416,093

Cost per 1000 gallons 9.83 cents

EL CAPITAN RESERVOIR DAM, SPILLWAY AND OUTLET WORKS

Comparison of contract bid schedule with estimated contract earnings

Item No.	Work or Material	Price	Unit	Contract bid schedule		Estimated contract earnings	
				Quantity	Amount	Quantity	Amount
1.	Excavation Class 1 solid rock originating in structure excavation including placing and sorting in dam.	\$ 1.00	cubic yards	40,000	40,000	60,000	60,000
2.	Embankment Class 1 rock originating in borrow pit only, including placing and sorting in dam, measured in embankment	1.00	"	800,000	800,000	880,000	880,000
3.	Excavation Class 2, earth, overburden, sand, gravel and other excavation originating in structure excavation, including placing and sorting in hydraulic fill	.40	"	350,000	140,000	200,500	80,200
4.	Excavation Class 2, earth, overburden, sand, gravel and other excavation originating in structure excavation, including placing and compacting in rolled embankment	.35	"	50,000	17,500	0	0
5.	Embankment Class 2, clay, earth, sand, gravel and other embankment originating in borrow pit only, including sorting and placing in hydraulic fill, measured in embankment	.40	"	1,000,000	400,000	1,600,000	640,000
6.	Embankment Class 2, clay, earth, sand, gravel and other embankment originating in borrow pit only, including placing and compacting in rolled embankment, measured in embankment.	.35	"	70,000	24,500	0	0
7.	Excavation Class 3 cutoff trench excavation under dam including placing and sorting in dam	3.00	"	12,000	36,000	4,000	12,000
8.	Excavation Class 4 cutoff trench excavation under spillway including placing and sorting in dam	2.00	"	5,000	10,000	1,500	3,000
9.	Excavation Class 5 outlet tunnel excavation, excepting open cut excavation and including placing and sorting in dam	5.00	"	30,000	150,000	14,500	72,500
10.	Excavation Class 1 solid rock originating in structure excavation and wasted	1.00	"	20,000	20,000	21,000	21,000
11.	Excavation Class 2 earth, overburden, sand, gravel and other excavation originating in structure excavation and wasted	.25	"	34,000	8,500	688,000	172,000
12.	Excavation Class 3 cutoff trench excavation under dam and wasted	3.00	"	1,000	3,000	16,000	48,000
13.	Excavation Class 4 cutoff trench excavation under spillway and wasted.	1.50	"	500	750	2,500	3,750

Item No.	Work or Material	Price	Unit	Contract bid schedule		Estimated contract earnings	
				Quantity	Amount	Quantity	Amount
14.	Excavation Class 5 outlet tunnel excavation excepting open cut excavation, but wasted	5.00	cubic yards	300	1,500	22,000	110,000
15.	Rock masonry in place between tunnel plugs	6.00	"	4,000	24,000	0	0
16.	Backfill	0.50	"	1,000	500	5,000	2,500
17.	Mass concrete Class 1 in overflow spillway outlet tower base and elsewhere	4.80	"	18,000	86,400	16,500	79,200
18.	Concrete Class 2 in spillway, side lining and retaining walls	9.00	"	3,000	27,000	1,700	15,300
19.	Concrete Class 3 in floor lining of spillway	4.80	"	6,000	28,800	4,570	21,936
20.	Concrete Class 4 in unformed portion of main core wall	4.80	"	3,000	14,400	5,400	25,920
21.	Concrete Class 5 in formed portion of main core wall	4.80	"	7,300	35,040	2,000	9,600
22.	Concrete Class 6 in cutoff walls under spillway	4.80	"	1,200	5,760	500	2,400
23.	Concrete Class 7 in outlet tower	15.00	"	2,000	30,000	1,000	15,000
24.	Concrete Class 8 in retaining walls at upstream and downstream toes of dam	4.80	"	10,500	50,400	13,550	65,040
25.	Concrete Class 9 in drains at toe of dam	12.00	"	400	4,800	710	8,520
26.	Concrete Class 10 in tunnel lining and cut and cover section excepting tunnel floor	12.00	"	3,300	39,600	5,500	66,000
27.	Concrete Class 11 in floor of tunnel, Excepting floor of outlet and inlet	4.80	"	1,500	7,200	1,080	5,184
28.	Concrete Class 12 in floor of tunnel approach and outlet	4.80	"	1,000	4,800	150	720
29.	Concrete Class 13 in retaining and guide and cutoff walls of tunnel approach and outlet	12.00	"	2,000	24,000	1,450	17,400
30.	Concrete Class 14 in tunnel plugs	4.80	"	600	2,880	1,440	6,912
31.	Concrete Class 15 in place in pipe embedment in tunnel	4.80	"	125	600	60	288
32.	Cement mortar used in laying up rock including shaping of rock and laying	20.00	"	100	2,000	0	0
33.	Cement in place in the work	1.90	barrels	67,000	127,300	82,020	155,838

Item No.	Work or Material	Price	Unit	Contract bid schedule		Estimated contract earnings	
				Quantity	Amount	Quantity	Amount
34.	Reinforcing steel in place in the work	0.03	pounds	2,400,000	72,000	1,544,000	46,320
35.	Structural steel in place in the work	0.04	"	496,000	19,840	100,000	4,000
36.	4" drain tile in place in the work	0.40	linear feet	6,000	2,400	6,600	2,640
37.	6" drain tile in place in the work	0.50	"	2,000	1,000	1,700	850
38.	8" drain tile in place in the work	0.60	"	1,000	600	0	0
39.	12" drain tile in place in the work	0.75	"	1,000	750	0	0
40.	2" steel grout and drain pipe in place in the work	0.25	"	3,000	750	8,700	2,175
41.	4" steel grout pipe and connections in place in rock between tunnel plugs	1.00	"	1,000	1,000	0	0
42.	Pressure grouting rock masonry in tunnel between plugs	1.00	cubic feet	20,000	20,000	0	0
43.	Holes drilled in rock or concrete with concussion drill	1.00	linear feet	1,000	1,000	11,700	11,700
44.	Holes drilled in rock or concrete with core recovery drill	5.00	"	1,000	5,000	0	0
45.	Grouting by air pressure, except in masonry of tunnel plug	1.00	cubic feet	5,000	5,000	31,700	31,700
46.	Copper water stop complete in place	0.30	pounds	9,000	2,700	16,000	4,800
47.	2" inside diameter pipe railing complete in place	0.30	linear feet	300	90	500	150
48.	Cast iron pipe and special castings complete in place	0.04	pounds	800,000	32,000	240,000	9,600
49.	Placing castings and metal work, not furnished by the contractor, in place in concrete.	0.05	"	30,000	<u>1,500</u>	120,000	<u>6,000</u>
Total					\$2,332,860		\$2,720,143

The above does not include estimated cost of El Capitan Reservoir Dam Spillway Extension amounting to \$200,000 which will be constructed under separate contract.

CHANGES IN DESIGN DURING CONSTRUCTION

SAN DIEGO RIVER PROJECT

EL CAPITAN RESERVOIR DAM, SPILLWAY AND OUTLET WORKS

CHANGES IN DESIGN DURING CONSTRUCTION

The general designs of the El Capitan dam and appurtenant works were shown on the drawings which formed a part of the bound volume of drawings and specifications. A number of changes in design were made as construction progressed and as additional fundamental data became available.

DAM

In the construction of the dam, the semi-hydraulic fill method was used in placing material up to elevation about 680. From this level to elevation about 718 the full hydraulic method was used. The narrow width and relatively steep slopes of the dam above elevation 718 made it necessary to change from the hydraulic fill method to rolled embankment, with a puddle of select fine materials which method was carried up to about elevation 763. The dam was topped off with rolled embankment. The above methods were provided for in the specifications, altho no definite statement was made therein as to where each of the different methods would be required.

To increase the safety and stability of the dam and to widen the upstream beach near the top, the berms on the upstream side at elevations 700 and 750 were eliminated and the top of the dam centered directly over the puddle core, the change permitting material thickening of the rock blanket, thereby providing additional protection against wave action. Drawings WD-501 and 511 indicate the changes in the dimensions of the upper portion of the dam.

In order to provide greater stability to the structure during construction, the impervious puddle core was narrowed above elevation 700 as shown on drawing WD-520. To insure an impervious puddle core in the construction of the upper portion of the hydraulic fill, requirement developed for the importation of about 52,000 cubic yards, truck count, of select fine materials which were secured from the vicinity of Lakeside.

SPILLWAY

In order to better fit the topographic conditions and to increase the distance between the north end of the dam and the spillway structure proper, the general location of the spillway was moved upstream a few feet and the upstream end shifted back into the hill.

Actual tests were made which indicated the value of steel anchors in holding the lining of the spillway firmly to the foundation and these anchors were installed as shown on drawing WD-449.

In order to prevent scour and give a uniform approach, a 6-inch thick 20-foot wide approach concrete lining was placed in front of the spillway ogee.

To prevent erosion during major floods, the surface of the rock embankment close to the spillway was strengthened by grouting.

The concrete side lining was made of a uniform thickness of 12 inches, instead of 12 inches at the bottom and 5 inches at the top as shown on the contract drawings.

The spillway extension was constructed, under separate contract, from Station 7+40 to 15+50 in conformity with plans later developed in detail and approved by the State Engineer and as shown on drawings WD-462, 449 sheets 2 and 7a of 7, 460 and 498.

A scale model of the spillway was constructed at the City's Riverview pumping station and the discharge of the spillway checked.

CONCRETE CORE WALL

Thorough study and consideration indicated that thin core wall in a hydraulic fill dam would be of little value in resisting percolation thru the dam and would be difficult to construct because pressures on the two sides of the wall would tend to rupture it and jeopardize the safety of the dam. It was decided to limit the height of the concrete core wall across the base of the dam from abutment to abutment to elevation 559 and the elevation of the wall at various points along the abutments to 15 to 20 feet above the natural ground level.

As excavation progressed and the deep cuts were made in the spillway adjacent to the northerly end of the dam, it became evident that seepage might take place thru the material remaining in place between the dam and the spillway. It was deemed advisable to continue the core wall and cutoff wall of the dam thru to connect with the spillway cutoff. Structural steel reinforcement was placed in this cutoff wall as shown on drawings WD-450 and 526.

DRAINS AT DOWNSTREAM TOE OF DAM

The location of the drains at the downstream toe of the dam was changed to meet the conditions developed by the excavation under the downstream rock embankment and the design changed from that shown on drawing WD-386 to that shown on WD-421.

TUNNEL LINING AND TUNNEL PLUG

After the tunnel excavation was undertaken, it was deemed impracticable to construct the section of lining as shown on drawing WD-386 and the design was changed to that shown on WD-414.

After the tunnel lining was completed, over 20,000 cubic feet of grout was forced behind the lining in the easterly half of the tunnel to reduce percolation. The continued percolation of water

indicated that the tunnel lining in this portion of the tunnel would be subject to full hydrostatic head of the water in the reservoir and, since the tunnel lining was not designed to resist such forces, it was deemed advisable to install a circular inner lining in the tunnel from the lower end of the plug at station 1+31 to 7+00 as shown on drawing WD-513 capable of withstanding full hydrostatic head.

The construction of the inner lining also permitted the use of a much shorter tunnel plug than was shown on the contract drawings. The details of the plug are shown on drawing WD-513.

OUTLET TOWER

It was originally planned to construct an octagonal outlet tower directly over the outlet tunnel. Stress analyses and estimates indicated that by setting the tower to one side of the tunnel the temporary heavy support work could be eliminated. The tower was redesigned, as shown on drawings WD-400 and 424 sheets 1, 2, 3 of 3, with a smaller diameter and circular instead of octagonal, and was constructed at a material saving in cost.

WATER RIGHTS

CALIFORNIA DECISIONS

Fortieth Year

THE OFFICIAL ORGAN OF THE SUPREME COURT
OF THE STATE OF CALIFORNIA

RANDOLPH V. WHITING, Editor

CASE REPORTED IN THIS NUMBER

City of San Diego (The) v. Cuyamaca Water Com-
pany et al. etc.....L. A. No. 9216 234

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for the simple and only reason that other persons or other communities along the upper reaches of the river, with full knowledge of the aforesaid prior and paramount rights of the plaintiff, may have undertaken, at a considerable expenditure of money, to make a beneficial and profitable use of such waters.

[18] The only remaining question for our determination upon these appeals relates to that portion of the judgment of the trial court wherein it purported to enjoin the defendants and interveners from the doing of certain constructive work in connection with their conservation and diversion of the waters of the San Diego river except in subordination to the prior and paramount rights of the plaintiff therein, and also purporting to restrain the defendants and interveners from the assertion of any claims of right or title in or to the waters of the San Diego river except in subordination to the paramount rights of the plaintiff therein, and save and except in the amounts and to the extent in said judgment specified. In respect to the aforesaid portions of the judgment it is clear that the trial court has gone beyond the scope and issues of the instant action. This, as we have seen, and as this court has already decided upon the former proceeding, is an action purely declaratory in character and is one wherein the plaintiff has neither pleaded nor attempted to prove any facts which would entitle it to any other or affirmative relief beyond that of having its prior and paramount right to the use of the waters of the San Diego river established. This being so, the trial court was in error in attempting to give to its determination of this matter any other or further effect than that of a declaratory judgment.

It follows from the foregoing conclusions that the judgment herein must be and is hereby modified so as to read as follows:

It is adjudged, ordered and decreed that the plaintiff the City of San Diego was at the time of the commencement of this action and now is the owner in fee simple of the prior and paramount right to the use of all the water (surface and underground), of the San Diego river, including its tributaries, from its source to its mouth, for the use of said the City of San Diego and of its inhabitants, for all purposes, and that said defendants, and each of said defendants, said cross-complainants, and each of said cross-complainants, and said interveners, and each of said interveners, have not, and no one or more of them have any estate, right, title or interest in or to said waters, or any part thereof, or in or to the use of the same, or any right to take or use said waters, or any part thereof, save in subordination and subject to said prior and paramount right of the plaintiff, the City of San Diego, and that the plaintiff is entitled to no other or further relief herein than that afforded by the remedy of the declaratory judgment above set forth, and that the judgment herein, as thus modified, is affirmed, and that each party hereto shall pay its own costs upon these appeals.

