

ORIGINAL

Decision No. 2531

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of JAMES A. MURRAY and ED FLETCHER, co-partners, doing business under the firm name and style of CUYAMACA WATER COMPANY, a public utility, and LA MESA, LEMON GROVE and SPRING VALLEY IRRIGATION DISTRICT, a public irrigation district, for an order establishing the value of the property of Cuyamaca Water Company and authorizing Cuyamaca Water Company to convey said property to said District.

Application No. 1432.

Sweet, Stearns & Forward, by F. W. Stearns, S. R. Robinson and A. E. Chandler for James A. Murray, Ed Fletcher, William G. Henshaw and Cuyamaca Water Company.
Andrews and Wright, Edgar A. Luce and Haines & Haines for La Mesa, Lemon Grove and Spring Valley Irrigation District.
T. B. Cosgrove, City Attorney, for City of San Diego, Intervener.

THEHEN, Commissioner.

O P I N I O N.

This is a proceeding in which the owner of a public utility water system and a public irrigation district which desires to purchase the same have joined in an application to the Railroad Commission to determine the fair value of the property of the utility and to authorize the owners thereof to convey the same to the District at the value thus found.

The petition alleges, in effect, that on November 17, 1914, James A. Murray and Ed Fletcher, doing business under the firm name and style of Cuyamaca Water Company, hereinafter referred to as the Cuyamaca Company, entered into an agreement with La Mesa, Lemon Grove and Spring Valley Irrigation District, hereinafter referred to as the Irrigation District, wherein the Cuyamaca Company agreed to sell and the Irrigation District agreed to buy the Cuyamaca Company's water system for such sum as the

Railroad Commission should determine to be its fair value; that a copy of the contract and of the property schedules attached thereto are attached to the petition and made a part thereof; that the parties are desirous that the terms of the contract be fulfilled, the fair value of the property established by the Railroad Commission and an order entered authorizing the conveyance of the property by the Cuyamaca Company to the Irrigation District at the value thus determined; that on May 4, 1914, the Irrigation District, at a special election, voted to issue bonds of the face value of \$1,232,500.00 for the purpose of diverting water for the use of the District and that of said issue \$247,000.00, face value, of bonds have been sold, leaving in the hands of the Irrigation District bonds of the face value of \$985,500.00 still unsold; that the Superior Court of the State of California, in and for the County of San Diego, on September 21, 1914, entered a decree declaring that the bonds of the Irrigation District are legal obligations; that the Irrigation District desires to purchase the Cuyamaca Company's water system in order to supply the Irrigation District with water for agricultural and domestic purposes and that it is for the best interests of the Irrigation District that said system be acquired, operated and controlled by the Irrigation District; that the Cuyamaca Company is willing to sell its water system to the Irrigation District, as provided in said contract; and that it is for the best interests of all parties and of the public service that such sale be consummated. The petitioners thereupon ask the Commission to fix and determine the fair value of the Cuyamaca Company's property as provided in said contract and that the Railroad Commission make its order authorizing the Cuyamaca Company to convey said properties to the Irrigation District at the value thus fixed and determined. The petition is signed by James A. Murray, Ed Fletcher and La Mesa, Lemon Grove and Spring Valley Irrigation District. At

the hearing, W. G. Henshaw, to whom Ed. Fletcher, by written agreement dated October 20, 1913, agreed to sell one half of his one sixth interest in the water system, authorized his appearance to be entered. Mr. Henshaw's interest in the property is that of an intending purchaser under an executory contract of sale. There was introduced in evidence as Cuyamaca Company's Exhibit No. 18, a letter from W. G. Henshaw to Ed Fletcher, dated March 2, 1914, in which Mr. Henshaw says:

"I am willing to sell at the same relative price that Mr. Murray may ask for his interest in the Cuyamaca system providing of course that it at least brings me out with a profit."

Mr. Fletcher testified that Mr. Henshaw had approved the contract with the Irrigation District and that there was a thorough understanding that he will be bound by it.

The contract of November 17, 1914, provides, in effect, as follows:

1. The Cuyamaca Company agrees to sell to the Irrigation District and the Irrigation District agrees to purchase from the Cuyamaca Company all the properties described in the schedules attached to the contract.

2. The purchase and sale price of the property is to be such sum as the Railroad Commission shall determine to be the value thereof upon joint application by the parties to the contract. In this respect, the contract further provides as follows:

"It is agreed and understood that the decision of the said Commission shall be final and binding upon both parties hereto, and that neither party shall have the right to appeal therefrom or to have a review thereof."

3. Upon the rendition of the Railroad Commission's decision the Irrigation District agrees to cause to be advertised for sale its 6 per cent bonds in such amount that the face value of the bonds together with accrued interest thereon to the date of the sale shall be equivalent to the value of the property as

determined by the Railroad Commission. The Cuyamaca Company agrees upon such sale to bid for said bonds par and accrued interest, said bonds to be taken in exchange for the property to be sold. The Irrigation District agrees to furnish to the Cuyamaca Company an opinion by Dillon, Thompson and Clay, of New York, that the bonds are valid and enforceable obligations of the Irrigation District.

4. The Cuyamaca Company agrees to furnish to the Irrigation District certificates of title showing good title to all the lands agreed to be sold, except ~~xxxxx~~ rights of way.

5. The Cuyamaca Company represents to the Irrigation District "that there are no outstanding water contracts, or contracts to rent, sell, supply or distribute water, except those contracts and obligations to furnish water which were incurred by the San Diego Flume Company prior to the purchase of the said system by the parties of the first part herein; except also, those instances where obligations have been incurred to furnish water for domestic use in compliance with the orders of the Railroad Commission, and except also that certain lease made and entered into on the 19th day of October, 1914, by and between the parties of the first part herein and the City of San Diego, California, wherein and whereby the said City has rented for one year from the date of the said lease the right to use such portion of the flume, pipe lines, and other water carrying facilities of the said lessors as may be necessary or convenient to carry any waters pumped into the said flume by the said City from the San Diego River."

6. The Cuyamaca Company agrees that it will not, without the written consent of the Irrigation District, prior to the determination of the value of said properties by the Railroad Commission, make any new or additional expenditures upon its system

except such as may be necessary to keep the same in order and repair.

7. Prior to the transfer of the property the exterior boundaries of the Irrigation District shall be so changed as to include certain lands which are described in a schedule marked "Lands to be included in District", a copy of which schedule is presumably attached to the original contract but was not attached to the contract on file with the Railroad Commission.

8. The Cuyamaca Company's properties are agreed to be sold "subject to all water right contracts or contracts to rent, sell, supply or distribute water hitherto made by the San Diego Flume Company (formerly the owner of the said water system), whether such contracts refer to water already furnished, or hereafter to be furnished."

The Irrigation District assumes and agrees to perform all such contracts to the same extent and in the same manner as the Cuyamaca Company or the San Diego Flume Company are now bound to perform the same.

9. The parties intend to include in the schedule attached to the contract "all of the properties of the parties of the first part necessary or desirable by the party of the second part for its use in conserving and utilizing all of the waters of the said San Diego River." The parties agree "that in the event the Railroad Commission of the State of California should determine that other property now owned by the parties of the first part is necessary or desirable for such use, then the same shall be deemed included in this agreement of purchase and sale with the same effect as though the said properties had been specifically mentioned and described in the said schedule; but it is agreed that at Cuyamaca Dam, no lands will be required except those which would be flooded by the reservoir filled to the present height of the dam and a margin as per schedule."

10. Provision is made for the payment of interest on the value determined by the Railroad Commission and for the payment of the net income by the Cuyamaca Company to the Irrigation District from and after June 1, 1915. The Cuyamaca Company is to be under no obligation to transfer its properties unless the Irrigation District shall have kept all its covenants prior to January 1, 1916.

11. The contract is made subject to the approval of the Railroad Commission and of the Engineering Department of the State of California and the parties agree to make joint application for such approval immediately upon the execution of the contract.

Attached to the contract are four schedules describing the property to be conveyed. The first schedule is marked "Exhibit A," and contains descriptions of nine parcels of land. The second schedule is marked "Exhibit B," and contains a description of rights of way, permits, franchises, a lease and certain floodage rights over lands in connection with La Mesa Reservoir. Schedule "C" contains a list of structures and improvements, including dams, transmission system, pumping plants, distributing system, buildings, wagons and tools. Schedule "D" contains a list of six notices of water appropriation, and one permit from the State Water Commission for the waters of Boulder Creek to be used for power purposes.

The City of San Diego filed a petition in intervention, in which petition the City alleges that it has been negotiating for the purchase of the properties of the Cuyamaca Company and desires to secure the same and intends to file proceedings in eminent domain in order to acquire the same. Attached to the petition is a copy of the petition in Application No. 1482, being an application filed with the Railroad Commission by the City of San Diego asking the Railroad Commission, in accordance with the terms of Section 47 of the Public Utilities Act, to fix and

determine the just compensation to be paid by the City of San Diego to James A. Murray, Ed Fletcher and William G. Henshaw, owners of the Cuyamaca Company's ^{water} system. The petitioner alleges that if it is successful in acquiring the property it will use the same principally for the development and transmission of water for municipal purposes and that it will recognize as prior obligations existing valid claims against the system, if the system is secured by the City of San Diego without long and expensive litigation. The intervener asks the Railroad Commission to refuse to authorize the Cuyamaca Company to convey its property to the Irrigation District and to fix and determine the just compensation to be paid by the City of San Diego for the properties of Cuyamaca Company, in accordance with the provisions of Section 47 of the Public Utilities Act. While the City of San Diego was permitted

to intervene in this proceeding and rendered very material assistance in the presentation of evidence showing the fair value of the property of Cuyamaca Company, it is not the function of the Railroad Commission to determine which of the two intending purchasers shall secure the property. The Railroad Commission will, in the present proceeding, determine the fair value of the property in accordance with the terms of the contract between the Cuyamaca Company and the Irrigation District and will authorize the transfer of the property to the Irrigation District for the compensation thus established, and the Railroad Commission will also, in Application No. 1482, fix and determine the just compensation to be paid by the City of San Diego, in case the City should acquire the property. The question as to which of these two public authorities shall acquire the property must then be left to the courts or, as I hope will be done, to an agreement between the City of San Diego and the Irrigation District. These parties should be able by fair and frank dealing with one another to settle this question without the necessity of protracted and expensive litigation.

The hearing in the present proceeding was consolidated with the hearings in Application No. 1482, hereinbefore referred to; Application No. 1231, being the application of Cuyamaca Company for an order authorizing an increase in rates; Case No. 716, Fairmount Water Company vs. Cuyamaca Water Company; Case No. 724, D. G. Gordon vs. James A. Murray and Ed Fletcher; and supplemental application on behalf of La Mesa Development Company for a modification of the order heretofore made in Application No. 118, in which proceeding the Railroad Commission established the rates to be charged by Cuyamaca Water Company. It was stipulated that all the evidence taken in these proceedings should be considered, in so far as material, as having been presented in each of the proceedings and also that the evidence heretofore taken in Application No. 118 might be considered as having been presented, in so far as material, in each of these proceedings.

Public hearings were held in San Diego on February 15, 16, 17, 18, 19 and 20 and April 12, 13, 14, 15, 16 and 17, 1915. Briefs have been filed in accordance with the request of certain of the parties to these proceedings and this proceeding is now ready for decision.

Cuyamaca Water Company derives its water partly from accumulations in Cuyamaca Reservoir, partly from diversion of the waters of San Diego River, partly from waters diverted from the South Fork of the San Diego River, partly from the runoff of La Mesa Reservoir and partly from pumping from the sands of San Diego River. Cuyamaca Reservoir is located on the easterly extremity of the system, at the head of Boulder Creek. An earth filled dam is built across a mountain meadow at this point. The reservoir has a drainage area of about 12 square miles and a capacity of about 10,800 acre feet. The waters in the reservoir are released, when needed, into the natural channel of Boulder Creek, through which channel they flow a distance of about 11½

miles into the San Diego River, at a point not to exceed one half mile above the diverting dam. The Cuyamaca Company's diverting dam is a structure composed of rubble masonry and concrete built across the San Diego River in Section 11, Township 14 South, Range 2 East, S.B.M. The waters thus diverted are conveyed through a flume a distance of 33.1 miles to Eucalyptus Reservoir at La Mesa. This flume consists ~~of~~ mostly of a wooden box resting upon wooden sills on a bench which has been excavated from the hillside and in part of a concrete flume, steel flume, siphons and tunnels. A small diverting dam is built across the South Fork of the San Diego River. The waters thus diverted are transmitted through a wooden flume, a steel flume and a steel pipe into the main flume. Siphons are located at Sand Creek, South Fork, Chocolate Creek and between Murray Hill Reservoir and Eucalyptus Reservoir. Eight tunnels are located between the diverting dam on the San Diego River and Eucalyptus Reservoir. Near the westerly end of the system are certain reservoirs of which the largest are La Mesa Reservoir, Murray Hill Reservoir and Eucalyptus Reservoir. There are also certain smaller reservoirs, known as Webster Reservoir, Miles Reservoir No. 1, Miles Reservoir No. 2 and four reservoirs in the Grossmont Tract. The waters of Murray Hill and Eucalyptus Reservoirs can be directed from one reservoir to the other through a concrete pipe line, connecting the two reservoirs. La Mesa Reservoir, at the present height of the dam, being 66 feet, has a capacity of approximately 1390 acre feet or about 450,000,000 gallons. Murray Hill Reservoir has a capacity of 127 acre feet or 41,000,000 gallons. Eucalyptus Reservoir has a capacity of 26 acre feet or approximately 8,000,000 gallons. An earthen ditch runs from the end of the flume at Eucalyptus Reservoir to La Mesa Reservoir. Practically all the territory below the end of the flume to the easterly boundary of the City of San Diego can be supplied from La Mesa

Reservoir, either by gravity or by pumping back by means of a booster pump located at the junction of a 24-inch wood stave line leading from La Mesa Reservoir to the pipe line on El Cajon Avenue leading from Eucalyptus Reservoir. The system has pumping plants as follows: Pumping Plant No. 4, being a small portable plant located a short distance westerly from the diverting dam; Pumping Plant No. 3, located at the junction of Sand Creek with the San Diego River; Pumping Plant No. 2, located at the junction of Chocolate Creek with the San Diego River; Pumping Plant No. 1, being the La Mesa booster plant; the Monte Pumping Plant, located east of Lakeside; the Grossmont Pumping Plant, used for the purpose of boosting water to the tract of land known as Grossmont, easterly from La Mesa; the Miles Pumping Plant, located at Miles Reservoir No. 1, near Grossmont; a small pumping plant at Eucalyptus Reservoir for domestic water supply; and the La Mesa Pumping Plant, located directly at the foot of La Mesa Reservoir.

Cuyamaca Company supplies its customers partly from its flume and partly through distributing pipes located between Eucalyptus Reservoir and the easterly limits of the City of San Diego, and divided into what the company calls its high service and its low service.

It appeared at the hearing that the schedules attached to the contract of November 17, 1914, omitted certain property which is used and useful by Cuyamaca Company in its public utility business. The contract provides that such properties shall be deemed included in the agreement of purchase and sale with the same effect as though they had been specifically mentioned and described in the schedules. I find that the omitted properties are as follows:

1. Shops located at Normal Heights.
2. Materials and supplies on hand, including office equipment, supplies, maps, schedules, charts, drawings and other data collected by Cuyamaca Company.
3. Pumping Plant No. 4.
4. Miles Pumping Plant.
5. Grossmont Pumping Plant.
6. La Mesa Pumping Plant.
7. Telephone lines.
8. Miles Reservoir No. 2, with real property on which it is located.
9. Measuring station below diverting dam.
10. Measuring station at Old Mission Dam.
11. Boulder Creek weir.
12. Sand Creek Cement shed.
13. Meteorological instruments.
14. South Fork cook shack.
15. Right of way for flowage and keeper's house at diverting dam.
16. Kelly Ditch and right of way therefor, being a ditch and right of way located above the Cuyamaca damsite and used for the purpose of diverting water into Cuyamaca Reservoir.
17. All riparian rights and rights to diversion on and along San Diego River owned and controlled by James A. Murray, Ed Fletcher or William G. Henshaw, as more particularly shown and described in Cuyamaca Company's Exhibit No. 30 herein.

