

**NESTLÉ WATERS NORTH AMERICA INC.
PRELIMINARY RESPONSE TO
REPORT OF INVESTIGATION ISSUED BY THE STATE WATER
RESOURCES CONTROL BOARD STAFF ON DECEMBER 21, 2017**



FEBRUARY 9, 2018

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5772 Jurupa St
Ontario, CA
91761
TEL: 909.974.0652

February 9, 2018

VIA: ELECTRONIC MAIL and OVERNIGHT COURIER

ARROWHEAD®

Victor Vasquez, Senior WRCE
State Water Resources Control Board, Division of Water Rights
1001 I Street
Sacramento, CA 95814
Victor.Vasquez@waterboards.ca.gov

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ICE MOUNTAIN®

Mr. Ken Petruzzelli, Attorney III
State Water Resources Control Board, Office of Enforcement
801 K Street, 23rd Floor
Sacramento, CA 95814
Ken.Petruzzelli@waterboards.ca.gov

Ozarka®

RE: *NWNA's Preliminary Response*

Poland Spring®

Dear Mr. Vasquez and Mr. Petruzzelli:

Zephyrhills.

Nestlé Waters North America Inc. ("NWNA") greatly appreciates the opportunity to provide more data and information, explicitly requested by the Report of Investigation issued on December 21, 2017 (the "ROI"), and which we believe highly relevant and applicable to responding transparently and substantively to the ROI. We believe much of this new or more detailed data and information will provide the State Water Resources Control Board ("SWRCB") staff with greater insight into the total volume of surface water appropriated from the tributaries of East Twin Creek by NWNA's predecessors-in-interest prior to 1914.



re-source.

We are submitting the following:

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- (i) Preliminary Response to Report of Investigation (the "Preliminary Response");
- (ii) Exhibit 1 - E.T. Ham Pipeline Drawings;
- (iii) Exhibit 2 - Arrowhead and Puritas Waters, Inc., "Schedule of Real Estate Titles";

perrier

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- (iv) Exhibit 3 - Photo of Old Arrowhead Factory;
- (v) Exhibit 4 - Indenture Recorded on July 12, 1907;
- (vi) Exhibit 5 - Rail Car Photos;
- (vii) Exhibit 6 - Del Rosa Pleadings and Judgment; and,
- (viii) Exhibit 7 - Pioneer Title Insurance and Trust Company Report.

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The above documents have been uploaded to an FTP site, and access credentials are being sent to you under separate cover. As a courtesy, two (2) hard copies of the above documents are being couriered to you for Monday delivery.

Our conclusions, in particular with regard to our current and future compliance with authorized diversions, rely in some degree upon the positive consideration of this new data and information, as well as groundwater data and information relevant to this process but perhaps outside the purview of the SWRCB, as acknowledged in the ROI. To that end, NWNA intends to operate in good faith reliance that the data and information submitted herein is sufficient at this time to allow for our continued compliance within the amounts for which we have provided detailed substantiation with this letter. Of course, as new hydrological models are developed as requested by the ROI, which may impact these overall amounts, we may adjust our diversions accordingly. We welcome hearing from the SWRCB should it have other views with regard to this matter, and would of course comply with those amounts as ultimately determined at the conclusion of this process.

With regard to future deliverables in the ROI, NWNA believes it would be appropriate to base future delivery dates on the delivery date of the Preliminary Response. As such, NWNA proposes to deliver the items listed below on the following dates, and with this letter requests that the SWRCB approve this revised timetable. Please note that it is our understanding that it is not necessary for NWNA to file an Initial Statement of Diversion for our surface water collections from the spring sites because we are reporting our annual diversions to the SWRCB as required by the Groundwater Recordation Act, which specifically provides that such filings—which include surface water and groundwater reporting—are exempt from an additional filing pursuant to California Water Code Section 5101. If the SWRCB believes otherwise, please let us know, and NWNA will file such a statement.

- (a) Interim Compliance Plan – Monday, March 12, 2018;



- (b) Investigation and Monitoring Plan – Tuesday, April 10, 2018; and,
- (c) Report and Compliance Plan – Friday, August 9, 2019.

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NWNA stands ready to respond to SWRCB requests for additional information and data, as well as provide its views on any other submissions throughout this process, should the SWRCB seek clarification.

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We look forward to hearing back from the SWRCB staff on these issues and responding to any questions that arise from review of this submission.

CALISTOGA®

Sincerely,

ICE MOUNTAIN®

A handwritten signature in blue ink, appearing to read "Larry Lawrence".

Ozarka®

Larry Lawrence
Natural Resource Manager, NWNA

Poland Spring®

5772 Jurupa St.
Ontario, CA 91761
(714) 812-4814
Larry.Lawrence@waters.nestle.com

Zephyrhills®



cc (via email): Rita Maguire, Esq., Maguire, Pearce & Storey, PLLC

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— PLLC —

ATTORNEYS AT LAW

Rita P. Maguire
Direct Line: 602-277-2195
rmaguire@azlandandwater.com

Michael J. Pearce
Direct Line: 602-277-2195
mpearce@mpwaterlaw.com

February 9, 2018

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RESOURCES CONTROL BOARD STAFF ON DECEMBER 21, 2017**

Division Staff:

Victor Vasquez, Senior WRCE
Sacramento Valley Enforcement Unit
Division of Water Rights
State Water Resources Control Board

Respondents:

Larry Lawrence
Natural Resource Manager
Nestlé Waters North America Inc.
5772 Jurupa Street
Ontario, CA 91761
larry.lawrence@waters.nestle.com

Rita Maguire, Esq.
Maguire, Pearce & Storey, PLLC for
Nestlé Waters North America Inc.
2999 N. 44th St. Suite 650
Phoenix, AZ 85018
rmaguire@azlandandwater.com

EXECUTIVE SUMMARY

- *The ROI does not account for additional volumes available to NWNA pursuant to its pre-1914 appropriative and prescriptive water rights and groundwater rights.*
- *NWNA's total volume under its pre-1914 appropriative surface water rights (including its prescriptive water rights) is **145** AFY.*
- *NWNA's total volume under its appropriative groundwater rights is at least **126** AFY.*
- *NWNA has a valid basis of right for surface water and groundwater to collect at least **271** AFY in Strawberry Canyon.*
- *Based upon the foregoing, NWNA is not making any unauthorized diversions from Strawberry Canyon.*

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Exhibit 6, *Del Rosa* Pleadings and Judgment (1931).

Exhibit 7, Pioneer Title Insurance and Trust Company Report (September 23, 1930).

INTRODUCTION

On December 21, 2017, the State Water Resources Control Board (“SWRCB” or “Board”) issued its Report of Investigation (“ROI”) following the receipt of citizen complaints concerning Nestlé Waters North America Inc.’s (“NWNA”) collection of water in Strawberry Canyon in the San Bernardino National Forest (“SBNF”) in San Bernardino County, California. The complaints alleged diversion of water without a valid basis of right, unreasonable use of water, injury to public trust resources, and incorrect or missing reporting. The ROI did not find any basis for the complaints concerning unreasonable use of water and incorrect or missing reporting and deferred any review of injury to public trust resources until the SBNF completes the renewal process for NWNA’s Special Use Permit (“SUP”). The ROI concluded that “[w]hile Nestlé may be able to claim a valid basis of right to some water in Strawberry Canyon, a significant portion of the water currently diverted by Nestlé appears to be diverted without a valid basis of right” (SWRCB Transmittal Letter at p. 2).

NWNA disagrees with one or more of the analyses and preliminary conclusions contained in the ROI and has prepared this Preliminary Response (“Preliminary Response”) to provide evidence and legal analyses in support of its position. NWNA reserves the opportunity to supplement its Preliminary Response should more information and data become available as we continue to investigate the history and hydrology of the East Twin Creek watershed or as it becomes necessary to correct inaccurate or misleading information submitted to the Board about NWNA’s water rights and its exercise of those rights. NWNA expressly reserves all of its rights under California law, and nothing herein should be construed as a waiver of any such rights.

Pursuant to the SWRCB’s written approval on January 18, 2018, NWNA is submitting this Preliminary Response to the ROI on February 9, 2018. NWNA previously provided the SWRCB’s Water Rights Division with a legal memorandum describing the bases of its pre-1914 water rights in Strawberry Canyon with supporting documentation on July 11, 2016. Additional materials were provided by NWNA to the Water Rights Division prior to the issuance of the ROI as requested.

NWNA’s Preliminary Response will demonstrate that the ROI’s quantification of NWNA’s pre-1914 surface water rights was undercounted, that the *Del Rosa* Judgment is persuasive historical evidence of water use and relative water rights, that the *Del Rosa* Judgment gave NWNA’s predecessor-in-interest pre-1914 prescriptive rights to the flows in Strawberry Canyon, and that the hydrogeology of Strawberry Canyon supports the conclusion that a significant amount of the water collected by NWNA is percolating groundwater.

PRELIMINARY RESPONSE

I. Additional Spring Water Used to Produce Bottled Water at Arrowhead’s Los Angeles Bottling Plant, Spring Water Bottled at the Old Arrowhead Factory, and Spring Water Sold Pursuant to a Third Party Sales Contract, Qualify as Pre-1914 Water Rights under California Water Law.

The ROI concludes that NWNA has valid pre-1914 surface water rights by appropriation to 26 acre-feet per year (“AFY”) from Strawberry Canyon, a tributary of East Twin Creek, based

upon the estimated production capacity of the Arrowhead Bottling Plant in Los Angeles (“LA Plant”) in the 1920’s but planned for prior to 1914 (ROI at p. 23-24). We do not dispute this finding; however, based upon additional historical information we have located, NWNNA believes that both the LA Plant and the Old Arrowhead Factory adjacent to the Arrowhead Springs Hotel were appropriating additional flows prior to 1914 from the tributaries of East Twin Creek, which were not accounted for in the ROI and should be added to the total AFY calculated by the SWRCB. In addition, AHSC had entered into a 10-year contract in 1909 with a third party for the bulk delivery of spring water from Indian Springs. The additional volumes from each of these activities necessarily increases the total pre-1914 water rights held by NWNNA today.

A. Additional Water Used in the Production of Bottled Spring Water at Arrowhead’s Los Angeles Bottling Plant Was Not Accounted for in the ROI.

- *NWNNA is entitled to increase its pre-1914 appropriative water rights by 5.9 AFY based on volumes used (but not necessarily bottled) at the LA Plant.*

According to a newspaper article published in 1926, Arrowhead’s LA Plant produced “1,700,000 five-gallon bottles, or 8,500,000 gallons” of spring water in that year, which translates to 26 AFY, making Arrowhead Springs Company¹ the “largest spring water business in the world” (San Bernardino *Daily Sun*, October 2, 1926).² This volume reflects the amount of water actually bottled at the LA Plant but does not include the water needed to *produce* the bottled water. This is because a plant’s production capacity does not fully account for all the water used in the production of bottled water.

All beverage producing facilities, whether they bottle spring water or other commercial beverages, use more water in the production of the product than is ultimately contained in the commercially sold product. This is because the water introduced into the plant is also used by these facilities for multiple purposes, including cleaning/sanitizing processes, cooling waters, heating waters, general sanitation, and providing drinking water to employees. Each of these uses is considered an industrial use under the California Water Code (CAL. CODE REGS., TIT. 23, § 665). In order to properly calculate the amounts of water used in production, two measurements are used. Total consumptive use (“TCU”) measures the total volume of water needed to produce the finished product. The water use ratio (“WUR”) is the calculated ratio of the TCU to the total finished product at a facility.

¹ We note that each of the following entities—referenced variously throughout this Preliminary Response depending on the context—is a predecessor of California Consolidated Water Company (and is therefore a predecessor of NWNNA): (i) Arrowhead Hot Springs Hotel Company; (ii) Arrowhead Hot Springs Company (“AHSC”); (iii) Arrowhead Springs Company; (iv) Arrowhead Springs Corporation (“ASC”); and (v) Arrowhead Springs Corporation, Ltd.

² NWNNA agrees with the SWRCB that until 1926, the LA Plant’s production capacity appears to remain unchanged from its construction in 1917. However, in 1926, the owners of the LA Plant embarked upon a significant expansion of the facility.

Bottled water producing plants have become significantly more efficient over time as a result of design and machinery improvements as well as an emphasis on conserving water. The growing focus on conserving water has resulted in a series of benchmarking studies that demonstrate the recent improvements in efficiency in bottled water plants. NWNA looked at the current TCU for its Los Angeles, California plant, where Arrowhead spring water is bottled, and determined that the average TCU for the plant over the past year was 259 AFY and its average WUR was **1.7** for the period of review. The LA Plant in 1926 incorporated many of the same processes used today in the production of bottled water, but also had an additional municipal water source available for water uses that were necessary but ancillary to production and are not done today.³

The San Bernardino *Daily Sun* reported on July 23, 1926 that rail shipment of water from Arrowhead Springs was estimated to be more than 200,000 gallons each week based on an average of three tank cars shipped each day with a carrying capacity of 10,000 to 15,000 gallons per tank car. Annualized, this weekly volume of water represents **31.9** AFY. Two months later, the San Bernardino *Daily Sun* reported that 8,500,000 gallons of spring water (26 AFY) would be “consumed” that year (San Bernardino *Daily Sun*, October 2, 1926). The difference between the reported 8,500,000 gallons bottled and the 200,000 gallons shipped per week may be used to calculate a WUR for bottling operations in the LA Plant in 1926. If the difference between the reported shipped volume and the reported product volume is attributed solely to WUR factors, the resulting actual historical WUR would be approximately **1.23**, a very low WUR value for that time period.

Based on the foregoing analysis, NWNA believes that the 26 AFY assigned by the ROI as the volume of water put to beneficial use by AHSC prior to 1914 undercounts the actual volume of water used at the LA Plant by approximately **5.9** AFY, and that the actual volume of water put to beneficial use at the LA Plant was **31.9** AFY.

B. The Old Arrowhead Factory Was Bottling Spring Water from Land Not Owned by AHSC and on Land Not Owned by AHSC in 1912.

- *NWNA’s pre-1914 water rights must be increased by **9.5** AFY based on the amount of spring water used and bottled at the Old Arrowhead Factory.*

1. **Bottling of Spring Water from Coldwater and Strawberry Canyons Was an Appropriative Use of the Water at the Old Arrowhead Factory.**

In 1912, Arrowhead Hot Springs Company (“AHSC”) undertook to construct a spring water bottling plant (the “Old Arrowhead Factory” or “Factory”) on a parcel of land adjacent to the Arrowhead Springs Hotel (Los Angeles *Times*, October 11, 1912).⁴ But the spring sources

³ Today, spring water bottling plants use little or no municipal water in any production activities, including cleaning and sanitizing equipment.

⁴ The larger property located in San Bernardino County and owned by AHSC (and its successors) is referred to herein as the “Hotel Property.”

that supplied the Old Arrowhead Factory were located on land not owned by AHSC. Known as Indian Springs and Strawberry Springs, these springs are located in the San Bernardino National Forest, established in 1893 by President Harrison⁵ (*San Bernardino National Forest*. U.S. Department of Agriculture, <https://www.fs.usda.gov/sbnf>. Accessed February 4, 2018). In 1887, prior to the creation of the SBNF, the water rights in Coldwater Canyon and Strawberry Canyon were properly noticed as appropriations in accordance with California law.⁶ AHSC was (and NWNA is) the successor-in-interest to these water rights.

Spring water was collected from Strawberry Canyon and Indian Springs (located between Coldwater and Waterman Canyons) and sent via separate pipelines to the Old Arrowhead Factory. The pipelines also delivered water for bulk delivery to customers in the Los Angeles area via the railroad spur immediately adjacent to the Factory. The existence of these pipelines is confirmed by a set of pipeline drawings prepared by E.T. Ham in 1931⁷ (*see* Exhibit 1). Because the Factory opened in 1912, it is reasonable to conclude that the pipelines date from that same time, even though the currently available drawings bear a later date. In fact, the discussion below provides compelling evidence that the Indian Springs pipeline was constructed just before the end of the 19th century.

As stated above, evidence of the pipeline can still be found today in survey drawings. But reference to the pipeline's construction can also be found in the Byron Waters' Letter cited in the ROI at page 16, which clearly refers to the "appropriation" of water from Indian Springs by ASC. The Letter continues:

[T]he title to the water developed in said tunnel appears to be vested in the present owner [ASC] by virtue of constructing of such tunnel under the existing laws of California by appropriation made more than thirty years ago by the predecessors in interest of the present owner to a continuous use of said water flowing from such tunnel. . . .

(Waters, Byron. *Letter*. San Bernardino, California, February 14, 1929 at p. 2).

⁵ The federal government granted the right to the use of waters on federal lands through appropriations pursuant to the Act of July 26, 1866, c.262, § 9, 14 Stat. 251, 253 (30 U.S.C. § 661). NWNA's right-of-way for its Arrowhead pipeline across the SBNF has been authorized by SUPs issued by the SBNF since 1930.

⁶ Notices of Appropriation were filed by B.F. Coulter, President of Arrowhead Hot Springs Hotel Company, on May 9, 1887, "to the water flowing or to flow in this Strawberry Canyon" which will be "conveyed from its point of diversion through a flume twelve by twelve inches for the first 30-40 feet and thence by iron pipe diameter 10 inches to seven inches diameter at the point of use" (Notices of Appropriation recorded on May 9, 1887 and May 7, 1887 in the Official Records of San Bernardino County, Water Records Book C, pp. 22 and 40). Later in November 1887, S.W. Gillette, on behalf of Arrowhead Hot Springs Hotel, "claims the water here flowing or to flow in this Strawberry Canon [*sic*] . . . of one hundred and forty inches measured under a four inch pressure for domestic, irrigation, bathing, and manufacturing, purposes upon its lands. . . ." The water in Strawberry Canyon was claimed to be diverted by "means of a flume" (Amended Notice of Appropriation recorded on November 30, 1887 in the Official Records of San Bernardino County, Water Records Book C, p. 298). A third notice of appropriation filed by the Arrowhead Hot Springs Hotel Company on November 30, 1887 describes both "Cold Canyon" and "Strawberry Canyon" (Amended Notice of Appropriation recorded on November 30, 1887 in the Official Records of San Bernardino County, Water Records Book C, p. 296). Because Indian Springs is located immediately west of Coldwater Canyon, it has been described as located in that Canyon.

⁷ Some of the Ham drawings appear to have been dated 1929.

This quote from Byron Waters, former legal counsel for ASC, establishes that a water tunnel built by his client's predecessor was constructed about 1899 (B. Waters Letter dated February 14, 1929). Given the rugged terrain, transportation of water would have been by pipeline, which is confirmed by the set of drawings referenced above.

Mr. Waters also states in the Letter's opening paragraph that he represented the owners of the Arrowhead Hot Springs property for "more than 20 years" and was a practicing attorney in the San Bernardino Valley for "more than sixty years" (B. Waters Letter at p. 1). Given his extensive experience as a local lawyer representing a client with established water rights, he would have been expected to fully appreciate the legal significance of an "appropriative" (as opposed to a "riparian") use. His description of the use of water from Indian Springs provides compelling evidence that indeed, the production of bottled water at the Old Arrowhead Factory was an appropriative, rather than a riparian, use.