RICHARDS, J.

We concur:

SHENK, J.
SEAWELL, J.
WASTE, C. J.
LANGDON, J.
CURTIS, J.
PRESTON, J.

L. A. No. 9216. In Bank. March 21, 1930.

THE CITY OF SAN DIEGO (a Municipal Corporation), Plaintiff and Respondent, v. THE CUYAMACA WATER COMPANY (a Corporation), THE CUYAMACA WATER COMPANY (a Copartnership), ED FLETCHER, as sole surviving Copartner of a Copartnership formerly composed of James A. Murray, Ed Fletcher and William G. Henshaw, doing business under the firm name and style of Cuyamaca Water Company; ED FLETCHER and C. F. STERN, Defendants and Appellants; LA MESA, LEMON GROVE AND SPRING VALLEY IRRIGATION DISTRICT et al., Interveners and Appellants.

[1] CONDEMNATION OF LAND—WATER COMPANIES—PUBLIC UTILITIES—MUNICIPAL CORPORATIONS.—In this action to condemn real property, where it appears that the land sought to be condemned is used by defendants for the purpose of conducting water to other municipal corporations, but plaintiff city by its complaint expressly reserved to defendants the easement and right to continue to conduct water over a portion of the land sought to be condemned, it was held that sections 1240 and 1241 of the Code of Civil Procedure, as amended in 1915, had no application to the cause at issue, and, therefore, could not be relied upon by defendants as a defense to the action.

[2] ID.—WATERS AND WATER RIGHTS—MEXICAN PUEBLOS—MUNICIPAL CORPORATIONS.—In such action, where plaintiff city, by reason of being the successor of the Pueblo of San Diego, is entitled to a prior and paramount right to the waters of the San Diego river, and defendants' rights to pump water from the river bed, if any, are riparian, it was held that defendants could not prevent plaintiff, in the exercise of its superior right to the use of such water, from also exercising the right of eminent domain over the lands forming the water course through which such waters flow in order to render available to plaintiff city its rights to such water according to its needs.

[3] COURTS—POWER—NEW TRIAL—EVIDENCE—JURIES AND JURORS—PASSION AND PREJUDICE—APPEAL.—The trial judge may, upon motion, grant a new trial if in his judgment the evidence is insufficient to justify the verdict, and he is not bound by the rule of the appellate courts that the judgment must be allowed to stand if there is any evidence to support it, and an order granting a motion for a new trial on issues tried by a jury will be affirmed on appeal where it appears that trial court felt that the judgment was influenced by passion and prejudice.

Appeal by interveners from part of a judgment of the Superior Court of Orange County, M. W. Conkling, Judge, in an action to condemn real property for public use and from an order granting motion for a new trial of that part of the case tried by jury. Portion of judgment appealed from *affirmed*. Order granting new trial *affirmed*.

On hearing after judgment in District Court of Appeal, Second District, Division One (59 Cal. App. Dec. 116), *reversing* portion of judgment of Superior Court appealed from in an action to condemn real property for public use and *affirming* order granting new trial. Portion of judgment of Superior Court appealed from and order granting motion for new trial *affirmed*.

For Appellants—Crouch & Sanders; Sweet, Stearns & Forward; Stearns, Luce & Forward.

Amicus Curiae for Appellant Henry W. Coil—Newman Jones.

For Respondent—Shelley J. Higgins; Arthur F. H. Wright; Hunsaker, Britt & Cosgrove; Harry S. Clark; James E. O'Keefe.

Amici Curiae—Edwin P. Werner, City Attorney, City of Los Angeles; W. B. Mathew, S. B. Robinson for Department of Water and Power, City of Los Angeles.

This action was commenced on May 20, 1924, in the county of San Diego, by the plaintiff, a municipal corporation, against Cuyamaca Water Company, a corporation, and Cuyamaca Water Company, a copartnership, and also

against Ed Fletcher as the sole surviving member of said copartnership, and one C. F. Stern, the defendants named in the original complaint therein, the purpose of said action being that of the condemnation of a certain tract of land containing approximately 200 acres lying along the course of the San Diego river about twenty miles above said city and just below what is known as the "Capitan Grande Indian Reservation", consisting of approximately 17,000 acres of land, of which about 1100 acres had theretofore been conveyed to the City of San Diego by an act of Congress for the development of a municipal reservoir for the impounding of the waters of the San Diego river for the municipal uses of said city. The tract of land involved in the present action adjoins the larger tract thus acquired and is also adjacent to certain other lands secured by said city from private owners; and the particular uses to which said land, in conjunction with the other adjacent lands, are to be applied are those of a dam site upon which it is proposed to erect a structure to be known as "El Capitan dam". The river flows through this dam site partly upon or under the lands thus sought to be condemned, and partly upon or under the lands which are thus already under the control of the city. The defendants appeared in the action by separate demurrers, which being overruled they answered, setting up numerous defenses to the action hereinafter to be considered in detail, and also embracing much the same matters in the form of cross-complaints. Subsequent thereto the plaintiff proffered certain important amendments to their original complaint, and the defendants also presented certain amendments to their answers and cross-complaints. In the meantime and on January 25, 1925, La Mesa Lemon Grove and Spring Valley Irrigation District, a corporation, caused itself to be made a party to the action, alleging that it had acquired an interest in the properties involved in the litigation by virtue of the fact that shortly before the institution of the action it had obtained from the Cuyamaca Water Company, a copartnership, an option to purchase all of the property of said copartnership, including the particular tract of land in controversy, and that subsequent to the date of the institution of this action it had complied with the terms of said option, which had thereby become a contract of purchase and sale of said properties between itself and said copartnership, and was therefore entitled to urge on its own behalf numerous defenses to said action to be hereafter considered. When these various pleadings, original and amended, were finally filed and the issues thus made up, the action was transferred to the county of Orange for trial, and was there brought to trial upon June 15, 1925. The trial court properly considered the issues in the action as of a twofold nature, the first involving questions relative to the right and necessity for the condemnation sought by the municipality, and second as to the damages to which the defendant would be entitled in the event of such condemnation. The first of these issues was to be determined by the court, the second by a jury, which was accordingly impaneled and sworn. In the meantime the trial court proceeded with the trial of the issues to be determined without a jury, and having determined these issues in the plaintiff's favor, the trial of the cause upon the issues of damages was proceeded with before the jury, which after a long trial lasting until August 9, 1925, returned a verdict in favor of the defendants, fixing the damages which the defendants would sustain as a result of the condemnation of said lands at the sum of \$600,000. The findings of fact and conclusions of law of the court were thereupon signed and filed. Thereafter the plaintiff presented a motion for a new trial upon all the statutory grounds, but particularly stressed therein and upon the hearing thereon that the award of damages by the jury was excessive. The

trial court granted the plaintiff's motion for a new trial, chiefly upon the foregoing ground; wherefrom the defendants took and perfected an appeal from the order of the trial court granting a new trial; and also took and perfected an appeal from that portion of the judgment of the trial court determining that the plaintiff was entitled to condemn the lands in question or any portion thereof. These appeals are presented to this court upon a bill of exceptions prepared and settled subsequent to the taking thereof. The cause upon these appeals was transferred to the jurisdiction of the District Court of Appeal, and upon the transfer thereof a motion was therein made to dismiss that portion thereof which had relation to the part of the judgment appealed from, and which motion was denied by said court (*City of San Diego v. Cuyamaca Water Co. et al.*, 80 Cal. App. 599). Thereafter the cause upon its merits was, after decision in said court, transferred to this court for hearing and determination. We may dispose of the foregoing phase of the case by stating that, whether or not we are in accord with all that is stated by said court in its opinion therein, we agree with its order denying said motion to dismiss said appeals, preferring to decide the matters involved in these appeals upon the merits thereof.

In the determination of these appeals upon their merits we shall first consider and dispose of the appellants' contentions made upon their appeal from the portions of the judgments complained of. In their several answers and affirmative pleadings herein the defendants have consistently asserted that the plaintiff, as a municipal corporation, is not as a matter of law entitled to maintain this or any action for the condemnation of the particular lands and properties sought to be taken and applied to the municipal uses through the medium of a condemnation proceeding, for the reason that there are certain statutory provisions in the codes of this state which have application to the instant situation, and which prohibit the plaintiff from the institution and maintenance of this form of action. In support of this contention the defendants have pleaded and undertaken to establish the fact that the lands affected by this proceeding, including the waters of the San Diego river which flow through said lands, form and have long formed an integral portion of the properties of the Cuyamaca Water Company, and as such have for a long time prior to the inception of this action been and still are actually appropriated to the use of certain cities, towns and water districts other than the plaintiff herein, and particularly to the use of the La Mesa Lemon Grove and Spring Valley Irrigation District, which, as we have seen, has made itself one of the defendants herein. The statutory provisions upon which these defendants and appellants thus rely are those found in certain amendments to the Code of Civil Procedure adopted in the year 1915, the special provisions of which thus relied upon herein reading as follows: "But property appropriated to the use of any county, city and county, incorporated city or town, or municipal water district may not be taken by any other county, city, city and county, incorporated city or town, or municipal water district while such property is so appropriated and used for the public purposes for which it has been so appropriated." Whether or not the defendant herein Cuyamaca Water Company, a copartnership, or the members thereof, or either or any of them, have ever been or now are entitled to claim and be accorded the benefit and application of the foregoing statutory provision in respect to the appropriation and uses which during past years have been by them or either or any of them made of the waters of the San Diego river, or of lands along its course, depends upon an involved condition of mingled law and fact, fully exploited during the long trial of the cause before the court and the jury. We do not deem it necessary upon the record as presented in these appeals to determine the primary legal problem thus presented and thus insistently urged by the

appellants herein, which is as to the right, under the foregoing amendment to the statutory law of eminent domain, possessed by a purely private owner of water, whether static or flowing in a stream, and of the land upon which it stands, as in a reservoir or over or through which it flows, as in a stream to resist condemnation proceedings undertaken by a municipality or other public body having for their purpose the acquisition and application of such lands or waters for public use, based solely upon the ground that the aforesaid lands or waters or both have by such private owner been devoted to another public use. We are of the opinion that upon both the facts of this case as developed by the evidence and found by the trial court the foregoing problem is not herein presented for our solution. The facts of this case as thus shown by the evidence may be briefly stated as follows: In about the year 1914 the City of San Diego entered definitely upon the project of creating a vast reservoir and sufficient dam for the impounding of the waters of the San Diego river, both normal and torrential, at and above a gorge along the course of said river and being about twenty miles above said city, through the comparatively narrow confines of which the water of the river makes its exit after passing over the lands of El Capitan Grande Indian Reservation. It accordingly in that year made application to congress for an appropriate grant of about 1100 acres of the lands of said reservation for use as a municipal reservoir. After prolonged hearings upon such application, which was staunchly, not to say passionately, resisted, by and on behalf of the Cuyamaca Water Company through its most active and aggressive member, Mr. Fletcher, and also by and on behalf of the interveners herein, the United States government finally determined to make said grant, and through its act of Congress authorized the City of San Diego to acquire such lands, amounting to about 1700 acres, by a condemnation proceeding against the Indians of such reservation, which proceeding being instituted in accordance with the terms of said act resulted in the acquisition by said city of the aforesaid acreage of land within said reservation for the purposes of creating thereon such reservoir. In the meantime the city acquired by purchase from private owners certain other and adjacent lands of such extent and location that shortly before the date of the institution of the present action it had become the owner of all the lands both above and within said gorge necessary to render feasible its proposed creation of said reservoir and dam, excepting only that body of land lying within and about said gorge which was owned by the Cuyamaca Water Company or by Mr. Fletcher, the active and only surviving member of said firm. This body of land, composing several hundred acres, had been acquired by Mr. Fletcher or his company in the year 1914, about the time when the activities of the City of San Diego for the eventual creation of El Capitan reservoir and dam site had their inception. The land in question does not occupy the entire width of the gorge, nor does it completely contain the stream bed of the San Diego river. The consequence of this situation was that neither the City of San Diego nor the Cuyamaca Water Company could construct a dam across said gorge adequate to impound the down flow of said river at that point without the concurrence of the other, or without the exercise of the right of eminent domain on the part of said city over the said lands and properties of the defendant company or of Mr. Fletcher, if it should appear that he was the individual owner of said tract of land. In the meantime the Cuyamaca Water Company had been making several if not separate uses of said land, the first of which was that in about the year 1914 it had caused the erection of a pumping plant in the bed of said river and upon its said lands and for a time had extracted a considerable amount of water from the stream, which it had poured into its ditches for the supply of its lower consumers, among which were numbered several municipalities and water-using districts, and among the latter the interveners herein. About

nine years prior to the commencement of the present action, however, a torrential down-flow of the river had destroyed said pumping plant and the same has never been rebuilt, nor have the waters flowing through that portion of the bed of the river been, since the destruction of said plant, extracted or appropriated or applied to the uses of the Cuyamaca Water Company or of its public or private customers occupying lower areas. The second uses which the Cuyamaca Water Company has been making of said tract of land since its acquisition, and is still making of such portion thereof as is required for such uses, is that of conveying across it by means of ditches the waters of the San Diego river and its tributaries which said company has been appropriating and claiming the right to appropriate for a goodly number of years, and in the extraction and impounding of which it has expended large sums of money in a distribution system by means of which it brings such of these waters as it has extracted and impounded from distances many miles up said river down to the gorge, in a portion of which the lands involved in this action are located, and thence across said lands to lower levels in the course of its ministry to the municipalities, water districts and individual users of water who are its customers therein. When the present action was instituted the plaintiff herein did not in its original complaint take any note or make any provision looking to the continued utilization of said tract of land for the aforesaid purposes; but in its amended complaint herein the plaintiff undertook to set forth affirmatively and in detail the particular use which the original defendants herein were making of the portion of said land occupied by its ditches and other appliances for the conveyance of said upper waters across said land, and in so doing so far modified its demand for the condemnation of said land for its own public uses as to concede and in fact establish in the said defendants the full right and easement in and to the use of the portion of said tract then being occupied and utilized for the foregoing purposes, the same to be and to remain unaffected by the construction and use of the proposed dam to be placed across said gorge, in the event of such condemnation. It is important to take note of the plaintiff's precise averments in that regard. They read as follows:

"Reserving to the defendants and to their successors in interest the easement and right:

"(1) To conduct over and across said land hereinabove described by means of the flume or conduit now located thereon, which said flume or conduit is located on that particular portion of said land more particularly described as follows: A strip of land twenty (20) feet wide, being ten (10) feet on each side of the following described center line to-wit: [Describing it] any water which said defendants, or either or any of them may now or hereafter be entitled to carry or conduct across said land, together with the right to enlarge and repair said flume or conduit, or to relocate the same in a manner not inconsistent with the use of said lands by plaintiff for reservoir purposes. . . .