While there was some question at the hearing with reference to certain additional installations which Cuyamaca Company has made at Monte Pumping Plant, the description of the Monte Pumping Plant property contained in Schedule A attached to the contract is sufficiently broad, speaking as it does as of the date of the decision herein, to include all the property located on this land.

The value herein fixed and determined covers all the property of Cuyamaca Company specifically described in the schedules attached to the contract, together with the additional property hereinbefore specifically designated, and all other property used and useful in connection with the property described in said schedules and hereinbefore described, in the operation of the Cuyamaca Company's water system.

Cuyamaca Company supplies water partly for irrigation and partly for domestic purposes. In 1912, the irrigation consumption was 94 per cent and the domestic consumption 6 per cent of the total amount of water sold, and in 1914, the irrigation consumption was 92½ per cent and the domestic consumption 7½ per cent of the total amount of water sold, / ^{excluding deliveries to the City of San Diego} During the years 1894 to 1906, inclusive, the Cuyamaca Company sold large amounts of water for consumption in the City of San Diego. In 1906, the City of San Diego acquired its own water system and these sales ceased until 1914. In the year 1914, the Cuyamaca Company sold to the City of San Diego, in addition to the irrigation and domestic water hereinbefore referred to, surplus waters amounting to 171,772,000 gallons, at the rate of 10 cents per 1000 gallons. The sale of surplus water to the City of San Diego has continued this year to date, but the record does not show the entire amount of the water thus sold in 1915. In 1914, the Cuyamaca Company supplied water for irrigation of 3734.71 acres. The following tables taken from Railroad Commission's Exhibit No. "I" show the actual delivery of water for the years 1913 and 1914, at wholesale and at retail, in cubic feet, as follows:

TABLE NO. 1.

WATER SOLD AT WHOLESALE.

Groups	1915		1914	
	Irrigation	Domestic	Irrigation	Domestic
<u>High Service</u>				
Chollas Mutual	739,450	88,840	881,167	329,780
La Mesa Mutual	188,350	2,258,205	427,627	2,509,702
Lemon Grove Mutual	11,255,286	324,104	16,328,210	435,023
Spring Valley (Helix Mutual)	7,081,491	-	7,692,734	109,360
Outlook Terrace	207,457	200,743	200,784	215,286
Orchard Tract - Lot 64	51,570	125,240	92,530	45,730
Wheeler Tract	51,728	74,018	44,560	70,130
Orchard Tract - Lot 70	3,213	75,990	58,136	45,575
Waverly Tract	51,550	65,025	4,600	82,190
Petaluma Tract	33,886	62,514	36,581	37,349
Marlett Tract	177,870	90,940	228,942	47,219
Magruder Tract	67,568	13,010	118,112	31,416
Fruitgale Tract	218,720	75,030	159,227	13,813
<u>Low Service</u>				
Pacific Building Co.	-	3,845,506	-	3,209,677
Granada Tract	853,295	-	488,344	55,451
City of San Diego #	-	-	-	22,897,383#
<u>Flume</u>				
Hawley Pipe Line	10,954,287	-	14,771,087	-
Cresson Flume	2,660,898	-	3,393,112	-
Hillsdale Flume	1,990,257	-	2,713,806	-
Lakeside Flume	4,709,979	-	6,053,776	-
Lakeview Flume	2,690,057	-	5,217,729	-
Total	45,966,712	7,298,959	36,890,958	30,135,484

- Sales to City of San Diego Jan. 1, 1915 to Feb. 18, 1915, total 8,389,400 cu. ft. (or 62,761,101 gallons).

In presenting these tables, Mr. James Armstrong, one of the Railroad Commission's hydraulic engineers, drew attention to the fact that the segregation into irrigation and domestic use is of doubtful value in many cases, particularly with reference to the tracts which are changing from irrigation to domestic use. The segregation as presented by Mr. Armstrong was made by the Cuyamaca Company in accordance with its interpretation of its rules and regulations, all water supplied to tracts of one half acre or larger, except wholesale domestic water, being considered as supplied for irrigation.

TABLE NO. 11.

WATER SOLD AT RETAIL FOR DOMESTIC CONSUMPTION.

Consumption Cu. Ft. Domestic	El Cajon Avenue Low Service				Kensington Park				Normal Heights				El Cajon Avenue High Service			
	1913		1914		1913		1914		1913		1914		1913		1914	
	T M	Cu Ft	T M	Cu Ft	T M	Cu Ft	T M	Cu Ft	T M	Cu Ft	T M	Cu Ft	T M	Cu Ft	T M	Cu Ft
0 to 540	35	10855	149	44609	426	124736	686	148282	3411	819186	3257	876304	117	27945	128	32875
540 to 1,000	28	21476	149	101855	291	228550	523	294920	562	420600	1171	816572	69	62808	48	37856
1,000 to 5,000	17	26197	64	93211	181	271300	217	284409	202	369665	427	572731	26	41309	27	54045
5,000 to 100,000	11	243740	19	347446	7	58400	7	53624	13	96800	9	79673	-	-	2	43412
Total	91	302268	381	587121	905	682986	1433	781243	4188	1706251	4864	2375280	212	132062	205	168194

Company's Line on Main Flume

1913		1914	
T M	Cu Ft	T M	Cu Ft
35	7047	117	26723
14	11242	31	23153
1	2700	42	78442
2	48600	7	45210
52	69589	197	173533

TABLE NO. III
WATER SOLD AT RETAIL FOR IRRIGATION CONSUMPTION.

Consumption Cu Ft Irrigation	El Cajon Avenue Low Service		El Cajon Avenue High Service				Company's Lines on Main Flume					
	1913		1914		1913		1914		1913		1914	
	T M	Cu Ft	T M	Cu Ft	T M	Cu Ft	T M	Cu Ft	T M	Cu Ft	T M	Cu Ft
0 to 540	85	17469	90	19989	74	16619	99	22119	11	3120	-	-
540 to 1,000	51	69309	43	32998	59	44276	40	35801	9	6150	1	576
1,000 to 5,000	226	621684	149	396692	207	517211	207	357927	21	70942	19	59985
5,000 to 100,000	345	6425909	346	7835444	399	8318818	363	10862519	338	9996763	294	9901329
Total	707	7134361	628	8285123	739	8896824	709	11278366	379	10046975	314	9961890

The following table shows a summary of the water sold in 1913 and 1914, under both the wholesale groups and the retail groups, for irrigation and domestic use:

TABLE NO. IV.

SUMMARY OF WATER SOLD 1913 and 1914.

	1913		1914	
	Irrigation	Domestic	Irrigation	Domestic
Wholesale Groups	46,906,712	7,298,969	56,890,953	30,135,484
Retail Groups	26,068,160	2,893,156	29,525,379	4,085,371
GRAND TOTALS	70,034,872	10,192,115	86,416,337	34,220,855
COMBINED IRRIGATION AND DOMESTIC TOTALS	80,226,987		120,637,192	

The word "wholesale" as used in the foregoing tables ~~and the tables which follow~~, means the water sold at the Cuyamaca Company's master meters and thereafter delivered to ^{the} various tracts, communities and companies which act as distributors. In some cases, such tract, community or company has an agent who deals with the Cuyamaca Company, while in other cases the company itself collects from the individuals. The word "retail" as used in the foregoing tables ~~and the tables which follow~~ refers to water delivered by the Cuyamaca Company directly to consumers.

In 1912, 1913 and 1914, the Cuyamaca Company was unable to deliver to its consumers the full supply of water to which they were entitled. Irrigation District's Exhibit No. 5 shows that there were shortages in the so-called "low service use" as follows: In 1912 there was a one-fourth supply in January and February; in 1913 there was a one-half supply in January, a three-fourths supply in May, a one-half supply in June and July, a one-fourth supply in August and September and a one-twelfth supply in October, November and December; and in 1914 there was a one-twelfth supply in January and February, a two-thirds supply in September and a one-half supply in October. The Irrigation District's Exhibit No. 6 shows that the same shortages existed during the same period with reference to the so-called "high service use." Irrigation District's Exhibit No. 7 shows that the shortages on the "flume service use" were as follows: in 1911 there was a two-thirds supply in September and no water in October, November and December; in 1912 there was no water in January and February, a ~~xxxx~~ five-sixths supply in August, and only a partial supply in September. In 1913 there was a one-half supply in January, a three-fourths supply in May, a one-half supply in June and July, a one-fourth supply in August and September and no water in October, November and December; and in 1914 there was no water in January and February, a one-half supply in June, a two-thirds ^{supply}

in July and September and a one-half supply in October. The data contained in these three exhibits varies somewhat from the testimony of Mr. D. G. Gordon, to be found on pages 1642 to 1644, inclusive, of the transcript, giving the actual shortages by reference to specific dates of the months in which there were shortages, but the data to which I have referred is sufficient to show the fact that during none of the last three years has the Cuyamaca Company been able to deliver to its customers the full supply of water to which they were entitled. During October and November, 1913, as well as 20 days in June, 1914, the flume was being lined with rubberoid roofing^{paper}, and hence could not be used for the transmission of water.

I shall now refer to the obligations of this system for the delivery of water. Mr. R. A. Pabst, one of the Commission's assistant auditors, made an extensive investigation, under direction of the Commissioner presiding at the hearing, into the so-called water right contracts entered into by San Diego Flume Company, the predecessor of the Cuyamaca Company, for the purpose of ascertaining the extent to which San Diego Flume Company had purported to obligate itself to deliver water from its system. In Railroad Commission's Exhibit "A", filed herein, will be found a record of each of these contracts from numbers 1 to 392, inclusive, giving in each case the date of the contract, its number by reference to San Diego Flume Company's contract book, the name of the party contracting with the Flume Company, the number of inches of water referred to in the contract, the consideration paid and the annual rental or rate. Mr. Pabst prepared and submitted as Railroad Commission's Exhibit No. "B" a list of all contracts grouped according to those taking water from the main flume and those taking from consumers' flumes or pipe lines, as well as the water attached to La Mesa Colony lands, ~~and~~ including the contract with La Mesa Development Company, herein-

after referred to. Certain questions arose at the hearing with reference to whether certain water was properly assignable to one flume or to another flume, and Mr. Pabst was instructed to prepare a supplemental report, which has now been prepared and filed in this proceeding. The following table contains a recapitulation of the revised classification of water right contracts by miner's inches, as prepared by Mr. Pabst as of June 1, 1910, being the date on which the water system was purchased by its present owners. This revised table is based on the original detail sheets found in the office of the Cuyamaca Company and showing the list of contracts outstanding in 1910:

TABLE NO. V.

WATER RIGHT CONTRACTS BY MINER'S INCHES ON JUNE 1, 1910.

	Regular	Special	Non- sumers	Con- sumers	No Doubt- ful	Charge	Indians	Total
Main Flume	88.92	2.25	.50				12.00	
Lakeview Flume	13.50				.50			103.67
Lakeside Flume	22.00							14.00
Hawley Pipe Line	43.42							22.00
Hillsdale Flume	9.75							43.42
Cresson Flume	11.00							9.75
Lexon Grove Pipe Line	48.375							11.00
Spring Valley Pipe Line	31.50		2.50					48.375
Pipe Line East of Stand Pipe	63.66	29.50	1.50		.75			34.00
Pipe Line West of Stand Pipe	44.08	29.375	.25					86.41
Floating Rights						1.75		73.705
Attached to La Mesa Lands						28.00		1.75
Under Contract to La Mesa Dev. Co.						149.00		28.00
								149.00
Total	376.205	52.125	4.75	1.25	178.75		12.00	625.08

The total number of miner's inches, being 625.08, tallies exactly with the statement of the number of miner's inches covered by outstanding contracts and attached to the agreement dated April 20, 1910, between San Diego Flume Company and James A. Murray, as shown in Railroad Commission's Exhibit "C" and is undoubtedly correct. These so-called water right contracts are of nine different forms, which forms are carefully explained by Commissioner Eshleman in Decision No. 536, rendered on March 28, 1913, in Application No. 118, to which decision reference is hereby made. In so far as necessary for the determination of certain legal questions, these various forms of contract will be further discussed hereinafter.

Railroad Commission's Exhibit No. "G" shows that in June, 1910, the 625.08 miner's inches under contract were distributed under the various forms of contract, as follows:

TABLE NO. VI

MINER'S INCHES SPECIFIED IN VARIOUS

FORMS OF CONTRACT IN JUNE, 1910.

Under Contract #1	581.51 inches	at \$65.00 per inch per annum.
"	2 403.855	" \$60.00 " "
"	3 67.55	" \$50.00 " "
"	4 3.62	" \$45.00 " "
"	5 9.875	" \$600.00 per annum, with excess water at 10¢ per thousand gallons.
"	6 14.50	" \$435.00 per annum with excess water at 5¢ per thousand gallons.
"	7 20.00	" \$575.00 per annum with excess water at 6¢ per thousand gallons.
"	8 2.25	" \$200.00 per annum.
"	9 .16	" \$72.00 per inch per annum.
La Mesa Colony Lands	28.00	" \$30.00 " " " "
Indians	12.00	" No charge
To Urban Tracts	<u>5.00</u>	" 5¢ per 1000 gallons with excess over 64,800 gallons per 24 hours at 10¢ per thousand gallons.
		625.080 inches under contract.

The 403.835 miner's inches referred to under Form No. 2 of contract, include the 150 miner's inches claimed by La Mesa Development Company.

In return for rights of way across Capitan Grande Indian Reservation, the predecessors of Cuyamaca Company agreed that "the Indians owning or occupying such reservation or reservations, shall, at all times during such ownership or occupation, be supplied with a sufficient quantity of water for irrigating and domestic purposes, upon such terms as shall be prescribed in writing by the Secretary of the Interior." Mr. W. S. Post, the Cuyamaca Company's chief engineer, testified that the maximum use of water by the Indians in any one day has been 40 miner's inches but that the average use continuously during 9 months has been $3\frac{1}{2}$ miner's inches. He further testified that only about one-tenth of the total acreage in the Reservation capable of irrigation has actually been irrigated and that if all the lands capable of tillage in the Reservation were irrigated, it would necessitate the use of an average of 35 9-months miner's inches. It has been impossible to determine why the **San Diego Flume Company** in June, 1910, placed its obligation to the Indians at 12 miner's inches.

The number of miner's inches obligation shown in Table No. VI remained constant up to November 1, 1910, at which time 1 miner's inch under the \$60.00 rate was cancelled and reconveyed to Murray and Fletcher by Mrs. Greenleaf, and 2 miner's inches under the \$65.00 rate were cancelled and reconveyed to Murray and Fletcher, thus leaving 622.08 miner's inches of water under contracts on February 28, 1912. On March 1, 1912, the Cuyamaca Company eliminated from this list the following water:

28 M. I. at \$30.00, not used but attached to La Mesa Colony.
149 M. I. at \$60.00, not used but attached to La Mesa Development Company.

12 M. I. - Indiana.

189 M. I. By subtracting from the total 626.08 miner's inches shown by San Diego Flume Company's contract book in June, 1910, the 28 miner's inches attached to La Mesa Colony, 149 miner's inches attached to La Mesa Development Company, 12 miner's inches attached to the Indians, 3 miner's inches reconveyed to Murray and Fletcher, 5 miner's inches originally assigned to the urban tracts of Normal Heights, Bonnie Brae, Teralta Heights and Kensington Park, we find 428.08 miner's inches remaining under contract on March 1, 1912. ~~These 428.08 miner's inches were not included in the contract book for the year 1912.~~ After Murray and Fletcher acquired the system they entered into a new contract to supply Kensington Park at 25 cents per 1000 gallons, without regard to the amount needed.