An engineering drawing of the Arrowhead Rail Line, believed to date from the late 1940's, shows changes to the rail facilities but also shows the location and dimensions of the 1912 Old Arrowhead Factory. The drawing is undated but shows dated changes ranging from 1915 to 1946 (Arrowhead and Puritas Waters, Inc. "Schedule of Real Estate Titles," Exhibit 2). The dimensions of the Old Arrowhead Factory are shown as 100 feet by 40 feet, or 4,000 square feet of manufacturing space. Based on a photo from the era, product storage appears to be outside of the Factory building, thereby maximizing the floor space allotted to production (*see* Exhibit 3). It also appears that the Old Arrowhead Factory was bottling spring water both in bulk and in five-gallon bottles (Landis, Mark. *Arrowhead Springs--California's Ideal Resort*. Wrightwood, California: Landis Publications, 2013 at p. 74).

From this information, and its experience with water botting facilities, NWNA estimates that the Old Arrowhead Factory likely produced approximately 5.6 AFY of bottled water in 1912 and for some time thereafter.⁸ Given the remote location, the 1912 Old Arrowhead Factory likely used spring water piped to the building for all water uses at the factory, resulting in a higher estimated WUR value than the proposed calculated historical WUR at the LA Plant. Based on this conclusion, an estimated WUR value of 1.7 is appropriate. Using this estimated WUR value, it is reasonable to conclude that 9.5 AFY was appropriated from Indian Springs prior to 1914 for beneficial use at this Factory.

⁸ Arrowhead later constructed another off-site bottling facility in 1926 of almost identical dimensions. The production capacity of that new facility was 1,000 five-gallon bottles per day or 5.6 AFY (San Bernardino *Daily Sun*, October 2, 1926).

2. The Old Arrowhead Factory Was Located on Property Not Owned by AHSC, and Thus Bottling Was a Non-Riparian Beneficial Use.

(a) Introduction.

Even if the spring water bottled at the Old Arrowhead Factory exclusively came from Arrowhead Springs⁹ rather than Indian Springs or Strawberry Springs, its use still would have been appropriative rather than riparian. This is because in 1907, as part of the development of the railroad link between the springs and the Los Angeles market, AHSC conveyed a parcel of property immediately adjacent to the Hotel Property (the “Railroad Parcel”) to the San Bernardino Valley Traction Company (the “Railroad Company” and later known as the “Pacific Electric Railway”), pursuant to an Indenture recorded in the Official Records of San Bernardino County on July 12, 1907 at Book 395, Page 289 (the “Indenture”) (*see* Exhibit 4). This railway line allowed passengers to travel directly to the Arrowhead Springs Hotel and allowed the Hotel’s owners to ship water in bulk and in bottles to Los Angeles and other markets.

According to the terms of the 1907 Indenture, AHSC did thereby “grant, bargain and convey” to the Railroad Company “and its successors and assigns forever, the right of way for a single or double track railway.” AHSC retained the remainder of the Hotel Property. While a portion of the Railroad Parcel contained the tracks for the rail line, the bottling facility was also constructed on a portion of the Railroad Parcel, and bottling was clearly taking place on the Railroad Parcel. After the construction of the rail line, the “Arrowhead” spring water business experienced significant growth, and the access to the Los Angeles market by this new rail line was a direct contributor to that growth (Landis at p. 74).¹⁰

The California Supreme Court has held that a right-of-way granted to a railroad by a property owner can be a grant of a fee simple interest in property (*City of Manhattan Beach v. Superior Court of Los Angeles*, 13 Cal.4th 232 (1996)). Once the Railroad Company held a fee simple interest in the Railroad Parcel, under California water law, the Factory’s production of spring water from any off-site water source became an appropriative use, rather than a riparian use.

(b) In California, Grants of Rights of Way Are Construed as Conveyances of Fee Simple Title.

Under California law, the use of the term “grant” is all the language needed to convey fee simple title to a party (*see, e.g., CAL. CIV. CODE* § 1069). California law expressly provides that for any grant of real property, fee simple title is presumed to pass to the grantee, unless it appears from the document “that a lesser estate was intended” (*see CAL. CIV. CODE* § 1105). California law also provides that grants of real property by a private party (as opposed to the government)

⁹ It is unlikely that Arrowhead Springs water was bottled in any great amount for consumption, having been described as “boiling, thermal, alkaline, saline and sulphated” (San Bernardino *Daily Sun*, December 20, 1928).

¹⁰ In 1912, AHSC announced the construction of the Old Arrowhead Factory on the Railroad Parcel (San Bernardino *Daily Sun*, July 18, 1912).

are construed in favor of the grantee (*see* CAL. CIV. CODE § 1069). Courts that analyzed the issue at the time of the Indenture have recognized compelling public policy reasons to construe grants of rights of way to railroads as grants of fee simple title. In *Northern Pacific Railway v. Townsend*, 23 S.Ct. 671 (1903), the Court noted (in the context of whether a right of way granted to a railroad under an 1864 federal statute could be adversely possessed by a private party):

[I]t must be held that the fee passed by the grant made [in the 1864 federal statute]. . . . Nor can it be rightfully contended that the portion of the right of way appropriated was not necessary for the execution of the powers conferred. . . . By granting a right of way 400 feet in width, Congress must understood to have conclusively determined that a strip of that width was necessary *for a public work of such importance*.

(*Townsend* at 672-73 (emphasis added; internal quotation marks omitted)).

This compelling public policy acknowledged by the Supreme Court is applicable to private grants of rights of way to railroads in general, and to the specific arrangement between AHSC and the Railroad Company. In order to develop a rail line, significant engineering and infrastructure needs to be planned, installed, and maintained. In order to achieve a “public work of such importance,” significant risk capital must be deployed. It is not surprising then that railroad companies, as part of this investment, would expect that they would control the fee interest in the real property—otherwise the investment, instead of benefiting the railroad which put its capital at risk, would be an unearned windfall to the property owner.

(c) California Courts Have Repeatedly Construed Grants of Rights of Way to Railroads as Grants of Fee Simple Title.

Four leading cases in California, including a California Supreme Court case, have held that with respect to conveyances of rights of way to railroads, the term “right of way” often means and refers to a fee simple interest in real property and not a lesser interest in land (*see Manhattan Beach* at 232 (conveyance of a “right of way for the construction, maintenance and operation of a Steam Railroad” was a transfer of fee simple title; the property was generally inaccessible and, without the rail line, could not be marketed at its highest value); *Machado v. Southern Pacific Transportation Co.*, 233 Cal.App.3d 347 (1991) (conveyance of a “parcel of land for a right of way for a standard gauge railroad” was a transfer of fee simple title); *Concord & Bay Point Land Co. v. Concord*, 229 Cal.App.3d 289 (1991) (conveyance of a parcel of land “to be used for a right-of-way for an electric railroad” was a transfer of fee simple title); *Severns v. Union Pacific Railroad*, 101 Cal.App.4th 1209 (2002) (conveyance of a parcel of land “for a right of way . . . [for] a first class electric railway” was a transfer of fee simple title; granting instrument contemplated that railroad would commit to a certain number of trips per day, resulting in a significant benefit to grantor)).

The general rule in water law is that riparian rights are acquired by ownership of riparian land. A riparian landowner will be found to have appropriated water if the beneficial use of the water occurs on land not owned by the landowner (*Millview County Water District v. State Water Resources Control Board*, 229 Cal.App.4th 879 (2014), citing *Crane v. Stevinson*,

5 Cal.2d 387 (1936)). If the land is severed and becomes noncontiguous to the water source, the property also loses its riparian character (*Anaheim Union Water Co. v. Fuller*, 150 Cal. 327, 331 (1907)). AHSC's grant of the Railroad Parcel to the San Bernardino Valley Traction Company resulted in fee simple title to the property being conveyed and the severance of any associated riparian rights. From that point forward, any bottling activity on the site, including at the Old Arrowhead Factory, was an appropriative beneficial water use.

Consistent with the law as articulated by the California courts, AHSC granted a fee simple parcel to the Railroad Company, operating to sever the riparian estate. The Railroad Parcel was not a riparian parcel. The bottling activities on the Railroad Parcel were therefore not riparian uses but rather appropriative, and should be included in the pre-1914 surface water rights now held by Nwana. The amount is the same set forth in Section I(B)(1) above (i.e., 9.5 AFY).

C. Additional Pre-1914 Appropriations of Water for Off-Site Bottling Were Not Addressed in the ROI.

- *Nwana's pre-1914 water rights must be increased by 16.8 AFY based on the volume of spring water bottled at other off-site locations.*

News articles published in the Los Angeles *Herald* and the San Bernardino *Daily Sun* on May 8, 1909 and August 25, 1909, respectively, reported a 10-year contract between AHSC (referred to in the articles as "Arrowhead Hot Springs Hotel") and three investors for the sale of water from Coldwater Canyon (sometimes referred to as "Cold Water" Canyon) for bottling and distribution purposes. Although Coldwater Canyon was referenced, the spring water actually came from Indian Springs, which is located immediately west of Coldwater Canyon (*see* ROI Attachments, Figure 5 at p. 5). According to the articles, the investors:

planned to construct a pipe line from Coldwater canyon to the terminus of the San Bernardino Valley Traction Company's Arrowhead line, where large tanks will be constructed and then the water shipped in large quantities to Los Angeles, where it will be bottled and placed on the market.

(Los Angeles *Herald*, May 8, 1909).

The contract provided that AHSC would deliver sufficient water through the pipeline to fill four train cars per week during the first three (3) years of the agreement. During the remaining seven (7) years, AHSC would deliver sufficient water through the pipeline to fill seven (7) train cars per week for delivery to the investors' facility (San Bernardino *Daily Sun*, August 25, 1909). Research by Nwana has determined that early 20th Century train cars could haul as much as 15,000 gallons of water per car (Los Angeles *Herald*, September 22, 1917). Nwana has located photos of the railcars likely used to transport the spring water from Indian Springs (*see* Exhibit 5). From local train schedules, Nwana can also confirm that the train made roundtrip stops to the Arrowhead Hotel station at least six times daily as early as 1910 (Walker, J., Ed. *Lines of the Pacific Electric, Northern and Eastern Districts* (Interurbans Special) (Vol. 61). Glendale: Interurbans, 1976 at p. 84). Based on the volume of water capable of being transported in railcars, and the delivery requirements of its 10-year contract with the third-party

investors, AHSC was obligated to sell 7.2 AFY of spring water through 1912 and 16.8 AFY through 1919. Using the maximum volume of spring water to be sold under the 1909 contract in accordance with California's "progressive use and development doctrine," NWNA estimates that at least 16.8 AFY qualifies as additional pre-1914 surface water rights (*see* State Water Resources Control Board Order 2006-001 at p. 8).

The ROI acknowledges that as early as 1909, there was a plan to construct a pipeline from Coldwater Canyon to the terminus of the San Bernardino Valley Traction Company's Arrowhead line (ROI at p. 16).¹¹ It also states that the first shipment of water from Arrowhead occurred in 1913 and appears to suggest that the water was bottled before it was transported (*id.*). However, based on the foregoing information, NWNA does not believe this information is accurate. News articles published in the San Bernardino *Daily Sun* in 1910 reported that water was transported *in bulk* by train from the Arrowhead Hot Springs Hotel pursuant to the 10-year contract to bottle spring water and distribute it worldwide (San Bernardino *Daily Sun*, August 25, 1909). Since the Arrowhead LA Plant was not completed until 1917, this bulk water was necessarily delivered to another facility for bottling.¹²

This beneficial water use was *in addition* to the beneficial water use at the LA Plant. There is no evidence that this volume of water was subsumed in the later deliveries to Arrowhead's LA Plant. Indeed, it likely was not, given the subsequent lawsuits between Arrowhead Springs Water Company (later known as Arrowhead Cold Springs Company, and referred to herein as "ACSC") and AHSC starting in 1910. According to a news article published on May 27, 1910 in the San Bernardino *Daily Sun*, ACSC sued AHSC because the latter refused to continue to deliver water through its pipeline pursuant to its contract with ACSC. In June 23, 1910, an article in the Los Angeles *Herald* reported that ACSC was found to have defrauded the public because it claimed it was selling mineral water from Arrowhead Spring rather than water from Coldwater Canyon, the actual source of the water. The article goes on to report that an agreement was reached between the parties requiring ACSC to obtain the approval of AHSC for any advertising of its product, but two years later the parties were back in court. On June 19, 1912, the San Bernardino *Daily Sun* reported that AHSC sued ACSC for mislabeling its products. Perhaps out of frustration, or more likely in recognition of the growing demand for bottled water, just one month later AHSC announced plans for the construction of the Old Arrowhead Factory (San Bernardino *Daily Sun*, July 18, 1912).

D. Conclusion

NWNA is entitled to a total of 58.2 AFY, based on: (i) 31.9 AFY of pre-1914 water rights at the LA Plant, based on the initial 26 AFY acknowledged in the ROI and additional

¹¹ NWNA notes that the ROI assumes only ASC and CCWC (and their predecessors) were bottling and selling spring water from the East Twin Creek watershed. However, based upon multiple news articles published in the San Bernardino *Daily Sun*, the Los Angeles *Herald*, and the Los Angeles *Times* between 1909 and 1912, there was at least one other off-site bottler of spring water from AHSC's Coldwater Canyon's appropriation prior to 1914.

¹² According to city records, the Arrowhead Cold Springs Co. was listed under "Water-Mineral," and was located at 1515 E. 7th St., Los Angeles, CA.

water used to produce the bottled spring water (5.9 AFY); (ii) the operation of the Old Arrowhead Factory adjacent to the Arrowhead Hotel in 1912 (9.5 AFY); and (iii) the 10-year contract with ACSC beginning in 1909 (16.8 AFY).

Table 1. Summary of NWNA’s Pre-1914 Water Rights

Facilities	Volume of Spring Water (AFY)	Source
LA Plant	26 + 5.9 (WUR) = 31.9	Indian/Strawberry/Arrowhead
Old Arrowhead Factory	5.6 + 3.9 (WUR) = 9.5	Indian/Strawberry/Arrowhead
3 rd Party Contract	16.8 (bulk)	Indian
TOTAL	58.2	Indian/Strawberry/Arrowhead

II. The Significance of the *Del Rosa* Judgment Is Unfairly Discounted in the ROI’s Analysis of NWNA’s Water Rights in Strawberry Canyon.

A. The *Del Rosa* Judgment Provides the “Best Evidence” of the Rights of ASC and CCWC.

1. California Law Provides that Del Rosa Is Persuasive Evidence of Historical Water Use and Relative Water Rights.

Del Rosa Mutual Water Company v. D.J. Carpenter, et al., No. 31798 (1931) (hereafter “*Del Rosa*” or “*Del Rosa* Judgment”) is persuasive evidence of historical water use and the relative water rights in the East Twin Creek watershed. *Del Rosa* was an adjudication of all the water rights in the East Twin Creek watershed, including all of the tributaries, above Del Rosa Mutual Water Company’s (“DRMWC”) point of diversion.¹³ The ROI states that because the SWRCB has “concurrent jurisdiction over water,” the outcome of this judicial proceeding is not binding on the SWRCB and it may draw its own, different conclusions (ROI at p. 25). However, the California Court of Appeal in *Pleasant Valley Canal Co. v. Borror* (61 Cal.App.4th 742, 778 (1998)), in holding that a trial court judgment can be “the best available evidence of . . . relative water rights,” suggests that the SWRCB should defer to these prior judicial findings of fact in cases such as *Del Rosa*.

Pursuant to *Pleasant Valley*, trial court judgments regarding the relative water rights of parties can constitute “persuasive evidence of the historic use of water . . . [and] water rights as they existed [at the time of the judgment]” (*see Pleasant Valley* at 766). The trial court judgment in *Pleasant Valley* was based on stipulated agreements between certain water users (*see Pleasant Valley* at 748). However, in *Pleasant Valley*, the adjudication relied upon by defendant Borror

¹³ Adjudication over the rights to diversions from the East Twin Creek watershed began as early as 1920 between DRMWC and Arrowhead Springs Company and was significant enough to garner news coverage in the local paper (San Bernardino *Daily Sun*, April 15, 1920). The earlier action never reached conclusion, but the later action, filed in 1930, was carried through to final judgment. The entire file of this latter *Del Rosa* litigation, obtained from the San Bernardino County Superior Court, is attached to this Preliminary Response as Exhibit 6. It contains a complaint, amended complaint, a stipulation for judgment, and a final judgment, among other documents.

for his water right claim was not a comprehensive adjudication of all the rights in the watershed because it failed to include numerous other water right users (*id.* at 767). Further, the *Pleasant Valley* parties were not adverse to one another in the underlying adjudication, they were co-defendants, and the underlying adjudication made no determination of rights as between the co-defendants. Although the *Pleasant Valley* Court did not fully recognize the prior adjudication of the water rights between the plaintiff and defendants due to the two infirmities discussed above, the Court did conclude that it was the best available evidence of the historic water use and, consequently, of the relative water rights of the parties (*id.* at 742).

Here, *Del Rosa* clearly constitutes strong corroborative and persuasive evidence of the historic water use and relative water rights in the watershed, because *Del Rosa*: (i) is a trial court judgment determining the relative water rights of **all** the parties **with claims to East Twin Creek and its tributaries**; and (ii) is based on a verifiable factual record (*see* Section II(A)(2) below). *Del Rosa* provides evidence that: (a) ASC and its predecessors had been taking water from the East Twin Creek watershed for more than fifty (50) years and was steadily increasing that volume; and (b) CCWC, subject to its agreements with ASC, acquired water rights to springs in Strawberry Canyon north of a certain boundary line (*Del Rosa* at pp. 6, 10). Like *Pleasant Valley*, *Del Rosa* was based on a stipulation but only after evidence was presented to the court (*Del Rosa* at pp. 1-2).

Moreover, *Del Rosa* constitutes even stronger evidence of historic water use and water rights than the trial court judgment in *Pleasant Valley*. While the trial court judgment in *Pleasant Valley* did not extend to all users of the water at issue, the *Del Rosa* Judgment—on the other hand—does. *Del Rosa* was a comprehensive adjudication of all the water rights in the watershed. The Amended Complaint specifically alleges:

that for a complete adjudication and determination of the rights of this plaintiff it is necessary to determine and adjudicate the rights of each and all of the defendants in and to the use of the water of said East Twin Creek and its tributaries; [and] ***that this plaintiff and said defendants constitute all of the claimants to the use of water of and from said East Twin Creek and its tributaries.***

(Amended Complaint at p. 9 (emphasis added)).

The Amended Complaint also specifically alleges that the plaintiff [DRMWC] is entitled to divert all of the flow of East Twin Creek at DRMWC's point of diversion (measured by the plaintiff at 130 inches of water, with one inch equal to 1/50 cubic foot per second), yet at the same time alleges that "some of said defendants have acquired a right to enter in and upon said East Twin Creek above plaintiff's point of diversion and take and divert water therefrom, some of which rights are on a parity with the rights of this plaintiff . . ." (Amended Complaint at p. 8). The Amended Complaint further alleges that "there is not enough water flowing in said stream or available during the irrigation period of any year to supply the right of this plaintiff and the claims of each and all of said defendants, and it is necessary to apportion the quantity of water available therein among the parties . . . that frequently the flow of said stream falls below 100

inches during the irrigating season . . .” (*id.*).¹⁴ The Amended Complaint also alleges “that the diversions of said defendants are not made at the same place upon said stream, but are at various places throughout the course of said stream; and affect and lessen the quantity of water flowing at plaintiff’s point of diversion . . . that this plaintiff and said defendants constitute all of the claimants to the use of water of and from said East Twin Creek and its tributaries” (*id.* at pp. 8-9).