"(5) Further reserving to said defendants and to each of said defendants, and their successors in interest, the right of access to said property for all purposes hereinabove stated as reserved to said defendants and to each and every of said defendants."

The evidence introduced upon the trial of the action was such as to fully support the aforesaid averments in the plaintiff's amendment to its complaint and also to fully justify the findings of the trial court precisely defining the aforesaid uses which the defendants have been and are making of that portion of the tract of land to be considered, and not only establishing the same but also declaring that the taking of said land, subject to such uses and the erection of the proposed dam thereon and upon the

lands which are already owned by the plaintiff, will not interfere with nor be in any wise inconsistent with the continuance of such easements and uses. As to the claim of the defendants to the effect that by the construction of the pumping plant already noted in the bed of said river and the extraction thereby of certain quantities of water from the river at said point for allocation to the uses of its lower customers, the trial court made a finding to the effect that the defendants had lost whatever right they might otherwise have gained through the destruction of said plant by torrential floods and by the abandonment of such use for the period of nine years following such destruction and immediately preceding the date of the institution of the present action. But even if in this respect the trial court could be held to have been in error, it would seem that whatever remaining rights the defendants may still retain in the matter of the re-establishment of said pumping plant, and in the use thereof, these have been fully protected and reserved to them, and hence also to the interveners herein by the further concessions found in the plaintiff's amended complaint, and wherein the defendants are to retain "the right to withdraw and take from said lands by pumps or otherwise any water which the defendants, or either or any of them, now have the right to withdraw and take from said land." With respect to whatever rights the defendants may have acquired in the waters of the San Diego river by virtue of the diversion thereof at the point where said original pumping plant was located and by the supply thereof from that source to their municipal and other customers below said point of diversion, and whatever rights they may still retain therein, and whatever basis the possession of such rights and the use of the lands in question for their exercise might furnish for the claim of the defendants and interveners herein for their present claim that the plaintiff is forbidden to condemn said lands under the aforementioned amendment to the eminent domain provisions of the Code of Civil Procedure, will be reserved for discussion at a later stage in the present opinion.

[1] We are thus, as to the facts of this case, brought to the point of considering whether the plaintiff herein, as a municipal corporation, is in either fact or law forbidden to institute and maintain this action for the condemnation for its public uses of the lands sought herein to be condemned by virtue of the provisions of said amendment to the Code of Civil Procedure. The particular lands and the particular portion thereof and the particular rights and uses therein which the plaintiff seeks to acquire by the instant proceeding in eminent domain bear no such relation, under the facts as found by the trial court, to those other lands and properties of the defendants, including water rights they may possess, or claim or be exercising therein and in relation to any public or private consumers, as to entitle these defendants to successfully maintain that the lands and properties herein sought to be taken have been or are being "appropriated to the use of any . . . incorporated city or town or municipal water district" so as to be exempted from the exercise of the right of eminent domain over such lands by the plaintiff herein, a municipal corporation, in its effort to so acquire the same for public use. The tract of land embracing about 200 acres, of which the larger portion is sought to be taken, and the remainder of which is sterile, unused and of little value, is separate and remote from any other lands of these defendants, the main holdings of which lie many miles further up the river and are directly utilized in the appropriation, diversion, storage and distribution of those waters of the river and its tributaries which these defendants are

engaged in transportation and disposing of to its consumers by means of the ditches and appliances above referred to, the only connection by way of either contact or use between these entirely separate land holdings being the long line of said ditch. The only other lands having any proximity to the tract in controversy consists of a body of land lying about five miles down the river, occupied by the El Monte pumping plant, and to which the relation of the defendants herein is that of a riparian owner. This latter tract bears no other relation to the lands to be taken than that the waters of the river which escape from the defendants' upstream appropriations and reach and pass through El Capitan dam site flow down to the El Monte location in the natural down-flow of the river. It would seem to be sufficiently obvious that as to the defendants' ditch and appliances across the lands here sought to be taken and as to the waters which flow therein in the course of their distribution to public and private consumers thereof upon the lower levels between these lands and the City of San Diego, neither these defendants nor the said users of said waters can have or claim any right to rely upon the inhibitive provisions of the Code of Civil Procedure above quoted for the purpose of defeating the present action, since as to each and all of them the taking of the portion of said tract of land herein sought to be condemned, and under the conditions allowing such condemnation, will not in the slightest degree affect or interfere with or in any wise diminish the full use of said waters and of the ditch or ditches by which they are and are to be delivered to such use or in any way involve or call in question the asserted right of these defendants or of their public or private consumers or of the interveners herein to the ownership and use of said waters flowing and to flow in said ditch or any part or portion thereof. In the utter absence of any showing herein that said lands, if so condemned, will be put to uses inconsistent with or injuriously affecting the use and right to use the said ditch and the waters flowing therein as to their ownership, distribution or use, there can exist no possible ground for the application of the aforesaid provisions of the Code of Civil Procedure to the proposed condemnation of the land in question in so far as the rights of these defendants and their consumers or the interveners herein to the use of said ditch and of the waters flowing and to flow therein are concerned.

[2] From the foregoing conclusion we pass to a consideration of whatever rights these defendants and these interveners, or either or any of them, claim to possess by reason of whatever uses have in the past been made or are now being made of the waters of the San Diego river which reach and pass over, through or under the particular lands herein sought to be taken. These waters, as we have seen, are in no way connected with the waters which arrive at and pass over said lands through said ditch, but, on the contrary, are waters which escaping appropriation on higher levels flow down the river to the point of their proposed collection and impounding by means of the El Capitan reservoir, to be created by the proposed dam. Assuming for the sake of argument that the question of the defendants' right to resume the extraction and use of these waters as they flow through said gorge by means of pumps or other devices has not been set at rest by the findings of the trial court relative to their abandonment of such use, or even by the concession of the plaintiff that whatever right these defendants may have to resume such use they may still exercise, notwithstanding the taking and subjection of said lands to dam site uses, there would still remain the question as to what rights, if any, these defendants or their consumers or successors have or could have in these

particular waters which is so far superior to the rights of this plaintiff therein as to operate to prevent the condemnation of these lands in order to the utilization of the waters of the San Diego river flowing therein for municipal purposes by the City of San Diego. As to these particular waters it will be seen that the rights of these defendants, if any, are riparian and are derived solely from their ownership of the land through which they flow. In the case of *City of Los Angeles v. Pomeroy*, 124 Cal. 597, et seq., it was held by this court that the city of Los Angeles, by virtue of its successorship to the rights and properties of the pueblo of Los Angeles, had a prior and paramount right to such of the waters of the Los Angeles river as the expanding needs of such city required, and that the defendants in that action as riparian owners along the upper course of said stream could not assert their subordinated riparian rights in and to said waters so as to defeat the right of said city to condemn their lands in order to accomplish the subjection of said waters to the public needs and uses of said city. In the case of *City of San Diego v. Cuyamaca Water Company et als.*, numbered L. A. 10171, this day decided (79 Cal. Dec. 205), this court has given full application of the doctrine announced in that case in so far as it related to the prior and paramount right of a city, deriving its origin from a pueblo, to the waters of a stream flowing through it, according to its growing needs. It follows from the law, as thus declared, that the City of San Diego, as plaintiff herein, as the successor of the Pueblo of San Diego, has had at all times and still has a prior and paramount right to the use of the waters of the San Diego river particularly involved in the present discussion whenever, and to the extent that, the needs of the city and its inhabitants require such use. In the instant proceeding the City of San Diego, by the formal resolution of its governing body, declared that the necessity had arrived for the impounding and use of these particular waters through the acquisition of El Capitan reservoir and the condemnation of the lands herein sought for the construction of a retaining dam. The findings of the trial court herein as to the facts support said resolution and reassert the present needs of the city for such waters and for the condemnation of said lands in order to the exercise of the prior and paramount rights of the city to the present use of said waters. In view of the law, as heretofore declared, and again and most recently reasserted, and of the facts as thus found to exist by the trial court, it is impossible to conceive how these defendants, or their successors, or even their consumers, possessing and exercising only a subordinated right to the use of these particular waters, could, either possess or under the aforesaid amendment to the Code of Civil Procedure be accorded the right to prevent the plaintiff, in the exercise of its superior right to the use of these waters, from also exercising the right of eminent domain over these lands forming, as they do, a portion of the water course through which these waters flow in order to render available to said city its aforesaid superior right to the use of said waters, according to its needs. The foregoing reasoning and conclusions are also susceptible of full application to whatever rights and claims these defendants and their successors assert to that portion of the waters of the San Diego river which, having passed through the gorge wherein lie the lands sought to be taken, flow downward some five miles or so to those lower lands of these parties, upon which is located El Monte pumping plant, the purpose of which is to extract said waters. As to these waters, also, the rights of the defendants and their successors in ownership and use are riparian only, and hence are subject to the same conditions as those already defined affecting these same waters at the

proposed dam site. It is obvious that the amended sections of the Code of Civil Procedure were never intended to have application to such a situation as is thus in both instances presented, but that even if given the fullest effect of which the language of said amendment is susceptible could only have been designed to prevent one municipality or water district from seeking to acquire by condemnation and apply to new and other public uses the property of another municipality or water district which had already been appropriated and was being actually put by the latter to a public use, which in point of right was equal or prior to that of the municipality or water district seeking such condemnation. The case of *Mono Power Co. v. The City of Los Angeles*, 284 Fed. 784, upon which the defendants, and particularly the interveners herein, most strongly rely, is a case to which the foregoing statement as to the proper interpretation of the said amendments to sections 1240 and 1241 of the Code of Civil Procedure has precise application. That was a case wherein the plaintiffs in the court below, city of Los Angeles et al., were seeking to condemn certain land, water rights and rights-of-way, of which the Southern Sierras Power Company et als., were the owners, and which lands, water rights and rights-of-way were at the time of the institution of said action in the actual use by said defendants of supplying electric energy to certain incorporated cities and towns in the counties of Mono, Inyo, Kern, San Bernardino, Riverside and Imperial for public or municipal uses. The court in that case held that the city of Los Angeles, in order to install and enter upon a municipal use of its own, was not entitled to condemn and apply to such public use on its own account properties which had already been wholly appropriated to the public use of some other county, municipality, incorporated city and town, and the inhabitants thereof. This, however, is, as we have seen, not such a case, but, on the contrary, is a case to which, under our interpretation of the scope and intent of the aforesaid amendments to the Code of Civil Procedure, that case has no application.

We have thus, we think, disposed of every vital question presented upon the appeal from that portion of the judgment herein from which the appellants have prosecuted a separate appeal. We now address ourselves to their appeal from the order of the trial court granting a new trial, as to the issues which were submitted to a jury, and as to which the jury returned a verdict in the defendants' favor, fixing their damages by virtue of the taking of the property involved in this condemnation, in round numbers at the sum of \$600,000. The trial court set aside this verdict as excessive, and in upholding its order in that regard we cannot do so more aptly than by adopting the language of the District Court of Appeal in and for the Second Appellate District, Division One, to which these appeals were in the first instance presented, and which court in affirming said order did so in the following appropriate words:

"The trial court held, in effect, that the evidence was insufficient to justify the verdict; and more particularly that the verdict was so excessive that it appeared to have been given under the influence of passion and prejudice. [3] Insufficiency of the evidence, before it will justify a court of appeal in refusing to accept and follow a finding of fact, must amount to a complete absence of any substantial evidence in support of the finding. A common statement of the rule on appeal is that if the evidence is conflicting, the finding will not be disturbed. But it is not so with a trial court in passing upon a motion for a new trial. The trial judge should not grant a new trial unless he is clearly satisfied that the verdict or other decision is wrong. 'But in considering the question upon the motion he

must act upon his own judgment as to the effect of the evidence. The parties are entitled to the judgment of the jury in rendering a verdict, in the first instance; but upon a motion for a new trial they are equally entitled to the independent judgment of the judge as to whether such verdict is supported by the evidence.' (*Green v. Soule*, 145 Cal. 96, 103.) In the case at bar there was a wide diversity of opinion of witnesses concerning the value of the land sought to be taken. The value stated in the verdict, though less than that shown by the testimony of some witnesses, is many times the value given by other witnesses. Counsel for defendants were deeply dissatisfied with the announcement of the intention of the court to decide that the right to condemn the land had been established. To such decision they had the right of exception, and the right to have the matter reviewed upon appeal, but upon that issue they had no right of appeal to the jury. Nevertheless, on numerous occasions, and apparently with a studied intention, they expressed this dissatisfaction in the presence of the jury, and endeavored to emphasize and impress upon the minds of the jurors the fact that the land was being taken away from the defendants against the will and contrary to the desire of the defendants. If this overpressed insistence of the defendants that the court was erroneously permitting their land to be taken away from them caused the jury to increase the amount of the compensation award and to raise it above the value which normally would have resulted from the testimony of the witnesses, this easily might have produced an excessive verdict. For the standard of measurement of value of the land about to be taken did not in any way depend upon the fact that the defendants were objecting to the condemnation. The plaintiff was entitled to have the actual market value established in accordance with law, unaffected by any belief or suggestion that the property was being wrongfully condemned and taken. It is apparent that the court in ruling on the motion for a new trial had reached the conclusion that the jurors, in arriving at the amount of compensation given by their verdict, had improperly allowed themselves to be influenced by these contentions of the defendants, and that the verdict so obtained was excessive. We are of the opinion that the order granting a new trial of the issues tried by jury should be affirmed."