In making these computations, I do not intend to pass upon the question of the legal obligation of any of these contracts or the right of the Cuyamaca Company to eliminate any of the contracts from its list.

In pursuance of a suggestion from the Commission, the Cuyamaca Company filed a statement of contracts under each of the forms of contract hereinafter referred to, which statement was marked "Cuyamaca Company's Exhibit No. 49." The statement is accompanied by a note reading as follows:

"This table is submitted pursuant to order of the Railroad Commission, the Cuyamaca Water Company hereby expressly stating that it does not recognize or in any way admit the validity of any of said contracts or the rights of any consumers to claim or demand or receive from the company the amount of water attempted to be secured by said contracts or any other amount of water at all; and further expressly stipulating that the submission of this table shall in no way

estop it from contesting the validity of any or all such contracts."

The following table contains, under the forms of contract therein specified, the number of miner's inches which had not been eliminated by Cuyamaca Company from its contract book on March 1, 1912, the miner's inches of water actually used in 1915, the maximum monthly use in miner's inches during the last five years, the number of miner's inches which are not used but for which payment is tendered, the number of miner's inches charged at irrigation rates in 1912 but now classified as domestic, and the number of miner's inches cancelled subsequent to March 1, 1912:

TABLE NO. VII.

MINER'S INCHES SPECIFIED IN CONTRACTS, USED,

NOT USED AND CANCELLED.

Contract Form No. of Railroad Commission Application No. 118	No. of M.I. 1912.	Irrigation M.I. of record 1915-	Irrigation M. I. max. mo. use covering 5 year period	M.I. diff- bet. Col. 8 and 7 representing non-use of water for which payment is tendered	M.I. charged at irrigation rates in 1912 now in domestic use	M.I. cancelled
1	59,965	54,045	53,045	1,000		5,920
2	253,249	239,231	211,687	27,544	7,587	6,431
3	67,33	60,962	57,182	3,780	4,604	1,764
4	3,683	1,653	1,653		1,900	.130
5	9,875				9,875	
6	14,500	14,500	4,900	9,600		
7	20,000				20,000	
8	2,250	2,250	2,250			
9	.160				.160	
10	1,00	1,00	.50	.50		
11	.50	.50	.50			
D 1720	.606	.606	.606			
TOTALS	433,118	374,747	332,323	42,424	44,126	14,245

The foregoing table does not include water supplied to El Capitan Indian Reservation or to the City of San Diego, but does include the 5 miner's inches supplied or ~~shown~~ to be supplied to the urban tracts.

It will be noted that the number of miner's inches shown in the preceding table as being outstanding after the contracts which the Cuyamaca Company eliminated on March 1, 1912, viz., 433.118, tallies within .038 miner's inches of ^{the} 433.08 miner's inches reported by Mr. Pabst on the same basis.

Mr. C. H. Lee, a witness in behalf of the Cuyamaca Company, made an exhaustive investigation into the net safe yield of the Cuyamaca Company's system, taking as his type year, what he termed an average dry year. The table presented by Mr. Lee which was introduced as Cuyamaca Company's Exhibit No. 25, is based on a detailed mass curve study of the supply available to the system and on the assumption that the supply available to the system during the last 20 years would be available during the coming 20 years but that, instead of the actual operation of the past 20 years an ideal operation is to be carried on during the coming 20 years. Mr. Lee assumed a carrying capacity of the flume amounting to 18 second feet above the South Fork siphon and 22 second feet below this siphon. Based on these assumptions, Mr. Lee reported that the net safe yield of the system, from gravity water, including a net safe yield from the runoff at La Mesa Reservoir of 7 9-months miner's inches, is 312 9-months miner's inches. By adding to the gravity yield 28 9-months miner's inches to be pumped from the sands of the San Diego River, Mr. Lee reported that the system, in its present condition, has a net safe yield of ^{at least} 320 9-months miner's inches. He also reported that the system has an installed pump capacity of 230 miner's inches, but after making additional investigations he presented

in Cuyamaca Company's Exhibit No. 43, his revised conclusions with reference to the amount of water which can be reasonably pumped by means of the present installation. Mr. Lee's revised conclusions in this respect are that with the present installed pumping plants, the system can supply 260 miner's inches during a period of 100 days continuous pumping, 200 miner's inches during a period of 300 days continuous pumping, and 196 miner's inches during a period of 600 days continuous pumping, providing that air lifts or other means of raising water from the wells were installed. Mr. Lee also presented as Cuyamaca Company's Exhibit No. 45, a table showing his estimated yield of excess flood waters, assuming a carrying capacity of 18 second feet above South Fork and 22 second feet below South Fork. He concludes that an average of 2286 acre feet of excess flood water can be produced from the system. If Mr. Lee's computations are correct, it follows that the system has a net safe yield from its gravity sources, together with pumping, of 572 9-months miner's inches; if the period of pumping does not exceed 100 days; 512 9-months miner's inches; if the period does not exceed 300 days; and 508 9-months miner's inches if the pumping does not exceed 600 days and if the necessary air lift or other means of raising water from the wells is installed. These computations are all based on the assumption that the amount of water to be pumped, under Mr. Lee's computations, could be pumped without successful interference from riparian owners whose rights might ~~xxx~~ be seriously interfered with. The evidence shows that an injunction suit on behalf of riparian owners to prevent pumping of water by the Cuyamaca Company from the sands of the San Diego River is now pending in the Superior Court of San Diego County.

It is evident, even on Mr. Lee's computations, that if Cuyamaca Company is obligated to supply the full number of miner's inches of water specified in the contracts entered into by

San Diego Flume Company, that the safe net yield of the system from gravity sources as well as pumping is insufficient to comply with the company's obligations. Mr. Lee testified that no water system in San Diego County can profitably deliver water for irrigation and that the Cuyamaca Company's system is no exception to this rule. He testified that he would build ^{no} additional dams or reservoirs on this system for irrigation purposes, but that if he had a market for domestic water, he would raise the diverting dam to a height of 70 feet, construct a reservoir at Conejos in the South Fork water shed, build the El Capitan Dam to a height of 100 feet and raise the dam at La Mesa Reservoir to a capacity of 5960 acre feet. All engineers agree that the height of La Mesa Dam ought to be raised as soon as possible.

I shall now proceed to a discussion of the value of the property of Cuyamaca Water Company herein under consideration under the following heads:

1. Physical structures.
2. Real property.
3. Water rights.
4. Going Concern.
5. Original cost, additions and betterments.
6. Special considerations.

1. PHYSICAL STRUCTURES.

Estimates of the cost to reproduce new the physical structures of Cuyamaca Company herein under consideration and estimates of the depreciated reproduction value thereof were presented on behalf of Cuyamaca Company by Fulton Lane, on behalf of the Irrigation District by J. H. Dockweiler, on behalf of the City of San Diego by E. A. Whitney, and on behalf of the Railroad Commission by James Armstrong. A summary of the estimates of these engineers, as they stood on April 12, 1915, was prepared by Mr. James Armstrong and appears in Railroad Commission's Exhibit No. "H". This summary appears in the following table:

TABLE VIII

COMPARATIVE TABULATION OF VALUATIONS BY GUYANACA WATER COMPANY, LA MESA DISTRICT

CITY OF SAN DIEGO AND RAILROAD COMMISSION'S ENGINEERS

	REPRODUCTION COST WITH CAYSTRAD				DEPRECIATED REPRODUCTION COST			
	GUYANACA WATER CO.	LA MESA DISTRICT	CITY OF SAN DIEGO	RAILROAD COM. ENGRS.	GUYANACA WATER CO.	LA MESA DISTRICT	CITY OF SAN DIEGO	RAILROAD COM. ENGRS.
COLLECTION SYSTEM								
Guyanaca Reservoir	\$ 46926	\$ 49364	\$ 45901	\$ 46926	\$ 42647	\$ 48751	\$ 31144	\$ 32691
Diverting Dam	49199	52217	44112	49025	44357	36839	30660	37361
Pump Station No. 4	568	611	597	566	537	506	567	537
Sand Creek Pump Station	4325	3766	4340	4325	4095	3631	4094	4095
Chocolate " "	6247	9056	6629	6247	7051	6753	3905	7651
Monte " "	51007	30825*	27918*	43423	17212	14579	4168	16109
Total Collection System	160269	163679	129467	152621	116699	109793	74578	98634
TRANSMISSION SYSTEM								
Main Flume--10 sections	667670	640677	714266	782515	471493	132088	227613	305538
Hurray 36" Supply Line	7117	6907	6379	7117	6958	6720	6187	6916
La Mesa Ditch Line	12948	9840	6703	9722	9142	6442	1740	6746
Total Transmission System	687735	657424	729348	799354	487593	145250	236740	319200
DISTRIBUTION SYSTEM								
Wobster Reservoir	497	309	393	497	478	188	386	240
Crossmont Reservoir	5914	4793	4864	5060	5437	4402	4449	4787
" Pump Station	2171	2436	2322	2171	1725	1949	1744	1725
Miles Reservoir No. 1	3732	4024	3522	3732	2687	2873	2994	2687
" Pump Station	2030	2030	2105	2030	1196	1265	1077	1196
" Reservoir No. 2	993	554	1085	993	715	399	931	715
Hurray Reservoir	23051	21509	14243	19865	23005	21504	13674	19839
" Eucalyptus Siphon	16200	14019	12635	15074	15040	13645	12449	14671
Eucalyptus Reservoir	9576	11197	10471	6927	8384	10039	7363	7703
La Mesa Reservoir	27529	27312	16757	22909	26281	26641	14694	21432
La Mesa Dam Pump Station	2043	1747	2266	2043	1734	1638	1155	1734
" " Pipe Line	14354	12956	12477	14354	4364	5183	3494	4364
" " Pump Station No. 1	5292	6835	5363	5292	5024	6621	5057	5024
Distribution Mains	167149	164639	164226	167149	126527	148211	113605	126527
Total Distribution System	290621	294442	244701	270176	224517	239626	183052	214601
MISCELLANEOUS								
Old Mission Dam Cable Station	38	39	144	35	31	36	126	31
Telephone Lines	3274	3039	2721	3274	3110	3200	2630	3110
Total Miscellaneous	3309	3078	2865	3309	3141	3236	2756	3141
TOTAL - - -	\$1331934	\$1209423	\$1108361	\$1228330	\$831950	\$497906	\$496156	\$655576
Add -Additional Motors, Pipe, etc.	11957			11957	11561			11561
GRAND TOTAL - - -	\$1343891			\$1240287	\$843511		\$496156	\$667137

*District and City have not computed cost on latest and most complete schedule.

In order to complete this table to the date of submission herein, it is necessary to make certain corrections and additions, as follows:

(a) Cuyamaca Water Company.

The following subtractions and additions should be made:

Subtractions:

From the reproduction cost of Monte Pumping Plant	\$5362.00	
From the reproduction cost of the flume.....	11000.00	
From the reproduction cost of the distributing mains.....	<u>3640.00</u>	
Total subtractions.....		\$20,002.00

Additions:

To reproduction cost of La Mesa Ditch.....	1941.00	
To reproduction cost additional meters.....	109.00	
To omitted items, Normal Heights shops.....	<u>532.00</u>	
To omitted item--Materials on hand.....	<u>20900.00</u>	
Total additions.....		\$23,482.00

These changes result in a net addition of \$ 3,480.00 to the Cuyamaca Company's estimate of reproduction value new, making a total of.....\$1,347,371.00

Similar corrections should be made in the Cuyamaca Company's estimate of reproduction cost less depreciation, resulting in a final estimate of.....\$ 850,791.00

(b) Irrigation District.

To the estimated reproduction cost as estimated by the Irrigation District there should be added the item of additional meters and pipes, which Mr. Lane estimates at \$12,066.00; the Normal Heights shops, estimated by Mr. Lane at..... \$ 532.00 the materials and supplies on hand, estimated by Mr. Lane \$20,900.00 making a total addition of..... \$33,498.00 and a final estimate of reproduction cost amounting to \$1,342,921.00

The appropriate additions must also be made to the Irrigation District's estimate of depreciated reproduction value, shown on the above table to be \$497,905.00.

(c) City of San Diego.

The City of San Diego did not include an allowance for the Normal Heights shops or for materials and supplies on hand. It will be necessary, in order to present a final estimate, to make the necessary additions to the City's estimate of reproduction value new, amounting to..... \$1,106,381.00
If Mr. Lane's estimate for these two items is accepted, it will result in the addition of the sum of..... \$ 21,432.00, making a total estimated reproduction value as estimated by the City of San Diego, of.....\$1,127,813.00.

A similar change in the depreciated reproduction value estimate of the City of San Diego would result in increasing the estimate from \$496,138.00 to \$512,138.00.

(d) Railroad Commission's Hydraulic Department.

To the estimated reproduction cost presented by Mr. Armstrong should be added the necessary allowances for the two omitted items of Normal Heights shops and materials and supplies, thus totalling ~~amounting to~~ \$1,258,719.00.

A corresponding change in the Hydraulic Department's estimate of depreciated reproduction cost would result in an increase of the estimate from \$647,137.00 to \$663,137.00.

Each of the foregoing estimates was prepared with thoroughness and ability and clearly represents a conscientious effort on the part of the respective engineers to reach a fair conclusion as to the estimated cost to reproduce the property new and the estimated depreciated reproduction cost, on the theories respectively adopted by these engineers. The point of greatest difference is the depreciated reproduction value of the flume.

In its decision in Application No. 118, the Railroad Commission found as a fact that this flume has entirely passed its useful life and should at once be renewed. Subsequent to the decision, the Cuyamaca Company lined the entire flume with rubberoid roofing. The testimony seems to show that this roofing may reasonably be expected to last four or five years, and that during this period of time the flume will remain reasonably water tight. Mr. Dockweiler and Mr. Earle, testifying in behalf of the Irrigation District, stated that the flume could not be expected to remain in service longer than four years more. Mr. Lane assumed a remaining life of seven years. Mr. Armstrong assumed that the flume box and trestle could possibly be made to hold together eight or nine years longer, but because of the practically untried use of the rubberoid roofing for flume lining, he estimated an aggregate remaining life of five years.

Mr. Dockweiler, starting with the assumption that the present flume is far more costly than necessary for the uses to which it is devoted, estimated the cost of a substitutional system of equal carrying capacity, consisting of a 36 inch wood stave pipe line, and tunnels of a size sufficient to carry at least 30 second feet of water. He estimated a reproduction cost of the pipe line amounting to \$479,002.00 and of the tunnels of \$68,221.00, being a total estimated reproduction cost of the substitutional system amounting to \$547,223.00. Assuming a remaining life of four years for such wood stave pipe and no depreciation for the tunnels, he reached a conclusion that it would be necessary to subtract the sum of \$415,135.00 for depreciation, leaving a present value, under the substitutional system of \$132,088.00, as contrasted with \$471,493.00 estimated by the Cuyamaca Company.

\$305,538.00 estimated by Mr. Armstrong and \$227,813.00 estimated by Mr. Whitney. Without saying that one of these engineers is right and the others are wrong, I entirely agree with Mr. Dockweiler

that, viewed from the knowledge which we at present have, ~~that~~ the construction of this flume was a mistake because it was entirely too large and is very expensive to maintain, and also that whoever takes this system takes it subject to the liability of expending a large sum of money within a few years for the purpose of entirely replacing the flume. That this fact is a very material element to be considered in determining the value of the system will, of course, be admitted.

2. REAL PROPERTY.

Testimony with reference to the value of the Cuyamaca Company's real property was presented on behalf of the Cuyamaca Company by Ed Fletcher and on behalf of the Irrigation District by Thomas O'Halloran and C. C. McCutchen. Testimony as to the value of the lands in the Cuyamaca Reservoir was also presented on behalf of the Cuyamaca Company by C. W. Potter, F. E. Feeler, Frank T. Hill and W. L. Detrick, residents of Julian.

The following table shows the estimates of land values presented by Colonel Fletcher and Thomas O'Halloran:

TABLE NO. IX.