In addition, while the relevant parties in *Pleasant Valley* were not adverse to one another, the relevant parties in *Del Rosa* were. Judge Leonard’s approved form of judgment describes the adjudicated rights to all of the water in the East Twin Creek watershed and its principal tributaries: “Strawberry Creek, Coldwater Creek, Hot Springs Creek, and other named and unnamed tributaries and springs, all of which flow and percolate into . . . and become a part of said East Twin Creek” above the plaintiff’s point of diversion. As noted, there were numerous adverse parties to the stipulated judgment including a plaintiff, defendants and cross-claimants. All of their rights were determined.¹⁵ Importantly, no subsequent claims or litigation to the water addressed by the *Del Rosa* Judgment have been brought in the nearly 87 years since the case was decided and no new claimants have appeared to challenge the water rights determined by the court.

Given the comprehensive nature of *Del Rosa*, the fact that evidence was presented to and considered by the Court, the fact that the parties were adverse, and the fact that it has gone unchallenged since its issuance, it must be given greater consideration by the SWRCB. At minimum, the SWRCB must acknowledge that *Del Rosa* provides the “best available evidence” of the historic water use in the East Twin Creek watershed. Beyond that, however, *Del Rosa* provides an entirely separate basis for water rights perfected in the name of NWNA’s predecessors.

2. *Del Rosa* Is Consistent with Contemporaneous Historical Records.

Del Rosa is consistent with a multitude of contemporaneous historical records in holding that ASC (and its predecessors) had been diverting water from the upstream canyons in the East Twin Creek watershed and putting it to beneficial use prior to 1914. As previously discussed, articles in various local newspapers confirm that ASC’s predecessors had been diverting water and putting it to beneficial use at the Old Arrowhead Factory, at the LA Plant, and through a 1909 contract with a third party bottler. *Del Rosa*’s alignment with the contemporaneous (and independently derived) historical record is further evidence that the factual conclusions set forth in *Del Rosa* are sound. Thus, *Del Rosa* continues to be compelling evidence of historical water use in Strawberry Canyon.

¹⁴ A decline of 30 inches of flow, as measured by the plaintiff’s standard, would, over the course of a year, equate to a diminution in volume of some 434 acre-feet.

¹⁵ The *Del Rosa* Judgment fixes the volume that ASC may take for riparian purposes at not greater than 10 inches, and also awards 10 inches to the miscellaneous defendants (other than ASC and CCWC). That would leave 10 inches to CCWC which, if measured in annual volume, would be approximately 145 AFY.

3. The SWRCB Should Defer to Del Rosa for Strong Policy Reasons.

In addition to the legal and historical reasons set forth above, there are strong policy reasons for the SWRCB to defer to *Del Rosa*. The judgment in *Del Rosa* became final over 86 years ago, and parties have been reasonably relying on it ever since. Both Federal and State law recognize a strong public policy interest in the finality of judgments (*see, e.g., Kachig v. Boothe*, 22 Cal.App.3d 626, 632 (1971)), in order to allow parties and non-parties alike to take actions based on reasonable reliance. In reliance on this case, no party to the litigation—in fact, no party whatsoever—has ever challenged the findings.

There are specific public policy reasons that underlie the larger public policy in favor of the finality of judgments. These include: (i) a public policy in favor of not unilaterally overturning long-standing precedents; (ii) a public policy in favor of allowing parties to deploy resources in reliance on established precedents; and (iii) a public policy in favor of reliable and dependable judgments. To ignore these would put entire commercial enterprises at risk.

To ignore *Del Rosa* would be to up-end over 86 years of reasonable reliance by NWNA (and its predecessors), as well as third parties. Moreover, NWNA and its predecessors have reasonably relied on *Del Rosa* to their detriment in structuring their water bottling business. Over the course of the last eight decades, NWNA and its predecessors have expended untold millions of dollars in reliance on *Del Rosa*. It would be inequitable for the SWRCB to completely discount *Del Rosa* to NWNA's detriment.

B. The *Del Rosa* Judgment Creates a Prescriptive Right by NWNA's Predecessors to the Tributary Flows of East Twin Creek.

Del Rosa creates a prescriptive right in favor of NWNA's predecessors to the tributary flows of East Twin Creek. As set forth below: (i) the ROI's characterization of *Del Rosa* is not borne out by the facts; (ii) California law allows for the acquisition of a private water right by prescription; (iii) the *Del Rosa* Court properly found that CCWC and ASC had acquired the pre-1914 water rights of DRMWC by prescription; and (iv) the proper quantity of NWNA's pre-1914 prescriptive water right is 145 AFY.

1. The ROI's Characterization of *Del Rosa* Is Not Borne Out by the Facts.

The ROI's characterization of *Del Rosa* is not borne out by the facts—in fact, *Del Rosa* was a truly adversarial proceeding. The ROI states that “Nestlé claims to have acquired a pre-1914 water right based on the [*Del Rosa*] Judgment; however, the Judgment did not carve out a right from a pre-1914 right held by Del Rosa [DRMWC] or ASC [Arrowhead Springs Corporation, Ltd.]. CCWC [California Consolidated Water Company] believed it acquired rights from ASC through the three agreements, but CCWC could only acquire rights from ASC insofar as ASC had rights to transfer” (ROI at p. 25). The ROI goes on to state that: “Alternatively, had Del Rosa transferred part of its pre-1914 water right to CCWC, the right would have maintained a pre-1914 priority date. However, the Judgment does not indicate that Del Rosa transferred its right to CCWC. Instead, it indicates that CCWC's rights were independent of Del Rosa's” (ROI at p. 25).

These conclusions overlook the fact that the *Del Rosa* Judgment did, by its express terms, take something from DRMWC. It found as a matter of fact that CCWC “and its predecessors in interest have *for more than five years prior to the commencement of this action* diverted into reservoirs and tanks and have diverted, *taken and transported* to Los Angeles and other places for bottling purposes and other commercial uses, *water from said watershed adversely to said plaintiff* [DRMWC], *and to all other defendants, except Arrowhead Springs Corporation, Ltd.*” (*Del Rosa* at p. 4) (emphasis added). It further expressly found that this taking was injurious to DRMWC, for which injury monetary compensation was actually paid.¹⁶ It further expressly describes uses by ASC and CCWC not only as “adverse” to DRMWC, but as an “exception” to DRMWC’s ability to otherwise take all of the water available at its point of diversion under DRMWC’s pre-1914 rights.

The ROI suggests that the judgment entered in the *Del Rosa* case cannot support a finding of a vested water right in NWNA’s predecessor CCWC, because it was “not a ruling issued by a court after a full trial with testimony and cross-examination, but a stipulated agreement and settlement between private parties.” The ROI also suggests that the “parties could also achieve different outcomes than otherwise may have occurred through a full judicial proceeding on the merits and a technical application of water right law (OE, 2017a)” (ROI at p. 25). NWNA believes that these views are inconsistent with the express recitations of fact in the *Del Rosa* Judgment, and the application of relevant California water law to those facts.

Clearly, this was not a “friendly” proceeding in which everyone simply agreed to the other’s water rights. Hostility was alleged, oral evidence was introduced (*Del Rosa* Judgment at p. 1), findings of fact and conclusions of law were expressly made, and compensation was ordered to be paid in the form of cash (from two different parties). Specific restrictions on future water use by all parties were imposed (*Del Rosa* at pp. 9-13). If any significance is to be attached to the fact that the judgment was based upon stipulation of the parties, then it must also be clear that DRMWC conceded the actual adverse use by CCWC and ASC and thus conceded the corresponding (30 inches) diminution in supply to DRMWC that it originally alleged.

The ROI’s questioning of the judge’s technical application of water right law is also inconsistent with the general understanding that courts are presumed to know the law of the state, and to apply it regardless of the circumstances. As reviewed below, nothing in the *Del Rosa* Judgment is inconsistent with California water law, as it existed at that time or today, nor is there any reason to suggest that a different outcome should have prevailed.

Viewed in this light, the *Del Rosa* Judgment represents a judicial determination of a perfected prescriptive right in favor of CCWC and against DRMWC based in part on CCWC’s own actions, and those non-riparian rights acquired from ASC of whatever nature they were. The findings of fact and legal conclusions as recited in the *Del Rosa* Judgment cannot be reasonably interpreted otherwise. And, as noted below, this legal conclusion is consistent with

¹⁶ The official file of the San Bernardino County Superior Court on the *Del Rosa* case includes two documents entitled “Satisfaction of Judgment” indicating that amounts awarded were actually paid to DRMWC.

California water law on the nature and viability of prescriptive rights acquired by adverse possession occurring after 1914.

2. California Water Law Allows for the Acquisition of a Private Water Right By Prescription.

Under California law, prescriptive water rights (*i.e.*, water rights acquired by adverse possession of someone else's water right) permit a private party to acquire the water rights of another private party. For many decades, such prescriptive rights were recognized by California courts as a routine matter (*Morgan v. Walker*, 217 Cal. 607 (1933) (decided by the California Supreme Court two years after the *Del Rosa* Judgment and applying principles of prescription); *see also Orange County Water District v. City of Riverside*, 173 Cal.App.2d 137 (1959) (determining and validating the relative prescriptive rights of the parties to the waters of the lower Santa Ana River watershed, to which East Twin Creek is tributary)).

The case of *People v. Shirokow* (26 Cal.3d 301 (1980))—which was decided nearly 50 years after *Del Rosa*—modified the general rule by carving out publicly-held water from the scope of water rights that could be acquired by prescription. The *Shirokow* Court held that **publicly-held** water could not be acquired by prescription subsequent to 1914, but explicitly did not affect the ability of a party to acquire **privately-held** water rights by prescription (*see Shirokow* at 312, n. 15; *see also, Brewer v. Murphy*, 161 Cal.App.4th 928, 937 (2008) (“[W]e reject defendants’ contention that the Water Code presented the exclusive method by which plaintiffs could obtain rights to water from the spring”)).

Accordingly, California law provides for the perfection of a prescriptive right as against another, competing user of water—assuming that the requisite elements of adverse possession are shown. Those elements are succinctly stated in *City of Pasadena v. City of Alhambra*, 33 Cal.2d 908 (1949):

[A]n appropriative taking of water which is not surplus is wrongful and may ripen into a prescriptive right where the use is actual, open and notorious, hostile and adverse to the original owner, continuous and uninterrupted for the statutory period of five years, and under claim of right.

(*City of Pasadena* at 926-27) (applying this law to prescriptive rights in groundwater, but noting, with citations, that this approach is in accord with the rule announced in cases dealing with water in a surface stream).

As noted on page 25 of the ROI, prescriptive water rights are given the priority date of the water right acquired (*see also, Kinney, Clesson Selwyne. Kinney on Irrigation and Water Rights*. San Francisco: Bender-Moss Company, 1912 at § 1058, pp. 1898-1899). Further, “[t]he effect of a right acquired by prescription is to vest in the claimant the title to the same as completely as if conveyed to him by deed from the original owner” (*id.* at §1057, p. 1897).

3. The *Del Rosa* Judgment Expressly Found All of the Required Elements of a Prescriptive Right with a Pre-1914 Priority Date.

Here, the specific findings of the *Del Rosa* Judgment and the context of the litigation show all of the requisite elements. First, the adverse use was actual, the Court having found that CCWC “for more than five years prior to the commencement of this action diverted into reservoirs and tanks and have diverted, taken and transported to Los Angeles and other places for bottling purposes and other commercial uses, water from said watershed . . .” (*Del Rosa* p. 4). Second, that such use was “open and notorious” is apparent from the fact that both CCWC and ASC were hauling this water away in rail cars immediately upstream from DRMWC’s point of diversion in such quantities as to be newsworthy. Third, the fact that such use was “hostile and adverse to the original owner” is apparent not only from the fact that it was DRMWC that initiated this lawsuit,¹⁷ but also by the finding that “the taking of such water will be injurious to plaintiff’s [DRMWC’s] right” (*Del Rosa* at p. 8). Fourth, that the use by CCWC was “continuous and uninterrupted for the statutory period of five years” is expressly found as a matter of fact within the Judgment, and is a point that must have been conceded by DRMWC (*Del Rosa* at p. 4). Fifth, that the use by CCWC was “under claim of right” is clear from the fact that CCWC believed it was taking under the deeds and agreements from ASC, as acknowledged by the SWRCB in the ROI (ROI at p. 25, quoted above) and as acknowledged by DRMWC (Amended Complaint at p. 8).

Moreover, *Shirokow*’s prohibition on the adverse possession of unused **publicly-held** water does not apply here. Rather, the parties in *Del Rosa* were adverse to each other with respect to existing **privately-held** beneficial uses of water (*Del Rosa* at pp. 3-4). Because DRMWC was appropriating, for actual beneficial use, “all” of the water of East Twin Creek, the context of the litigation compels the conclusion that the parties—and the Court—were aware that this was not a situation where there was “surplus” publicly-held water available to be taken or given away. Rather, only privately-held water rights were at stake.

Thus, all of the elements of a prescriptive acquisition of DRMWC’s rights were established, and, by the express findings of the *Del Rosa* Judgment, the elements ripened into a perfected pre-1914 right in favor of CCWC taken from DRMWC by adverse possession.

In addition, the water rights acknowledged by the *Del Rosa* Court as belonging to CCWC and ASC (by prescription) were pre-1914 water rights, because they were DRMWC’s pre-1914 appropriative rights to the water in East Twin Creek and its tributaries. Because these prescriptive water rights were pre-1914 rights, CCWC was not obligated to comply with the SWRCB’s permitting process (*see* CAL. WATER CODE §§ 1202, 1225). Accordingly, the ROI’s statements to the contrary are mistaken (*see* ROI at p. 25). As the successor-in-interest to the

¹⁷ According to a report issued by the Pioneer Title Insurance and Trust Company with respect to the 1931 *Del Rosa* litigation, in 1920 DRMWC first sued Arrowhead Springs Company to quiet title to 130 inches of water from East Twin Creek. “After the joinder of the issues the Case has lain dormant in the files while the property of both the plaintiff and defendant has passed to new owners. This Action [*Del Rosa* (1920)] apparently arises out of the same cause of Action as that claimed in the present case” (Pioneer Title Insurance and Trust Company. *Title Report*. San Bernardino, California, September 23, 1930 at p. 7; attached as Exhibit 7).

pre-1914 rights held by ASC, CCWC acquired the majority of those rights as well, except for those expressly retained riparian rights held by ASC and acknowledged in the *Del Rosa* Judgment (*Del Rosa* at p. 9-10).

4. The Proper Quantity of NWNA's Pre-1914 Prescriptive Right Is 145 AFY.

Under its pre-1914 prescriptive water right, NWNA is entitled to develop water from the springs in Strawberry Canyon located north of a certain boundary line.¹⁸ With respect to the quantification of the prescriptive right perfected by CCWC, *Del Rosa* specifies that CCWC is entitled to “all the water now flowing and hereafter developed and flowing from said springs” (*Del Rosa* at p. 8). However, NWNA is not relying on an unquantified amount of the diversion as the sole measure of volume (*see Pabst v. Finmand*, 190 Cal. 124 (1922)).

In this case, the quantification of the use under the *Del Rosa* Judgment is based on DRMWC's own allegations. DRMWC alleged that CCWC (in its own right or as successor to ASC's non-riparian rights) was diminishing the flow at DRMWC's point of diversion by an unaccounted for 10 miner's inches of water (*i.e.*, 145 AFY at continuous flow). That amount would be the “best evidence” of CCWC's acquired pre-1914 appropriative surface water right. But it is also apparent that all of the parties understood that capturing water above the half section lines of Sections 31 and 32, Township 2 North, Range 3 West in Strawberry Canyon would involve artificial development of water. Such developed water, as the ROI acknowledges, would almost certainly include a component of percolating groundwater, and would also include a component of surface water. That ratio of groundwater to surface water could not likely be quantified then, and it remains difficult to quantify today.

When the *Del Rosa* litigation was commenced, CCWC was in the process of developing this supply. There was certainly some amount of surface water flowing at the springs. This would have been, in pre-development conditions, an unimpeded tributary flow to the waters of East Twin Creek and to DRMWC's pre-1914 right. While the exact amount of water obtainable was not yet known, it was clear that the taking of that natural flow would have some detrimental impact on DRMWC. Nevertheless, the court found that, based upon the extensive development of business by CCWC “dependent entirely upon such supply of water,” it would be “inequitable to enjoin said defendant from *continuing* to so take and use said water that said defendant requires . . .” (*Del Rosa* at p. 8) (emphasis added). Today, it is likewise reasonable to understand that the amount of the pre-1914 appropriative water right acquired by CCWC to the water “now flowing” from the natural springs would be equivalent to the prescriptive right acquired by CCWC under the terms of the *Del Rosa* Judgment (*i.e.*, 145 AFY).

¹⁸ The ROI concludes that CCWC's point of diversion was properly moved (ROI at p. 32; *see also* CAL. WATER CODE § 1706). NWNA agrees. NWNA reserves its right to submit additional materials with respect to this matter in the event that such materials are requested by the SWRCB (or otherwise).

C. Conclusion

It is apparent from the circumstances and the detailed wording of the *Del Rosa* Judgment that the parties in and around East Twin Creek, including DRMWC, ASC, CCWC, and the other private party defendants, were actively using, and attempting to maximize their use of, all of the available waters tributary to, and part of, the East Twin Creek watershed. Some of that use, particularly by ASC and CCWC, was expanding to the point where it was encroaching upon the flow at DRMWC's point of diversion such that it compelled DRMWC to initiate the lawsuit and seek to apportion the water between DRMWC and the allegedly unauthorized upstream users, including CCWC and its plans to capture and develop water in the upper reaches of Strawberry Canyon. The settlement reached among the parties, and the findings of fact contained within the *Del Rosa* Judgment, however, show that DRMWC's claim of right to 130 miner's inches may have been vulnerable to loss to third parties by adverse possession.

This conclusion is consistent with other evidence of the actual beneficial use of water *after* 1914 by both ASC and CCWC found in the news articles of the time. The San Bernardino *Daily Sun* reported in an article dated July 23, 1926 that consumption of "Arrowhead" water in "Los Angeles, Venice and other beach points" had reached more than 200,000 gallons per week, and daily shipments of water averaged three cars per day (*i.e.*, 31.9 AFY). In addition, over 150 delivery trucks were routinely delivering five-gallon bottles of water from 30 separate Arrowhead distributing units (San Bernardino *Daily Sun*, March 5, 1929). ASC had previously announced the construction of a new Arrowhead bottling plant in 1926 to capitalize on the growing market for bottled spring water (San Bernardino *Daily Sun*, October 2, 1926). CCWC ultimately entered into several agreements with ASC to purchase its water bottling business in the late 1920's, and commenced construction of the infrastructure contemplated by the agreements. The continuing expansion of this water bottling activity clearly led to the litigation between DMWRC, CCWC and ASC.

DRMWC must have recognized that its claim of unauthorized use by the upstream defendants might be barred by the application of the principles of adverse possession. In fact, DRMWC ultimately stipulated that the adverse use *had* been continuing for a period of "more than five years" (*Del Rosa* at p. 11). In this circumstance, the *Del Rosa* Court would have been justified then—and even today—in determining that such adverse use had ripened into a perfected water right. Knowing that CCWC intended to capture both the natural flow (water "now flowing" in pre-development conditions) and additional future developed flow from the capture of percolating groundwater in the upper reaches of Strawberry Canyon, DRMWC must have also conceded that the natural flow at the upper springs was a reasonable quantification of the adverse diminution of its available downstream supply.

That conclusion has withstood the test of time. Even today, no downstream successor-in-interest to DRMWC or the other defendants have reasserted a challenge to the water rights put to beneficial use by CCWC and its successors over the almost nine decades since the *Del Rosa* judgment was entered. NWNA, as the principal successor, should be entitled to maintain that use of the natural flow for the same purpose, and in the same relative amounts, as the *Del Rosa* Court deemed equitable in 1931.