In the determination of these appeals we have given careful consideration to the very elaborate briefs and arguments of counsel for the respective parties and of amici curiae, and to the many points made and authorities cited therein, and such of these as have not been noted or commented upon in detail in this opinion are, we think, fully covered and disposed of by our discussion herein of the vital points involved in these appeals.

It is ordered that the portion of the judgment appealed from be and the same is hereby affirmed, and that the order of the trial court granting a new trial as to the issues which were committed to the jury is also hereby affirmed.

RICHARDS, J.

We concur.

SHENK, J.
WASTE, C. J.
LANGDON, J.
SEAWELL, J.
CURTIS, J.
PRESTON, J.

MINUTES

San Francisco, March 25, 1930.

In Bank.

S F 13461—Southern Cal. Edison Co. v. Railroad Commission. Mandate of the United States Supreme Court in the above entitled cause has been received and filed this day as follows: "United States of America—ss. The President of the United States of America, to the Honorable the Judges of the Supreme Court of the State of California, greeting: Whereas, lately in the Supreme Court of the State of California, before you, or some of you, in a cause between Southern California Edison Company, petitioner, and Railroad Commission of the State of California, City of Los Angeles, and Board of Water and Power Commissioners of the City of Los Angeles, respondents, S. F. No. 13461, wherein the judgment of the said Supreme Court, entered in said cause on the 13th day of May, A. D. 1929 (rehearing denied June 10, 1929), was in favor of the said respondents, Railroad Commission of the State of California et al., and against the said petitioner; as by the inspection of the transcript of the record of the said Supreme Court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeable to the Act of Congress in such case made and provided, fully and at large appears. And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and twenty-nine, the said cause came on to be heard before the Supreme Court of the United States on the said transcript of record, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court that this appeal be and the same is hereby dismissed for the want of jurisdiction. January 20, 1930. And the same is hereby remanded to you, the said Judges of the said Supreme Court of the State of California, in order that such proceedings may be had in the said cause, in conformity with the judgment and decree of this court above

stated, as, according to right and justice, and the Constitution and laws of the United States, ought to be had therein, the said appeal notwithstanding. Witness the Honorable Charles E. Hughes, Chief Justice of the United States, the 20th day of March, in the year of our Lord one thousand nine hundred and thirty. Charles Elmore Cropley."

The following order in same case was also this date received and filed: "Supreme Court of the United States. No. 475. October Term, 1929. Southern California Edison Company, appellant, v. Railroad Commission of the State of California, City of Los Angeles, a municipal corporation, Board of Water and Power Commissioners of said city. Appeal from the Supreme Court of the State of California. Treating the appeal herein from the Supreme Court of the State of California as an application for a writ of certiorari; on consideration whereof, it is now here ordered by this court that the said application for writ of certiorari be and the same is hereby denied. January 20, 1930. A true copy: Charles Elmore Cropley. Test: Clerk of the Supreme Court of the United States."

L A 12212-12213—Hammond Lbr. Co. v. Gilkey. By the Court: Upon the foregoing stipulation, it is ordered that the appeals herein may be presented upon one reporter's transcript and one set of briefs. Waste, C. J. Dated March 25, 1930.

Sac 4416—Cockrill v. Boas. By the Court: On affidavit, appellant granted to and including April 1, 1930, to file opening brief. Waste, C. J. Dated March 22, 1930.

San Francisco, March 26, 1930.

In Bank.

Crim 3270—People etc. v. Osaki. Judgments and orders appealed from are affirmed. Seawell, J. We concur: Richards, J.; Curtis, J.; Shenk, J.; Preston, J.; Waste, C. J.; Langdon, J.

Crim 3290—People etc. v. Guzman. By the Court: Judgments and orders appealed from affirmed.

Crim 3274—People etc. v. Bruno.
By the Court: Upon authority of
People v. Osaki and Yoshioka and
People v. Guzman, both this day
filed, the judgment and orders
from which the appeal is taken are
affirmed.

L A 12205—Foster v. Lingo;

L A 12206—Lingo v. Foster. By

the Court: Upon reading the fore-
going affidavit and good cause ap-
pearing therefor, it is hereby or-
dered that the above entitled ac-
tions may be heard together on ap-
peal on separate clerk's transcripts
and one reporter's transcript and
one set of briefs. Waste, C. J.
Dated March 26, 1930.

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November 13, 1930.

To the Honorable, The Mayor and Common Council
of The City of San Diego, California.

Gentlemen:

Responding to your Resolution No. 55215, adopted November 10th, asking for a report as to what amounts of water can or will have to be delivered or furnished to the La Mesa, Lemon Grove & Spring Valley Irrigation District at El Capitan Dam Site or Mission Gorge Dam Site, I beg leave to state:

The question as to what water can be delivered to such irrigation district at either place presents no legal question, and I presume was intended by you should be answered by the City's engineer in charge.

As to the matter of what water will have to be delivered to such irrigation district, I am of the opinion that the city will not be under any obligation to deliver to the irrigation district any water from either of such dams, should either be constructed.

By the provisions of the judgment recently entered in the court in what is known as the paramount rights case, the City has been adjudged to be the owner of all the water in the river to the extent that it needs the same. I have noticed in the public print and elsewhere recent references to the Act of 1919, granting to The City of San Diego certain lands in the Cleveland National Forest and Capitan Grande Indian Reservation for dam and reservoir purposes, which Act provides, in section 5:

"That said reservoir, when constructed, shall be maintained and controlled by the City of San Diego for the use and benefit of said city and the inhabitants thereof and of such other municipalities within the county of San Diego, state of California, as may be now or hereafter furnished with water by said City of San Diego, and for the use and benefit of riparian owners along the San Diego River below the lands herein described and for the benefit of persons, corporations, or municipalities situated along or adjacent to the pipe lines of said city of San Diego for the conservation and storage of water for domestic, irrigation, or municipal uses."

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To a person not a lawyer, this language might seem to imply some obligation on the part of the city, but the first rule of statutory construction is that the entire statute must be considered together, and section 6 provides that

"nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the State of California relating to the control, appropriation, use, or distribution of water used in irrigation, or for municipal or other uses or any vested rights acquired thereunder."

Where the two sections are construed together, it is perfectly apparent that to construe section 5 as granting a water right inconsistent with what the Court has decided are the rights of the parties under the state laws would render such section entirely inconsistent with the next section of the same law.

In my opinion the only purpose of section 5 would be to make permissive the use by the City for the purpose of furnishing waters to others where it so desired. This conclusion is made necessary also by reason of the utter inadequacy of the language quoted from section 5 to confer any water right which could be enforced in any court. There is no provision in the section as to what amount of water shall be delivered to other cities or riparian owners, nor what price shall be charged. The result is that even were the language construed to mean a grant of water it would be satisfied with the delivery by the City of one gallon of water at the price of one thousand dollars per gallon. There is no authority which can fix the price which the city shall charge for water, and the city is therefore entitled to fix its own charge (*Pasadena v. Railroad Commission*, 183 Cal. 531).

This conclusion is further strengthened by the fact that the bill provides for the deliver of water to the Navy and War Departments by The City of San Diego, but provides that the same shall be furnished at a fixed rate per one thousand gallons, not to exceed the actual cost of such water to the City. Were it the intention of the statute to create any duty to deliver water, there necessarily would have been appropriate language used, somewhat similar to that used with respect to that furnishing water to the Government of the United States.

Furthermore, this Act was passed in 1919. Had the effect of the act been such as to confer any water rights whatever upon the irrigation district, such irrigation district would have been bound by law to set up such right in the before mentioned paramount rights case, and have it

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there determined by the court. Not having done so, the judgment of the court in the paramount rights case must be deemed to state the entire law between the city and the irrigation district, and the irrigation district has no rights which are not protected in such decree. It must also be apparent that the astute attorneys for the irrigation district did not consider that the above mentioned United States statute conferred any rights upon it, for if so, they undoubtedly would have set up such rights in the above mentioned litigation.

Respectfully,

M. W. CONKLING (signature)

City Attorney.

MWC/S

November 17, 1930

THE MAYOR AND COMMON COUNCIL
OF THE CITY OF SAN DIEGO, CALIFORNIA.

Gentlemen:

The following expression of opinion is respectfully submitted in compliance with the terms of your Resolution No. 55210, adopted November 10, 1930, and reading as follows:

"BE IT RESOLVED by the Common Council of the City of San Diego, as follows:

"That T. B. Cosgrove, special counsel of the city of San Diego on water matters, be and he is hereby requested to give this council an opinion in writing as to whether or not under the Act of Congress granting Indian lands at El Capitan, riparian owners and cities lower down have any rights as against the city of San Diego to the waters of the river and also his opinion as to the advisability or necessity of the city proceeding now to acquire the Indian Reservation Lands."

The language of the resolution is interpreted as intending to request an opinion upon two matters:

First: An opinion as to whether or not, under the Act of Congress granting Indian lands at El Capitan, riparian owners and cities lower down have any rights as against the City of San Diego to the waters of the river.

Second: An opinion as to the advisability or necessity of the City proceeding now to acquire the Indian Reservation lands.

These questions shall be considered in their order as stated in the resolution.

The first question is re-stated as follows:

Do riparian owners or municipalities downstream from the El Capitan Indian Reservation, under the Act of Congress entitled "An Act granting to The City of San Diego certain lands in the Cleveland National Forest and the Capitan Grande Indian Reservation for dam and reservoir purposes for the conservation of water, and for other purposes," (40 Stats. L. 1206), acquire any rights to the waters of the San Diego River as against the City of San Diego?

determined by meter measurements: Provided, however, That the grantee shall at all times comply with and observe on its part all of the conditions specified in this Act, and in the event that the sums are not reasonably complied with and carried out by the grantee upon written request by the Secretary of the Interior it is made the duty of the Attorney General, in the name of the United States, to commence all necessary suits or proceedings in the proper court having jurisdiction thereof for the purpose of enforcing and carrying out the provisions of this Act: Provided, That the city of San Diego is authorized to assign all its rights, powers, and privileges under this Act to any public watersdistrict formed under the laws of California."

So far as applicable to the question under discussion, this section epitomized provides that the reservoir when constructed shall be maintained and controlled by the City of San Diego,

(a) For the use and benefit of said City and its inhabitants,

(b) For the use and benefit of any other municipality within the County of San Diego furnished with water by said city at the time of the adoption of the act,

(c) For the use and benefit of any other municipality within the County of San Diego furnished with water by the city of San Diego subsequent to the adoption of the act,

(d) For the use and benefit of lower riparian owners along the San Diego River,

(e) For the use and benefit of persons, corporations or municipalities situated along the pipe lines of the city of San Diego.

Had the act in question provided that the reservoir when constructed should be used for the conservation and storage of water for the use and benefit of the City of San Diego alone, that would have been the extent of the beneficial uses provided for under the act, and other municipalities or communities in the vicinity of San Diego would have enjoyed no benefits thereunder.

The foregoing statement leaves unanswered, however, the contention that although the City could not have supplied water from the projected El Capitan Reservoir to other municipalities or lower riparian owners without some such series of phrases as appear in Section 5 of the act, nevertheless Section 5 as written gives to these other municipalities and lower riparian owners the right to water from the reservoir free of charge.

The Act of Congress referred to in the question is commonly known and referred to as the El Capitan Reservoir Bill. It will be so designated in this communication. The act is ordinarily simple in scope and tenor. It purports to confer upon the municipality of San Diego the right, under the law of eminent domain of the State of California, to acquire in condemnation proceedings lands therein specifically described, lying within the Cleveland National Forest and the Capitan Grande Indian Reservation, to be used for the conservation and storage of water for domestic, irrigation or municipal uses, upon the "express condition specifically set forth" that nothing therein contained shall affect, or be construed as intending to affect, the laws of the State of California, relating to the control, appropriation, use or distribution of water for irrigation or municipal uses.

It has been called to our attention that opinions have been expressed, publicly and privately, by persons familiar with the terms of the act in question to the effect that under Section 5 thereof, the City of San Diego will be required to furnish water free of charge from the projected El Capitan reservoir to lower riparian owners (personal or corporate) and municipalities located within the watershed and downstream from said reservoir.

Section 5 of the act reads as follows:

"That said reservoir, when constructed, shall be maintained and controlled by the city of San Diego for the use and benefit of said city and the inhabitants thereof and of such other municipalities within the county of San Diego, State of California, as may be now or hereafter furnished with water by said city of San Diego, and for the use and benefit of riparian owners along the San Diego River below the lands herein described and for the benefit of persons, corporations, or municipalities situated along or adjacent to the pipe lines of said city of San Diego for the conservation and storage of water for domestic, irrigation, or municipal uses: Provided, that the city of San Diego shall sell to the United States for the use of the War and Navy Departments such water as the War and Navy Departments, or either of them, may elect to take, and shall deliver the same through its system in or near the city of San Diego to the mains or systems of such military or naval reservations in that vicinity as may be designated by the Secretary of War or the Secretary of the Navy, or both, under such rules and regulations as they or either of them may prescribe. In payment of such water and the delivery thereof the United States shall pay to said city of San Diego a rental to be calculated at a fixed rate per one thousand gallons, said rate not to exceed the actual cost of such water to said city for all water so furnished as

Referring back to our summary of Section 5, that the reservoir when constructed shall be maintained and controlled by the City of San Diego,

(a) For the use and benefit of said City and its inhabitants,

(b) For the use and benefit of any other municipality within the County of San Diego furnished with water by said City at the time of the adoption of the act,

(c) For the use and benefit of any other municipality within the County of San Diego furnished with water by the City of San Diego subsequent to the adoption of the act,

(d) For the use and benefit of lower riparian owners along the San Diego River,

(e) For the use and benefit of persons, corporations or municipalities situated along the pipe lines of the City of San Diego,

let us assume that the bill had declared merely that the reservoir, when constructed, shall be maintained for the use and benefit of the City of San Diego and its inhabitants. It could not be successfully contended that the inhabitants of the City of San Diego would be entitled to water from the reservoir free of charge.