LAND VALUES - FLETCHER and O'HALLORAN.

	<u>Acres</u>	<u>Fletcher</u>	<u>O'Halloran</u>
Cuyamaca Reservoir	1074	\$134,250.00	\$53,700.00
La Mesa Reservoir	85	16,600.00	4,980.00
La Mesa Flowage Rights	----	-----	60.00 per acre
Murray Hill Reservoir	16.16	4,848.00	1,616.00
Eucalyptus Reservoir and Right of way	6.43	2,250.00	643.00
Kuehner Property	160	Reservoir -\$150 - \$200 per acre Hillside \$5 - \$10 per acre	2,400.00
Poverty Gulch Reservoir	120	2,875.00	600.00
Webster Reservoir-	.14	35.00	200.00
Miles Reservoir No. 1	3.68	1,104.00	1,000.00
Miles Reservoir No. 2	.42	210.00	200.00
Grossmont Reservoir and Pumping Station	.41	820.00	-----
Miles Pump Station	.25	\$7.50	-----
Monte Pumping Plant	7.85	2,147.62	2,355.00
Flume Right of way	229.26	12,684.75	146a. 7,530.00
La Mesa Ditch	22.25	5,562.50	1,335.00
Murray Eucalyptus Siphon	1.19	476.00	-----
La Mesa Pipe Line	2.05	615.00	-----

Neither witness testified as to the value of the Kelly Ditch right of way, containing 7 acres, and estimated in the Lane appraisal at \$50.00 per acre; the land at the diverting dam with flowage rights, consisting of 8 acres, and estimated in the Lane appraisal at \$100.00 per acre; one acre of land at Sand Creek Pumping Station, estimated in the Lane appraisal at \$100.00 per acre; right of way from flume to Murray Hill Reservoir for 36 inch supply line, containing .47 of an acre, estimated in the Lane appraisal at \$350.00 per acre; nor the Normal Heights shops, containing .273 acres, and estimated in the Lane appraisal at \$2000.00 per acre.

The flowage rights and land for the keeper's house at the diverting dam, the land on which Sand Creek Pumping Station is located and the right of way for the main flume from the diverting dam to the northerly line of Section 9, in Township 15 South, Range 2 East, S.B.M., as well as the diverting dam in the South Fork of the San Diego River and the right of way for the flume and pipe line through Sections 3 and 10, in the same township and range, are all located in Capitan Grande Indian Reservation. The fee is in the United States Government and the Cuyamaca Company has only an easement.

Mr. Ed Fletcher testified, at page 462 of the transcript, that he valued the lands in the Cuyamaca Reservoir at \$125 per acre, but that since he heard the testimony of the Julian witnesses, he asked that the value be raised to \$200 per acre. This second value was clearly an afterthought. The Julian witnesses testified that the land was worth about \$250.00 per acre for the purpose of raising apples. These same witnesses testified on the hearing in Application No. 118 that the ~~land~~ ^{entire 1675 acres} was worth between \$100 and \$150 per acre. The net result of their testimony in the present case would be to assign to a portion of the Cuyamaca lands a value

considerably in excess of the value of the entire tract, testified to by them in the hearing on Application 118. Commissioner Eshleman found on the former hearing that the sum of \$144,000.00 would be at least ample and, if anything, in excess of the real value of the 1675 acres which constitute the entire tract. Colonel Fletcher testified that he had paid between \$6,000 and \$7,000 for the 160 acres which constitute the Kuehner property. The La Mesa Ditch right of way on which Colonel Fletcher placed a value of \$250.00 per acre, was acquired by condemnation in August, 1914, at \$150.00 per acre for three parcels, and \$185.80 per acre for the fourth parcel.

3. WATER RIGHTS.

In the Lane report, filed as Cuyamaca Company's Exhibit No. 5, the Cuyamaca Company claimed an item of \$999,000 for water rights, consisting of 333 9-months miner's inches, being the net safe yield of the system as determined at that time by Mr. Lee, at \$1500.00 per miner's inch, amounting to \$499,500.00, and an additional item in the same amount for 333 9-months miner's inches as representing an average flood yield which the system was supposed to be able to carry. Mr. Lane stated that these were not his values and that he was unwilling to testify as to values to be assigned in this proceeding to water rights. When it is remembered that all the water rights owned by the Cuyamaca Company were transferred to the company, together with nearly all the lands and physical property now owned by it, all for the sum of \$150,000.00, Mr. Lane's hesitancy to stand sponsor for the amount claimed in his report for water rights can readily be understood. The figure thus presented is simply another illustration of the extreme optimism with reference to water right values which a

number of utilities have recently shown in cases pending before the Railroad Commission. ~~with reference to water rights~~
That water companies can acquire title to water rights and that these water rights may have value is, of course, clear.

San Joaquin and Kings River Canal and Irrigation Company vs. County of Stanislaus, 233 U. S. 454, decided on April 27, 1914. To say that water rights which are acquired together with a ~~water~~ water system should thereafter suddenly have a value in excess of six times what was paid for the entire system, including the water rights, is a ~~very~~ different thing.

Later in the hearing, the Cuyamaca Company presented two distinct lines of testimony with reference to water right values. The first line of testimony was presented by Mr. A. E. Chandler and the second by Mr. W. S. Post, in reliance on data supplied largely by Mr. C. E. Lee.

Mr. Chandler testified that the water diverted through the Cuyamaca system is worth at least \$1000 per 9-months miner's inch, regardless of ownership, with certain important qualifications. Mr. Chandler testified that if, after the evidence had been completed, it should appear to the Commission that the irrigation rate which would result would be unreasonably high for the irrigators, then his value of \$1000 per miner's inch should be cut down. He testified further that a water right value is an intangible, and that if, after determining the fair value of the physical items of the property and making reasonable allowances for maintenance and operating expenses and depreciation, the rate which would result from these computations would be such that an addition thereto by reason of water right values would result in a rate which the irrigators could not reasonably afford to pay, no allowance should be made for any water right value. Apparently acting on this theory, the Cuyamaca Company has claimed no water right value in connection with the water used for irrigation, in

so far as concerns the establishment of rates. The Cuyamaca Company, however, does claim a value for this same water for the purpose of sale. This position of the Cuyamaca Company seems entirely illogical. If a purchaser of this system must pay for these water rights, he ~~would later claim the right to establish~~ ~~xxxx xxxxx xxxxxxxx~~ rates high enough to yield him a return on the entire purchase price, including the price paid for the water rights. But if the irrigators can not reasonably pay a rate including an allowance for water rights, the purchaser would at once find himself in the position of having bought a property the value of which, from his point of view, was depreciated by reason of the fact that he could not charge rates high enough to yield a return on water right value. Hence, it would seem to follow that if the Cuyamaca Company can not charge a rate high enough to return a value on any water right, for irrigation purposes, it can not consistently ask that the value ~~in~~ be allowed for these water rights for purposes of sale.

Mr. Chandler also testified that if a water system is already burdened with servitudes to the public up to the extent of its capacity and that if water rights under a system have been sold to the consumers, they belong to the consumers and the water company is not entitled to receive payment a second time when the company undertakes to sell its system.

Referring now to domestic water, Mr. Chandler qualified his value of \$1000 per 9-months miner's inch by saying that if the use of a value of \$1000 per 9-months miner's inch should result in ~~in-give~~ a rate for domestic consumers higher than the rate hitherto established by the Railroad Commission to be charged by the City of San Diego for consumers in outside territory under similar conditions, his value of \$1000 per miner's inch would have to be pared down accordingly. As the rates charged by Cuyamaca Company for domestic consumers are already higher than the rates established by the Railroad Commission to be charged by the City of San Diego for outside domestic consumers, and as these rates charged by the

Cuyamaca Company can not be reduced, it would follow on Mr. Chandler's analysis, that no value can be allowed to the Cuyamaca Company for its water sold for domestic consumption.

Mr. Chandler testified that he had no suggestion to make with reference to the value of the surplus water which the Cuyamaca Company claims to have.

The second line of testimony presented by the Cuyamaca Company in connection with its claim to values for water rights was presented in connection with its Exhibit No. 51, in which exhibit the following claim is made for an allowance for water right value:

"265 9-months miner's inches, being 24 miner's inches continuous domestic use plus 239 miner's inches excess flood water at \$2960.00 per miner's inch, being the capitalized value of the difference between a rate of 15.1 cents per 1000 gallons which is also the cost delivered at the city limits of the San Diego system, and the corresponding cost of the Cuyamaca water which is 10.9 cents per 1000 gallons, both fixed on capital at 5 per cent interest--\$778,480.00."

The Company then adds the following note:

"The inclusion of no value for water rights on account of water now in use for irrigation for the purpose of rate fixing is not to be considered as a waiver of the right to compensation for such rights for ~~the~~ purposes of sale. For the purpose of sale, such additional valuation on account of water rights for water used for irrigation as to the Commission may seem proper is asked."

This valuation is based on a capitalization of the assumed difference in the cost of delivering water at the gates of San Diego between the City of San Diego's system on the one hand and the Cuyamaca system on the other. The entire claim is based on the assumption that it costs 15.1 cents per 1000 gallons to deliver water at the city limits of San Diego through the City of San Diego's gravity system and that it costs only 10.9 cents per 1000 gallons to deliver water at the city limits of San Diego through the Cuyamaca Company's system. The assumption that it costs the City of San Diego 15.1 cents per 1000 gallons to deliver water from its gravity system at the gates of San Diego is based on certain computations presented by Mr. Lee in Cuyamaca Company's

Exhibit No. 44. In determining this cost to the City of San Diego, Mr. Lee used a capital investment of \$4,700,000, although as a matter of fact, the City of San Diego paid \$4,000,000 for the system and has expended subsequently only \$250,000. Mr. Lee assumed an annual allowance for depreciation of \$36,777.00, although the Railroad Commission in its Decision No. 1465, rendered on April 28, 1914, in Application No. 547, being the application of City of San Diego for an order establishing the rates to be charged by said City for the delivery of water to consumers outside of the boundaries of said City (Vol. 4, Opinions and Orders of the Railroad Commission of California, p. 902), found that a reasonable allowance for annual depreciation would be \$27,826.00. Mr. Lee allowed \$66,169.00 as the annual expenditure for maintenance and operation. He took this amount from the records supplied by one of the employees of the hydraulic department of San Diego, without making any check as to whether these sums included amounts properly chargeable to capital expenditures instead of to maintenance and operation and without reference to the fact that the Railroad Commission in its decision on the City of San Diego's application had pointed out the fact that such had been the practice and that a reasonable allowance for maintenance and operation for the impounding system would be \$27,500.00. Mr. H. A. Whitney, hydraulic engineer of the City of San Diego, testified that he had made a careful examination of the maintenance and operating expenses actually incurred by the City of San Diego in its impounding system and that his results check very closely with the amount of \$27,500.00 allowed by the Railroad Commission. Mr. Lee assumed a net safe yield from the City of San Diego's impounding system of only 6.1 million gallons per day when that system shall have been completed. Mr. H. A. Whitney, who has had an intimate knowledge of every detail of the system during the last three or four years, estimated that under the most adverse conditions, it is reasonable to assume that the City of San Diego

with the addition of the Pine Creek Dam, which Mr. Lee also included in his computations, would have a net safe yield of 7.5 million gallons daily from the impounding system. It is evident that nearly every assumption used by Mr. Lee in his computation is erroneous, and that no weight whatsoever can be given to it.

In said Application No. 547, the Railroad Commission found that the average cost of the delivery of water at the gates of the City of San Diego from its impounding system is 9.73 cents per 1000 gallons. This figure must be compared with the 10.9 cents per 1000 gallons which the Cuyamaca Company claims as the cost of delivering water from its system at the gates of San Diego. On this basis, it follows that on the second line of evidence submitted by the Cuyamaca Company to prove the value of its water rights, namely, the next available source theory, the water rights of the Cuyamaca Company have no value.

After Mr. Lee presented his computations, Mr. E. A. Whitney, hydraulic engineer of the City of San Diego, presented in City of San Diego's Exhibit No. 24, a computation as to the cost of the delivery of water from the City of San Diego's impounding system and also from the pumps now being operated by the City of San Diego in the San Diego River. This exhibit shows that on the basis of 7.5 million gallons delivered daily from the impounding system and 2.75 million gallons delivered daily from the sands of the San Diego River, or a total net safe yield of 10.25 million gallons daily, the cost to the City of San Diego of the delivery of its water in the University Heights Reservoir amounts to 8.72 cents per 1000 gallons. On cross-examination by the Cuyamaca Company, Mr. Whitney testified that if the pump^{ed} water is entirely eliminated from his computations, the cost of water delivered from the impounding system, on the net safe yield assumed by him and on the basis of four million ~~gallons~~ dollars expended by the City of San Diego for the properties of Southern California Mountain

Water Company instead of the \$3,500,000 found to be their fair value in this Commission's decision on Application No. 547, the cost of water delivered from the impounding system alone at the gates of San Diego is 10.4 cents per 1000 gallons as contrasted with the Cuyamaca Company's cost of 10.9 cents per 1000 gallons under its system in its present condition and its cost of 10.7 cents when its system is fully developed in accordance with Mr. Lee's suggestions.

Mr. Whitney also made an estimate of the cost of pumping water from the sands of the San Diego River and delivering it in University Heights Reservoir, and found this cost to be 4.62 cents per 1000 gallons. He also reported that the cost of pumping water from the sands of Tia Juana River and of delivering three million gallons per day at the Lower Otay Reservoir at an elevation of 450 feet above the sea level would be 5.26 cents per 1000 gallons. In order to ascertain the cost of delivering the water at the gates of San Diego, it will be necessary to add to this cost an amount which represents a proper proportion of the cost, operating expenses and depreciation of the Lower Otay Reservoir and of the pipe line or pipe lines leading ^{there-} from to the University Heights Reservoir.

There was also introduced in evidence a report presented jointly to the City of San Diego and to the Volcan Land and Water Company by Mr. P. E. Harroun, dated August, 1914, in which report Mr. Harroun finds that upon the basis of 4 1/2 per cent interest on the value of the property, together with annual depreciation, maintenance and operating cost and the delivery of 23 million gallons daily, water could be delivered at the gates of San Diego from the properties now owned by Volcan Land and Water Company on the San Luis Rey River at Warner's Ranch for the sum of 5.26¢ per 1000 gallons. Disregarding for the moment the comparisons of the cost of pumping water from the San Diego River, of pumping

water from the Tia Juana River and of bringing water from the properties of Volcan Land and Water Company, and confining our attention entirely to the cost of water delivered by gravity at the city limits of San Diego from the City's impounding system, it appears conclusively, on the Cuyamaca Company's own theory, that ~~no substantial value can be assigned to~~ ^{substantial value can be assigned to} ~~no substantial value can be assigned to~~ ~~proceeding for~~ its water rights.

Before leaving this particular branch of the subject, I desire to draw attention to the fact that whether or not the City of San Diego continues to buy from the Cuyamaca Company any surplus water, is entirely problematical. With the exception of insignificant amounts sold to ranchers, the Cuyamaca Company has never sold surplus water to any customer other than the City of San Diego. No such water was sold to the City for a period in excess of five years between 1906 and 1914. Less than two years have expired since the sale of surplus water to the City has been resumed. Whether the Cuyamaca Company will continue to find a purchaser for these surplus waters and whether it will be able to re-establish rights as against the riparian owners owning lands below the diverting dam are matters which largely lie beyond the control of Cuyamaca Company and as to which no definite finding can be made on the evidence presented in this proceeding.

I now desire to draw attention to a further matter having a material bearing on the question as to what allowance should be made in this proceeding for water rights. Reference has already been made to the water right contracts entered into by San Diego Flume Company. I shall now refer to these contracts, under the different type forms, for the purpose of drawing attention to the language therein with reference to the granting of water rights or agreements to supply water.