Finally, CCWC (and NWNA, as its successor) also had the right, as a prescriptive holder of a pre-1914 right acquired from DRMWC, to develop that natural supply by “capturing or channeling previously uncaptured water.” As understood from the ROI Attachment OE2017b at pages 5-6, an upstream diverter “appropriating developed water from a spring that forms or is tributary to a watercourse there has the burden to prove the appropriation will not deplete stream flow to the detriment [of] prior rights.” In this regard, the *Del Rosa* judgment is not only the “best evidence” that the appropriation was proper, but is a judicial determination of a perfected right to make that appropriation.

Table 2. Summary of Prescriptive Rights Acquired by NWNA’s Predecessor-in-Interest CCWC

Prescriptive Rights Granted by <i>Del Rosa</i>	Volume	Priority Date
CCWC	Pre-development normal flow (i.e., 145 AFY). This figure includes the 58.2 AFY set forth in Section I above.	Pre-1914

III. Developed Water at the Springs Can Include Surface Water and Groundwater.

NWNA’s springs consist of five distinct spring sites located within Strawberry Canyon on the southern slope of the San Bernardino Mountains. The Arrowhead Springs are located within the Strawberry Creek watershed, approximately eight miles north-northeast of the town of San Bernardino in Sections 30 and 31 of Township 2 North, Range 3 West, of the San Bernardino Baseline and Meridian. The Arrowhead Springs and portions of the spring water collection system are located within the boundaries of SBNF. The balance of the spring water collection infrastructure, including portions of the pipeline, water storage silos, and truck loading station, are located on private property owned by the San Manuel Band of Mission Indians and referred to hereafter as the Arrowhead Campus. The Arrowhead Campus lies in the foothills of the San Bernardino Mountains approximately four miles southwest of the Arrowhead Springs.

Spring water is collected from the Arrowhead Springs by means of 10 horizontal boreholes and two tunnels constructed at five spring areas. The boreholes are referred to as Boreholes No. 1, No. 1A, No. 7, No. 7A, No. 7B, No. 7C, No. 8, No. 10, No. 11, and No. 12. The boreholes have been constructed adjacent to, or in the immediate vicinity of, three of the spring areas. Springs No. 2 and No. 3 were developed by construction of water collection tunnels advanced at the location of the natural spring orifice, and have no boreholes associated with them. The tunnels and boreholes have been installed to facilitate sanitary collection of spring water. Spring water flows from horizontal boreholes and tunnels by gravity alone; no external force is used to collect water from the fractured bedrock aquifer. Spring water from the horizontal boreholes and tunnels is conveyed by gravity through the pipeline to silos at the Arrowhead Campus. Spring water is then transported by truck to bottling plants where it is bottled as Federal Food and Drug Administration defined Spring Water in accordance with regulations set forth in Title 21 Part 165 (21 CFR Part 165) (FDA, 1995).

NWNA's average annual collections from the springs in Strawberry Canyon since 1947 are approximately five percent of the average annual streamflow through the USGS' stream gauge on East Twin Creek downstream of the Arrowhead Springs Hotel (ROI at p. 9). Since 1920, the annual average flows in East Twin Creek below the NWNA points of diversion ("PODs") in Strawberry Canyon is 3,681 AFY, while the annual average collections by NWNA since 1947, as reported in its annual Groundwater Recordation filings, averaged 192 AFY or five percent of the downstream flows in East Twin Creek (ROI at p. 9). Thus, NWNA's collections of spring water in the Canyon comprise a very small percentage of the overall flows that contribute to East Twin Creek. NWNA has spent a significant amount of time and resources developing a thorough understanding of the hydrogeology in Strawberry Canyon. Nevertheless, NWNA is interested in working with the SWRCB to develop additional data and information to ensure that all parties have a better understanding of the legal nature of the water developed by NWNA through the use of tunnels or boreholes as defined under California law.

The tunnels and horizontal boreholes at NWNA's collection points in the San Bernardino Mountains were constructed at or adjacent to naturally occurring spring sites for the purposes of capturing spring water and developing additional percolating groundwater from the same underground strata feeding the springs. The tunnels and horizontal boreholes successfully achieved these purposes. The Dames and Moore Report (1999) reviewed by the SWRCB Staff demonstrated that each of the tunnels and horizontal boreholes collects water from the same underground strata feeding the springs. A portion of the water collected may reasonably be assumed to have been intercepted before discharging at the spring site, where it may have flowed to the surface of the Earth becoming surface water. A portion of the water collected has been demonstrated to be groundwater percolating through the same strata feeding the spring, and may be considered to be "developed water" because it represents an increase in flow above the natural spring discharge. As recognized by the Board, a diverter who develops water by capturing or channeling previously uncaptured water has a right to the increased flow (ROI Attachment OE 2017B at pp. 5-6 citing *Churchill v. Rose*, 136 Cal. 576, 578-579 (1902); *Pomona Land & Water Co. v. San Antonio Water Co.*, 152 Cal. 618, 623 (1908)).

At the time of construction of each of the tunnels and boreholes, no consideration was given to differentiating the fractions of surface water or groundwater as developed water because the predecessors in interest to NWNA had been adjudicated to hold rights to both types of water within Strawberry Canyon. Consequently, no data presently exist that may be used determine the fraction of developed water at each tunnel and borehole that is surface water and the fraction that is groundwater. The Board partly addressed this lack of data by conducting analysis of the development sequence relative to flows at the 7's spring site, and evaluation of testing results reported by Dames and Moore (1999) at the 10,11, and 12 spring site.

The approach taken by the Board to determine the portion of surface water in the developed water at the 7's, 10, 11 and 12 spring sites is reasonable and based on available data. At the 7's spring site, the Board compared reported flow volumes from the original infiltration gallery to those reported from the horizontal boreholes constructed after the infiltration gallery was abandoned. The Board reasonably concluded that the difference in flow between the infiltration gallery and horizontal boreholes may represent the volume of developed water. At the 10, 11, and 12 spring site, the Board reviewed the report prepared by Dames and Moore (1999) describing the results of a shut-in test at this spring site and reasonably concluded that the

test reflected the relationship between the amount of surface water flow in the developed water volume.

The analysis and review performed by the Board and presented in the ROI resulted in an estimated total volume of developed groundwater at the spring sites of 126 AFY. NWNNA believes this volume of developed groundwater and the methods used to derive it are reasonable, given the limited amount of available data. However, given the lack of data, the Board did not perform any analyses at springs 1, 1A, 2, 3, or 8 to estimate the proportion of surface water to developed groundwater. Pursuant to the ROI's "Recommendations," NWNNA is currently preparing an investigation and monitoring plan that will include a methodology to determine the relative proportions of developed water (ROI Transmittal Letter at p. 3). The testing may include a combination of shut-in tests, surface water flow measurement, and other analyses to characterize flow from each of the spring sites. The intent of this study is to develop data that may be used to identify the proportions of developed water at each of the spring sites. This testing may generate additional data at spring sites 10, 11, and 12, and the 7's, which may facilitate further analysis of the volume of developed water at these spring sites.

As the Board is aware, NWNNA has prepared a draft Adaptive Management Plan (AMP) in conjunction with its application for renewal of Special Use Permit (SUP) No. 7285. The draft AMP includes a provision to conduct shut-in tests at each of the spring sites that are similar to, but more extensive than, the test conducted by Dames and Moore (1999) at the 10, 11, and 12 spring site. NWNNA is interested in working with the SWRCB to develop additional data and information to ensure that all parties have a better understanding of the legal nature of the water developed by NWNNA through the use of tunnels or boreholes as defined under California law.

Table 3. Total Surface Water and Groundwater Available to NWNNA from its Spring Sites in Strawberry Canyon

RIGHTS	VOLUME (AFY)	SOURCE
Pre-1914 Appropriative Rights	58.2	Normal pre-development flows from Strawberry Creek and Indian Springs
Prescriptive Rights	145 (includes 58.2 from above)	Normal pre-development flows from Strawberry Creek
Groundwater	126 +	Percolating groundwater from Strawberry Canyon
TOTAL	271+	Surface Water/Groundwater from Strawberry Canyon

CONCLUSION

Based on the volume of pre-1914 water rights affirmed by the ROI and the additional pre-1914 volumes identified by NWNA, the additional water acquired by CCWC pursuant to the Del Rosa Judgment, and the right to withdraw groundwater from NWNA's spring sites in an adjudicated basin,¹⁹ NWNA is not making any unauthorized diversions from Strawberry Canyon.

NWNA reserves the right to present additional evidence in support of the Board's Findings in its ROI and challenge the content of any response submitted to the Board concerning NWNA's historic and current water collections in Strawberry Canyon or its legal rights to do so.

¹⁹ The SWRCB has acknowledged that NWNA's points of diversion in Strawberry Canyon are not within the Western San Bernardino adjudicated basin area or within the Upper Santa Ana Valley groundwater basin, and thus, its withdrawals are from a groundwater basin not subject to an adjudication of existing groundwater rights (ROI at 9).

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- “Arrowhead Springs Plant Completed,” Los Angeles *Herald*, September 22, 1917.
- “Arrowhead Water Subject of Suit,” San Bernardino *Daily Sun*, June 19, 1912.
- “Big Expansion at Arrowhead Contemplated,” San Bernardino *Daily Sun*, March 5, 1929.
- “Bottling Will Be Done Here,” San Bernardino *Daily Sun*, October 2, 1926.
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- Los Angeles *Herald*, May 7, 1909.
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- “Personalities – Pencil and word sketches of prominent residents of San Bernardino county – Charles G. Anthony,” San Bernardino *Daily Sun*, December 20, 1928.
- San Bernardino *Daily Sun*, May 8, 1909.
- San Bernardino *Daily Sun*, June 23, 1910.
- “Shipments of Water Higher,” San Bernardino *Daily Sun*, July 23, 1926.
- “The Arrowhead Hot Springs Water for World's Market,” San Bernardino *Daily Sun*, August 25, 1909.
- “The Water of Arrowhead Bottled,” San Bernardino *Daily Sun*, July 18, 1912.

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- Amended Notice of Appropriation recorded on November 30, 1887 in the Official Records of San Bernardino County, Water Records Book C, p. 296.
- Amended Notice of Appropriation recorded on November 30, 1887 in the Official Records of San Bernardino County, Water Records Book C, p. 298.
- Indenture recorded on July 12, 1907 in the Official Records of San Bernardino County at Book 395, Page 289.
- Notices of Appropriation recorded on May 9, 1887 and May 7, 1887 in the Official Records of San Bernardino County, Water Records Book C, pp. 22 and 40.

EXHIBITS

Exhibit 1, E.T. Ham Pipeline Drawings (1931).

Exhibit 2, Arrowhead and Puritas Waters, Inc., “Schedule of Real Estate Titles.”

Exhibit 3, Photo of Old Arrowhead Factory (circa 1912).

Exhibit 4, Indenture recorded in the Official Records of San Bernardino County on
July 12, 1907 at Book 395, Page 289.

Exhibit 5, Rail Car Photos.

Exhibit 6, *Del Rosa* Pleadings and Judgment (1931).

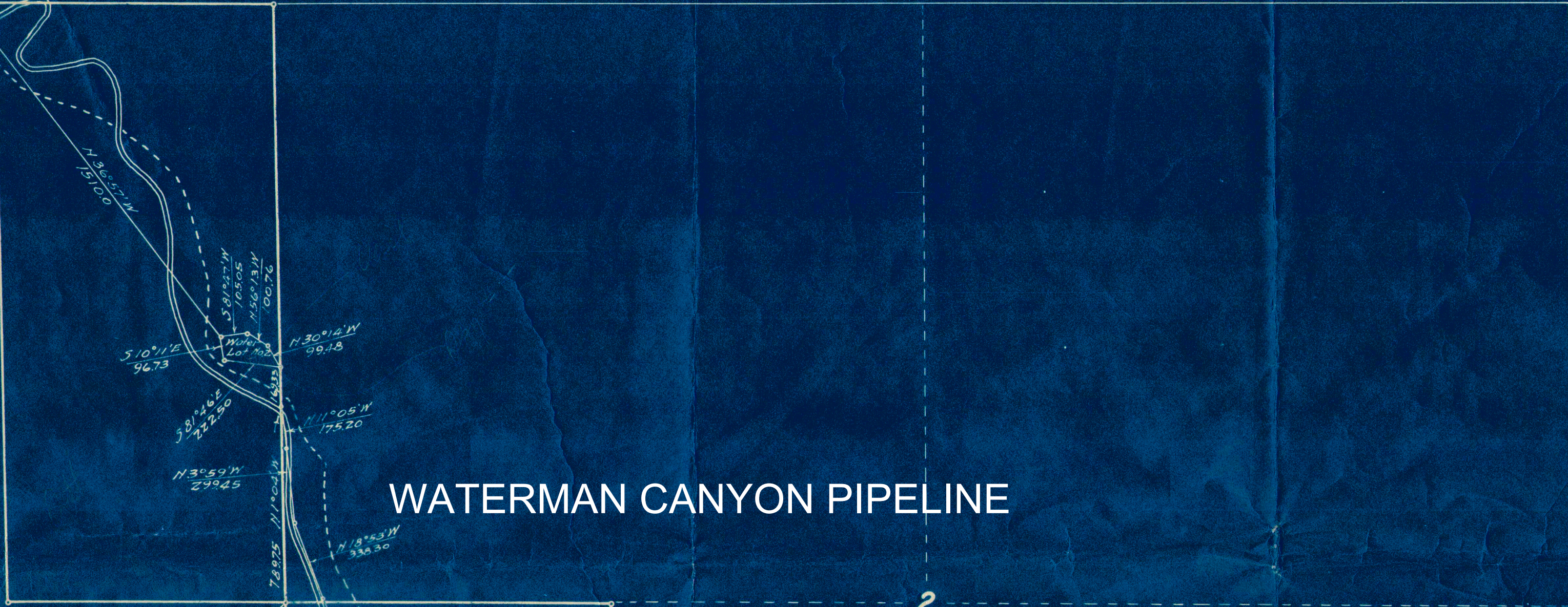
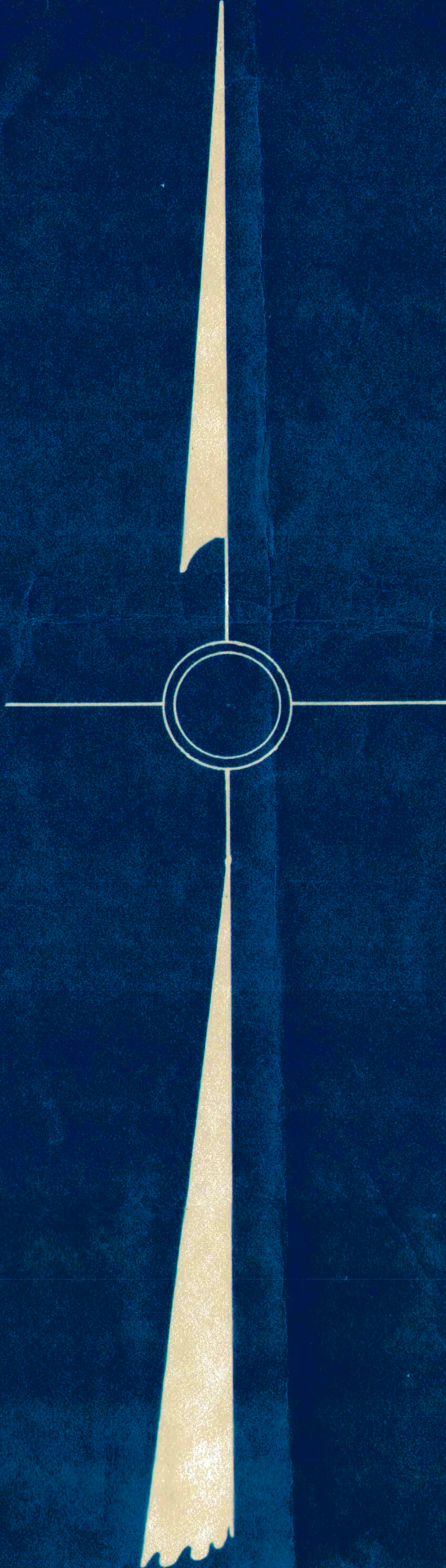
Exhibit 7, Pioneer Title Insurance and Trust Company Report (September 23, 1930).

**NESTLÉ WATERS NORTH AMERICA INC.
PRELIMINARY RESPONSE**

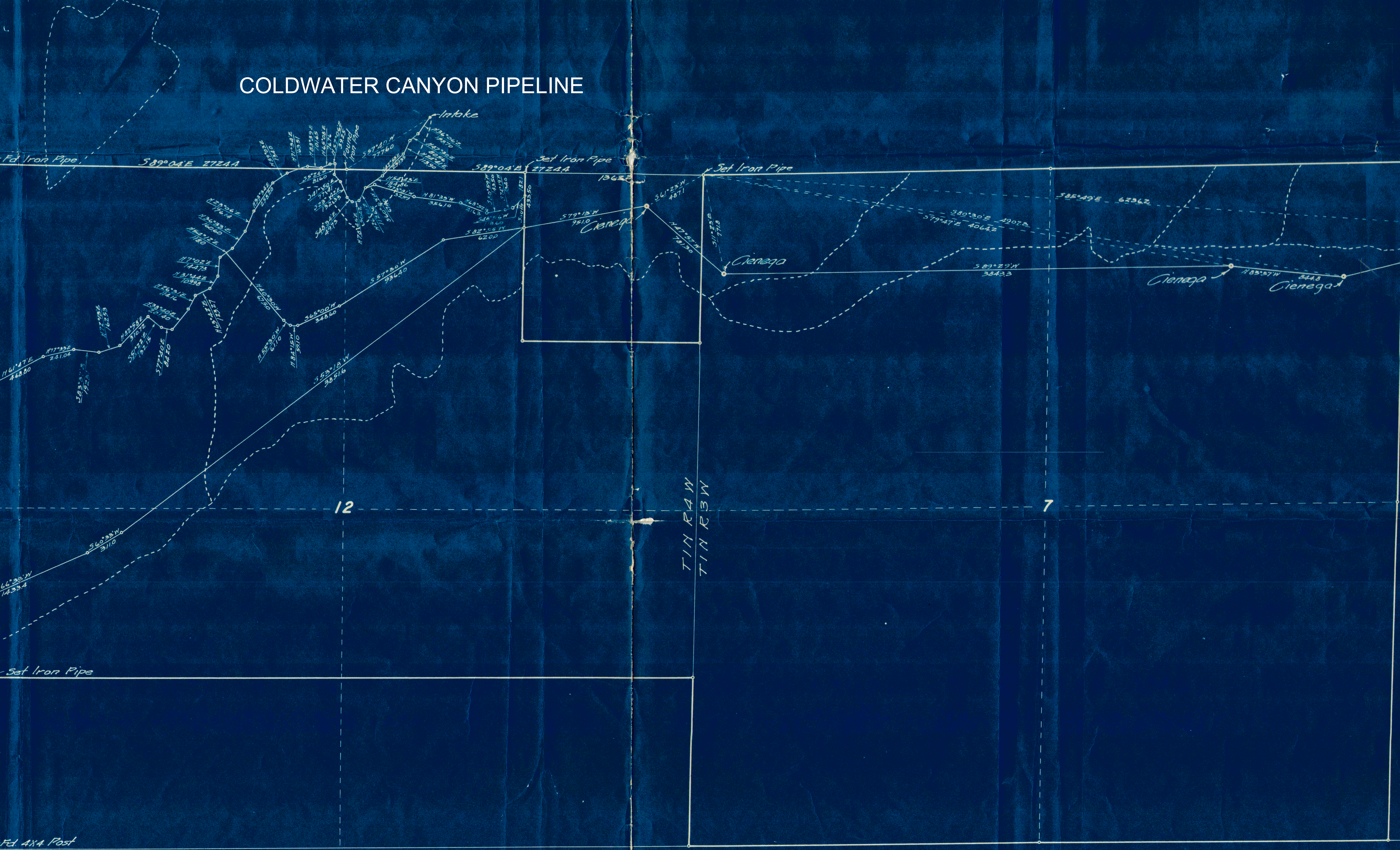
Exhibit 1

MAP
SHOWING THE PIPE LINES AND EASEMENTS
OF THE
CALIFORNIA CONSOLIDATED WATER CO.
IN T.1N.R.3 & 4 W. S.B.B.&M.
E. T. HAM ENGINEER SCALE 1 IN. = 400 FT.