The Owens River Aqueduct Bill (34 Stats. at Large 801) granted the necessary rights of way over government lands for conveying water to the City of Los Angeles.

The Hetch-Hetchy Bill (38 Stats. at Large 242) granted to the City of San Francisco the necessary rights of way over government lands for conveying water to the City of San Francisco.

The inhabitants of these municipalities are not entitled to water from these projects free of charge.

By adding to Section 5 of the El Capitan Reservoir Bill the additional phrase that the reservoir, when constructed, shall be maintained for the benefit of municipalities within the County of San Diego then or thereafter furnished with water by said city, in addition to the use and benefit of the City of San Diego and its inhabitants, would not give to the inhabitants of the outside municipalities the right to demand water free of cost while the inhabitants of the City of San Diego would be required to pay the price fixed by the City Council, neither would the addition of a phrase referring to lower riparian owners place the lower riparian owners in any different position than the inhabitants of the City of San Diego, or the inhabitants of any other municipality which the city was then furnishing, or might thereafter undertake to furnish, with water.

Doubt entertained upon this question, resulting from an analysis of the act itself without the aid of judicial decision, should be dissipated by the language found in Section 5 immediately following the phrases previously under discussion. There a proviso is inserted that the War and Navy Departments should be furnished water at "the actual cost" thereof.

This question, however, has been the subject of judicial determination by the Supreme Court of this state and the Supreme Court of the United States, in the case of:

The City of San Diego,

v.

The Cuyamaca Water Company,
The La Mesa, Lemon Grove &
Spring Valley Irrigation
District, The City of El
Cajon, et al.,

decided on March 21, 1930, by the Supreme Court of the State of California, and on October 13, 1930, by the Supreme Court of the United States.

Section 6 of the El Capitan Reservoir Bill was there under consideration.

Section 6 reads as follows:

"That this Act is a grant upon certain express conditions specifically set forth herein, and nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the State of California relating to the control, appropriation, use, or distribution of water used in irrigation, or for municipal or other uses or any vested right acquired thereunder, and the Secretary of the Interior and the city of San Diego in carrying out the provisions of this Act shall proceed in conformity with the laws of said State."

The Supreme Court of the State of California in its opinion (79 C. D. 205, 230, 231) discusses at some length the contention of the defendants and intervenors in the case to the effect that, under the terms of the act or the circumstances surrounding its adoption, the City of San Diego had lost some of its rights in and to the waters of the San Diego River or that the defendants and intervenors had gained some rights or advantages adverse to the City. The opinion is by Mr. Justice Richards and his language is now quoted at length:

"In the year 1917, however, the City of San Diego took a very definite step in the direction of making available to itself certain of the waters of the San Diego river not as yet conserved or appro-

priated to any beneficial use. In that year a bill was introduced in the United States Congress, at the instance of the City of San Diego, purporting by its title 'to grant rights-of-way over government lands for reservoir purposes for the conservation and storage of water to be used by the City of San Diego, California, and adjacent communities'. The text of the measure thus presented in Congress had reference to a proposed reservoir to be constructed along the upper reaches of the San Diego river and upon lands which formed a portion of an Indian reservation, the title of which was in the United States. While this measure was pending before certain committees of Congress during that and the following year the passage thereof was strenuously opposed by certain representatives of the defendants and interveners herein, their contention being that the grant of such reservoir rights, with the resultant construction of the proposed reservoir, would constitute a serious interference with the already vested rights of the defendants and interveners to the beneficial use of the waters of the San Diego river. In furtherance of the urge of these opponents and in an effort to so far limit the scope and purpose of said grant and the exercise of whatever reservoir rights and uses were to be asserted thereunder, it was sought to have the City of San Diego, through its officials then in charge of its municipal affairs, adopt certain resolutions disclaiming any intent on the part of said city to interfere with the uses then being made of the waters of the San Diego river by the defendants and interveners herein, and in pursuance thereof certain resolutions were adopted by the then governing body of said city touching this subject. A considerable portion of the record consists of details of this proceeding in Congress, and there is considerable discussion in the brief of counsel with respect to the attitude thus taken by the City of San Diego with relation thereto. It would seem, however, that the trial court fully set forth and adequately and correctly considered and treated this entire episode in its findings of fact herein, and that with particular reference to the resolutions adopted by the governing body of the City of San Diego, having reference to the aforesaid controversy, correctly stated herein that 'It is not true that by said resolutions, or by any resolution, or act of said common council, the plaintiff herein, acting by or through its legislative body, has expressly or impliedly admitted the ownership by the defendants, or any of them, of the right to use and develop the waters or any of the waters of the San Diego river prior, superior or paramount to the rights of the plaintiff.' With respect to the action of the Congress of the United States as to the

form and scope of said proposed legislation, in view of the developed opposition of the defendants and interveners herein to the passage thereof, the trial court found that: 'It is not true that the public lands committee of Congress, or any other congressional body, or any member of Congress, upon receiving or noting the protest of defendants, or any of them, or of any city or community served by Cuyamaca Water Company, or for any other reason, refused to adopt said proposed bill or house resolution unless or excepting this plaintiff admitted either expressly or impliedly an ownership and estate of these defendants, or any of them, in or to the waters or the use of the waters of the San Diego river. On the contrary, it is true that the Congress of the United States and the public lands committee of the Senate and the House of Representatives, and each of them, and the members thereof, explicitly and unequivocally set forth in said bill, and insisted in setting forth in said bill, a provision declaring that nothing therein contained should be construed as affecting or intending to affect, or in any way to interfere with, the laws of the state of California relating to the control, appropriation, use or distribution of water used in irrigation or for municipal or other uses, or any vested rights acquired therein, and that the secretary of the interior and the City of San Diego, in carrying out the provisions of said act, should proceed in conformity with the laws of said state of California.' The foregoing findings of the trial court based, as they are, on much probative evidence, which fully supports them, would seem to set at rest the question as to whether the plaintiff had lost, by its affirmative action, or by way of estoppel whatever rights we have found it to be possessed of prior to the year 1914, to the assertion of its paramount use whenever required of the waters of the San Diego river."

The rights which the court found to be possessed by the City of San Diego are described in the judgment ordered by the Supreme Court, which reads as follows:

"It is adjudged, ordered and decreed that the plaintiff the City of San Diego was at the time of the commencement of this action and now is the owner in fee simple of the prior and paramount right to the use of all the water (surface and underground), of the San Diego river, including its tributaries, from its source to its mouth, for the use of said the City of San Diego and of its inhabitants, for all purposes, and that said defendants, and each of said defendants, said cross-complainants, and each of said cross-complainants, and said interveners, and each of said interveners, have not, and no one or more of them have

any estate, right, title or interest in or to said waters, or any part thereof, or in or to the use of the same, or any right to take or use said waters, or any part thereof, save in subordination and subject to said prior and paramount right of the plaintiff, the City of San Diego, * * *

In connection with the decision of the Supreme Court, it should be borne in mind that both the Cuyamaca Water Company and the La Mesa, Lemon Grove & Spring Valley Irrigation District are lower riparian owners, and that the City of El Cajon is a municipality "lower down". Accordingly, the rights of lower riparian owners on the stream and cities lower down were under consideration, and it has been definitely and finally judicially determined that, under the act in question, they had acquired no rights as against the City of San Diego.

Upon the completion of the El Capitan project, the City of San Diego will be compelled to decide for itself whether it will furnish additional consumers outside the city limits, whether such consumers are riparian owners or other municipalities, and the City of San Diego alone, acting through its legislative body, is authorized under the laws of the State of California to fix the rate which it will charge for such service in the event that additional consumers are supplied. Not even the Railroad Commission of the State of California has any jurisdiction in the premises.

City of Pasadena v. Railroad Commission,
183 Cal. 526,

It is our opinion that under the Act of Congress granting Indian lands at El Capitan Reservoir site, neither lower riparian owners nor municipalities within the watershed, or elsewhere, acquired any rights as against the City of San Diego.

The second question is re-stated as follows:

Is it advisable or necessary to the development of the waters of the San Diego River that the City of San Diego proceed at this time to acquire the lands described in the El Capitan Reservoir Bill?

Precisely this same question has been under consideration by us heretofore and in response to oral discussions of the matter with city officials, we advised the City Attorney, on October 15, 1930, as follows:

"The action of the Supreme Court in denying the petition for writ of certiorari imposes upon the municipality the duty of complying immediately with the requirement of the El Capitan Bill regarding the payment into the United States Treasury of the amount

of the judgment in condemnation in the case of The City of San Diego v. United States of America. It is our understanding that bonds have been sold, the money is available, and that nothing remains but the tendering of a city warrant or certified check by the City Attorney to the Secretary of the Interior. In our opinion, it is extremely advisable that you should proceed to Washington on this errand at your earliest convenience."

Unless it is the intention of the Mayor and Common Council to relinquish, or fail to embrace, the benefits accruing to the municipality and its inhabitants under the terms of the El Capitan Reservoir Bill, the condemnation on proceedings under which the City will acquire title to the reservoir site immediately upon payment of the amount of the decree, and the successful termination of the litigation involving the rights of the municipality to the waters of the San Diego River, the payment to the United States Government of the award in the condemnation proceeding will be made forthwith.

It will be remembered that the La Mesa, Lemon Grove & Spring Valley Irrigation District now has pending before the Secretary of the Interior a petition to rescind the action of the Secretary of the Interior in approving said award in condemnation for the reason, among others, that the municipality has not paid the amount of the award to the United States Government.

Until the judgment of the Supreme Court of the State of California had become final, determining that the City of San Diego was entitled to condemn the El Capitan dam site, the city officials, with justification, could not have made such payment. The remittitur was issued in this matter and, accordingly, the judgment became final on or about May 21, 1930. The suit to settle conflicting claims of right to the use of waters of the San Diego River was not finally disposed of until the order of the Supreme Court of the United States denying the petition of the La Mesa, Lemon Grove & Spring Valley Irrigation District for Writ of Certiorari. This order was dated October 13, 1930. Prior to this date, the payment should not have been made.

The construction of a dam at the San Vicente dam site would not require the acquisition of the lands of the El Capitan Grande Indian Reservation. The construction of a dam at either the El Capitan dam site or at any of the Mission Gorge dam sites, or at any point above the El Capitan dam site, necessitates, or makes exceedingly advisable, the immediate acquirement of the lands described in the El Capitan Reservoir Bill.

Failing at this time to pay into the United States Treasury the amount provided for in the final decree of condemnation in the case of The City of San Diego v. United States of America and the Capitan Grande Band of Indians, which decree was approved by formal order of the Secretary of the Interior, the city officials of the City of San Diego (if it is ever intended to develop the water of the San Diego River) are not alone inviting, but are insuring, prolonged and vexatious litigation

which may involve the Government of the United States as a party and which, not at all unlikely, may be far less successful than the litigation heretofore had respecting the water resources of the San Diego River.

Because of the reference herein to expression of opinion heretofore given the City Attorney on the second question involved, we desire to add that the first question mentioned herein has been the subject of frequent discussion between ourselves and the City Attorney or the Hydraulic Engineer during the past year or thereabout, at which times we advised these officials to the same effect as herein set forth at length.

Respectfully submitted,

HUNSAKER & COSGROVE

BY

T. B. COSGROVE

TBC:MH

September 1, 1931.

MEMORANDUM

Subject: San Diego River Project, El Capitan Feature, Conference; Common Council, City Attorney, Special Counsel T. B. Cosgrove, Hydraulic Engineer, August 27, 1931.

On August 27, 1931 the Common Council in special session conferred with the City Attorney, Special Counsel T. B. Cosgrove and the Hydraulic Engineer on questions pertaining to the development of the San Diego River, El Capitan feature, submitted by City Attorney to Mr. Cosgrove on August 21, 1931.

Councilman Alexander absent.

Of the 9 questions submitted, Nos. 1, 4 and 6 were not answered.

A. (Q.2) Neither riparian owners nor land owners along the pipe line have acquired any rights against the City of San Diego or retained any rights under the Act of Congress.

Attorney Cosgrove referred specifically to his letter dated November 17, 1930, comprehensively discussing and supporting the City's paramount right as against either riparian owners or owners along the pipe lines.

Attorney Cosgrove advised that the City is not obliged to supply riparian owners and/or owners along the City's pipe lines, and the Supreme Court decision 321-1930 appears to have the Act of Congress El Capitan Bill fully in mind.

The California State Supreme Court denied every claim of riparian owners and/or owners along the pipe line of the City upon the City for delivery of water if the City acted under the Act of Congress.

If the City constructs a dam at the El Capitan site, the laws of the State of California should and do require the City if having an excess of water beyond that required by the City to furnish water to riparian owners and/or others along the pipe line.

A. (Q.3) Attorney Cosgrove's opinions were predicated on facts and precedence in California State Supreme court, first and second hearings, full court concurred.

Quoted extensively from final hearing and especially clause "fee simple all water".

Was emphatic in his expressions that all adverse interests and agencies, the Doe family included, were included in the

decision giving fee simple all water to the City.

A. (Q.5) No interest or agency may acquire any water rights riparian or by prescription or principals of estoppel.

Ordinance by City Council fully adequate to resist any endeavor or any interest or agency to acquire any rights of beneficial users.

The City cannot be resisted from taking any and all water from San Diego River for City use irrespective of any other available supply.