1. Form No. 1- 58.51 M.I.

In this form of contract San Diego Flume Company "for itself, its successors and assigns, doth sell and convey and agree to furnish in perpetuity, for the purpose of irrigation and use upon, and in connection with the following land, situated in the County of San Diego, State of California, to-wit (describing land), water right of and to() inches of water, miners measure, under a four-inch pressure, being equivalent to 12960 standard gallons of water in every 24 hours for each and every inch hereby sold, under a four-inch pressure, as aforesaid."

2. Form No. 2- 403.835 M.I.

In this form of contract, San Diego Flume Company, referred to as the owner of certain water and water rights, and a system for the delivery of water to consumers, "agrees to and does hereby sell and convey to the consumer a water right to() miners inches of water (being equivalent to 12960 standard gallons of water in every 24 hours for each and every inch), to be delivered through the distributing system of the party of the first part at a suitable point on its main flume line for deliveries above the flume terminus, or at a suitable point on its main pipe line for deliveries below the flume terminus."

It is provided that "said water right is sold for the use of, and to be appurtenant to, the following described real estate now owned by the consumer, in the County of San Diego, State of California, to-wit: (Describing land)."

The contract further provides that "it is expressly understood and agreed that the water right hereby sold shall belong to said described real estate and be used thereon and not diverted therefrom, or used on any other land."

Of the 405.835 miners inches covered by this form of contract 150 miners inches are covered by contract entered into on February 7, 1908 between San Diego Flume Company and La Mesa Development Company, in which contract it is provided that in consideration for the sum of \$120,000.00 the Flume Company

"does hereby grant, bargain, sell and convey unto the said party of the second part a water right to 150 inches of water, miners measure, under a four-inch pressure from the center of the opening, being equivalent to 12960 standard gallons of water in every 24 hours for each and every inch, to be delivered from or through the main flume lines and pipe lines of the party of the first part." It is provided that "said water right is sold for the use of and to be appurtenant to any lands within the flow of the water system" of the Flume Company owned by La Mesa Development Company, ~~xxx~~ its successors or assigns. This contract differs from the others of this type particularly in that it provides that La Mesa Development Company may have twenty years within which to attach the water covered by the contract to designated tracts of land. The Flume Company agreed that upon ^{the} designation of any particular parcel of land it would execute a water right contract attaching a specific quantity of water to the designated parcel of land, such water right contract to be of type No. 2. One miners inch of water has

been attached to land under this contract and is being used but the remaining 149 miners inches have not been attached. A suit for specific performance of this contract brought by La Mesa Development Company against James A. Murray and Ed Fletcher was filed in the Superior Court of San Diego County on February 16, 1912, and is still pending.

3. Form No. 3- 67.55 M.I.

In this form of contract Bryant Howard and R. A. Thomas, trustees of La Mesa Colony Tract and San Diego Flume Company, convey a lot or lots in "La Mesa Colony," also a lot or lots in the town of La Mesa "together with the right to take water from the pipes or flumes of said company at the rate of one miners inch measured under a four-inch pressure (for irrigation and domestic purposes) for said tract." The Flume Company agreed to convey water in its pipes or flumes to the edge of said tract "within a reasonable time after the completion of its main flume line to its reservoir about 8 miles east of the city of San Diego, and near said "La Mesa Colony."

On March 1, 1912, the Flume Company, claiming that 20 miners inches under this type of contract had not been applied for "within a reasonable time" after the completion of its main flume line, eliminated this number of miners inches from its list of outstanding contracts, thus reducing the number to 67.55 miners inches.

4. Form No. 4- 3.62 M.I.

In this form of contract, originally entered into with Teralta Land and Water Company, San Diego Flume Company bound itself as long as the covenants to be performed by the

purchaser were kept, "to furnish annually for the lands hereinabove described, and none other, water as follows" (specifying number of miners inches) with certain provisos to which it is unnecessary here to refer.

5. Form No. 5- 9.875 M.I.

In this form of contract, entered into between San Diego Flume Company and Columbian Realty Company, the Flume Company agrees "to sell, furnish and supply to the party of the second part, not to exceed 9-7/8 inches of water, miners measure (under a four-inch pressure from the center of the opening), being equivalent to 12960 standard gallons of water in every 24 hours for each and every inch, or total per each 24 hours of 127,960 gallons." The agreement specifies the territory for the use of which the water is agreed to be sold, furnished and supplied. At the time this contract was entered into Columbian Realty Company surrendered certain contracts covering approximately 5.8 miners inches, a part of which had been secured through Teralta Land and Water Company's contract (Form No. 4). Columbian Realty Company was selling off lots in this territory and was distributing water to its purchasers for domestic purposes. Fairmount Water Company, distributing water to East San Diego, is the successor of Columbian Realty Company under this contract.

6. Form No. 6- 14.5 M.I.

In this form of contract, entered into between San Diego Flume Company and El Cerrito Park Water Company, the Flume Company agrees "to sell, furnish and supply to said party of the second part not to exceed 14-1/2 inches of water, miners measure, under a four-inch pressure from the center of

the opening or the equivalent of 12960 standard gallons of water for each 24 hours for each and every inch, or a total per each 24 hours of 187,920 gallons." The agreement provides that the water is ~~agreed~~ to be sold, furnished and supplied for use upon a certain territory specifically described in the contract.

7. Form No. 7- 20 M.I.

In this form of contract, entered into between San Diego Flume Company and La Mesa Mutual Water Company, the Flume Company "does hereby agree to sell, furnish and supply to the party of the second part" 5 inches of water, miners measure, with the option on the part of La Mesa Mutual Water Company to take 15 additional inches within the time specified in the contract, which option seems to have been exercised. The contract specifically describes the territory in which the water is to be used.

8. Form No. 8- 2.25 M.I.

In this form of contract, entered into between San Diego Flume Company and Levi Chase, the Flume Company agrees that it "will convey to the party of the second part a water right of 2-1/4 inches of water, miners measure, under a four-inch pressure, to be taken and used as hereinafter provided, and subject to the conditions usual with said party of the first part in the sale of water rights to other parties."

9. Form No. 9.- .16 M.I.

In this form of contract, San Diego Flume Company "agrees to and does hereby sell and convey to the consumer a water right to _____ miners inches of water, (being equivalent to 12960 standard gallons of water in every 24 hours for each and every inch), to be delivered through the distributing system of the party of the first part at a suitable point on its main

line flume for deliveries above the flume terminus, or at a suitable point on its main pipe for deliveries below the flume terminus." The contract further provides that "said water right is sold for the use of, and to be appurtenant to, the following described real estate (describing real estate)."

The foregoing type forms of contract appear in full in Railroad Commission's Exhibit "E" in this proceeding. Reference has already been made to the rentals to be paid under these various forms of contract and to the fact that in each case consideration was paid to the Flume Company for entering into the contract. Reference has also been made to the water which the Cuyamaca Company is obligated to supply to the Indians and to the water supplied for domestic use on Normal Heights, Bonnie Bree, Teralta Heights and Kensington Park.

M. C. Healion, president of San Diego Flume Company at the time of the sale of the property to James A. Murray on June 1, 1910, testified that the Flume Company had recognized the obligations of all these contracts up to the time of the sale of the property. The agreement for the sale of the property entered into on April 20, 1910, between San Diego Flume Company and James A. Murray, specifically provides that "said water delivered is sold, subject to all water right contracts hitherto made by the party of the first part with consumers under its water system." It further provides as follows: "It is understood and agreed that there are now in existence contracts to supply water to consumers covering about 625 miners inches of water at various annual rentals." Attached to the agreement is a statement showing gross earnings as of May, 1910 on existing water right contracts and extra supply

and enumerating the water contracts, showing outstanding obligations of 625.08 M.I. The deed from San Diego Flume Company to James A. Murray dated June 1, 1910, provides in part as follows:

"This property, water system, franchises, easements, et cetera, are sold subject to all water right contracts, or contracts to rent, sell, supply or distribute water hitherto made by the party of the first part, whether such contracts refer to water already furnished or hereinafter to be furnished."

The party of the second part "assumes, and agrees to perform all such contracts to the same extent and in the same manner as the party of the first part is now bound to perform the same." The deed further provides as follows:

"It is further understood and agreed that there are now in existence contracts to supply water covering about 625 miners inches of water at various rentals."

The agreement dated November 17, 1914, between James A. Murray and Ed Fletcher and La Mess, Lemon Grove and Spring Valley Irrigation District, hereinbefore referred to, provides, as already indicated, that the property is to be sold and acquired "subject to all water right contracts or contracts to rent, sell, supply or distribute water hitherto made by San Diego Flume Company (formerly the owner of the said water system), whether such contracts refer to water already furnished, or hereafter to be furnished.

All water sold by the Cuyamaca Company for irrigation purposes is sold under some one of these contracts. Out of 24 miners inches of water sold by the Cuyamaca Company in 1914 for domestic purposes, Mr. W. S. Post testified that all except 8.5 miners inches is also supplied under some one of these contracts. These 8.5 miners inches appear to be supplied to certain portions of Normal Heights, Kensington Park and other territory lying outside of the territory described in any of these contracts.

Reference has already been made to the fact that the San Diego Flume Company received consideration for each of these

contracts. In some of the earlier contracts the consideration was either the grant of right of way or the grant of right of way plus the payment of cash. In most cases, however, the company received cash payments ranging from \$600.00 to \$1,000.00 per miners inch. The sums usually paid were either \$600.00 or \$800.00 per miners inch. After December, 1898, no water rights were sold for less than \$800.00 per miners inch. The evidence seems to show that the San Diego Flume Company received from the sale of water rights in the neighborhood of \$568,000.00 in cash together with rights of way of indefinite value.

In the present proceeding Cuyamaca Company takes the position that all these contracts are void and that the company is under no obligation with reference to any of them. The company further takes the position that it will not return the money which was paid for water rights as distinguished from the rentals specified in these contracts and that it will make no allowance for the same. It is unnecessary for me at this time to comment upon the equity of such a claim.

The Cuyamaca Company's position that these contracts are all void is founded upon the principle that a public utility water company has no right to grant preferences to any persons within the area of the territory to the service of which its water has been dedicated. The Cuyamaca Company claims that these contracts violate this principle in that they purport to grant to the owners of certain of the lands within the territory to the service of which the company's water has been dedicated rights to the use of the water over and above the rights enjoyed by other land owners by virtue of their status as persons owning land within the territory to the service of which the water has been dedicated. The company relies on a number of decisions of the Supreme Court of this State and also of the Federal Courts sitting in California. Chief among these cases are, Hildreth

vs. Montecito Creek Water Company, 139 Cal. 22; Leavitt vs. Lassen Irrigation Company, 157 Cal. 82; Lassen Irrigation Company vs. Long, 157 Cal. 94; Boise City I. & E. Co. vs. Clark, 151 Fed. 415; and Imperial Water Company No. 5 vs. Holabird, 179 Fed. 4.

The consumers under this system take the position that these contracts are all valid and enforceable. They rely on a number of decisions in which certain of these very contracts were under consideration by the Supreme Court of this State and by the Federal Courts, and in which the contracts were directly or by inference sustained for the purposes of those cases. These cases are, San Diego Flume Company vs. Chase, 87 Cal. 561; San Diego Flume Company vs. Souther, 90 Fed. 164; San Diego Flume Company vs. Souther 104 Fed. 706; Souther vs. San Diego Flume Company, 112 Fed. 228; ^{No.} In the last case, Judge Ross, in enforcing one of the type/3 contracts, bowed to the decision of the United States Circuit Court of Appeals in 104 Federal, although he believed it to be wrong.

These authorities and all the other decisions which seem to bear on the question were elaborately discussed by Commissioner Eshleman in this Commission's decision in Application No. 118, and it is unnecessary to again cover the field.

The difficulty experienced by the courts in passing upon the validity of such contracts arises from the fact that at the time they were entered into the parties apparently had in mind only the ordinary laws of contract and real property and did not realize that an entirely different body of law applies to the rights and obligations of a public utility and its consumers. Particular reliance is placed by the contract holders on section 532 of the Civil Code, enacted in 1875, reading as follows:

"Whenever any corporation, organized under the laws of this State, furnishes water to irrigate lands which said corporation has sold, the right to the flow and use of said water is and shall remain a perpetual easement to the land so sold, at such rates and terms as may be established by said corporation in pursuance of law. And whenever any person who is cultivating land, on the line and within the flow of any ditch owned by such corporation, has been furnished water by it, with which to irrigate his land, such person shall be entitled to the continued use of said water, upon the same terms as those who have purchased their land of the corporation."

The consumers rely on this section and on the decisions construing the same in support of their contention that the ordinary rules of real property and of contract obligations apply and that they have secured through their contracts a "perpetual easement" as such easements are known in ~~the ordinary~~ real property law. Without passing upon the validity of this claim, I desire simply to draw attention to the decision of the Supreme Court of California in Leavitt vs. Lassen, supra. In this case, Mr. Justice Henshaw, at page 79 says:

"The fundamental and all important proposition then is this, that a public service water company which is appropriating water under the constitution of 1879, for the purpose of rental, distribution and sale, cannot confer upon a consumer any preferential right to the use of any of its water (citing cases)."

Again, at page 90, Mr. Justice Henshaw says:

"The right of an individual to a public use of the water is in the nature of a public right possessed by reason of his status as a person of the class for whose benefit the water is appropriated or dedicated. All who enter the class may demand the use of the water, regardless of whether they have previously enjoyed it or not."

Referring then to section 552 of the Civil Code, Mr. Justice Henshaw, at page 93, says:

"Permanent rights in a limited sense, such consumers may acquire. That is to say, having once been supplied by the company, they are entitled to a continuation of such supply, unless their quantum shall be diminished by a shortage for which the water company is not responsible, or a shortage by reason of the increased demand of added consumers. In such cases, the duty of the water company is to supply such water as it has, fairly apportioned between its consumers. If

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it be conceived that section 522 of the Civil Code is designed to confer upon any particular consumer any especial, permanent and preferential right above what is here stated, that effort, being plainly violative of the constitution, would be held void."

Mr. Justice Henshaw then continues and holds that the same declaration applies to the provisions of the Act of March 12, 1885, and the amendment of March 2, 1897.

If the position of the consumers with reference to the validity of these contracts is correct, and if it be held that the perpetual easements on the system have been established thereunder, on which contention it is unnecessary herein to pass, it follows that the Cuyamaca Company's system is burdened with all these easements and that the value of the system for the purpose of sale is accordingly diminished to this extent. Under this view, the company having sold these water rights once, cannot own them for the purpose of selling them again.

On the other hand, if the consumers are not correct in their contention, it becomes necessary to consider the effect to be given to their transactions with the Flume Company, as bearing on the value of the Cuyamaca Company's property for the purpose of sale. It has been suggested that these contracts have at least the effect of bringing the lands therein described within the area of the territory for the benefit of which the water is appropriated or dedicated and to establish its status as land permanently entitled to share in the public use. It appears clearly, however, from the evidence in this proceeding that all these lands were already within the area to which the water appropriated by San Diego Flume Company was dedicated and that it accordingly was unnecessary to pay any consideration to bring these lands within the area within which they already found themselves. The notices of appropriation of water by San Diego Flume Company all show that the lands of all the contract holders were within the area for the service of which the water was appropriated.

On May 28, 1886, San Diego Flume Company filed a notice appropriating all the waters of the San Diego River at the head of Boulder Creek to the extent of 6,000 miners inches measured under a four-inch pressure. The notice states that the water "is appropriated, claimed and intended for irrigation and domestic use and mechanical purposes." The notice continues as follows: "The places where it is intended to use said water are the City of San Diego, Ex Mission Rancho, and Rancho of El Cajon."

On June 29, 1886, San Diego Flume Company posted a notice appropriating all the waters of the South Fork of the San Diego River to the extent of 4,000 miners inches measured under a four-inch pressure. The notice of appropriation states that "said water is appropriated, claimed and intended for irrigation and domestic use and mechanical purposes." The notice continues as follows: "The places where it is intended to use said water are the City of San Diego, Ex Mission Rancho, Rancho of El Cajon and other places between the point of diversion and the seaboard."