WC-9



WATERMAN CANYON PIPELINE



COLDWATER CANYON PIPELINE



STRAWBERRY CANYON PIPELINE

LICENSED LAND SURVEYOR'S MAP
SHOWING CERTAIN PIPE LINES AND EASEMENTS
ARROWHEAD SPRINGS CORPORATION

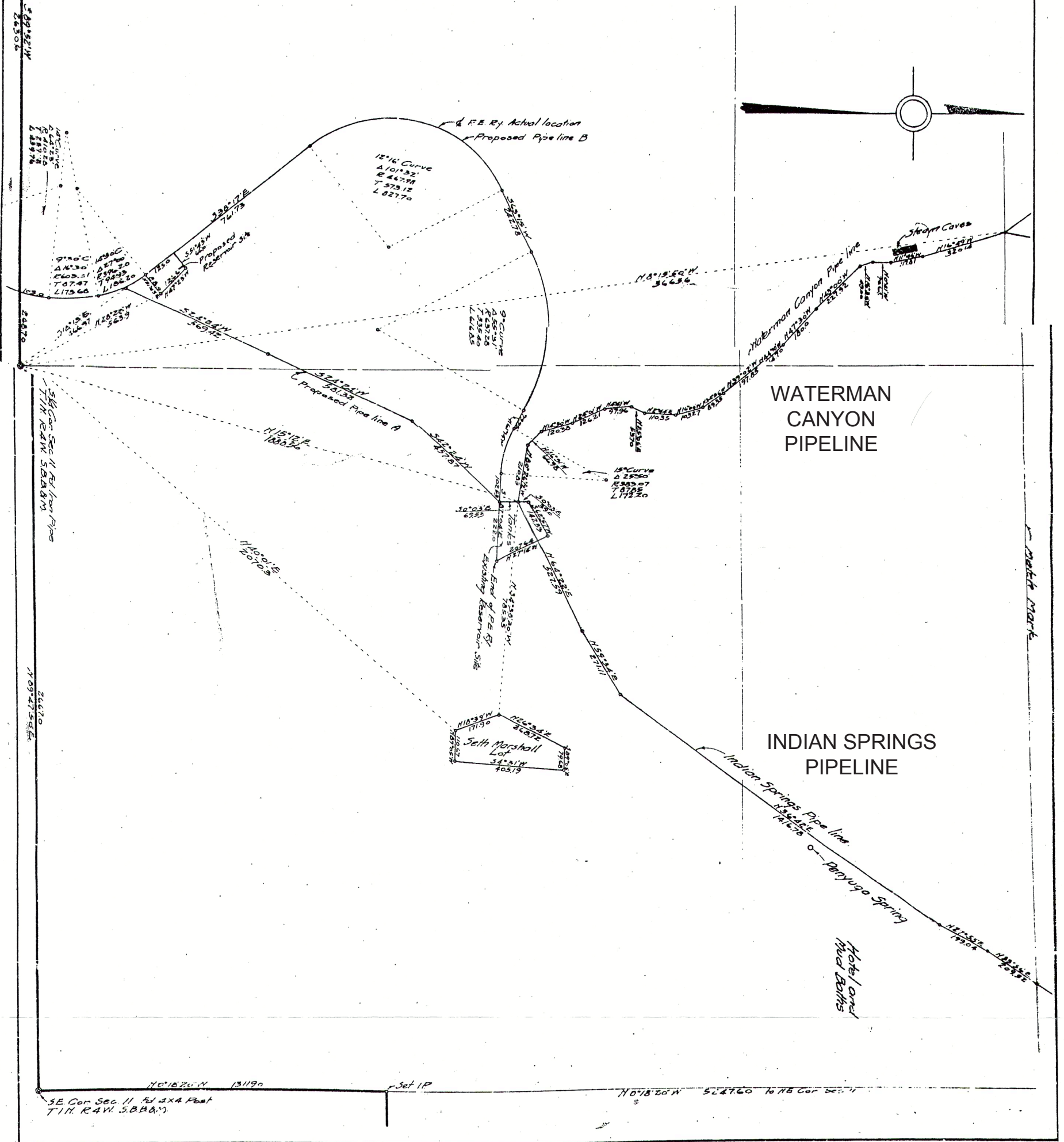
E.T. HAM SURVEYOR

SCALE 1 IN. 200 FT.

SHEET 1 OF 2 SHEETS

E.T. Ham
Feb 11-1929
No. 40
In Book 2 Record
Pages 18 & 19
Surveys
Dutton & Derand
No fee

REDUCED TO
3/4"



CONFIDENTIAL RESTRICTED-
SUBJECT TO PROTECTIVE
ORDER

GSWA0271568

LICENSED LAND SURVEYOR'S MAP
SHOWING CERTAIN PIPE LINES AND EASEMENTS
ARROWHEAD SPRINGS CORPORATION

E.T. HAM SURVEYOR

SCALE 1 IN. 200

SHEET 2 OF 2 SHEETS

I Edgar T. Iton hereby certify that I am a Licensed Land Surveyor of the State of California and that this map consisting of two sheets correctly represents a survey made under my supervision and that all monuments shown actually exist and their positions are correctly shown.

Edgar T. Ham
Licensed Land Surveyor
730

Reported at August 91

af 1. 41

in book
Page

Handwritten: *Handwritten*

WATERMAN
CANYON
PIPELINE

INDIAN SPRINGS PIPELINE

R.S. 127 Pg. 119

GSWA0271567

**CONFIDENTIAL RESTRICTED
SUBJECT TO PROTECTIVE
ORDER**

REDUCED TO
3/4"
SCALE

**NESTLÉ WATERS NORTH AMERICA INC.
PRELIMINARY RESPONSE**

Exhibit 2

SCHEDULE OF REAL ESTATE TITLES							
FILE#	DESCRIPTION OF PROPERTY		FORM	DATE	GRANTOR	ACRES/CONS	REMARKS
	LOT	SUBDIVISION					
3277	1, 2,	L Van Doring's Sub. NE 1/4 Sec 14 T14 N R S 1/4 E 1/4 M	G. B. S.	10-5-06	J. L. Hall, et ux.	6.644	
3274		W 1/2 NW 1/4 Sec 14 T14 N R 4 W, S 1/4 E 1/4 M	G. B. S.	8-25-06	George A. Enrich, et ux.	4.584	
3276		E 1/2 of NW 1/4 Sec 14 T14 N R 4 W, S 1/4 E 1/4 M	G. B. S.	10-1-06	Francis M. Babiner	5.318	
3275		NE 1/4 Sec 14, T14 N, R 14 W, S 1/4 E 1/4 M	G. B. S.	7-1-07	A. H. H. Co.		
3275		For square price in S 1/4 of NW 1/4 Sec 14, T14 N, R 14 W, S 1/4 E 1/4 M	G. B. S.	7-1-07	Arrowhead Hills Springs	1.976	See File No. 3275

**NESTLÉ WATERS NORTH AMERICA INC.
PRELIMINARY RESPONSE**

Exhibit 3



Old Arrowhead Factory c. 1912

**NESTLÉ WATERS NORTH AMERICA INC.
PRELIMINARY RESPONSE**

Exhibit 4

STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO } SS

On this 20th day of June 1907, before me, J.S. Wood a Notary Public in and for said County personally appeared E.D. Roberts and Maud A. Roberts, his wife, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

(Notarial seal)

J.S. Wood, Notary Public

in and for the County of San Bernardino,
State of California.

vo. 36 "Endorsed". Recorded at Request of J.C. Boyd Jul 12, 1907 at 54 min past 10 A.M. in Book 395 of Deeds Page 288 Records of San Bernardino County, J.F. Johnson Jr., County Recorder By J.C. Gray, Deputy Recorder fee \$.90.

A full, true, and correct copy of the original.

J.F. Johnson Jr., County Recorder.

By *L.M. Brown* Deputy Recorder.

THIS INSTRUMENT, made the 11th day of July in the year of our Lord one thousand nine hundred and seven, BETWEEN the Arrowhead Hot Springs Company, a corporation, the party of the first part, and The San Bernardino Valley Traction Company, a corporation, the party of the second part,

WITNESSETH: That the said party of the first part, for and in consideration of the sum of Ten Dollars, lawful money of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and for other good and valuable considerations moving from said party of the second part to the said party of the first part, does hereby grant, bargain and convey unto the said party of the second part and to its successors and assigns forever, the right of way for a single or double track railway, the cars thereon to be operated by electricity or any other motive power authorized by law for the operation of railways, over and upon that certain piece or parcel of land situate, lying and being in the County of San Bernardino, State of California, particularly described as follows, to-wit:

An irregular shaped piece or parcel of land being a part of the southwest quarter of Section 11, Township 1 North, Range 4 West, S.B.M., San Bernardino County, California, said irregular shaped piece or parcel of land being Seventy-five (75) feet on the left and One hundred (100) feet on the right of the following described line, to-wit:

Beginning at a point in the south line of said Section 11, said point of beginning being distant Westerly Two hundred and eighty (280) feet, a little more or less, from the southeast corner of the southwest quarter of said Section 11; thence from said point of beginning on a 14° curve to the North and Northwest having a tangent at the beginning of said curve bearing North 23° 08' 30" East; thence along said curve four hundred and Forty and thirty-eight hundredths (440.38) feet, a little more or less, to Station 27+43.29 at the end of said curve, a tangent to said curve at the end of said curve bearing North 38° 21' 30" West; thence North 38° 21' 30" West eight hundred and seven and Twenty-nine hundredths (807.29) feet to Station 19+30.00 at the beginning of a 12° curve to the right having a radius of Four hundred and Seventy-eight and three tenths (478.3) feet; thence along said curve to the right eight hundred and forty-two and fifty-eight hundredths (842.58) feet to Station 10+23.22 at the end of said curve, a tangent to said curve at the end of said curve bearing North 62° 45' East;

thence North 62° 45' east two hundred and ninety-eight and eighty-eight hundredths (298.88) feet to Station 7+94.55 at the beginning of a 9° curve to the right having a radius of Six hundred and thirty-seven and three tenths (637.3) feet; thence along said curve to the right Six hundred and twenty and twenty-eight hundredths (620.28) feet to station 1+47.26) at the end of said curve, a tangent to said curve at the end of said curve bearing south 60° 30' east; thence south 60° 30' east Seventy-four and thirty-five hundredths (74.35) feet to Station 0+00 at the beginning of a curve to the left having a radius of Three hundred and Eight-eight and sixty-two hundredths (388.62) feet; said last mentioned Station being at the point of beginning of said irregular shaped piece or parcel of land; thence from said last mentioned Station along said curve to the left One hundred and Seventy-six and Sixty-three hundredths (176.63) feet to Station 1+76.63 at the end of said curve, a tangent to said curve at the end of said curve bearing south 86° 34' 30" east; thence south 86° 34' 30" East Three hundred and nine and Fifty-seven hundredths (309.57) feet to Station 4+86.20 at the Easterly line of said irregular shaped piece or parcel of land.

Said piece of parcel of land being more particularly shown by the colored portion of the plat hereto attached and hereby made a part hereof.

With the right to enter upon said strip of land above described and construct, maintain and operate cars thereover, together with the right to erect and maintain poles on the strip of land above described, such poles to be used for the purpose of carrying wires for the transmission of electrical power, trolley wires and all other things or appliances that may be necessary to transmit power, or for any other purposes necessary for the operation of cars over any railway that may be constructed on said strip of land.

The grantee shall not have the right under this deed to use the land herein granted except for railroad purposes as hereinbefore provided and reserving to the grantor the right to use the wagon road crossing said right of way as now used across the same.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances unto the said party of the second part and to its successors and assigns forever.

IN WITNESS WHEREOF the said party of the first part has herunto caused its corporate name and seal to be affixed by resolution of its Board of Directors, duly and regularly adopted therefor.

Arrowhead Hot Springs Company
by Seth Marshall president
by Victor C. Smith Secretary

(Corporate Seal)

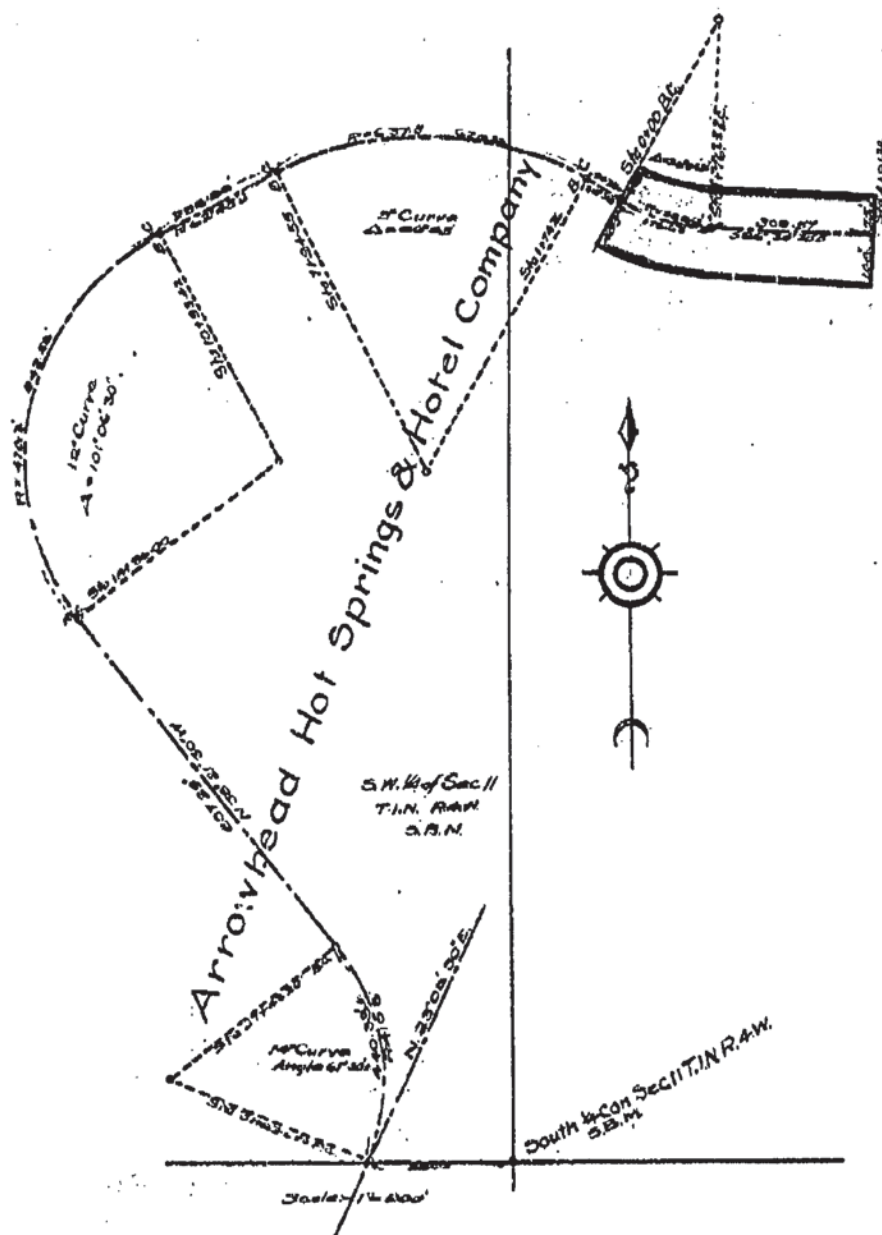
STATE OF CALIFORNIA }
SAN BERNARDINO COUNTY }

On this 11th day of July before me, F.A. Leonard, a Notary Public in and for San Bernardino County, California, personally appeared Seth Marshall, known to me to be the President of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

Witness my hand and official seal.

(Notarial Seal)

F.A. Leonard, Notary Public
in and for San Bernardino County,
California.



No. 39 "Entered". Recorded at Request of S.B.V. Traction Co. Jul 12, 1907 at 45 min past 10 A.M. in Book 395 of Deeds page 289 Records San Bernardino County, J.F. Johnson Jr., County Recorder By I.C. Gray Deputy Recorder. Fee \$2.00.

A full, true and correct copy of the original.

J.F. Johnson Jr., County Recorder.

By I.C. Gray Deputy Recorder.

RECORDED

**NESTLÉ WATERS NORTH AMERICA INC.
PRELIMINARY RESPONSE**

Exhibit 5



SBVT car 102 at the Arrowhead Springs terminus, circa 1910. The car began service on the Redlands Central Railway in 1907, and was later put into service on the Arrowhead Line. - SBH&PS

PUSH TROLLEY TO ARROWHEAD.

**SAN BERNARDINO COMPANY HAS
FULL RIGHT OF WAY.**

Surveyors Will Go Into Field in
Few Days and Construction Will
Be Rushed, Says General Manager
Smith—Progress on Redlands and
Riverside Extensions of Line.

SAN BERNARDINO, May 20.—General Manager W. H. Smith of the San Bernardino Valley Traction Company and W. E. Leonard have secured from Mrs. M. S. Severance of Los Angeles a right of way across the Muscupiabi ranch, north of this place, for the proposed extension of the company's line to the Arrowhead Hotel. Smith announces that not later than Wednesday a corps of surveyors will be in the field staking off the route, preparatory to rushing the construction of the road which is to be completed at the earliest possible date.

The right of way has now been secured from Highland avenue to the hotel, and nothing remains but to put the construction force at work. With the completion of the electric road to the Arrowhead Hot Springs, a start will have been made toward the building of the line to the summit of the mountains, though, so far as known, the road projected to the hotel does not involve the more pretentious improvement of building up the San Bernardino Mountains. The wind is blowing that way, however.



The incline railway was built in 1906 to haul materials up to the Little Bear Dam project. - Russ Keller collection

company was composed of Los Angeles and Pasadena investors, with a capitalization of \$50,000. Included in company were James Mumford, Dr. F.J. Nutting, C.H. Temple, Ralph E. Pearce, and James R. Haddock. The company planned to use the San Bernardino Valley Traction Company's Arrowhead Line to transport the water in tank cars to Los Angeles for bottling.²⁰⁴

THE GOLDEN GOOSE OF ARROWHEAD SPRINGS

In the shadow of the opulent hotel and its wealthy guests, the bottled water quietly became the "golden goose" of Arrowhead Springs. The water bottling commenced quickly, and the first sales were announced in the Los Angeles Times on July 25, 1909:

Arrowhead Spring Water
From the famous Arrowhead Springs Resort.
50 cents case, 5-gal. demijohn, 40c. Car-
bonated splits, \$1 per doz. Phone F4446. 411
Currier Bldg

Shortly after the water sales began, the lawsuits followed. On February 20, 1910, the Los Angeles Herald announced that the Arrowhead Springs Company (the Los Angeles bottlers) went to court seeking an injunction restraining the Arrowhead Hot Springs Company (the hotel and resort) from

shutting off their water supply.