The Irrigation District and other beneficial users may continue to use water from the drainage basin, subject, however, to the City's paramount right to take and use any and all the water.

If Mission Dam No. 2, either diverting or impounding be built, the City may enjoin adverse use of water whenever such adverse use reduces or limits the supply required by the City.

The City has paramount right to all the water in the drainage basin but if water enough for all, including irrigation district and riparian right owners they may continue to use but the City has paramount right but may not deprive others of water which City does not require.

Any agreement with the Irrigation District must be subject to the City's paramount right.

No mention was made throughout discussions of rights of previous riparian owners or users from the San Diego River resources other than the Irrigation District.

If water shortage then City may use all San Diego River water to the exclusion of all others.

A. (Q.7) In condemnation cases initiated by the City the right of the City is paramount to all other interests or adverse users.

No land in the San Diego River drainage basin has any water right value as affecting value of land required by the City for conservation of water resources of the San Diego River, whether Mission, El Capitan or San Vicente reservoir basins or carrying conduits.

A. (Q.8) Los Angeles Flood Control District when straightening Rio Hondo at Long Beach and condemning lands in the City now secures authority from the courts to take immediate possession for right of way required for reservoirs, dams and conduits.

The El Capitan land and damsite condemnation case was peculiar. Attorneys were at variance as to rights of the City and the land owners.

Now in the light of the opinion of the Supreme court, the City may now properly apply to the Court for immediate order, placing the City in possession of the land provided the City desires to and is ready to proceed at once with the construction of a dam, but if the City now plans to construct another height and type of dam, the City should not ask for the land involved until the electors have authorized the type and/or location of the dam.

If court be asked for possession of El Capitan reservoir and dam site land, the City may go ahead and construct a gravity arch section type dam up to reservoir contour 150, but if it appears that the City intends to change the type of dam and/or height then the court may delay granting the City possession.

A. (Q.9) The Los Angeles Flood Commission. An Act of the State Legislature permits and authorized the Flood Commissioners in case of insuperable obstacles to the construction of the works authorized by the electors to change the type of dam and location of dam provided only the purport of the authorization is accomplished.

The City of San Diego, however, if desiring to change the type and/or location of El Capitan Dam is restricted to the expressed wish of the electors. San Diego electors only may change the type and/or location of a dam, the construction of which funds were authorized by the electors.

The Los Angeles Flood Commission Act specifically provides authority to the Commissioners if found necessary to change type and location of dam.

The City of San Diego's Charter also provides specifically that the electors may only change type and/or location of dam.

Question by Council - MAY THE CITY OF SAN DIEGO CONTRACT TO FURNISH THE IRRIGATION DISTRICT 4 MILLION GALLONS OF WATER PER DAY IN PERPETUITY?

A. The quantity of water which the City might contract to furnish the Irrigation District is not a factor--two political subdivisions would be involved, one the City of San Diego and the other the Irrigation District.

If the question is whether legal for the City and District to agree to contract, the answer might be yes, but when you come

to work out the contract you might and probably would be required to secure approval of the electors and confirmatory act of the State Legislature.

Provided the terms were agreed upon by the electors and ratified by the Legislature, an agreement might be accomplished.

Type and/or location of the El Capitan Dam to change would require two-thirds vote of the electors.

In response to inquiry from Fred Jewell, "If the City would lose El Capitan Indian lands if the City does not sell bonds and begin construction within six months after money paid to United States, i.e. \$361,000."

No apparent haste deemed necessary.

The City has diligently progressed the El Capitan feature considering the legal complications encountered.

Attorney Cosgrove inquired, "Why is not the City constructing a dam at the El Capitan site at this time?" and stated

"I will undertake for the City the responsibility of the legal end of the immediate construction of a dam at the El Capitan site if the City wants to construct a masonry gravity section arch type dam to store water up to not to exceed 150 feet reservoir contour."

The Irrigation District is entirely out of the proposition if the City of San Diego should go ahead with the construction of El Capitan Dam.

Patrick Francis O'Rourke announced that with thirteen hours conference, the construction work of presumably a rock embankment dam could be put under construction which would be the proudest day in San Diego's history.

HNS/m

8/26/32
copy /f
9/1/31
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2997

August 22, 1931.

Mr. T. B. Cosgrove,
Messrs. Hunsaker & Cosgrove,
Attorneys and Counsellors at Law,
Rowan Building,
Los Angeles, California.

My dear Mr. Cosgrove:

Enclosed find copy of resolution requesting a conference in San Diego for the 27th day of August.

In connection with the proposed conference several questions concerning the future development of the San Diego River will be discussed, and a definite written opinion will no doubt be requested covering the following questions. Some of these questions no doubt will be rather academic, and some may seem to you to have been answered before, but I shall be very pleased to have you give all of the questions your consideration, and would further appreciate a conference with you after you have prepared your written opinion on the matters involved and prior to the date set for the general conference on August 27th.

(1) If El Capitan Dam and Reservoir should be constructed pursuant to the authority of the El Capitan Reservoir Bill, would it be mandatory upon the city to supply water to the classes of persons and communities enumerated in Section 5 of the Bill?

(NOTE: This is not the same question as the one upon which Mr. Cosgrove rendered his opinion dated November 17, 1930, to the Council. That opinion was in answer to the question "as to whether or not under the Act of Congress granting Indian lands at El Capitan riparian owners and cities lower down have any rights as against the City of San Diego to the waters of the river." Mr. Cosgrove's opinion stated that they did not. Question No. 1, however, does not go to the acquiring of right in the waters of the San Diego River, but to the obligation on the part of the City to furnish water impounded in the El Capitan Reservoir pursuant to the conditions upon which the governmental grant was made; i.e., whether or not the city by accepting the benefits of that grant and constructing the reservoir assumed the obligation to supply from it water to the communities and persons for whose benefit jointly with the city the act provides the reservoir shall be maintained.)

Mr. T. B. Cosgrove - 2.

(2)

(a) If it is mandatory upon the City to so furnish water, or if the City should voluntarily supply water from El Capitan, as contemplated in Section 5 of the bill, or otherwise, what effect would such application by the City of the waters of the San Diego River have upon its paramount right, which right is to take and use these waters as against every one, for use within the limits of the municipality. In other words, could the city justify the sale or use of San Diego River waters outside its boundaries under the paramount right awarded to it by the Court? If not, under what other right could it claim as against any riparian owner on the stream?

(a) Does the paramount water right decree prevent The City of San Diego from complying with its contractual obligations to deliver water for use in the Bell-Lloyd tract, which is outside the boundary lines of The City of San Diego, to which the city heretofore agreed to deliver water in perpetuity as compensation for right of way for pipe line?

(3) Is the decision in The City of San Diego v. Guyamaca Water Company, et al., L. A. 10171, binding upon those not made parties to the action?

(4) What bearing, if any, may Act No. 9170 (Statutes of 1925, page 251), have upon the development of the San Diego River by the City under its paramount right case?

This act provides in very broad and comprehensive terms that municipalities who enter in or upon any watershed, or in or upon any lands, streams or waters within any such watershed, for the purpose of acquiring or increasing a water supply for any such municipal corporation, or for the purpose of taking, diverting or transporting water therefrom for use by or in any municipal corporation, or for the purpose of supplying the needs of any municipal corporation, or its inhabitants, with water for the uses aforesaid, shall be liable to all persons, firms and corporations, their heirs, representatives and successors, and to municipal corporations, districts, and political subdivisions of this state whose property, business, trade, profession or occupation, are within or conducted or carried on within the watershed so entered as aforesaid, for all damage suffered or sustained by them, or any of them, either directly or indirectly, because of injury, damage, destruction or decrease in value

Mr. T. B. Cosgrove - 3.

of any such property, business, trade, profession or occupation, resulting from or caused by the taking of any such land or water, or by the taking, diverting or transporting of water from such watershed, to and for use by or in such municipal corporation.

The act further provides for the joining together of claimants, authorizes the compromise of claims, and the payment of damages agreed upon, without court proceedings, etc.

(5) Under the paramount right decision, what is the extent of that right? What courses are open to the City or what steps are required to be taken by the City in asserting that right?

(6) What courses are open to those who may be injuriously affected by the taking of water from time to time by the City under its paramount right?

(7) What effect will the paramount right decision have in determining the actual value of lands the city may acquire for dam and reservoir sites by condemnation or by negotiation? In other words, can the City successfully maintain the contention that the lands sought for the above purposes have no water rights as against the City, and therefore that riparian or other water rights are not an element of value or damage to be considered?

(8) Under the decision and matters pending in the case of *The City of San Diego v. Cuyamaca Water Company* has The City of San Diego the right to immediate possession of the land sought to be condemned by depositing security in court for the award?

(9) Inasmuch as the proceedings leading up to the election for the issuance of bonds to construct a dam at El Capitan provided for a certain type of dam to be constructed, to-wit: "the acquisition, construction and completion of a dam, of the arched, gravity section, masonry type, at a point known as El Capitan Dam Site No. 2, located on the San Diego River," may The City of San Diego, without calling a special election, change the type of dam to be constructed to an earth and rock fill type dam?

Yours very truly,

C. L. Byers
City Attorney.

CLB/S

PUBLICITY

WESTERN CONSTRUCTION NEWS

114 Sansome Street
San Francisco, California

January 13, 1932

Mr. H. N. Savage,
Hydraulic Engineer in Charge,
Water Development Department,
San Diego, California.

Dear Mr. Savage:

Your article on the San Diego Bureau of Water Development and personal photograph are contained in the January 10th issue, page 15, two copies of which are being mailed to you today.

The photograph sent us with your letter of December 18 is being returned herewith.

Much interest is, of course, being aroused by the El Capitan dam and pipe line, and we hope that you will find it possible to prepare a short pre-bid article on this important project for publication in WESTERN CONSTRUCTION NEWS. The article might be similar to the one in our February 10th, 1931, issue, pages 63 and 64, on the Santiago Creek dam. (tear sheets attached). This type of article is of real value to the contractors who might consider bidding on any proposed work, and it does invite wider competition.

If your organization is unable to devote the time necessary to prepare this article and would care to loan us a set of the plans and specifications, sufficiently in advance of the call for bids so that the pre-bid article may be prepared, we will be glad to do this, subject, of course, to your review and approval of the manuscript.

We hope that we may report construction of the El Capitan dam and pipe line, both by progress and detailed articles in WESTERN CONSTRUCTION NEWS, and we sincerely thank you for past courtesies.

Very truly yours,

WESTERN CONSTRUCTION NEWS

A. GILBERT DARWIN (Signature)
Al Gilbert Darwin,
Acting Editor

AGD:VC
Encls.

ENGINEERING NEWS-RECORD

883 Mission St.
San Francisco, Calif.

March 28, 1932.

Mr. H. N. Savage,
Hydraulic Engineer,
San Diego, Calif.

Dear Mr. Savage:

This is to thank you very much for your thoughtfulness in sending the San Francisco office of Engineering News-Record a copy of the drawings and specifications for El Capitan dam, which you addressed to Dr. Bowers under date of March 17.

The material has been looked through with considerable interest, particularly the design plan and the combination of core wall, puddle, hydraulic fill and rock sections both up- and downstream makes the structure of unusual interest. When the project gets under way it will undoubtedly provide a most interesting major article for Engineering News-Record.

The progress of the San Diego water system leading up to the final decision to build the El Capitan dam has been referred to from time to time in our news pages. The next major job will be the description of the actual construction. According to present plans, I will be visiting the southern part of the state early in the fall and at that time will make definite plans to visit the work which I hope, by that time, will be in full swing.

Incidentally, I have been following, through press reports, the controversy over the proposed strengthening of the Lake Hodges dam and when decision is reached in this matter would appreciate very much work from you as to what the decision is and the result.

Again thanking you for your kindness, and assuring you that we will follow the El Capitan dam project with a great deal of interest, I am,

Very truly yours,

J. I. BALLARD (Signature)

Pacific Coast Editor.

JIB:G.

WATER WORKS ENGINEERING

24 West 40th Street
New York City

May 5, 1932

Mr. H. N. Savage,
Hydraulic Engineer,
Water Development Dept.,
San Diego, Cal.

Dear Mr. Savage:

Thank you very much for your article on the San Diego River Project, El Capitan Dam and Reservoir Municipal Water Conservation, and for the photograph and black line prints which accompanied it.

We are planning to publish this in an early issue of WATER WORKS ENGINEERING.

With kindest regards, we are,

Cordially yours,

WATER WORKS ENGINEERING

ROBERT H. LOCKWOOD (Signature)

Robert H. Lockwood, Editor.

RHL:FS

Published articles pertaining to
El Capitan Reservoir Dam, Spillway & Outlet works

WESTERN CONSTRUCTION NEWS

- 3-25-32 p. 158 Historical and prebid description of El Capitan Dam and Pipe Line including plan and sections of dam.
- 4-25-32 p. 238 Unit bid summary El Capitan Dam
- 10-25-32 p. 612 Article descriptive of construction of El Capitan dam with pictures.
- 12-1933 p. 485 Detail description of and statistics of construction work
- 7-1934 p. 244 Paragraph on death of H. N. Savage.
- 7-1934 p. 245 F. D. Fyle appointed Hydraulic Engineer

ENGINEERING NEWS-RECORD

- 12-24-31 p. 1016 San Diego to build El Capitan Dam. Brief description of project and outline of settlement with Irrigation District.
- 4-21-32 p. 748 Bids opened April 11. Bidders and total amounts of bids.
- 5-19-32 p. 748 Brief description of dam, classifications, quantities and unit prices of 2 lowest bidders, also plan and sections, drawings.
- 7-13-33 p. 33 "Non slip hydraulic fill dam for San Diego". Detailed description of project written by H.N.Savage including several photos and drawings.
- 6-28-34 p. 854 Obituary notice H. N. Savage
- 8-2-34 p. 157 "Personals" Fred D. Fyle appointed San Diego Hydraulic Engineer

To December 30, 1934 inclusive
E.L.B. 1-3-34

AGREEMENT

with

LA MESA, LEMON GROVE & SPRING VALLEY
IRRIGATION DISTRICT

(COPY)

November 28, 1930.