On July 31, 1886, San Diego Flume Company posted a notice appropriating all the waters of Boulder Creek to the extent of 2,000 miners inches measured under a four-inch pressure. The notice states that "said water is appropriated, claimed and intended for irrigation and domestic use and mechanical purposes." The notice continues in part as follows: "The places where it is intended to use said water are the City of San Diego, Ex Mission Rancho and Rancho El Cajon."

The notices of appropriation filed in behalf of Murray and Fletcher after they acquired the property on June 1, 1910, were posted subsequent to the dates of all the contracts herein referred to, but were of similar tenor with reference to the appropriation for public use and the place of intended use.

As all the lands covered by the contracts were already within the area to the service of which the water had been appropriated and dedicated, their owners, if they had understood their legal rights, could have demanded service upon the payment of the established rates. Price vs. The Riverside Land and Irrigating Company, 56 Cal. 431; McCrary vs. Beaudry, 67 Cal. 120; Fellows vs. City of Los Angeles, 151 Cal. 52; Leavitt vs. Lessen Irrigation Company, 157 Cal. 62; Byington vs. Sacramento Valley West Side Canal Company, decided by the Supreme Court of California on April 29, 1915.

It is well established now that a water utility has no right to charge a water right in addition to the established rates as a condition precedent to service. San Diego Land and Town Company vs. National City, 74 Fed. 79, 86; Lanning vs. Osborne, 76 Fed. 519, 529, 533; Boise City I. & L. Co. vs. Clark, 131 Fed. 415, 420; San Joaquin and Kings River Canal and Irrigation Company vs. Stanislaus County, 191 Fed. 875, 891. Whatever question there may have been in this matter has been definitely set at rest in this state by the recent decision of the Supreme Court of California in Byington vs. Sacramento Valley West Side Canal Company, supra, decided on April 29, 1915.

The question then arises as to what effect can be given to the payments made for these so-called water rights. If these moneys could be recovered by those who paid them or their successors, a serious question might arise as to whether the value of the water system would not be depreciated in the hands of whoever may own it. On the other hand, in the absence of a decision by the Supreme Court of this state holding that these moneys can be recovered, the Railroad Commission would be inclined, in so far as it could, on the facts of this case, to give effect, in equity, to the moneys thus paid and to regard them, in so far as it can do consistently with the establishment of uniform rates and the prevention of dis-

crimination, as advance payments on rates, so that the consumers holding under these contracts, will have the normal rates which they otherwise would be compelled to pay, reduced to the extent of reasonable interest on the moneys which they have paid. By reason of the inability to collect such rates as otherwise would be collected from these consumers, the value of the water system would, of course, ^{be} pro tanto depreciated.

From what has been herein said, and necessarily said as bearing on the question of a fair sale price of this property, the consumers under the system who have been using water under their contracts, should not have the slightest fear as to the permanency of their rights to receive water under this system. Having once received water from this system and continued the use thereof, they are entitled, as was held by the Supreme Court of this state in Leavitt vs. Lassen, supra, "to a continuation of such supply, unless their quantum shall be diminished by a shortage for which the water company is not responsible, or a shortage by reason of the increased demand of added consumers." Realizing the difficulties which might arise from the demand of additional consumers in an area specified in the notices of appropriation larger than the area which can reasonably be served, the Legislature of this state, in 1913, enacted Chapter 80, providing in part that whenever the Railroad Commission, after a hearing, shall find that any water company which is a public utility operating within this state has reached the limit of its capacity to supply water and that no further consumers of water can be supplied from the system of such utility without injuriously withdrawing the supply wholly or in part from those who have theretofore been supplied by such corporation, the Railroad Commission may order and require that no such corporation shall furnish water to any new or additional consumers until such order is vacated or modified by the Commission. Acting under this

principle, although prior to the time this particular statute was enacted, the Railroad Commission in its decision in Application No. 118 provided in part that "no additional consumers shall be added to this system except domestic consumers under the terms hereinbefore in this opinion and order set out." As long as the Railroad Commission continues to have jurisdiction over this particular water system it will continue to protect the rights of those who have heretofore enjoyed the use of the water from the system against the taking on of additional consumers for irrigation purposes beyond the extent to which the system can reasonably supply such additional consumers. As far as domestic consumption is concerned, there will be no danger for a long time from additional consumers of this class, for the reason that the Cuyamaca Company's system, if properly developed, can take care of large additional amounts of domestic consumption.

In its Exhibit No. 51, Cuyamaca Company also claims an allowance of \$250,000.00 for water rights under Permit No. 1 of the State Water Commission of California, issued on March 12, 1914. This permit authorizes the appropriation of not to exceed 50 cubic feet per second of Boulder Creek for irrigation and power, and the Cuyamaca Company intends to use this water for the generation of power. The evidence does not show that any consideration was paid to the State of California in connection with this appropriation. The Cuyamaca Company presents a table of contemplated cost of developing a plant for the generation of hydro-electric energy by means of the water thus appropriated, of total operating and fixed charges, of depreciation and of revenue, and reaches the conclusion that it will secure by this means a surplus profit of \$20,000.00, which sum capitalized at 8 per cent, gives a claimed power right value of \$250,000.00. This project is so vague, problematical, speculative and uncertain as not to justify the addition of any material sum to the sale price in this proceeding.

The evidence shows that only one-half mile of ditch has been completed, that the estimates of construction cost, operating expense and depreciation are purely speculative, and that no contract has been entered into for the sale of power. No estimate of operating and maintenance expenses in connection with this project had ever been made prior to the presentation of the evidence in this case. The case seems to fall clearly within the rule announced by the Supreme Court of this state in San Diego Land and Town Company vs. Neale, 88 Cal. 50, in which the court, at page 66, says:

"The condition of the property, the uses to which it may be put, having regard to the existing advantages for making a practical use of the property, and such advantages as may be reasonably expected in the immediate future, are all matters for consideration in estimating the value of the lands (Boon Company vs. Patterson, 98 U.S. 403,); but to attempt to ascertain the value by estimating the cost of works necessary for its use for a particular purpose, the cost of operation, prospective sales and estimated profits, increased demands through growth of population, etc., requires a degree of refinement in the measure of values which seems to us totally incompatible with the gross estimates of common life. . . the gross estimates of common life are all that the court and juries have skill enough to use as a measure of value. All other measures are necessarily arbitrary and fanciful" (Searle vs. L. & B. R.R. Co., 55 Pa. St. 44)."

4. GOING CONCERN VALUE.

The Cuyamaca Company also presents a claim for going concern value. That such value must be allowed in proper cases is well established. But when it is remembered that in the present case the Cuyamaca Company and its predecessor, the San Diego Flume Company, have been unable for more than three or four years during the entire period of 26 years of operation to pay even maintenance and operating expenses, it must be apparent that this system has no very great value as a "going concern" in addition to the value of its tangible properties. It must be remembered also that when James A. Murray purchased this property on June 1, 1910 for \$150,000 he bought it as a going concern which had been in operation and doing business for some 21 years and the purchase price included as one of the elements of the property purchased its value as a going concern.

5. ORIGINAL COST, ADDITIONS AND BETTERMENTS.

The agreement of April 20, 1910, by which San Diego Flume Company agreed to sell its system to James A. Murray for \$150,000.00, had attached thereto as Exhibit "A", a list of the properties transferred, which property includes, ~~practically~~ ^{nearly all} the properties now owned by the Cuyamaca Company. The deed dated June 1, 1910 from San Diego Flume Company to James A. Murray conveyed all these properties, including all the water rights owned by the company and its value as a going concern.

The evidence shows that for 8 years, from 1900 until 1908, the San Diego Flume Company tried to sell its entire holdings, but without success. In 1908, the lands not used and useful in connection with the operation of the system, being 1400 acres valued at \$30.00 per acre, were segregated from the system and the property was offered for sale at \$150,000.00.

It was not until 1910 that the company was able to realize this price. Mr. Healion, president of the San Diego Flume Company, testified that the company had been willing for a long time to take \$150,000.00, and that it took the first opportunity to sell at that price. I am convinced from the evidence that the sum of \$150,000.00 may reasonably be taken as representing the fair value of the property at the time of its sale by the San Diego Flume Company to James A. Murray.

Subsequent to the acquisition of the property by Murray the Cayamaca Company has made numerous improvements as well as acquiring some additional property. Mr. W. S. Post, the company's chief engineer, testified that the principal improvements and additions have been the placing of an additional sideboard on the flume, an increase in the size of the South Fork feeder, the replacement of 12 wooden ~~flumes~~ ^{flumes} by steel flumes, the construction of additional bents in the remaining wooden ~~trestles~~ ^{trestles}, the construction of a number of concrete conduits, the construction of siphons at Sand Creek, South Fork and Chocolate to replace long and dangerous wooden trestles, the lining of the entire flume with rubberoid roofing ^{paper}, an increase in the height of the diverting dam, the construction of an additional pipe line on El Cajon Avenue, the deepening and enlarging of the La Mesa ditch and the purchase and better equipment of the El Monte pumping plant property. In addition, certain small reservoirs and pumping plants have been constructed by Murray and Fletcher in their individual capacities for the purpose primarily of distributing water to their private land holdings in and about Grossmont and Murray Hill and are now to be permanently added to the water utility system.

Cuyamaca Company presented as its Exhibit No. 39, a statement showing the alleged cost of the water system to the Cuyamaca Company from June 1, 1910 to January 1, 1915, and another statement marked "Cuyamaca Company's Exhibit No. 58" showing the alleged cost of the system from June 1, 1910 to March 1, 1915. Subsequent to the hearing, the company filed a statement showing the alleged cost of the system from June 1, 1910 to April 1, 1915 with an estimate of probable cost to July 1, 1915. These statements are subject to numerous serious objections. The rate of interest of 10 per cent on all moneys expended for construction as well as deficits in maintenance and operating expenses is used throughout these tables. The Cuyamaca Company's counsel stated at the hearing that "we thought we would put it high enough and put it up to the Commission." That this rate of interest is too high under the circumstances of this case is too apparent for comment. Further, ^{after} allowing interest at the rate of 10 per cent per annum on all the construction costs and all the deficits in operation, the company adds in its Exhibit No. 39 the sum of \$150,230.00, being the gross earnings during the period from June 1, 1910 to January 1, 1915. On this basis the more money a utility earns the larger is the amount as to which the utility is out of pocket. Of course, no such allowance can be made. The company also presents a statement of the "value" of the property acquired by James A. Murray and Ed Fletcher individually and which is to go with the system, totalling \$48,947.00. This statement again includes interest at the rate of 10 per cent per annum. It is not a statement of actual cost of the property and hence is not presented on the theory of actual expenditures which is supposed to underlie the exhibit. The values of

most of the real property therein contained are in excess even of the values testified to by Colonel Fletcher and materially in excess of the values testified to by Mr. O'Halloran. For instance, the Murray Hill Reservoir lands are given a value of \$6,335.00 while Colonel Fletcher testified to a value of \$4,848.00; and Mr. O'Halloran to a value of \$1,616.00; Miles Reservoir No. 1 is given a value of \$1,443.00 although Colonel Fletcher testified to a value of \$1,104.00 and Mr. O'Halloran to a value of \$1,000.00; the ~~the~~ Murray-Hill Eucalyptus siphon right-of-way is given a value of \$565.00 while Colonel Fletcher testified to a value of \$476.00; and the present value of the Grossmont Reservoirs is given as \$5,437.00 as contrasted with \$4,737.00 estimated by this Commission's hydraulic department. I believe that full justice will be done to the company if it be assumed that these properties originally cost, before the addition of interest, \$30,000 instead of \$40,789.00 claimed by the company in this Exhibit.

Furthermore, the Exhibit contains the full claims of the company for maintenance and operating expenses, although these operating expenses have been shown to include unduly large amounts for salaries of general officers and items properly chargeable to the proposed sale of the property and other items not proper to be included.

Railroad Commission Exhibit No. ~~17~~ contains a summary of construction and capital expenditures, as agreed upon between the Commission's auditor and the Cuyamaca Company between June 1, 1910 and January 1, 1915, without the addition of interest except an item of \$2,531.98, as follows:

TABLE NO. X.

SUMMARY OF CONSTRUCTION AND CAPITAL EXPENDITURES

June 1st, 1910 to January 1st, 1915.

Purchase of physical property of San Diego Flume Co.	\$150,000.00
Legal and other expense in connection with purchase	592.70
Purchase and collection of unpaid accounts	2,368.04
Purchasing and protecting water rights	3,462.92
Engineering for proposed reconstruction, etc.,	2,029.31
Equipment	5,472.52
Interest	2,531.98
Lands and rights of way	3,231.99
Boulder Creek, Conejos, ^o Everty Gulch and El Capitan Reservoirs	10,248.91
Buildings	188.77
Murray Hill Reservoir, pipe lines and tunnel	41,788.91
Cuyamaca Reservoir	13.10
La Mesa Reservoir	98.37
Eucalyptus Reservoir	75.00
Diverting Dam	12,050.46
Flume construction, including wood flume, steel flume, concrete flume, steel and concrete siphons, lining, etc.,	134,980.40
Pipe lines	98,328.25
Meters and services	17,571.09
Pumping plants	30,405.50
Telephone line	2,209.57
Measuring weirs, gauging stations, etc.,	1,356.54
Miscellaneous expense	217.90
Casualty insurance	1,163.30
Commissary - net cost	905.40
La Mesa Ditch	137.40
Total.	<u>\$521,428.33</u>

The sums thus expended are distributed over the years 1910 to 1914, inclusive, as follows:

1910	\$ 155,390.32
1911	51,815.20
1912	53,902.63
1913	89,908.33
1914	170,411.65.

In addition to these amounts the Cuyamaca Company reports capital expenditures for January, February and March, 1915 amounting to \$31,241.00 and estimated additional capital expenditures from April 1 to July 1, 1915, amounting to \$2,500.00.

These statements do not include the properties acquired by Murray and Fletcher individually, which properties are to go with the system, and which have hereinbefore been assigned a reasonable cost of \$50,000.00 without the addition of interest.

The following table shows the capital expenditures incurred during each year, together with interest thereon, at the rate of 8 per cent per annum from the middle of the year to July 1, 1915:

TABLE NO. XI.

CAPITAL EXPENDITURES, WITH INTEREST,

June 1, 1910 to June 30, 1915.

<u>1910</u>		
Capital Expenditures	\$155,390.32	
8% interest for 5 years	<u>\$ 62,156.13</u>	\$217,546.45
<u>1911</u>		
Capital Expenditures	\$ 51,815.20	
8% interest for 4 years	<u>16,580.66</u>	68,395.86
<u>1912</u>		
Capital Expenditures	\$ 53,902.63	
8% interest for 3 years	<u>12,936.63</u>	66,839.26
<u>1913</u>		
Capital Expenditures	\$ 89,908.33	
8% interest for 2 years	<u>14,385.33</u>	104,293.66
<u>1914</u>		
Capital Expenditures	\$170,411.85	
8% interest for 1 year	<u>13,632.95</u>	184,044.80
<u>1915.</u>		
Capital Expenditures	33,741.00	
8% interest for 3 months	<u>674.82</u>	34,415.82
Properties heretofore owned individually by Murray and Fletcher, assumed cost	30,000.00	
Interest at 8% for 2 years	<u>4,800.00</u>	<u>34,800.00</u>
		\$710,335.85

The Cuyamaca Company claims surplus and deficits in earnings over maintenance and operating expenses in the years 1910 to 1915, inclusive, as follows:

TABLE NO. XII.

EARNINGS VS. MAINTENANCE AND OPERATING EXPENSES,
AS CLAIMED BY CUYAMACA COMPANY.