The Arrowhead Hot Springs Company claimed that the water bottlers were defrauding the public by marketing the water as if it came from Arrowhead's hot springs, when it actually came from the stream known as Coldwater Canyon.²⁰⁵

A judge found the water bottling company guilty of fraud, and the two companies were left to work out an agreement on the advertising and supplying of water.²⁰⁶

In October of 1912, the Arrowhead Hot Springs Company started work on a new bottling plant on the resort property that would be in direct competition with the Los Angeles bottlers.²⁰⁷ The following year, the company began marketing their own brand of water designated as "The Monarch of All Waters." It was packaged as Indian Spring Water, and Arrowlax Water, a natural laxative. The advertisements for these products stated that it was



Arrowhead Water Train tank car in San Bernardino, November of 1922. - Russ Keller collection

**NESTLÉ WATERS NORTH AMERICA INC.
PRELIMINARY RESPONSE**

Exhibit 6

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

DEL ROSA MUTUAL WATER COMPANY,
a corporation,
Plaintiff,

-vs-

CALIFORNIA CONSUMERS CORPORATION,
a corporation,
D. J. CARPENTER, ISABELLA TURNER,
J. D. JEFFERS, GEORGE MASON,
NATIONAL THRIFT CORPORATION OF AMERICA,
a corporation, JOHN DOE, MCKASON, MARY
GLEASON, C. M. CHRIST, GREAT VIEW
WATER COMPANY, NETTIE D. PHILLIPS,
PACIFIC-SOUTHWEST TRUST & SAVINGS BANK,
A CORPORATION, ARTHUR R. PECK, CARRIE A.
PECK, ELLEN A. McLAUGHLIN, ARROWHEAD
SPRINGS CORPORATION, a corporation,
ARROWHEAD SPRINGS COMPANY, a corporation,
J. N. BAULIS, John Doe Corporation No. 1,
John Doe Corporation No. 2, John Doe
Corporation No. 3, John Doe Corporation
No. 4, John Doe Corporation No. 5, John
Doe, John Hoe, Richard Hoe, Richard Roe,
Jane Doe, Sallie Hoe, Dolly Doe, Joe
Doe, Jim Doe, Nellie Doe, Sally Doe,
Dolly Doe, CALIFORNIA CONSOLIDATED WATER
COMPANY, a corpora- Defendants.

C O M P L A I N T
T O
Q U I E T T I T L E .

Comes now the plaintiff above named and for cause of
action against the defendants alleges and shows to the Court:

I.

That plaintiff now is and for more than five years last
past has been a corporation organized and existing under and pur-
suant to the laws of the State of California; the purposes for
which said corporation was formed are as follows:

(a) To acquire by appropriation, purchase, lease,
condemnation, development, storage or otherwise the
ownership, control and use of water, water rights, water
bearing lands, water property, water privileges for the
mutual use and mutual benefit of its stockholders only
and to distribute and deliver any and all water acquired
by it, to its stock holders at cost, for domestic use
and for irrigation of their respective lands and any and
all other beneficial and useful purposes.

(b) To acquire by purchase, lease, condemnation or
otherwise the ownership or control of lands, rights of
way, dam sites, reservoir sites, reservoirs, dams, canals,
ditches and conduits, wells, pumps, pumping machinery and
all other property necessary or convenient to collect,
develop, store, convey, distribute and deliver water for
the purposes aforesaid for the mutual use and benefit of
its stock holders.

1 (c) To acquire by purchase or otherwise any and all
2 necessary pumps, pumping machinery, equipment, tools,
3 pumping plants, buildings and any and all other necessary
4 appliances, paraphernalia, or equipment necessary or proper
for the developing of water, or to aid or assist in carry-
ing out any or all of the aforesaid purposes for the
mutual use and benefit of its stock holders.

5 (d) To exercise such powers and functions as are
6 now or may hereafter be granted to or conferred upon
7 corporations by the laws of the State of California, not
inconsistent with the powers and purposes of this corpora-
tion as hereinbefore set forth.

8 (e) To do and perform for the mutual benefit of its
9 stock holders any and all things necessary or proper to
accomplish any or all of the aforesaid purposes.

10 That at all times since its incorporation plaintiff has
11 been engaged in performing and carrying out said purposes.

12 II.

13 Upon information and belief plaintiff alleges that
14 defendants, Great View Water Company, John Doe Corporation No. 1,
15 John Doe Corporation No. 2, John Doe Corporation No. 3, John Doe
16 Corporation No. 4 and John Doe Corporation No. 5, now are and at
17 all times herein mentioned were each a corporation organized and
18 existing under and pursuant to the laws of the State of California.

19 III.

20 That plaintiff does not know the true names of the
21 defendants, John Doe McKason, John Doe Corporation No. 1, John Doe
22 Corporation No. 2, John Doe Corporation No. 3, John Doe Corpora-
23 tion No. 4, John Doe Corporation No. 5, John Doe, Richard Hoe,
24 Richard Roe, Jane Doe, Sallie Hoe, Dolly Doe, Joe Doe, Jim Doe,
25 Nellie Doe, Sally Doe, Dolly Doe, for which reason plaintiff has
26 designated such defendants by such fictitious names respectively,
27 and when the true names of such defendants are ascertained this
28 plaintiff expects to and will amend the complaint by inserting
29 the true names of such defendants when so ascertained.

30 IV.

31 Upon information and belief plaintiff alleges that
32 defendant Arrowhead Springs Corporation, is a corporation organized

1 and existing under and pursuant to the laws of the State of Delaware
2 and is doing business within the State of California; that defend-
3 ant, Arrowhead Springs Company, is a corporation organized and
4 existing under and pursuant to the laws of the State of Maine, and
5 is doing business in the State of California; that defendant,
6 National Thrift Corporation of America, is a corporation organized
7 and existing under and pursuant to the laws of the State of
8 Delaware, and is doing business in the State of California; that
9 defendant, California Consolidated Water Company, is a corporation
10 organized and existing under and pursuant to the laws of the State
11 of Delaware, and is doing business in the State of California.

12 V.

13 Upon information and belief plaintiff alleges that the
14 defendant, Pacific-Southwest Trust & Savings Bank, now is and at
15 all times herein mentioned was a corporation organized and existing
16 under and pursuant to the laws of the State of California.

17 VI.

18 That East Twin Creek is a natural stream of water situated
19 in the County of San Bernardino, State of California, having its
20 source in tributaries rising in what is known as East Twin Creek
21 Watershed in the San Bernardino mountains; that all of the waters
22 of said watershed drain into and become a part of said East Twin
23 Creek above the point of plaintiff's diversion hereinafter referred
24 to; that the principal tributaries to said East Twin Creek are
25 Strawberry Creek, Coldwater Creek, Hot Springs Creek, and other
26 named and unnamed tributaries and springs, all of which flow and
27 percolate into and are a part of said East Twin Creek; that at the
28 time of the appropriation of the waters of said East Twin Creek by
29 plaintiff's predecessors in interest as hereinafter alleged, all
30 of the waters of said East Twin Creek and its tributaries flowed in
31 a southerly direction in a natural stream to and into what is known
32 as East Twin Creek Canyon and thence into San Bernardino Valley,

1 and at the time of the appropriation by plaintiff's predecessors
2 in interest as hereinafter alleged none of said water had been
3 appropriated, diverted or used.

4 VII.

5 That more than fifty years prior hereto plaintiff's
6 predecessors in interest entered in and upon said East Twin Creek
7 at a point thereon about one mile north of the mouth of said East
8 Twin Creek Canyon, and appropriated all of the flow of said
9 stream, and thereafter diverted all of the waters of said stream
10 into a ditch and conduit, and diverted and conveyed the same away
11 for beneficial uses; that the point on said stream where said
12 appropriation and diversion was so made was below the confluence
13 of all of said tributaries and below the point where all of the
14 waters of said East Twin Creek watershed converge; that in so
15 appropriating said waters of said stream plaintiff's said
16 predecessors in interest appropriated and acquired the right to
17 have all of the waters of said East Twin Creek and its tributaries
18 flow uninterrupted, unpolluted, and undiminished in quantity and
19 quality down to said point of appropriation and diversion; that
20 ever since said appropriation of said waters of said stream all of
21 the waters of said stream flowing at said point have been and now
22 are taken, diverted and used by plaintiff and its predecessors in
23 interest for household and domestic use and for irrigation and
24 other beneficial uses and purposes, and during all of said time
25 has been and now is devoted to beneficial uses and purposes by
26 plaintiff and its predecessors in interest, except when interfered
27 with or diminished by defendants or some of them.

28 That the normal and usual flow of said stream at said
29 point of appropriation and diversion throughout the irrigation
30 season is 130 inches, when not interfered with or diminished by
31 defendants.

32 That plaintiff now is and it and its predecessors in

1 interest have been, ever since the appropriation of said waters
2 as aforesaid, the owner of the right to take and divert from said
3 East Twin Creek at said point of diversion all of the waters of
4 said East Twin Creek flowing at said point to the extent of 130
5 inches of water constant and continuous flow, and is the owner of
6 the right to have all of the waters of said East Twin Creek and
7 its tributaries flow down to said point of diversion in the
8 customary and usual manner, undiminished, unpolluted, and uninter-
9 ferred with by said defendants or either or any of them.

10 VIII.

11 That during all of said time plaintiff and its prede-
12 cessors in interest have been and plaintiff now is, except when
13 interfered with by the defendants as hereinafter alleged, divert-
14 ing, taking and using all of the waters of said East Twin Creek
15 flowing therein at plaintiff's intake and point of diversion to
16 the extent of 130 inches, when the same was available, and have
17 conducted and conveyed the whole of said water, so taken and
18 diverted as aforesaid, by means of aqueducts and pipe lines, to
19 that certain community or settlement situated in said county,
20 known as and called Del Rosa; and plaintiff and its predecessors
21 in interest during all of said time have been, and plaintiff now
22 is, except when interfered with as hereinafter alleged, distribut-
23 ing and delivering said water to the stockholders of plaintiff and
24 to others owning lands in said community, for the irrigation of
25 lands therein, owned by them respectively, and for domestic and
26 household uses and purposes, and for the watering of animals and
27 fowls on said lands; and during all of said time said water has
28 been and now is necessarily and beneficially devoted to and used
29 for said purposes; that the total acreage of land under the flow
30 of plaintiff's said pipe lines and aqueduct, and for which plain-
31 tiff and its predecessors in interest have been and now are taking
32 and diverting water as herein alleged, and to which plaintiff and
its said predecessors in interest have been and now are furnishing

1 and delivering water for the aforesaid purposes, is five hundred
2 eighty-five (585) acres; all of which five hundred eighty-five
3 acres is and at all times herein mentioned has been improved and
4 cultivated, and is planted to citrus, deciduous and other trees,
5 vines, fruits, hay, grains, and grass, and all of said water so
6 taken and diverted as aforesaid by plaintiff and its predecessors
7 in interest was, during all of said time has been, and now is
8 reasonably necessary for said uses and purposes. That the owners
9 of all of said five hundred eighty-five (585) acres of land and
10 their predecessors in interest have at all times depended upon the
11 said water supply and source of water aforesaid, and all of the
12 trees, fruits, vines, grasses, etc., planted on said lands have
13 grown up under a supply of water furnished from said source, and
14 during all of said time the owners of said five hundred eighty-five
15 (585) acres of land have depended upon the said supply and source
16 of supply of water, and without which none of said lands would
17 have been improved or planted as aforesaid.

18 IX.

19 That said defendants claim some right, title or interest
20 in or to the waters of said East Twin Creek, or in or to some part
21 or portion thereof, or in or to the waters of some of the tributaries
22 thereof, adverse to this plaintiff, and said defendants also claim
23 a right adverse to plaintiff to enter in and on said East Twin Creek
24 and its tributaries above plaintiff's point of diversion and pollute
25 and diminish the waters thereof, and divert the waters from said
26 stream and its tributaries and interfere with the flow of said
27 stream in a manner so as to diminish the quantity and quality of
28 said water in said stream at plaintiff's point of diversion; that
29 said claims of said defendants are, and each and all of them is,
30 without any right whatever as against this plaintiff, and none of
31 said defendants have any right to enter in or upon said stream, or
32 in or upon any of its tributaries, and pollute the waters thereof,

1 or take or divert any of the waters thereof, or interfere with the
2 flow thereof in any manner or at all so as to diminish the flow of
3 said East Twin Creek at plaintiff's point of diversion below 130
4 inches, or to do any act or thing that will pollute the waters of
5 said stream or diminish the same in quantity or quality at said
6 point of diversion.

7 X.

8 That said defendants have entered in and upon said East
9 Twin Creek and its tributaries above plaintiff's point of diversion
10 and have been and now are, without right, taking and diverting the
11 waters thereof away from and beyond and outside of the natural
12 water course of said stream in a manner so as to deprive this
13 plaintiff of the use of such waters; that said defendants have
14 threatened to, and unless restrained by order of this Court will
15 continue to, enter in and upon said stream and its tributaries and
16 make further diversions therefrom, and will take, divert and
17 conduct away all of the waters of said East Twin Creek and its
18 tributaries out of and beyond the natural water course of said
19 stream in such manner and to such extent that it will deprive this
20 plaintiff of the use of all of the waters of said stream.

21 That said defendants have in the past and threaten to
22 continue in the future to pollute the waters of said stream above
23 the point of plaintiff's diversion in a manner so as to render the
24 waters thereof unfit for domestic use, and said defendants threaten
25 to continue to so pollute said waters, and will, unless restrained
26 by order of this Court, continue to pollute the same;

27 That each and all of the diversions and acts of said
28 defendants as aforesaid are without right, and each and all of said
29 diversions and acts interfere with the rights of this plaintiff
30 and deprive plaintiff of its right to have the waters of said
31 East Twin Creek and its tributaries flow down to plaintiff's said
32 point of diversion unpolluted and undiminished in quantity and
quality.

1 That the taking and diversion of said waters from said
2 East Twin Creek by defendants as aforesaid does and will continue
3 to reduce the supply and quantity of water flowing in said creek
4 at plaintiff's said intake and point of diversion to such an extent
5 that plaintiff will be unable to furnish to its stockholders and
6 the other owners of said five hundred eighty-five (585) acres of
7 land the quantity of water reasonably necessary for the irrigation
8 of said lands and for domestic uses and purposes thereon, and for
9 the watering of animals and fowls; and by reason thereof the trees,
10 vines, fruits, grain and grasses growing thereon will wither and
11 die and plaintiff's said stockholders and the other owners of said
12 five hundred eighty-five (585) acres of land will suffer great and
13 irreparable injury and damage; and the pollution of said stream
14 as aforesaid renders the waters thereof unfit for domestic uses
15 or purposes.

16 XI.

17 Wherever the words "inch of water" are used or mentioned
18 in this complaint, it is intended thereby to refer to such a
19 quantity of water in continuous flow as will supply 1/50 of a
20 cubic foot of water per second of time.

21 WHEREFORE, plaintiff prays judgment against defendants
22 as follows:

23 (a) That defendants be required to appear herein and set
24 up their respective rights and claims in and to the waters of said
25 stream, and in and to the right that either or any of them may have
26 to pollute, divert or use the same as aforesaid, and that all ad-
27 verse claims of said defendants and each of them in and to the said
28 waters of East Twin Creek and its tributaries be determined by
29 decree of this Court, and that by said decree it be decreed and
30 adjudged that defendants, nor any of them, have any right, title or
31 interest in or to the waters thereof adverse to the rights of
32 plaintiff herein, and that plaintiff is the owner of the right to
have the waters of said East Twin Creek and its tributaries flow

1 down the natural channel thereof to plaintiff's intake and point
2 of diversion unpolluted and in such manner and to such extent that
3 there will at all times be flowing in said creek at plaintiff's
4 said intake and point of diversion one hundred thirty inches of
5 water.

6 (b) That plaintiff's right in and to the waters of East
7 Twin Creek and its tributaries as alleged and set forth in this
8 complaint be quieted as against defendants and each and all of them.

9 (c) That defendants and each and all of them be enjoined
10 from in any manner polluting the waters of said stream or in any
11 manner taking, diverting or removing any of the waters of said
12 East Twin Creek or its tributaries ^{or at all} to such an extent or in such
13 manner that the pollution thereof will render the said waters, or
14 any part or portion thereof unfit for domestic uses or purposes,
15 or in such manner that the taking and diverting thereof will
16 reduce the flow thereof to a quantity less than one hundred thirty
17 inches at plaintiff's intake and point of diversion, and that said
18 defendants and each of them be restrained and perpetually enjoined
19 from doing any of the things herein complained of, or interfering
20 with the said stream or the waters thereof in such manner as to
21 affect plaintiff's rights therein.

22 (d) For costs of action herein and for such other and
23 further relief as to the Court may seem meet and proper in the
24 premises;

25 And plaintiff will ever pray.

26 Swing & Wilson
27 Attorneys for Plaintiff.
28
29
30
31
32

No. 31798 125

IN THE
Superior Court
OF THE
STATE OF CALIFORNIA

In and for the County of San Bernardino

DEL ROSA MUTUAL WATER
COMPANY,
Plaintiff.....

vs.

D. J. CARPENTER, ET AL,
Defendant.....

C O M P L A I N T.

Received Copy of the within.....

this **FILED** 192.....

Attorney 1151 12 1030

HARRY L. ALLISON

M. McBrady CLERK
Deputy

SWING & WILSON

Attorneys for Plaintiff.....

Garner Block, Corner Court and E Streets
SAN BERNARDINO, CALIFORNIA

Telephone 2179

SWING & WILSON
ATTORNEYS
GARNER BLOCK CORNER COURT AND E STREETS
SAN BERNARDINO, CALIFORNIA

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

DEL ROSA MUTUAL WATER COMPANY, a
corporation,
Plaintiff,

No. 31798

-VS-

CALIFORNIA CONSUMERS COMPANY, a
corporation, D. J. CARPENTER,
ISABELLA TURNER, J. B. JEFFERS,
GEORGE MASON, NATIONAL THRIFT
CORPORATION OF AMERICA, a corpora-
tion, JOHN DOE MCKASON, MARY
GLEASON, C. M. CHRIST, GREAT VIEW
WATER COMPANY, NETTIE D. PHILLIPS,
PACIFIC-SOUTHWEST TRUST & SAVINGS
BANK, a corporation, ARTHUR R. PECK,
CARRIE A. PECK, ELLEN A. McLAUGHLIN,
ARROWHEAD SPRINGS CORPORATION, a
corporation, ARROWHEAD SPRINGS COMPANY,
a corporation, J. N. BAYLIS, John Doe
Corporation No. 1, John Doe Corpora-
tion No. 2, John Doe Corporation No. 3,
John Doe Corporation No. 4, John Doe
Corporation No. 5, John Doe, John Hoe,
Richard Roe, Richard Hoe, Jane Doe,
Sallie Hoe, Dolly Doe, Joe Doe, Jim
Doe, Nellie Doe, Sally Doe, CALIFORNIA
CONSOLIDATED WATER COMPANY, a corpora-
tion,
Defendants.

AMENDED COMPLAINT
TO
QUIET TITLE.

Comes now the plaintiff above named and files this, its
amended complaint herein, and for cause of action against the
defendants alleges and shows to the Court:

I.