To the Honorable Mayor and City Council
of the City of San Diego,
San Diego, California.

Gentlemen:

Having been notified that the Common Council of the City of San Diego on the 28th day of November, 1930, requested the La Mesa, Lemon Grove & Spring Valley Irrigation District to submit to the Council a written proposal of settlement of all differences between the City of San Diego and said Irrigation District as to the right to the use of the water of the San Diego River, and the Members of the Board of Directors of said Irrigation District upon consideration of said request having determined that such proposal should be made, upon condition that in making the same no construction shall be so placed thereon as to affect the present status of the proceedings either in the courts or the Department of the Interior, and that the rights of each of the parties to the proposed agreement shall remain unaffected by this proposal until such time as an agreement is actually reached, hereby suggests to the Honorable, the Common Council of the City of San Diego, the following as a basis for a proposed settlement:

1. That the City of San Diego buy from the Irrigation District Murrey Dam and Reservoir lands, the El Capitan Dam and Reservoir lands owned by the District, which must include all lands included in the Santa Ana condemnation suit which are owned by the District, and also Eighty (80) acres adjoining belonging to the Cuyamaca Water Company; the lands in the Mission Gorge Reservoir site, about 400 acres owned by the Irrigation District; all lands owned by the Irrigation District at Mission Gorge Site No. 3. The price to be fixed by the District and your Honorable Body, or fixed by arbitration in the usual manner.
2. The Irrigation District will convey to The City of San Diego, without any further consideration except that which flows from the other obligations herein agreed upon and assumed:
 - (a) Five hundred (500) acres, or thereabouts, of water-bearing gravels lying above and below and adjacent to the El Monte pumping plant and including such El Monte pumping plant, and all lands in the San Diego River bottom lying between El Capitan dam site and Lakeside which the District owns.
 - (b) All rights of the District to the Fletcher dam site and reservoir lands.

(c) The Cuyamaca dam and reservoir lands, approximately eleven hundred (1100) acres of land, whatever the district owns, subject to the hunting, fishing and boating rights heretofore granted to the Cuyamaca Water Company, which contract has approximately ten (10) years to run.

(d) The diverting dam near the mouth of Boulder Creek; all rights of way, entire flume line which includes Sand Creek, South Fork and Chocolate steel and concrete siphons, a mile and a half of tunnel, and all of the distribution lines of the Irrigation District, including also Murray Hill, Eucalyptus and Mt. Helix reservoirs.

3. The Irrigation District will pay all of its own outstanding bonds, both principal and interest.

4. The City to agree that it will, to the extent that it is possible to do so with the distribution facilities which are by the District conveyed to the City, furnish water to the consumers within the District, under the same conditions, regulations and rates at which water is now furnished by the District, provided, that such rates may after ten (10) years be changed and fixed at such rate as may be by the State Railroad Commission of the State of California found to be reasonable taking into consideration the actual cost of delivering such water, and that the same may thereafter be again so changed at ten-year periods.

5. It is recognized, however, that the main flume line now owned by the District will of necessity be rebuilt within about five (5) years, and it is agreed that when the time comes to rebuild the said main flume, the cost of reconstruction or replacement by pipe lines to render the same service now rendered by such flumes, then the cost of such reconstruction or replacement with pipe lines is to be borne by the City and the Irrigation District in proportion to its use each year by the City and the District. The reconstruction of such flume or conduit shall be financed by the City of San Diego in the first instance, and the District's proportion of such cost shall be paid annually one fortieth part with five per cent. (5%) interest each year until paid for; provided, that should the City issue bonds for the purpose of such work, then the District will pay annually its proportion of interest and sinking fund on such bond issue.

The matter of how much of the said flume and main pipe line shall be reconstructed, and when and of what material shall be determined by The City of San Diego, and should it be found more profitable to abandon that portion of the main flume which lies above the El Capitan Reservoir site and to pump water from a reservoir to be constructed by the City upon such site into such main flume at or near such reservoir site, then the cost of such pumping of the water which is so delivered to the

Irrigation District consumers shall be charged against the Irrigation District, and paid for by the District, or its consumers.

6. Should any of the lands now served by the District be annexed to The City of San Diego, the amount of water to be delivered to the District shall be reduced proportionately and such lands pay City rates for water.

7. The amount of water so to be supplied by the City to the said Irrigation District consumers for irrigation purposes shall not be to exceed Four Million (4,000,000) gallons daily on the average, nor upon any one day greater than the greatest previous amount delivered to consumers of approximately Ten Million (10,000,000) gallons, nor at any time greater than can safely be delivered through the system in use for the delivery thereof.

8. Such contract, before it becomes binding upon either the City or the Irrigation District, shall be submitted to the electors of The City of San Diego, and approved by a majority of the electors of said City voting upon the subject at such election, and The City of San Diego must have received a patent from the United States for the Indian Reservation lands, for which application is pending.

9. It is recognized that there may be legal difficulties in carrying out the foregoing proposal, if accepted, and therefore this proposal, if accepted, shall not be deemed a contract between the parties, but rather as an agreeable basis of settlement which, if accepted in principle, requires a contract in detail, prepared with care, and possibly some change in method of accomplishing the desired end, and possibly some legislation.

10. Should this proposition, therefore, be accepted in principle by The City of San Diego as a basis for future contracts, then you are requested to have your attorney confer with the attorney for the Irrigation district, and to present a form of contract for adoption by the City and the Irrigation District, if found acceptable.

MEMBERS OF THE BOARD OF DIRECTORS
OF THE LA MESA, LEMON GROVE &
SPRING VALLEY IRRIGATION DISTRICT.

CH/RD

EXCERPTS FROM STENOGRAPHIC REPORT OF
CONFERENCE HELD IN THE OFFICE OF THE
CITY ATTORNEY ON FRIDAY, FEBRUARY 6,
1931, at ten o'clock A.M.

PRESENT:

Councilmen Alexander, Bennett, Irej, Dowell,
and Maire; Mayor Clark; City Attorney M. W.
Conkling; Consulting Attorney T. B. Cosgrove;
Attorney for El Capitan Committee, F. L.
Richardson; Purchasing Agent A. V. Goeddel;
Hydraulic Engineer H. N. Savage; Engineer
F. D. Pyle; Representatives of the Press.

Chairman: Councilman L. C. Maire

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Mr. Alexander: Getting back to this Irrigation District propo-
sition. Why would there be any legal entanglements there,
say that we did find out what the price of water was, whether
it was prohibitive or wasn't, would there be anything to
keep this city from getting into a contract with the dis-
trict, a perpetual contract, Mr. Cosgrove?

Mr. Cosgrove: Let me see if I understand, just in a general way.
This proposition, which I understand comes from the La Mesa,
Lemon Grove & Spring Valley Irrigation District, and which
forms the basis of this present discussion, I understand the
district proposes to turn over to the city of San Diego all
its property, that is, lock, stock and barrel.

Mr. Irej: All except their distributing system.

Mr. Cosgrove: I asked that the question specifically, and they-

Judge Conkling: One was the whole thing, from start to finish.

Mr. Cosgrove: It occurs to me that the distributing system is a
parcel that you should not take unless you have to, and as
the proposition was explained to me by Judge Conkling it was
that you took the entire system, including the distributing
system; that you took no obligation with reference to the
outstanding bonds of the district; that you paid \$248,000.00;
that you undertook to deliver five million gallons of water
a day for irrigation and domestic, but that the price for
domestic water was the rate within the City of San Diego,
the city rate. That the price for irrigation, the water for
irrigation use, was ten cents a thousand gallons for the
first ten years, and the rate after that, if you couldn't
agree upon it, to be left to the Railroad Commission. In
connection with the flume, some portion of the flume would
have to be maintained and, of course, it would have to be
reconstructed, and that the cost of reconstructing the flume

to the city bears to the amount of water passing down the flume to the district. That the Lakeside consumers who are outside the district but on the system would be taken care of, and that the rate of domestic supply would be the same rate as paid by the citizens of San Diego, city rate, and the irrigation rate to be taken care of by the Railroad Commission although that was somewhat indefinite, that feature of it. Now the working out of the details of such an agreement requires some time, and presents some legal difficulties. Don't present any insurmountable legal difficulties. For illustration, this would all have to be presented to the Railroad Commission, and the Railroad Commission approve the transfer to the city of the public utility, and you wouldn't have any trouble on that score. They would turn over to the city the legal title to the lands in which the city is primarily interested; and this matter of the city undertaking to furnish them with water, why you would be doing just about the same thing that you did when you purchased the Southern California Mountain water system. The Southern California Mountain water system was owned by the Southern California Mountain Water Company, a corporation, and it sold the system to the city for \$4,000,000.00, and the city agreed to pay \$4,000,000.00, did pay \$4,000,000.00 paid it in two parcels. They agreed to furnish water to the consumers on the system; I presume they are still supplying some of them, and they agreed to furnish a certain amount of water to the company, I forget the name of the company supplying water, might have been the Southern California Mountain Water Company would retain title to the line running from the Coronado Wye running to the strand and over the strand, and to continue to serve them with water, at eight cents per thousand gallons. It was all approved by the Railroad Commission. You have that precedent, and if all these provisions were acceptable and agreeable to both sides, why I don't think there would be any considerable legal difficulty in working it out. But, of course, you have got some matters there that are worthy of very serious consideration. The question of obligating the City for all time to supply water at certain rates. So far as the domestic rate is concerned, iff I understand it, that isn't as serious as the matter of supplying water for irrigation purposes at another rate.

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Judge Conkling: There is a small area in the Lakeside territory. How much Mr. Savage?

Mr. Savage: My understanding, from the Irrigation District officials, is that there are about 3850 acres total including town lots using water within the boundary lines of the Irrigation District, and that in the river drainage basin outside of the Irrigation District, there are a total of about 3970 acres that are using water.

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Mr. Maire: Do you know of any other water users along the river outside of the district that the city might be called upon to serve with water, outside of what has been mentioned?

Mr. Savage: The Irrigation District Engineer and Manager has told me that there are 3850 acres being irrigated in the Irrigation District, that the Irrigation District is supplying water to about 900 acres outside of the limits of the Irrigation District and that including that 900 acres there are a total of 3970 acres outside the district that is now or has been and will expect to continue to use water.

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Judge Conkling: Where do they get their water?

Mr. Savage: Mostly from pumping.

Mr. Maire: The question I want to bring out is, if we build a dam and the sands are depleted, who takes care of those 3072 acres that have been pumping?

Judge Conkling: God.

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Mr. Maire: Mr. Cosgrove, these farms outside the district that are pumping water out of the sands at the present time, what would you say our status would be if the sands were depleted?

Mr. Cosgrove: Well, I would say that their rights as against the City are identical with the rights of the district against the City, no better and no worse. The City has a prior and paramount right to the use of the water. When the city gets ready to take it the city can take it, and the ranchers can't stop them, and the Supreme Court of the United States has said that the Irrigation District can't stop them. There is no difference in their rights. The City is the first person or entity to be served. When they have had all they require, why then these other parties have a problem to thrash out and among and between themselves, as the case may be, but so far as the City is concerned it stands foremost in the line of consumers with reference to priority of right to use.

Mr. Bennett: How long would it take us to start constructing a dam at El Capitan, if we failed to compromise with the La Mesa District?

Mr. Cosgrove: Well, that question is not free from doubt in my mind. I believe with the decision of the Supreme Court, this decision of March, 1930, declaring that the City is entitled to condemn that property, that the City could take possession of the property by putting up a bond, but the

question is not entirely free from doubt. The Flood Control District, for example, in Los Angeles County, instituted condemnation proceedings and posted a bond, and were allowed to go into possession immediately. There were not in as good a position in my opinion as the City of San Diego would be in reference to the El Capitan dam site, for the question of right of the city to acquire that particular property in a condemnation proceeding has been the subject of a decision of the Supreme Court of the State, and the Supreme Court of the State has said that the City is entitled to take that land by condemnation, so that the right of the City to take the land by condemnation has been adjudicated. Now if you would go now to condemn a parcel of land for a City Hall, or if you want to condemn the lands of the Irrigation District, the 400 acres or thereabouts, which form a part of the reservoir at the Mission Dam site, you would have to go in and thrash out your right to take it. In that case I think you might have difficulty in taking possession of that land, and getting a bond, because there is hasn't been determined. But the status of the land, this 190 acres, at the El Capitan dam site occupies a rather unique position in that it has been the subject of litigation in which the City has been successful, and the Supreme Court has said that the City is entitled to take the land. The only question to be determined is how much will the city pay for it.

Mr. Bennett: You have to prove our need for the water, don't you?

Mr. Cosgrove: Well you might in connection with the development of the entire project. That is right, sir. It has been the subject of the litigation in court. The Court held that the right existed, and the Supreme Court affirmed the right; you have established the need for this property, the need for this development, and the city's right to take the land has been adjudicated the law of the case, and you go into court and say now it is a settled proposition on this particular land, the city has the right to take this land. It is just a question of the city putting up a sufficient bond to insure that they will pay for it if they take it.

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Mr. Dowell: My point is that we have to show that they can stop us from taking more water than we need for the use of our citizens. That is, the question which enters into the whole thing. If they can show that we are using that water to supply somebody else, we can't take it away from them and bring it in here.

Mr. Cosgrove: The right which the Supreme Court declared that the City enjoys as successor to the Pueblo is the first right on the river for use by the City. In other words, the City of San Diego can't develop a certain reservoir system, and use half the water in the city and deliver the other half to

National City and Chula Vista. No. The right of the City is to the use of the water for the City. That is your prior right. Now, in order that you will be fully advised of the significance of that principle, you understand that any riparian owner on the river could say to the City, if the City started developing this water and turning it over to the district, "You haven't any such right; your right is to develop this water and bring it into the City;" so that the City isn't in any better position to make a contract to deliver water to the District than it would be to deliver water for Chula Vista.