1910	Surplus in earnings over maintenance and operating expenses	\$ 3,943.00
1911	Deficit in earnings over maintenance and operating expenses	5,818.00
1912	Deficit in earnings over maintenance and operating expenses	11,830.00
1913	Deficit in earnings over maintenance and operating expenses	13,707.00
1914	Deficit in earnings over maintenance and operating expenses	7,604.00
1915	Surplus earnings over maintenance and operating expenses, in January 1 to April 1,	3,814.00

The evidence in this proceeding shows that the Cuyamaca Company's maintenance and operating expenses have been unnecessarily heavy. Reference has already been made to salaries paid to general officers and to the inclusion of expenses which are not properly maintenance and operating expenses. As pointed out at the hearing, the expenses for hearings before the Railroad Commission have been abnormally high and far greater than necessary. As typical of this condition, I desire to refer to Railroad Commission's Exhibit No. "J", in which appears the Company's claim for maintenance and operating expenses for the year 1914, amounting to \$57,902.88.

There appears in the same exhibit, Mr. Armstrong's estimate of what would have been reasonable maintenance and operating expenses during this year, amounting to \$44,706.19. The only changes of importance are a reduction in the salary of general officers, and the assignment to this year of the proper pro rata of Railroad Commission expenses, which should be spread over a number of years. On the basis of Mr. Armstrong's report, the deficit of \$7,604.60 reported by the Cuyamaca Company for 1914 is converted into a surplus of \$7,593.00 of earnings over reasonable maintenance and operating expenses.

I find as a fact that an allowance of \$25,000.00 to cover reasonable deficits in maintenance and operating expenses from June 1, 1910 to July 1, 1915, with interest at the rate of 8 per cent per annum, is reasonable.

Before leaving the question of original cost, with additions and betterments, I desire to draw attention to the fact that the Cuyamaca Company is retaining 601 acres of land in the vicinity of Cuyamaca Reservoir, which land was testified to by Colonel Fletcher as having a value of about \$25.00 per acre, or a total value of \$15,005.00.

SPECIAL CONSIDERATIONS.

Before making my finding as to the fair value of the Cuyamaca Company's property for the purpose of sale in this proceeding, I desire to draw attention to a number of ^{additional} matters which have bearing on the question of value.

The evidence clearly shows that the flume is largely overbuilt and that throughout most of its extent it is from four to six times as large as necessary to carry the water which it has hitherto supplied. The evidence also shows that this excess capacity can not be availed of prior to the necessity of taking down the flume and substituting a more efficient and economical carrier.

The evidence further shows that water properties in ^{adjoining lands,} and about Grossmont and ~~San Diego~~ ^{San Diego} which must have cost somewhere in the neighborhood of \$50,000.00 and which were constructed primarily for the purpose of serving the lands owned by Murray and Fletcher and being sold by them, serve but a relatively few customers at the present time. The total number of customers thus served probably does not exceed two dozen. The revenues to be derived from these customers and those who may be expected to be added within the near future, will be but a small part of the maintenance and operating expenses necessary to serve these customers. That these properties constitute a burden on the system and depreciate its value, is clear.

Attention must also be drawn to the ability of the consumers to pay rates, as bearing on the value of the property. The Cuyamaca Company itself, on this principle, has eliminated any value for water rights in so far as concerns the establishment ^{for irrigation} of rates. Mr. C. E. Lee, a witness for the Cuyamaca Company, testified that there was no future in San Diego County for the

irrigation of citrus crops and that San Diego County producers cannot compete with the growers in the vicinity of Whittier and Ventura, where lemon crops were claimed by Mr. Lee to be two or three times as great as those produced by consumers under the Cuyamaca Company's system. Colonel Fletcher testified that the cost of water under the Cuyamaca Company's system will be so high that it cannot be used for irrigation purposes under any condition. Nevertheless, 92 1/2 per cent of the water under this system, except surplus waters, is being used for irrigation and the lands to which this water has been applied are entitled to have the continued use thereof.

Finally, I desire to draw attention, in this connection, as bearing on the value of the system, to Colonel Fletcher's testimony that for 26 years this system has been unable to pay even maintenance and operating expenses. This testimony should be modified by the fact that on the basis of reasonable maintenance and operating expenses, the system has probably paid such expenses, ~~with a surplus margin~~ during three of the last five years.

After a careful consideration of all the evidence in this proceeding, I find as a fact that the fair value of the property of Cuyamaca Water Company, referred to in the contract dated November 17, 1914, between James A. Murray and Ed Fletcher, doing business under the firm name and style of Cuyamaca Water Company, and La Mesa, Lemon Grove and Spring Valley Irrigation District, and to be transferred by the Cuyamaca Company to the Irrigation District, including property to be added to that particularly described in the contract, as hereinbefore set forth, is the sum of \$745,000.00. The property as to which this finding is made is described in Exhibit No. 1, which is hereto attached and made a part hereof.

While this amount is in excess of the amount which would be allowed for rate fixing purposes, the public can afford to be generous in taking from the owners of the Cuyamaca Company's system their property.

I am of the opinion that Cuyamaca Water Company should be authorized to convey its said property to La Mesa, Lemon Grove and Spring Valley Irrigation District at the price herein found to be reasonable, and recommend that the Railroad Commission make its order authorizing such conveyance.

I submit the following form of order:

O R D E R.

JAMES A. MURRAY and ED FLETCHER, doing business under the firm name and style of CUYAMACA WATER COMPANY, and LA MESA, LEMON GROVE AND SPRING VALLEY IRRIGATION DISTRICT having filed their petition asking the Railroad Commission to determine the fair value of the property of Cuyamaca Water Company to be transferred to the Irrigation District under contract dated November 17, 1914, and to authorize the conveyance of said property by Cuyamaca Water Company to the Irrigation District at the value thus fixed and determined,

THE RAILROAD COMMISSION HEREBY FINDS AS A FACT that the fair value of the property of Cuyamaca Water Company to be transferred to La Mesa, Lemon Grove and Spring Valley Irrigation District, as described in Exhibit No. 1 attached hereto, is the sum of seven hundred and forty-five thousand dollars (\$745,000.00).

Being its order on the foregoing finding of fact and on the other findings which are contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that JAMES A. MURRAY, ED FLETCHER and W. G. HENSEAW, doing business under the firm name and style of CUYAMACA WATER COMPANY be and the same are hereby authorized

to convey to LA MESA, LEMON GROVE AND SPRING VALLEY IRRIGATION DISTRICT, the property particularly described in Exhibit No. 1 which is attached hereto and made a part hereof.

The foregoing findings and order are hereby approved and ordered filed as the findings and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of June, 1915.

Max Thelen
A. D. Rowland
Alex. Gordon
Edwin O. Edgerton
Stanley D. Doherty

Commissioners.

EXHIBIT No. 1.

SCHEDULE "A"

REAL PROPERTY

Parcel No. 1.

CUYAMACA RESERVOIR AND GROUNDS AT KEEPER'S HOUSE.

DESCRIPTION.

All that portion of lots "D" "E" and "G" of the Cuyamaca Rancho in said County as set out in the decree of Partition of said Rancho recorded in Book 43 of Deeds at page 309 et seq in the County Recorder's Office of said County, particularly described as follows:

Beginning at a point north $89^{\circ}25'$ east, 448.8 ft. from Corner 6 of said Lot "E":

thence N $21^{\circ}12'$ E	1094 feet;
thence N $4^{\circ}20'$ E	995.5 feet;
thence N $32^{\circ}18'$ W	507.6 feet;
thence N $10^{\circ}27'$ W	866.5 feet;
thence N $53^{\circ}42'$ W	439.0 feet;
thence N $2^{\circ}52'$ W	141.3 feet;
thence N $40^{\circ}06'$ W	536.1 feet;
thence N $69^{\circ}26'$ W	193.4 feet;
thence N $65^{\circ}11'$ W	671.1 feet;
thence S $37^{\circ}52'$ W	309.3 feet;
thence N $52^{\circ}08'$ W	640.5 feet;
thence N $37^{\circ}57'$ E	1028.0 feet;
thence S $76^{\circ}00'$ E	1043.0 feet;
thence S $89^{\circ}13'$ E	504.8 feet;
thence S $79^{\circ}40'$ E	880.7 feet;
thence N $74^{\circ}57'$ E	408.5 feet;
thence S $80^{\circ}07'$ E	571.4 feet;
thence N $36^{\circ}13'$ E	451.5 feet;
thence N $54^{\circ}30'$ E	11.21 chains;
thence N $40^{\circ}30'$ E	11.97 chains;
thence N $62^{\circ}06'$ E	17.88 chains;
thence N $22^{\circ}00'$ E	13.48 chains;
thence S $41^{\circ}00'$ E	4.16 chains;
thence N $45^{\circ}00'$ E	11.82 chains;
thence S $83^{\circ}15'$ W	9.47 chains;
thence N $20^{\circ}15'$ E	17.68 chains;
thence N $61^{\circ}30'$ E	12.73 chains;
thence N $10^{\circ}30'$ E	7.80 chains;
thence N $18^{\circ}45'$ W	11.74 chains;
thence N $1^{\circ}39'$ W	5.53 chains;
thence N $53^{\circ}15'$ E	12.35 chains;
thence N $14^{\circ}30'$ E	13.03 chains;
thence S $68^{\circ}15'$ E	10.30 chains;

thence South			7.50 chains;
thence S 25° 30' E			7.87 chains;
thence S 16° 15' W			11.66 chains;
thence S 27° 45' E			21.67 chains;
thence N 82° 30' E			14.01 chains;
thence S 32° 45' E			10.45 chains;
thence S 62° 00' E			6.97 chains;
thence S 26° 15' W			7.20 chains;
thence S 33° 00' E			5.75 chains;
thence N 89° 39' W			5.45 chains;
thence South			8.64 chains;
thence S 48° 30' W			11.51 chains;
thence N 52° 15' W			5.91 chains;
thence N 32° 15' W			5.45 chains;
thence S 69° 07' W			7.43 chains;
thence S 15° 16' E			11.69 chains;
thence S 34° 29' E			8.24 chains;
thence S 12° 15' E			4.03 chains;
thence S 32° 21' W			12.23 chains;
thence S 12° 40' W			13.32 chains;
thence S 10° 24' W			7.91 chains;
thence S 41° 53' W			5.20 chains;
thence S 7° 44' W			7.67 chains;
thence S 74° 27' W			15.09 chains;
thence S 00° 22' W			5.92 chains;
thence S 89° 25' W			20.00 chains;
thence N 00° 22' E			5.12 chains;
thence N 41° 25' W			7.83 chains;
thence N 58° 08' W			6.58 chains;
thence N 28° 15' W			5.20 chains;
thence N 00° 15' E			4.70 chains;
thence N 26° 46' W			2.42 chains;
thence N 75° 15' W			6.97 chains;
thence S 57° 30' W			2.65 chains;
thence S 22° 00' W			8.33 chains;
thence N 77° 00' W			3.03 chains;
thence N 41° 00' W			4.55 chains;
thence S 73° 00' W			8.33 chains;
thence S 62° 30' W			4.92 chains;
thence S 34° 15' W			7.58 chains;
thence S 8° 15' W			7.58 chains;
thence S 10° 45' E			4.92 chains;
thence S 29° 00' E			4.55 chains;
thence S 56° 30' E			1.79 chains;
thence N 84° 30' E			4.05 chains;
thence N 59° 00' E			7.58 chains;
thence N 86° 00' E			3.79 chains;
thence S 68° 00' E			6.97 chains;
thence S 32° 02' E			5.30 chains;
thence S 24° 58' W			3.03 chains;
thence N 65° 02' W			10.61 chains;
thence S 71° 58' W			1.21 chains;
thence S 43° 58' W			9.09 chains;
thence S 52° 57' W			3.99 chains;
thence S 23° 59' W			7.77 chains;
thence N 65° 04' W			5.70 chains;
thence S 73° 46' W			5.07 chains;
thence S 30° 10' W			7.14 chains;
thence West			2.58 chains;
thence South			3.02 chains;
thence West			10.00 chains;

Subject to the reversionary interest in favor of R. W. Waterman to the property described in deed from R. W. Waterman to San Diego Flume Company, recorded in Book 188, page 141 of Deeds, Records of San Diego County, California.

Parcel No. 2.

POVERTY GULCH RESERVOIR SITE.

DESCRIPTION.

NE $\frac{1}{2}$ of SW 1/4 and N $\frac{1}{2}$ of SE 1/4 of Section 3, Township 15 South, Range 3 East, S. B. M., containing 120 acres.

Parcel No. 3.

KUEHNER PROPERTY, UPON WHICH CHOCOLATE PUMPING PLANT AND EL CAPITAN RESERVOIR SITE ARE LOCATED.

DESCRIPTION

SE 1/4 of NE 1/4 of Section 7 and S 1/2 of NW 1/4 and SW 1/4 of NE 1/4 of Section 8, in Township 15 South, Range 2 East, S. B. M., containing 160 acres.

Parcel No. 4.

WEBSTER RESERVOIR.

DESCRIPTION.

Block 9 of Villa Caro Heights per map thereof No. 1345 of Records of San Diego County, California, containing 0.14 acres more or less.

Parcel No. 5

MURRAY HILL RESERVOIR

DESCRIPTION

All that portion of Lot 136 of Murray Hill per map thereof No. 1342 filed in the County Recorder's Office of San Diego County, California, lying east of a straight line, between the west corner of Lot 80 of Murray Hill and the west corner of Lot 125 of Murray Hill, and containing 15.4 acres more or less.

Parcel No. 6

PARK RESERVOIR (ALSO KNOWN AS MILES RESERVOIR NO. 1)

DESCRIPTION

The Park Reservoir site and the reservoir built thereon situate in Lots 1 and 2 Block 29, El Cajon Heights, as per license survey map No. 50, records of San Diego County, and more particularly described as follows, to-wit:

Commencing at the southwest corner of Lot 4, Block 29, El Cajon Heights, thence south 70 degrees 52'30" E along the northeast line of the County Road 178 feet; thence N 79 degrees 5 $\frac{1}{2}$ ' east along said County Road 1150 feet; thence continuing N 79 degrees 5 $\frac{1}{2}$ ' E 16.1 feet to the point of beginning of the traverse of said reservoir; thence N 10 degrees 57' E 548.8 feet; thence N 17° 11' W 100.5 feet; thence N 32° 11' W 50 feet; thence N 29° 08' E 100 feet more or less to the southerly line of the San Diego flume right of way; thence along said southerly line south 60° 52' E 472 feet; thence S 32° 45' W 216.5 feet; thence S 8° 15' W 263 feet more or less to the northerly line of said County Road; thence along said northerly line of said County Road S 79° 03 $\frac{1}{2}$ ' W 200 feet to the point of beginning. Containing 3.42 acres more or less.

Parcel No. 7

EUCALYPTUS RESERVOIR.

DESCRIPTION

That portion of Lot 4 in Section 17, Township 16 South, Range 1 West, S. B. M., in the County of San Diego, State of California, more particularly described as follows:

Commencing at a point 541 feet north 75°36' east from the southwest corner of said Lot 4,

thence N 75° 36' E	60 feet to corner No. 1,
thence N 71° 06' E	163.2 feet to corner No. 2,
thence N 88° 01' E	25.9 feet to corner No. 3,
thence S 79° 29' E	143.5 feet to corner No. 4,
thence S 66° 23' E	106.9 feet to corner No. 5,
thence S 58° 41' E	177.0 feet to corner No. 6,
thence N 3° 03' E	70.7 feet to corner No. 7,
thence N 45° 17' W	101.6 feet to corner No. 8,
thence N 52° 51' W	280.2 feet to corner No. 9,
thence N 45° 29' W	179.4 feet to corner No. 10,
thence S 84° 07' W	130.1 feet to corner No. 11,
thence S 72° 33' W	238.0 feet to corner No. 12,
thence S 16° 25' E	278.0 feet to point of beginning.

Also that certain other tract of land bounded and particularly described as follows, to-wit:-

Commencing at a point 108.2 N 45° 9' W from corner No. 9 of the above described tract,

thence N 20° 21' E	350.0 feet,
thence N 69° 39' W	110.0 feet, to east side of right of way of San Diego Flume Company,
thence S 30° 00' W	344.0 feet along east side of said right of way.
thence N 84° 07' E	52.0 feet,
thence S 45° 29' E	71.2 feet to point of beginning.