That plaintiff now is and for more than five years last
past has been a corporation organized and existing under and pur-
suant to the laws of the State of California; the purposes for
which said corporation was formed are as follows:

(a) To acquire by appropriation, purchase, lease,
condemnation, development, storage or otherwise the
ownership, control and use of water, water rights, water
bearing lands, water property, water privileges for the
mutual use and mutual benefit of its stockholders only
and to distribute and deliver any and all water acquired
by it, to its stockholders at cost, for domestic use
and for irrigation of their respective lands and any and
all other beneficial and useful purposes.

1 (b) To acquire by purchase, lease, condemnation or
2 otherwise the ownership or control of lands, rights of
3 way, dam sites, reservoir sites, reservoirs, dams, canals,
4 ditches and conduits, wells, pumps, pumping machinery and
5 all other property necessary or convenient to collect,
6 develop, store, convey, distribute and deliver water for
7 the purposes aforesaid for the mutual use and benefit of
8 its stock holders.

9 (c) To acquire by purchase or otherwise any and all
10 necessary pumps, pumping machinery, equipment, tools,
11 pumping plants, buildings and any and all other necessary
12 appliances, paraphernalia, or equipment necessary or proper
13 for the developing of water, or to aid or assist in carry-
14 ing out any or all of the aforesaid purposes for the
15 mutual use and benefit of its stock holders.

16 (d) To exercise such powers and functions as are
17 now or may hereafter be granted to or conferred upon
18 corporations by the laws of the State of California, now
19 inconsistent with the powers and purposes of this corpora-
20 tion as hereinbefore set forth.

21 (e) To do and perform for the mutual benefit of its
22 stock holders any and all things necessary or proper to
23 accomplish any or all of the aforesaid purposes.

24 That at all times since its incorporation plaintiff has
25 been engaged in performing and carrying out said purposes.

26 II.

27 Upon information and belief plaintiff alleges that
28 defendants, Great View Water Company, John Doe Corporation No. 1,
29 John Doe Corporation No. 2, John Doe Corporation No. 3, John Doe
30 Corporation No. 4, and John Doe Corporation No. 5, now are and at
31 all times herein mentioned were each a corporation organized and
32 existing under and pursuant to the laws of the State of California.

III.

That plaintiff does not know the true names of the
defendants, John Doe McKason, John Doe Corporation No. 1, John Doe
Corporation No. 2, John Doe Corporation No. 3, John Doe Corporation
No. 4, John Doe Corporation No. 5, John Doe Richard Roe, John Hoe,
Richard Hoe, Jane Doe, Sallie Hoe, Dolly Doe, Joe Doe, Kim Doe,
Nellie Doe, Sally Doe, for which reason plaintiff has designated
such defendants by such fictitious names respectively, and when
the true names of such defendants are ascertained this plaintiff
expects to and will amend the complaint by inserting the true
names of such defendants when so ascertained.

IV.

Upon information and belief plaintiff alleges that defendant , Arrowhead Springs Corporation, is a corporation organized and existing under and pursuant to the laws of the State of Delaware, and is doing business within the State of California; that defendant, Arrowhead Springs Company, is a corporation organized and existing under and pursuant to the laws of the State of Maine, and is doing business in the State of California; that defendant, National Thrift Corporation of America, is a corporation organized and existing under and pursuant to the laws of the State of Delaware, and is doing business in the State of California; that defendant, California Consolidated Water Company, is a corporation organized and existing under and pursuant to the laws of the State of Delaware, and is doing business in the State of California.

V.

Upon information and belief plaintiff alleges that the defendants, Pacific-Southwest Trust & Savings Bank, now is and at all times herein mentioned was a corporation organized and existing under and pursuant to the laws of the State of California.

VI.

That East Twin Creek is a natural stream of water situated in the County of San Bernardino, State of California, having its source in tributaries rising in what is known as East Twin Creek Watershed in the San Bernardino mountains; that all of the waters of said watershed drain into and become a part of said East Twin Creek above the point of plaintiff's diversion hereinafter referred to; that the principal tributaries to said East Twin Creek are Strawberry Creek, Coldwater Creek, Hot Springs Creek, and other named and unnamed tributaries and springs, all of which flow and percolate into and are a part of said East Twin Creek; that at the time of the appropriation of the waters of said East Twin Creek by plaintiff's predecessors in interest as hereinafter alleged, all

1 of the waters of said East Twin Creek and its tributaries flowed in
2 a southerly direction in a natural stream to and into what is known
3 as East Twin Creek Canyon and thence into San Bernardino Valley,
4 and at the time of the appropriation by plaintiff's predecessors
5 in interest as hereinafter alleged none of said water had been
6 appropriated, diverted or used.

7 VII.

8 That more than fifty years prior hereto plaintiff's
9 predecessors in interest entered in and upon said East Twin Creek
10 at a point thereon about one mile north of the mouth of said East
11 Twin Creek Canyon, and appropriated all of the flow of said
12 stream, and thereafter diverted all of the waters of said stream
13 into a ditch and conduit, and diverted and conveyed the same away
14 for beneficial uses; that the point on said stream where said
15 appropriation and diversion was so made was below the confluence
16 of all of said tributaries and below the point where all of the
17 waters of said East Twin Creek watershed converge; that in so
18 appropriating said waters of said stream plaintiff's said prede-
19 cessors in interest appropriated and acquired the right to have
20 all of the waters of said East Twin Creek and its tributaries flow
21 uninterrupted, unpolluted, and undiminished in quantity and quality
22 down to said point of appropriation and diversion; that ever since
23 said appropriation of said waters of said stream all of the waters
24 of said stream flowing at said point have been and now are taken,
25 diverted and used by plaintiff and its predecessors in interest
26 for household and domestic use and for irrigation and other beneficial
27 uses and purposes, and during all of said time has been and now is
28 devoted to beneficial uses and purposes by plaintiff and its
29 predecessors in interest, except when interfered with or diminished
30 by defendants or some of them.

31 That the normal and usual flow of said stream at said
32 point of appropriation and diversion throughout the irrigation
season is 130 inches, when not interfered with or diminished by

1 defendants.

2 That plaintiff now is and it and its predecessors in
3 interest have been, ever since the appropriation of said waters
4 as aforesaid, the owner of the right to take and divert from said
5 East Twin Creek at said point of diversion all of the waters of
6 said East Twin Creek flowing at said point to the extent of 130
7 inches of water constant and continuous flow, and is the owner of
8 the right to have all of the waters of said East Twin Creek and
9 its tributaries flow down to said point of diversion in the
10 customary and usual manner, undiminished, unpolluted, and uninter-
11 ferred with by said defendants or either or any of them.

12 VIII.

13 That during all of said time plaintiff and its predecessors
14 in interest have been and plaintiff now is, except when interfered
15 with by the defendants as hereinafter alleged, diverting, taking
16 and using all of the waters of said East Twin Creek flowing therein
17 at plaintiff's intake and point of diversion to the extent of 130
18 inches, when the same was available, and have conducted and conveyed
19 the whole of said water, so taken and diverted as aforesaid, by
20 means of aqueducts and pipe lines, to that certain community or
21 settlement situated in said county, known as and called Del Rosa;
22 that plaintiff and its predecessors in interest during all of said
23 time have been, and plaintiff now is, except when interfered with
24 as hereinafter alleged, distributing and delivering said water to
25 the stockholders of plaintiff and to others owning lands in said
26 community, for the irrigation of lands therein, owned by them
27 respectively, and for domestic and household uses and purposes,
28 and for the watering of animals and fowls on said lands; that during
29 all of said time said water has been and now is necessarily and
30 beneficially devoted to and used for said purposes; that the total
31 acreage of land under the flow of plaintiff's said pipe lines and
32 aqueduct, and for which plaintiff and its predecessors in interest

1 have been and now are taking and diverting water as herein alleged,
2 and to which plaintiff and its said predecessors in interest have
3 been and now are furnishing and delivering water for the aforesaid
4 purposes, is five hundred eighty-five (585) acres; all of which
5 five hundred eighty-five acres is and at all times herein mentioned
6 has been improved and cultivated, and is planted to citrus, deciduous
7 and other trees, vines, fruits, hay, grains, and grass, and all of
8 said water so taken and diverted as aforesaid by plaintiff and its
9 predecessors in interest was, during all of said time has been, and
10 now is reasonably necessary for said uses and purposes. That the
11 owners of all of said five hundred eighty-five (585) acres of land
12 and their predecessors in interest have at all times depended upon
13 the said water supply and source of water aforesaid, and all of the
14 trees, fruits, vines, grasses, etc. planted on said lands have
15 grown up under a supply of water furnished from said source, and
16 during all of said time the owners of said five hundred eighty-five
17 (585) acres of land have depended upon the said supply and source
18 of supply of water, and without which none of said lands would
19 have been improved or planted as aforesaid.

20 IX.

21 That said defendants claim some right, title or interest
22 in or to the waters of said East Twin Creek, or in or to some part
23 or portion thereof, or in or to the waters of some of the tributaries
24 thereof, adverse to this plaintiff, and said defendants also claim
25 a right adverse to plaintiff to enter in and on said East Twin Creek
26 and its tributaries above plaintiff's point of diversion and pollute
27 the diminish the waters thereof, and divert the waters from said
28 stream and its tributaries and interfere with the flow of said
29 stream in a manner so as to diminish the quantity and quality of
30 said water in said stream at plaintiff's point of diversion; that
31 said claims of said defendants are, and each and all of them is,
32 without any right whatever as against this plaintiff, and none of

1 said defendants have any right to enter in or upon said stream, or
2 in or upon any of its tributaries, and pollute the waters thereof,
3 or take or divert any of the waters thereof, or interfere with the
4 flow thereof in any manner or at all so as to diminish the flow of
5 said East Twin Creek at plaintiff's point of diversion below 130
6 inches, or to do any act or thing that will pollute the waters of
7 said stream or diminish the same in quantity or quality at said
8 point of diversion.

9 X.

10 That said defendants have entered in and upon said East
11 Twin Creek and its tributaries above plaintiff's point of diversion
12 and have been and now are, without right, taking and diverting the
13 waters thereof away from and beyond and outside of the natural
14 water course of said stream in a manner so as to deprive this
15 plaintiff of the use of such waters; that said defendants have
16 threatened to, and unless restrained by order of this Court will
17 continue to, enter in and upon said stream and its tributaries and
18 make further diversions therefrom, and will take, divert and conduct
19 away all of the waters of said East Twin Creek and its tributaries
20 out of and beyond the natural water course of said stream in such
21 manner and to such extent that it will deprive this plaintiff of
22 the use of all of the waters of said stream.

23 That said defendants have in the past and threaten to
24 continue in the future to pollute the waters of said stream above
25 the point of plaintiff's diversion in a manner so as to render the
26 waters thereof unfit for domestic use, and said defendants threaten
27 to continue to so pollute said waters, and will, unless restrained
28 by order of this Court, continue to pollute the same;

29 That each and all of the diversions and acts of said
30 defendants as aforesaid are without right, and each and all of said
31 diversions and acts interfere with the rights of this plaintiff
32 and deprive plaintiff of its right to have the waters of said East
Twin Creek and its tributaries flow down to plaintiff's said point
of diversion unpolluted and undiminished in quality and undiminished
in quantity below 130 inches.

WING & WILSON
ATTORNEYS
GARNER BLOCK CORNER COURT AND E STREETS
SAN BERNARDINO, CALIFORNIA

XI.

1
2 Upon information and belief plaintiff alleges that some
3 of said defendants have acquired a right to enter in and upon said
4 East Twin Creek above plaintiff's point of diversion and take and
5 divert water therefrom, some of which rights are on a parity with
6 the rights of this plaintiff; that each and all of said defendants
7 claim a right so to do; that the aggregate claims of said defendants
8 exceed the entire flow of said East Twin Creek and its tributaries;
9 that as between themselves said defendants are claiming the right
10 to take and use said waters of said East Twin Creek adversely as to
11 one another; that there is not enough water flowing in said stream
12 or available during the irrigation period of any year to supply
13 the right of this plaintiff and the claims of each and all of said
14 defendants, and it is necessary to apportion the quantity of water
15 available therein among the parties hereto entitled thereto in the
16 order of their respective priorities; that ~~plaintiff does not know~~
17 ~~the extent of any of the claims of said defendants~~ frequently
18 the flow of said stream falls below 100 inches during the irrigat-
19 ing season and during such time it is necessary to pro rate the
20 water available among the various parties entitled thereto in
21 proportion to their respective rights; that plaintiff does not
22 know the extent of any of the claims of said defendants, nor which
23 of said claims of said defendants are prior to the others; nor
24 which of the claims of said defendants are on a parity with
25 plaintiff's right, nor the extent to which such claims of said
26 defendants are on a parity with the right of this plaintiff, nor
27 which, if any, of said claims of said defendants are claimed to be
28 prior to plaintiff's right; that the diversions of said defendants
29 are not made at the same place upon said stream, but are at various
30 ^{the course of} ~~places~~ places throughout/said stream; and affect and lessen the
31 quantity of water flowing at plaintiff's point of diversion; that
32 the right of this plaintiff cannot be determined in any action

1 without at the same time and in the same action determining the
2 rights and priorities of each and all of the other claimants in
3 and to said stream, and without determining the quantity of water
4 each of said defendants has a right to take and divert from said
5 stream above plaintiff's said point of diversion; that for a com-
6 plete adjudication and determination of the rights of this plaintiff
7 it is necessary to determine and adjudicate the rights of each and
8 all of the defendants in and to the use of the water of said
9 East Twin Creek and its tributaries; that this plaintiff and said
10 defendants constitute all of the claimants to the use of water of
11 and from said East Twin Creek and its tributaries.

12 XII.

13 That the taking and diversion of said waters from said
14 East Twin Creek by defendants as aforesaid does and will continue
15 to reduce the supply and quantity of water flowing in said creek
16 at plaintiff's said intake and point of diversion to such an extent
17 that plaintiff will be unable to furnish to its stockholders and
18 the other owners of said five hundred eighty-five (585) acres of
19 land the quantity of water reasonably necessary for the irrigation
20 of said lands and for domestic uses and purposes thereon, and for
21 the watering of animals and fowls; that by reason thereof the trees,
22 vines, fruits, grain and grasses growing thereon will wither and
23 die and plaintiff's said stockholders and the other owners of said
24 five hundred eighty-five acres of land will suffer great and
25 irreparable injury and damage; that the pollution of said stream
26 as aforesaid renders the waters thereof unfit for domestic uses
27 or purposes.

28 XIII.

29 Wherever the words "inch of water" are used or mentioned
30 in this complaint, it is intended thereby to refer to such a
31 quantity of water in continuous flow as will supply 1/50 of a
32 cubic foot of water per second of time.

SWING & WILSON
ATTORNEYS
DARNER BLOCK CORNER COURT AND E STREETS
SAN BERNARDINO, CALIFORNIA

1 WHEREFORE, plaintiff prays judgment against defendants
2 as follows:

3 (a) That defendants be required to appear herein and set
4 up their respective rights and claims in and to the waters of said
5 stream, and in and to the right that either or any of them may have
6 to pollute, divert or use the same as aforesaid, and that all adverse
7 claims of said defendants and each of them in and to the said waters
8 of East Twin Creek and its tributaries be determined by decree of
9 this Court, and that by said decree it be decreed and adjudged that
10 defendants, nor any of them, have any right, title or interest in
11 or to the waters thereof adverse to the rights of plaintiff herein,
12 and that plaintiff is the owner of the right to have the waters of
13 said East Twin Creek and its tributaries flow down the natural
14 channel thereof to plaintiff's intake and point of diversion
15 unpolluted and in such manner and to such extent that there will
16 at all times be flowing in said creek at plaintiff's said intake
17 and point of diversion one hundred thirty inches of water.

18 (b) That the Court ascertain the quantity of water flowing
19 in said East Twin Creek and its tributaries available for distribu-
20 tion between the parties hereto, and determine the quantity of
21 water which each of the parties hereto is entitled to take, and
22 determine the manner in which each of the parties hereto entitled
23 to take water from said stream shall take and divert the same.

24 (c) That defendants and each and all of them be enjoined
25 from in any manner polluting the waters of said stream or in any
26 manner taking, diverting or removing any of the waters of said East
27 Twin Creek or its tributaries or at all to such an extent or in such
28 manner that the pollution thereof will render the said waters, or
29 any part or portion thereof unfit for domestic uses or purposes, or
30 in such manner that the taking and diverting thereof will reduce the
31 flow thereof to a quantity less than one hundred thirty inches at
32 plaintiff's intake and point of diversion, and that said defendants

SWING & WILSON
ATTORNEYS
GARNER BLOCK CORNER COURT AND E STREETS
SAN BERNARDINO, CALIFORNIA

1 and each of them be restrained and perpetually enjoined from
2 doing any of the things herein complained of, or interfering
3 with the said stream or the waters thereof in such manner as to
4 affect plaintiff's rights therein.

5 (d) For costs of action herein and for such other and
6 further relief as to the Court may seem meet and proper in the
7 premises,

8 And plaintiff will ever pray.

9
10 Shirley Wilson
Attorneys for Plaintiff.

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

DEL ROSA MUTUAL WATER COMPANY,
a corporation,

Plaintiff,

vs.

D. J. CARPENTER et al.,

Defendants.

No. 31796

DEMURRER OF DEFENDANTS
ARROWHEAD SPRINGS CORPORATION,
ARROWHEAD SPRINGS COMPANY,
CALIFORNIA CONSOLIDATED WATER
COMPANY AND CALIFORNIA CON-
SUMERS COMPANY AND EACH
OF THEM.

Defendants Arrowhead Springs Corporation, a corpora-
tion, Arrowhead Springs Company, a corporation, California
California Consumers Company, sued herein as
Consolidated Water Company, a corporation, and California Con-
sumers Corporation, a corporation, and each of them, demur to
the complaint on file herein, and for grounds of demurrer,
specify:

1. Said complaint does not state facts sufficient to
constitute a cause of action.

2. Several causes of action are set forth in said
complaint and are not separately stated, to-wit, a cause of
action to quiet title, and a cause of action for an injunction.

WHEREFORE defendants and each of them pray judgment here-
on.

GIBSON, DUNN & CRUTCHER

and H. F. Prime

O'MELLENY, TULLER & MYERS

and Prime
Attorneys for said Defendants
and each of them.

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MEMORANDUM OF POINTS AND AUTHORITIES

Several causes of action united in a complaint must
be separately stated.

C. C. P. 427

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN BERNARDINO

3
4
5 DEL ROSA MUTUAL WATER COMPANY,
6 a corporation,

7 Plaintiff,

8 vs.

9 D. J. CARPENTER et al.,

10 Defendants.
11

No. 31788

PETITION OF DEFENDANTS
ARROWHEAD SPRINGS CORPORA-
TION, ARROWHEAD SPRINGS
COMPANY, CALIFORNIA CON-
SOLIDATED WATER COMPANY AND
CALIFORNIA CONSUMERS
COMPANY, AND EACH OF THEM,
FOR REMOVAL TO UNITED STATES
DISTRICT COURT.

12
13 TO THE HONORABLE SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 IN AND FOR THE COUNTY OF SAN BERNARDINO:

15
16 Petitioners, and each of them, respectfully show and
17 allege:

18 1. Plaintiff herein, Del Rosa Mutual Water Company, a
19 corporation, was at the time of the commencement of the above
20 entitled action, and now is, a corporation organized and exist-
21 ing under and by virtue of the laws of the State of California,
22 and likewise was and is a citizen and resident of the Southern
23 District of the State of California, having its principal place
24 of business in the County of San Bernardino in said state.