Mr. Dowell: But the point is that the District is made up of the riparian users.

Mr. Cosgrove: No, not at all. The right of the city now established in this litigation involving this prior and paramount right to the waters of the river is this, that the City of San Diego is the successor to the Mexican Pueblo. Our territorial limits are to all intents and purposes the same as the Pueblo, go a little outside to Chollas Valley. We don't have to go and develop the Cottonwood, and we don't have to develop the San Dieguito. We can go on the San Diego River first, and we can put a dam anywhere we want to on the San Diego River, and we can take and develop the water and bring it into the City of San Diego. Now, any riparian owner along the river enjoys the same right as any other riparian owner along the river. Here are a number of riparian owners along this river out here in Mission Valley, and farther up in the neighborhood of Lakeside. They are not within this district. The City of San Diego, of course, if it buys a water right it enjoys whatever right the owner of that water right had. It is a right by appropriation. Now the Irrigation District unquestionably have rights by appropriation on the river, and these rights by appropriation on the river are infringements upon the rights of riparian owners. But ahead of all of them is this right of the City of San Diego to take this water for use within the City of San Diego, and the City of San Diego can put a dam up at El Capitan, and bring into the City of San Diego the water that is impounded and conserved there, and nobody down lower on the stream, whether he be a riparian owner or an appropriator, can enjoin that diversion or use. But if the City of San Diego, instead of delivering that water into the City, starts delivering it to the Irrigation District, why then you have got to deal with the riparian owner.

Judge Conkling: In that respect, Mr. Cosgrove, I presume if we made a contract to deliver a part of that water to the Irrigation District, that to the extent that the Irrigation District had a title by prescription as against the lower riparian owners, and to the extent that as the riparian owners themselves, or the trustee for the carrying of riparian water, they would not be subject to any such proposition. - - -

- Mr. Cosgrove: Apply that to your situation up here. In other words, this just develops that it isn't a one-sided question. You have a problem taking all of your engineering---. You just take and apply that principle to the geographical facts up here. The Irrigation District as successor to the Cuyamaca Water Company, and the Cuyamaca Water Company as successor to the old San Diego Flume Company have acquired rights by appropriation. Let us say they amount to about 25 inches, continuous flow. But that right by appropriation includes the right to divert the water, includes the right to divert the water at a point and convey it to a point. They have been diverting the water at the Cuyamaca, and at the diverting dam. Now every year, with the exception of those dry years in about 1900, you had a big spill over the diverting dam to these riparian owners below. That right you would get from the Cuyamaca Water Company would be the right to continue with the Cuyamaca Dam, and would be the right to continue with the diversion dam and taking the water down the flume, but you couldn't transfer that into or substitute for that the right to build a dam at the El Capitan and you shut off the flow down to these lower riparian owners, and they would be injured by it; and if you do that as the City, and if you use that water in there within the city limits they can't molest you, but if, instead of using that water within the city, you use it outside the city limits, I think you have got something to consider.
- Mr. Richardson: I was going to apply Mr. Cosgrove's proposition. What you have said would be applicable to Mission No. 2, No. 3, and riparian owners below, the principle laid down is applicable to us.
- Mr. Maire: You wouldn't recommend that we enter into a contract that we furnish the District with water if there is a chance for the riparian owners to get out an injunction against us.
- Mr. Cosgrove: I think your question is an eminently fair one, and I say to you frankly that I have tried to give the matter impartial consideration, looking at it from all the different view points I have heard, or that I could think of, and I don't know. It is a pretty difficult problem. Now, if you could eliminate the obstacles that can be put in your path as you proceed along with the development of the waters of the San Diego River by the Irrigation District, you accomplish a great deal. Of course if you set these obstacles they can put in your path aside and for them substitute others as great you have made no progress. When you start to consider, if you consider first, what are the obstacles that can be put in your path by the District, they are I think quite definite. If you want to proceed with the development of the Mission Gorge, they consist in requiring you to establish your right to condemn their 400 acres or thereabouts acres of land lying within the reservoir site. So far as the Mission Gorge is concerned that is the only

impediment they can put in your way that I now call to mind. So far as the El Capitan is concerned the only impediment I know of is the contest they can make in court as to the price that you will pay them for the 190 acres of land and the additional 80 acres of land. The additional 80 acres of land has not been the subject of litigation. The 190 acres has been the subject of litigation, and it is concerning this 190 acres it speaks of in this decision. If you build a dam at either place, or both places, they could not, nor any one else could not, prevent you from bringing that water into the City of San Diego and distributing it in the City of San Diego, and I think wholly regardless of the amount of water that you have developed in other watersheds, or that you could develop in other watersheds. Now, if on the other hand, you want to get rid of these difficulties, these impediments as I call them, consider whether or not the other difficulties that you substitute for them are more easily surmounted or will entail the expenditure of greater amounts of money. If you entered into a contract to supply the Irrigation District with five million gallons of water a day, and you supplied that by maintaining their existing flume, and their existing reservoir at Cuyamaca, and their existing pumping plant at the El Monte, all you would be doing would be simply substituting one political subdivision for another in the operation and maintenance for the City of San Diego, and no one could enjoin the City that cannot now enjoin the district. Now I understand that of course no one contemplates taking over the Cuyamaca Water System for the purpose of operating it for the benefit of the consumers and substituting the city for the district, but what you are figuring on doing is building a dam at El Capitan, as I understand the object of this proposed compromise is primarily to clear the way for the El Capitan project. If you build a reservoir at El Capitan you have got an entirely different situation so far as lower riparian owners is concerned, because then these lower riparian owners are going to have an entirely different hydraulic situation face them. You put up a dam at the El Capitan and it won't be long before the boids in the sands and gravels below will be very materially exhausted, and they will be exhausted despite the annual normal rainfall, because there won't be the flow of the river, the surface flow in the winter and the slow gradual underground movement of the water during the remainder of the season to replenish them, and there will be very considerable depletion. Now then, you are going to run afoul the law which is no part of the Pueblo right, namely, the right to deprive the riparian owner of his right, and the right of the riparian owner is very well established in this state. The Supreme Court has within the last couple of years affirmed in no unmistakable language, in the Herminghaus case, and it has been reaffirmed two or three times since. The riparian owner has got a right to say that I want the water to flow here as by nature it is wont to flow, save and excepting that upper riparian owners are

entitled to use it on riparian land. I may be mistaken in my fractions, but I venture to say that in excess of a third of the land of the district is not within the San Diego River watershed. Am I correct in that or not Mr. Savage?

Mr. Savage: You are.

Mr. Cosgrove: I believe that in excess of one-third of the entire acreage of the Irrigation District lies over in the Sweetwater watershed. Now any riparian owner is in a position to prevent the City, I think, from delivering water not only over in that portion of the district, but they are in a position to prevent the City from delivering water from the El Capitan Reservoir to any portion of the District. If the City would maintain the flume and the Cuyamaca reservoir and the El Monte pumping plant, and supply this water in the quantities which for many years in the past the Cuyamaca Water Company and its predecessor in interest, San Diego Flume Company, has been doing you wouldn't have any trouble, but if you abandon that development, and start up this new development at the El Capitan Damsite, which is the subject of these decisions of the Supreme Court, where the Supreme Court specifically says that your right in this connection is at least partially due to this prior and paramount right which you have as successor to the Pueblo of San Diego, I think you will likely have a lot of very serious obstacles put in your way by lower riparian owners. My reason for saying that to you, gentlemen, is to justify, if nothing else, my inability to answer that question which was asked me a minute ago. Would I advise this?

Mr. Dowell: If the City at its pumping plant made it less for the riparian owners who are now using water, we could not dry up their farms.

Mr. Cosgrove: If I understand the facts, the Riverview pumping plant is a pumping plant and a battery of wells connected up with a pump, and the water is brought into the City, and you have a right to do that.

Mr. Dowell: If you had the right to do that I think you could build a dam.

Mr. Cosgrove: You can take the water from the river any way you please at any point you please, where you have the right to -- but when you start delivering it to Coronado or La Mesa, there is a different situation.

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Mr. Alexander: It is very evident that it would be a calamity to make a contract with those people out there.

Judge Conkling: Do you see any legal objection which would be created if we were to agree with the Irrigation District that they might take from the San Diego River, without objection from us, not to exceed a certain quantity of water?

Mr. Maire: That is altogether different, Judge.

Judge Conkling: The idea is to get you to agree how much water you are going to allow them. When Mr. Dowell proposed that proposition before the Council, I suggested you had better put in there that this is simply to declare a principle of action, and not to make a definite contract, that being a very important matter which must be given careful examination by our attorneys. But if you gentlemen could agree that you wanted the Irrigation District to have about so much water, I was willing to get together with the other attorneys.

Mr. Maire: Now that we have had this legal opinion, as I see it, it would be perfectly all right to let the district take the amount of water they wanted from the El Monte sands. If we were to build at El Capitan all that water would have to come into the City. We could allow the District to get what water they could get out of the sands below the dam.

Mr. Cosgrove: As I understand Mr. Maire, if the proposition, instead of this proposition which I had been talking about, if you substitute for that this proposition that the district will give us a title to this 190 acres and this 80 acres, 270 acres involved at the El Capitan, and the 450 acres at the Mission Gorge site, that we will not object to the continuation of their diversion at the diverting dam, the maintenance of the existing Guyamaca Dam, and the continuation of their operation as heretofore at the El Monte, would that be fraught with any such legal difficulties as I have mentioned that would accompany this other proposition?

Mr. Bennett: Yes, that is it?

Mr. Cosgrove: No.

Mr. Bennett: Question:

Mr. Cosgrove: The proposition is that there will be turned over to the City the 450 acres of land that constitutes a part of the reservoir site at Mission Gorge. There will also be turned over to the City the 190 and the 80 acre parcels that constitute a part of the damsite and a portion of the reservoir site at El Capitan, to the City, that the City would then be in a position to immediately build the El Capitan, and would be in a position to build the Mission Gorge as soon as it satisfied the other owners of the property in the Mission Gorge reservoir site. That in consideration of that grant of property to the City of San Diego, the District would continue on as they are now with their present flume,

their diverting dam, their reservoir at the Cuyamaca, and their pumping plant at El Monte, and we would not object to their continuing with it. Of course if they don't get any water at El Monte that is their funeral.

Judge: I want to put another question. (Question)

Mr. Bennett: Well, you are assuming then by that statement that we are to proceed with condemnation rather than agreement.

Mr. Cosgrove: That disposes with any necessity for condemnation, and puts the City in position where it could go ahead immediately with El Capitan, and wouldn't be held up on Mission Gorge project by the necessity for thrashing out this question.

Mr. Bennett: Where are they going to get their water?

Mr. Cosgrove: That is their problem.

Mr. Alexander: That would take us back after the first or second year, as I understand it. All they would have coming to them, just the water coming to them from the Cuyamaca Lake. After a couple of years the El Monte would be drained dry.

Mr. Cosgrove: I should think so.

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Mr. Cosgrove: The Irrigation District now has rights on this river. They are paramount to the rights of riparian owners. The right to build that Cuyamaca Dam and to divert the water at the diverting dam is an infringement on a riparian owner which is prior to this riparian right, but it isn't, of course, prior to the city's right. They have - let us say that the City builds the El Capitan Dam, and they proceed to store water there for use with the City, which they unquestionably have the right to so do as against the whole world. Now the District says to the City, we have up here in the Cuyamaca Reservoir a certain amount of water, that water is static. It is not the flow of a stream, it is water in a reservoir, it is static. They want to transfer it to our impoundment basin, the El Capitan reservoir, and their means of transferring it is by means of a pipe line, or an open ditch. They have a right to run it down. No intervening owner as it came along would be entitled to grab off his share. They would have the right to transfer that water from one reservoir to another reservoir, and no riparian owner would complain of it. When they got it into El Capitan - - -

Judge Conkling: They have a right, - - -

Mr. Bennett: Assuming that we did that, that would only be about twelve years' supply, and we would run into the same jam after that. We would have to contract with La Mesa in order to get this compromise over. Could you do this? Could you in buying their rights out, as a part of the consideration, agree to deliver water for a certain length of time, or a certain quantity of water, say twenty or fifty million gallons, as part of the consideration of buying their lands, and we would still get away from this legal entanglement?

Mr. Cosgrove: No sir. You can, for example, instead of paying money for land, you can agree to deliver water, but you have got to take into consideration that the lower riparian owner must be considered. His right is to have the water flow as by nature it is wont to flow, save such diminution as results from the allocated right of an upper riparian owner, his prorate share of this water, or such differences as have been acquired by appropriation or prescription. If we would contract with the Irrigation District in consideration of their deeding to us this 270 acres of land involved in the El Capitan reservoir site that we would agree to deliver to them from that reservoir blank gallons of water a day, I think that any lower riparian owner would enjoin the performance of that contract, because the City hasn't the right to take that water out of that river, and deliver it to anybody but a consumer within the city limits over the protest of a riparian owner.

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Mr. Irej: What would be the effect, or wouldn't this be possible, that the District be permitted to take the water as they are getting it now, for a period of say five years, when they claim that the distributing system and the flume will have to be rebuilt. Well, it wouldn't be necessary to rebuild that flume. We could deliver this water, we could say to our engineer that they select another engineer to arrive at the cost of the water delivered to them, arrive at a cost in the El Capitan and the water from Dulzura Conduit, fixing that price at the time of the completion of the dam and the completion of the system to deliver the water to them, making the cost whatever it might be. There would be no obligation and no complication. If we could get a settlement from the district on the land. If we could get a settlement from the district on the land, say three or five years in the future. Wouldn't that work out?

Mr. Cosgrove: Let's see if we understand one another.

Mr. Irej: The idea is, the district is claiming that they can't live and irrigate their lands unless they get a certain price, which is not any higher than at present.

Mr. Cosgrove: I don't understand the question.