Parcel No. 8

LA MESA RESERVOIR.

DESCRIPTION

That portion of La Mesa Colony in the Rancho Mission of San Diego, according to the map thereof filed in the County Recorder's Office of said San Diego County, September 4th, 1901, and numbered 876 of the maps filed in said office, particularly described as follows:

Beginning at a point 855 feet north $36^{\circ} 32'$ east of the northwest corner of the southwest quarter of Section 13, Township 16, South, Range 2 West, S. B. M. at a stake set in the stone mound, thence N $36^{\circ} 32'$ E on boundary line of Lot 19 of Rancho Mission of San Diego, according to the partition map thereof on file in the office of the Clerk of the Superior Court of the County of San Diego, California, and also on file in the office of the Recorder of said County, which boundary line of Lot 19 of said Rancho Mission is as marked and delineated on said amended map of La Mesa Colony, to the corner of said Lot 19, which lies west of the North boundary of Lot 196 of said La Mesa Colony, thence east on the north boundary of said Lot 19 of said Ex Mission Rancho to the northwest corner of said Lot 196 of La Mesa Colony, thence south, southerly and southeasterly along the westerly line of said Lot 196 of La Mesa Colony and along the southerly boundary line of lots 195 and 194 of said La Mesa Colony, and continuing along the westerly and northerly boundary lines of the County Road, as marked on said amended map of La Mesa Colony, to the easterly line of Lot 157 of said La Mesa Colony, thence north on the east boundary line of said lot 157 of La Mesa Colony to the northeast corner thereof, thence west on the north boundary line of said lot 157 to the curved boundary line on the west side thereof, thence southwest, southerly and southeasterly along said curved west boundary line of said lot 157 to an intersection of said line with the section line, thence east on the south boundary line of said lot 157 to the southeast corner thereof, thence southwesterly along the boundary line of the county road as shown on map of La Mesa Colony to a point where said road deflects west, thence along said road following the deflection of the same around the north side and west side of lot 155 of said La Mesa Colony to a point where the south line of said lot 155 protruded across the county road is intersected, thence along the northerly boundary of said county road, following the detour thereof to a point where a line drawn parallel with and 190.7 feet at right angles southwesterly from La Mesa Dam intersects the west boundary line of said County Road, thence north $60^{\circ} 45'$ west parallel with said La Mesa Dam, 847.5 feet to the point of beginning.

Parcel No. 9

MONTE PUMPING PLANT

DESCRIPTION

Beginning at the intersection of the northerly line of Julian Avenue, and the east boundary line of El Cajon Valley Company's land as shown on Map 289, filed in the office of the County Recorder of said San Diego County December 30, 1886, which point is 40.33 feet north of the intersection of the center line of Julian Avenue and said boundary line; thence north 1173.5 feet along said boundary line to the San Diego River; thence north $60^{\circ} 31'$ west 57 feet; thence south 1248 feet to the northerly line of said Julian Avenue; thence north $48^{\circ} 03'$ east along the line of Julian Avenue to place of beginning.

Beginning at a point on the East boundary line of El Cajon Valley Company's land as shown on said Map 289, 1213.83 feet north of the intersection of the center line of Julian Avenue and said boundary line; thence north along said boundary line 500 feet; thence north $60^{\circ} 31'$ west 57 feet; thence south parallel to said boundary line 500 feet; thence south $60^{\circ} 31'$ east 57 feet to point of beginning.

Beginning at a point on the northerly line of Julian Avenue and 50 feet west of the point of intersection of the center line of said Julian Avenue with the east line of El Cajon Valley Company's land as shown on said Map 289; thence south $48^{\circ} 03'$ west along the northerly side of said Julian Avenue 80.7 feet; thence north 1332 feet; thence south $60^{\circ} 31'$ east 68.92 feet; thence south 1248 feet to northerly line of Julian Avenue and place of beginning.

Beginning at the intersection of the southerly line of Julian Avenue with the east boundary line of El Cajon Valley Company's lands as shown on said Map 289 which point is 40.33 feet south of the intersection of the center line of said Julian Avenue and said boundary line; thence along the south line of said Julian Avenue south $48^{\circ} 3'$ west 190 feet; thence at right angles south $41^{\circ} 57'$ east 213 feet to a point on said boundary line 285.4 feet south of the place of beginning; thence north to place of beginning.

Beginning at a point on the east boundary line of El Cajon Valley Company's Land as shown on said Map 289, 550.73 feet south of the point of intersection of the center line of said Julian Avenue and said boundary line; thence west 569.7 feet to the southerly line of Julian Avenue; thence north $48^{\circ} 03'$ east along southerly line of said Julian Avenue 574.7 feet; thence at right angles south $41^{\circ} 57'$ east 213 feet to point on said boundary line; thence south along said boundary line 225 feet to point of beginning.

Together with wells, pumps, pumping plant, oil tanks, storehouses and all other structures or personal property now situate lying or stored thereon.

SUBJECT, HOWEVER, to the reservations and encumbrances of various deeds of record.

SCHEDULE "B"

RIGHTS OF WAY, U. S. RIGHTS GRANTED AND PENDING,

FLOODAGE RIGHTS AND RIPARIAN RIGHTS.

No. 1 - Right of Way.

Permit issued by United States Department of Agriculture, Forest Service, for a canal upon Boulder Creek; dated July 2, 1914.

No. 2 - Right of Way.

Application to United States Department of Agriculture, Forest Service, for final power permit on Boulder Creek, filed June 6th, 1914. Temporary permit to proceed with construction issued July 3rd, 1914; final stipulation signed August 3, 1914.

No. 3.

Contract to occupy lands and right of way for flume within the El Capitan Indian Reservation, with United States Department of the Interior, originally made with the San Diego Flume Company, as recorded in the office of the Commissioner of Indian Affairs at Washington, D. C. per letter from Department of Interior to Commissioner of Indian Affairs, dated September 16th, 1892.

No. 4.

Amended right of way for concrete pipe line at Sand Creek over land in the El Capitan Indian Reservation, approved by United States Indian Service June 25, 1913, as per Departmental letter of July 29, 1913.

No. 5.

Amended right of way for steel pipe line at South Fork Canyon, over the El Capitan Indian Reservation granted in 1912.

No. 6.

Application for lands for reservoir purposes and easements for Conejos Reservoir, pending; filed with the United States Department of the Interior in May, 1912. Stipulations signed for a payment of \$2,600.00 for lands to the Indian Bureau, in 1914.

No. 7.

Permit for use of public land for reservoir purposes in Poverty Gulch Reservoir Site July 26, 1913.

In SW 1/4 of SE 1/4 and SE 1/4 of NE 1/4, Section 3, Township 15 South, Range 3 East, S.B.M. Approximately 40 acres.

No. 8.

Permit to occupy lands within the El Capitan Indian Reservation for pumping purposes, granted by United States Department of Interior, dated September 12, 1913.

No. 9.

Right of way for the San Diego Flume from the west boundary of El Capitan Indian Reservation to the Eucalyptus Reservoir, traversing Section 12, Township 15 South, Range 1 East, El Cajon Rancho, Sections 17 and 18 of Township 16 South, Range 1 East, through Section 24, Township 16 South, Range 1 West and through Section 17, Township 16 South, Range 1 West.

No. 10.

Right of way for La Mesa Ditch and pipe line through Section 17, Township 16 South, Range 1 West and through La Mesa Colony to La Mesa Reservoir.

No. 11.

A general right of way for pipe lines through all lots in La Mesa Colony.

No. 12.

Franchise of the County of San Diego granted December 22, 1913, as per resolution of the Board of Supervisors, upon El Cajon Avenue, Monroe Street, Monroe Way, Isabella Street, Ramona Street and Lincoln Street.

No. 13.

Franchise for pipe line granted by the City of La Mesa upon El Cajon Avenue by ordinance dated December 26, 1913.

No. 14.

Franchise for pipe line granted by the City of East San Diego upon El Cajon Avenue dated February 9, 1914.

No. 15.

The lease of parcel of land for pumping station in the northwest corner of Lot "K", La Mesa Colony.

No. 16.

Easements and rights of way acquired by condemnation proceedings in the Superior Court in an action of Murray and Fletcher vs. La Mesa Development Company, judgment rendered on July 30, 1914.

No. 17.

Floodage rights over lands in La Mesa Reservoir, to a maximum height of reservoir of 100 feet granted by Junipero Land & Water Company to San Diego Flume Company May 14, 1887, and recorded in Book of Deeds 99, page 466, records of San Diego County, California.

SCHEDULE "C"

PHYSICAL STRUCTURES AND IMPROVEMENTS.

No. 1.

DAMS USED IN THE OPERATION OF THE WATER SYSTEM AS FOLLOWS:

The Cuyamaca Dam.

The Diverting Dam upon the San Diego River.

The Eucalyptus Dam located at the end of the flume.

The Murray Hill Dam.

The La Mesa Dam.

No. 2.

CONVEYING SYSTEM.

Flume, siphons, tunnels and conduits 33 miles in length, constituting the San Diego Flume, and flume known as South Fork Feeder.

No. 3.

PUMPING PLANTS DESCRIBED AS FOLLOWS:

Pumping Plant No.1.

The pumping plant known as No. 1 is located at the corner of Victoria Street and Ramona Avenue, in La Mesa Colony.

Pumping Plant No.2.

East 10 acres of SW 1/4 of NE 1/4 of Section 8, Township 15 South, Range 2 East, S.B.M., and right of way for pipe line over lands of Robert Alvord in NW 1/4 of SE 1/4 of said Section 8, to the flume of Murray and Fletcher; including pumping plant, wells and pipes on said lands.

Pumping Plant No.3.

Pumping plant known as Plant No. 3 is located upon El Capitan Indian Reservation by permit of United States Department of Interior, located as follows:

In the SW 1/4 of SW 1/4 of Section 22, Township 14

South, Range 2 East, S.B.M., whence southwest corner of said Section 22 bears from center of said pumping plant house South 38° West, 1,000 feet approximately; also wells and suction pipe lines occupying a strip of land 25 feet wide extending from center of said pumping plant house North 45° West, 400 feet approximately, and a discharge line occupying a strip of land 5 feet wide extending from said ^{South} 40° East, 350 feet approximately to the flume of Murray and Fletcher.

No. 4.

DISTRIBUTING PIPE LINES AS FOLLOWS:

The City of El Cajon system partly installed and under construction.

The Grossmont Park system consisting of a reservoir in Lot 469 and a reservoir in Lot 449 in Grossmont Park, Sub-division No. 3, and a reservoir in Lot 21 and a reservoir near Lot 75 of Grossmont Park Sub-division No. 1; all pipe lines connecting these reservoirs and other distributing lines laid upon the private ways within these sub-divisions up to and including meters of the consumers and the pipe line known as the Helix Pipe Line.

The water system in the streets of Murray Hill.

The water system in the streets of Hawley Heights.

The 36" pipe line connecting the flume and Murray Hill Reservoir.

The 24" pipe line connecting Murray/^{Hill} and Eucalyptus Reservoirs.

The ditch and pipe line known as La Mesa Ditch connecting the flume and La Mesa Reservoir.

The 24" Redwood pipe connecting La Mesa Reservoir with the main distributing pipe at the corner of Victoria Street and Ramona Avenue, in La Mesa Colony.

Wood stave pipe supplying North La Mesa, approximately

8,000 feet long.

The main distributing system beginning at the Eucalyptus Reservoir and running thence along El Cajon Avenue, through the cities of La Mesa and East San Diego and all branches owned by Murray and Fletcher, consisting of:

<u>PIPE</u>			<u>LIN. FT.</u>
4	inch Riveted Steel		7500
6	" " "		1200
8	" " "		5000
14	" " "		15920
16	" " "		24760
3	" Screw Casing		5966
4	" " "		3296
6	" " "		334
8	" " "		284
10	" " "		350
11	" " "		339
12	" " "		927
1	" Standard Screw		9898
1 1/2	" " "		2395
2	" " "		88919
3	" " "		10042
4	" " "		4516
4	" Cast Iron		1681
6	" " "		7422
12	" " "		51

No. 5.

BUILDINGS AS FOLLOWS:

Buildings at Cuyamaca Reservoir, La Mesa Reservoir and Eucalyptus Reservoir.

Section houses at Diverting Dam, Chocolate Canyon, Los Coches, Los Coches Trestle and Section No. 5.

No. 6.

WAGONS AND TOOLS, now in use by Company.

SCHEDULE "D"

WATER APPROPRIATIONS.

No. 1

Appropriation by San Diego Flume Company of the diverting dam on San Diego River, for 6,000 miner's inches, dated May 28, 1886, and recorded in Book of Water Claims No. 1, page 146.

No. 2.

Appropriation by San Diego Flume Company on South Fork of San Diego River, for 4,000 miner's inches, dated June 29, 1886, and recorded in Book of Water Claims No. 1, page 152.

No. 3.

Appropriation by San Diego Flume Company on Boulder Creek (at Cuyamaca Reservoir), for 2,000 miner's inches, dated August 4, 1886, and recorded in Book 1, page 159.

No. 4.

Appropriation by B. Otterstedt (assigned to Ed Fletcher) at diverting dam of San Diego River, for 100,000 miner's inches, dated June 1, 1910 and recorded in Book 4 of Water Claims, page 51.

No. 5.

Appropriation by W. E. Keenan (assigned to Ed Fletcher) in the southwest quarter of Section 22, Township 14 South, Range 2 East, for 50 miner's inches of water, dated June 12, 1914, and recorded in Book 4, page 218 et seq of Water Claims.

No. 6.

Appropriation by L. A. Olsen (assigned to Ed Fletcher) for 500 miner's inches in the northwest quarter of Section 8, Township 15 South, Range 2 East, (El Capitan Dam site), dated June 12, 1914, and recorded in Book of Water Claims No. 4, page 217 et seq.

No. 7.

Permit for appropriation of water for power purposes to State Water Commission on Boulder Creek in Section 10, Township 14 South, Range 3 East, for 50 cubic feet per second, filed May 9, 1913, granted March 12, 1914, and recorded in Book of Water Claims No. 4, page 208.

SCHEDULE "E"

SUPPLEMENTAL SCHEDULE.

The following properties referred to in the opinion herein, and added by the Railroad Commission in accordance with provision in contract dated November 17, 1914, between James A. Murray and Ed Fletcher, co-partners doing business under the firm name and style of Cuyamaca Water Company, and La Mesa, Lemon Grove and Spring Valley Irrigation Company, in accordance with stipulation at hearing:

1. Shops located at Normal Heights, with property on which they are located.
2. Materials and supplies on hand, including office equipment, supplies, maps, schedules, charts, drawings and other data collected by Cuyamaca Company.
3. Pumping Plant No. 4.

4. Miles Pumping Plant.
5. Grossmont Pumping Plant.
6. La Mesa/^{Dam} Pumping Plant.
7. Telephone lines.
8. Miles Reservoir No. 2, with real property on which it is located.
9. Measuring station below diverting dam.
10. Measuring station at Old Mission Dam.
11. Boulder Creek weir.
12. Sand Creek cement shed.
13. Meteorological instruments.
14. South Fork cook shack.
15. Right of way for flowage and keeper's house at diverting dam.
16. Kelly Ditch and right of way therefor, being a ditch and right of way located above the Cuyamaca damsite and used for the purpose of diverting water into Cuyamaca Reservoir.
17. All riparian rights and rights to diversion on and along San Diego River owned and controlled by James A. Murray, Ed Fletcher or William G. Henshaw, as more particularly shown and described in Cuyamaca Company's Exhibit No. 30 herein.
18. All pipe, casings and fittings located in El Cajon Avenue and installed during the years 1914 and 1915 for the purpose of delivering flood waters of the San Diego River to the City of San Diego.
19. 265 meters, varying in size from 5/8 inch to 3 inches.