25 2. The defendants named in the above entitled action other
26 than these petitioners and other than the fictitious defendants
27 referred to in Paragraph 3 hereof, are D. J. Carpenter, Isabella
28 Turner, J. E. Jeffers, George Mason, National Thrift Corporation
29 of America, a corporation, John Doe McKason, Mary Gleason,
30

1 C. M. Christ, Great View Water Company, Nettie D. Phillips,
2 Pacific-Southwest Trust & Savings Bank, a corporation, Arthur R.
3 Peck, Harry A. Peck, Ellen A. McLaughlin and J. H. Baylis.

4 3. In addition to the foregoing defendants, there
5 are also named as defendants in said action, and exclusive of
6 these petitioners, the following: John Doe Corporation No. 1,
7 John Doe Corporation, No. 2, John Doe Corporation No. 3, John
8 Doe Corporation No. 4, John Doe Corporation No. 5, John Doe,
9 John Doe, Richard Doe, Richard Roe, Jane Doe, Sallie Doe, Dolly
10 Doe, Joe Doe, Jim Doe, Nellie Doe, Salley Doe and Dollie Doe.
11 Each and all of the last named defendants are wholly fictitious
12 in character, whose true identity, if any they have, cannot be
13 ascertained by these petitioners from the complaint in the above
14 entitled action, nor have these petitioners any information or
15 belief as to the identity of said fictitious defendants, or any
16 of them.

17 4. Petitioner, Arrowhead Springs Corporation, a
18 corporation, is a corporation organized and existing under and by
19 virtue of the laws of the State of Delaware and is a citizen of
20 said state; petitioner Arrowhead Springs Company, a corporation,
21 is a corporation organized and existing under and by virtue of
22 the laws of the State of Maine and is a citizen of said state;
23 petitioner California Consolidated Water Company, a corporation,
24 is a corporation organized and existing under and by virtue of
25 the laws of the State of Delaware and is a citizen of said state;
26 California Consumers Company, sued herein as
27 petitioner/California Consumers Corporation, a corporation, is a
28 corporation organized and existing under and by virtue of the
29 laws of the State of Delaware and is a citizen of said state.

30 5. The above entitled action has been commenced
against your petitioners, and each of them, as well as the de-

1 defendants hereinabove referred to in Paragraphs 2 and 3 hereof,
2 and each of them, in the Superior Court of the State of Cali-
3 fornia, in and for the County of San Bernardino, by Del Rosa
4 Mutual Water Company, a corporation, which said action is of a
5 civil nature.

6 6. Plaintiff brings such action in equity for the
7 purpose of quieting its asserted title to the waters, or cer-
8 tain thereof, of East Twin Creek, a natural stream of water
9 situated in and flowing through the County of San Bernardino,
10 State of California, as against the various and respective rights
11 and claims of defendants above named, including these petitioners,
12 and prays that the judgment and decree herein declare and adjudge
13 "that defendants, nor any of them, have any right, title or
14 interest in" and to the waters of said stream. Ancillary to
15 such relief, it is prayed in said complaint that "defendants
16 and each and all of them" be enjoined from interfering with
17 plaintiff's alleged rights in and to the aforesaid water.

18 7. Said complaint sets forth as between plaintiff
19 and/or petitioners and each of them a controversy wholly separable
20 and entire as to the right of plaintiff to obtain the relief prayed
21 for, or any relief, as against the rights, claims, titles and/
22 or interests of these petitioners and each of them in and to the
23 waters above referred to and one which can be fully and com-
24 pletely determined by and between plaintiff and these petition-
25 ers and each of them irrespective of and without reference to
26 the joinder of the various defendants other than these petitioners
27 hereinabove referred to. Said complaint was not filed, nor
28 does the same purport to have been filed, for the purpose of
29 obtaining adjudication of a single controversy between plaintiff
30 and each and all of said defendants named in said action; on

1 the contrary, said complaint was filed and said action was and
2 is brought for the purpose of obtaining an adjudication of the
3 validity of any and all adverse claims, rights, titles or in-
4 terests held or asserted by each of the defendants in said
5 action, including these petitioners and each of them. Said com-
6 plaint requires, by appropriate allegations, that each of said
7 defendants, including these petitioners, set forth "their re-
8 spective rights and claims in and to the waters of said stream
9 and in and to the right that either or any of them may have" to
10 use the same. There is no averment or allegation in said com-
11 plaint, nor is it the fact, that the defendants named in said
12 complaint claim under any common source of title or of right,
13 or that they, or any of them, claim any joint right, title or
14 interest in and to the waters aforesaid.

15 8. A necessary effect of any judgment obtained in
16 this action will be to determine, adjudicate and adjust both the
17 legal and equitable rights, titles and interests of plaintiff and
18 of these petitioners and each of them in and to the waters afore-
19 said, which said rights, titles and interests and each of them
20 greatly exceed in value the sum of \$3,000.00; wherefore your
21 petitioners and each of them allege that the amount in contro-
22 versy in this action and as well the amount in controversy between
23 plaintiff and these petitioners and each of them exceeds the sum of
24 \$3,000.00, exclusive of interest and costs.

25 9. No pleading has been filed, nor has any appearance
26 been made in the above entitled action by these petitioners, or
27 any of them, and the time of said petitioners and each of them to
28 answer or plead to the complaint herein will not expire until
29 subsequent to July 19, 1930.

30 10. There is presented herewith a good and sufficient

1 bond, as provided by statute in such cases, which said bond is
2 in the penal sum of \$2,500.00 and is conditioned upon the entering
3 into the District Court of the United States for the Southern
4 District of California, Central Division, within thirty (30)
5 days from the date of the filing of this petition of a certified
6 copy of the record of this action and for the payment of all costs
7 which may be awarded by said court if the said District Court
8 shall hold this suit wrongfully or improperly removed thereto.

9
10 WHEREFORE your petitioners and each of them pray that
11 this court proceed no further herein, except to approve the bond
12 presented herewith and to make the order of removal, as required
13 by law, and to direct a transcript of the record herein to be
14 prepared by the Clerk of this Honorable Court and to be filed
15 with the said District Court of the United States in manner and
16 form as provided by law in such cases.

17 GIBSON, DUNN & CRUTCHER

18
19 and H. F. Quinn
20 Attorneys for Petitioners.

21 O'MELVENY, TULLER & MYERS

22
23 and Quinn Tuller
24 Attorneys for Petitioners.
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1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SAN BERNARDINO
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5 DEL ROSA MUTUAL WATER COMPANY,
6 a corporation,

7 Plaintiff,

8 vs.
9

10 D. J. CARPENTER et al.,

11 Defendant.

No. 31728

NOTICE OF PETITION AND BOND
FOR REMOVAL TO THE DISTRICT
COURT OF THE UNITED STATES.

12
13 To Plaintiff in the above entitled action and
14 Messrs. Swing & Wilson, its attorneys:
15

16 Please take notice that on Friday, July 18, 1930, at
17 the hour of 1:45 o'clock P.M., or as soon thereafter as counsel
18 may be heard, defendants Arrowhead Springs Corporation, a cor-
19 poration, Arrowhead Springs Company, a corporation, California
20 California Consumers Company, sued herein as
Consolidated Water Company, a corporation, and California Con-
21 sumers Corporation, a corporation, and each of them, will file
22 with and in and present and submit to the Superior Court of the
23 State of California in and for the County of San Bernardino, at
24 its courthouse in the City of San Bernardino, in said County, in
25 the courtroom of Department No. 3 of said Court, their petition
26 and bond, copies of which are attached hereto, for removal of the
27 above entitled action to the District Court of the United States
28 for the Southern District of California, Central Division, and
29 that said defendants, and each of them, will at said time and
30 place, apply for an order approving said bond, granting said

1 petition for removal, and directing the Clerk of said court to
2 prepare a certified copy of the record in said case in manner
3 and form as provided by law.

4 DATED July 17, 1930.

6 GIBSON, DUNN & CRUTCHER

7 and W. F. Prime
8

10 O'MELVENY, FULLER & MYERS,

11 and Prime
12

13 Attorneys for said Defendants.
14

15 MEMORANDUM OF POINTS AND AUTHORITIES
16

17 The above entitled action is removable upon the grounds
18 stated in the petition herein.
19

20 McMullen v. Halleck Cattle Company, 193 Fed. 282;

21 Carothers v. McKinley Mining Co., 116 Fed. 947;

22 Bates v. Carpentier, 98 Fed. 452;

23 Bacon v. Felt, 38 Fed. 870.
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Judge.



SEYLER-DAY CO.
INSURANCE
GENERAL AGENTS
NATIONAL SURETY CO.
OF NEW YORK
CAPITAL AND SURPLUS OVER \$16,000,000.00
1120 CORPORATION BLDG.
724 S. SPRING STREET
LOS ANGELES

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

Del Rosa Mutual Water Company,
a corporation,
Plaintiff
Vs
D J Carpenter, et al,
Defendants.

No. 31798

BOND ON REMOVAL.

KNOW ALL MEN BY THESE PRESENTS: That the National Surety Company, a corporation, as Surety, is held and firmly bound unto Del Rosa Mutual Water Company, a corporation, plaintiff in the above entitled action, its legal representatives, and assigns, in the sum of TWENTY FIVE HUNDRED (\$2500.00) DOLLARS, lawful money of the United States of America, for the payment of which well and truly to be made it binds itself, its successors and assigns, as the case may be, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION is such that:

WHEREAS, the Arrowhead Springs Corporation, a corporation, Arrowhead Springs Company, a corporation, California Consolidated Water Company, a corporation, and California Consumers Company, Corporation, a corporation, defendants in the above action, have applied by petition to the Superior Court of the State of California, in and for the County of San Bernardino, for the removal of a certain cause therein pending, wherein Del Rosa Mutual Water Company, a corporation, is plaintiff, and D J. Carpenter et al are defendants, to the District Court of the United States, for the Southern District of California, Central Division, for further proceedings on the grounds in said petition set forth, and that all further proceedings in said action, as to said named defendants in said Superior Court be stayed.

NOW THEREFORE, if the Arrowhead Springs Corporation, a corporation, Arrowhead Springs Company, a corporation, California Consolidated Water Company, a corporation, and California Consumers Company, ~~Company~~, a corporation, defendants above named, shall within thirty (30) days from and after the date of the filing of said petition, enter in said District Court of the United States of America a duly certified copy of the record in the above entitled action, and shall pay or cause to be paid all costs that may be awarded therein by the District Court of the United States, if such Court shall hold that such action was wrongfully or improperly removed thereto, then this obligation shall be void, otherwise to remain in full force and effect.

Dated July 17th, 1930.

NATIONAL SURETY COMPANY

ATTORNEY IN FACT.

The foregoing bond on removal is hereby approved as to form and sufficiency of surety this _____ day of _____ 1930.

Judge.

Wife
sued herein as California Consumers Company, ~~Company~~

O'CONNOR & FINDLAY
Law Offices
Arcade Bldg. - Calles, Calif.

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

DEL ROSA MUTUAL WATER COMPANY,
a corporation,

Plaintiff,

-vs-

No. 31798

D. J. CARPENTER, ISABEL C. TURNER,
J. B. JEFFERS, GEORGE S. MASON,
NATIONAL THRIFT CORPORATION OF
AMERICA, a corporation, JOHN DOE
McKASON, MARY GLEASON, C.M. CHRIST,
GREAT VIEW WATER COMPANY, NETTIE D.
PHILLIPS, PACIFIC-SOUTHWEST TRUST
& SAVINGS BANK, a corporation,
ARTHUR R. PECK, CARRIE A. PECK,
ELLEN A. McLAUGHLIN, ARROWHEAD
SPRINGS CORPORATION, a corporation,
ARROWHEAD SPRINGS COMPANY, a cor-
poration, J. N. BAYLIS, John Doe
Corporation No. 1, John Doe Corpora-
tion No. 2, John Doe Corporation
No. 3, John Doe Corporation No. 4,
John Doe Corporation No. 5, John Doe,
John Hoe, Richard Hoe, Richard Roe,
Jane Doe, Sallie Hoe, Dolly Doe, Joe
Doe, Jim Doe, Nellie Doe, Salley Doe,
Dolly Doe, CALIFORNIA CONSOLIDATED
WATER COMPANY, a corporation, CALIFORN-
IA CONSUMERS CORPORATION, a corpora-
tion,

Defendants

ANSWER AND CROSS-COMPLAINT OF DEFENDANTS,
D. J. CARPENTER, ISABEL C. TURNER, GEORGE
S. MASON, J. B. JEFFERS, L.R. McKESSON,
sued herein as JOHN DOE McKASON, and
NATIONAL THRIFT CORPORATION OF AMERICA, a
corporation

The defendants, D. J. Carpenter, Isabel C. Turner, George S.
Mason, J. B. Jeffers, L. R. McKesson, sued herein as John Doe Ma-
Kason, and National Thrift Corporation of America, a corporation,
for answer to so many and such parts of plaintiff's complaint as
are deemed necessary to answer, answering say:

I.

That these defendants are the owners of the first ten (10)
inches of water flowing from East Twin Creek.

II.

That as to the statements contained in Paragraphs I, II, III, IV, and V, they have not sufficient information to know whether the same are true or false, and therefore deny the same.

III.

Admit all allegations contained in Paragraph VI, and admit all those portions of Paragraphs VII, VIII, IX, X, and XI, alleging that plaintiff's predecessors in interest entered in and upon East Twin Creek at a point thereon about one (1) mile north of said East Twin Creek Canyon, and appropriated all of the flow of said stream, and thereafter ~~diverted~~ and conveyed the water of said stream through conduit for beneficial uses, are true.

IV.

Deny all other portions of said Paragraphs VII to XI, inclusive, alleging that the plaintiff, during all of said time, was and now is taking said water and devoting it to beneficial uses, and alleging that the plaintiff is the owner of the right to have all of the water of said East Twin Creek and its tributaries flow down in the usual and customary manner, uninterfered with by any of the defendants, and alleging that each of the defendants is without any right whatever in and to said water of East Twin Creek, and alleging pollution by these defendants of said water.

V.

As to all other portions of said Paragraphs VII, to XI, inclusive, not hereinbefore specifically admitted or denied, these defendants allege they have not sufficient information to know whether the same is true or false, and basing this allegation upon such lack of information, hereby deny the same.

CROSS-COMPLAINT

Further answering said complaint and by way of cross-complaint

1 thereto against said plaintiff and against all defendants above
2 named, except these answering defendants, same being herein desig-
3 nated as cross-defendants, these answering defendants and cross-
4 complainants allege:

5 I.

6 That they are now the owners of the first ten (10) inches of
7 water under a four (4) inch pressure at any and all times flowing in
8 East Twin Creek mentioned in plaintiff's complaint. That these de-
9 fendants and their predecessors in interest have been the owners of
10 said ten (10) inches of water for more than fifty (50) years last
11 past and, have, during all of said time, made a beneficial use of
12 the same for domestic and general agricultural purposes.

13 II.

14 That the cross-defendants above named and each and all of them
15 claim some right, title or interest in and to said ten (10) inches
16 of water, have been infringing and trespassing upon these cross-
17 complainants' rights in and to the same and threaten to continue
18 to infringe and trespass upon cross-complainants' rights in and to
19 the same and that they will continue to infringe and trespass upon
20 cross-complainants' rights in and to the same and will appropriate
21 all of the same to their own use unless restrained and enjoined
22 by this Court from doing so. That the said claim or claims of
23 said cross-defendants and each and any and all of them are without
24 any right or foundation.

25 WHEREFORE, defendants and cross-complainants pray:

- 26 1. That plaintiff take nothing by its action herein.
27 2. That these cross-complainants be adjudged to be the owners
28 of the first ten (10) inches under a four (4) inch pressure of the
29 water at any and all times flowing in said East Twin Creek, and
30 that said cross-defendants have no right, title or interest in and
31 to the same or any part thereof and that said cross-defendants and
32

O'CONNOR & FINDLAY
Law Offices
Arcade Bldg. - Colton, Calif.

1 each and every person, firm or corporation claiming or to claim
2 under them or any of them, be forever barred from asserting any
3 right, title or interest in or to the same or any part thereof.

4 3. That these defendants be given judgment for their costs
5 and for such other and further relief as shall to the Court seem
6 meet and proper in the premises.

7
8 O'CONNOR & FINDLAY

9 By
10 Attorneys for Defendants, D.J.
11 Carpenter, Isabel C. Turner,
12 George S. Mason, J. B. Jeffers,
13 L. R. McKesson, National
14 Thrift Corporation of America.
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443135

In the Superior Court of the State of California
In and For the County of San Bernardino

D. J. CARPENTER, ISABEL C. TURNER,
GEORGE S. MASON, J. B. JEFFERS, L. R.
McKESSON, sued herein as John Doe
McKason, and NATIONAL THRIFT CORPORA-
TION OF AMERICA, a corporation.

Cross-complainants.

vs.

DEL ROSA MUTUAL WATER COMPANY, a cor-
poration, MARY GLEASON, C.M. CHRIST,
GREAT VIEW WATER COMPANY, NETTIE D.
PHILLIPS, PACIFIC-SOUTHWEST TRUST & SAV-
INGS BANK, a corporation, ARTHUR R. PECK,
CARRIE A. PECK, ELLEN A. McLAUGHLIN, ARROW-
HEAD SPRINGS CORPORATION, a corporation,
ARROWHEAD SPRINGS COMPANY, a corporation,
J.N. BAYLIS, John Doe Corporation, No. 1,
John Doe Corporation No. 2, John Doe Cor-
poration No. 3, John Doe Corporation No. 4,
John Doe Corporation No. 5, John Doe,
John Doe, Richard Doe, Richard Roe, Jane
Doe, Sallie Doe, Dolly Doe, Joe Doe, Jim
Doe, Nellie Doe, Salley Doe, Dolly Doe,
CALIFORNIA CONSOLIDATED WATER COMPANY, a
corporation, CALIFORNIA CON-
SUMERS CORPORATION, a corporation,
Cross-defendants.

Action brought in the Superior Court of the County
of San Bernardino, State of California, and the
Complaint filed in the office of the Clerk of said
County of San Bernardino.

O'CONNOR & FINDLAY

Attorney & Counsel for ~~McKason~~
Cross-complainants

The People of the State of California Send Greetings to

DEL ROSA MUTUAL WATER COMPANY, a corporation, MARY GLEASON, C.M. CHRIST, GREAT VIEW
WATER COMPANY, NETTIE D. PHILLIPS, PACIFIC-SOUTHWEST TRUST & SAVINGS BANK, a cor-
poration, ARTHUR R. PECK, CARRIE A. PECK, ELLEN A. McLAUGHLIN, ARROWHEAD SPRINGS
CORPORATION, a corporation, ARROWHEAD SPRINGS COMPANY, a corporation, J.N. BAYLIS,
John Doe Corporation No. 1, John Doe Corporation No. 2, John Doe Corporation No. 3,
John Doe Corporation No. 4, John Doe Corporation No. 5, John Doe, John Doe, Richard
Doe, Richard Roe, Jane Doe, Sallie Doe, Dolly Doe, Joe Doe, Jim Doe, Nellie Doe,
Salley Doe, Dolly Doe, CALIFORNIA CONSOLIDATED WATER COMPANY, a corporation,
CALIFORNIA CONSUMERS CORPORATION, a corporation,

Cross-defendant.

CROSS

YOU ARE HEREBY DIRECTED TO APPEAR, and answer the Complaint in an action entitled as
above, brought against you in the Superior Court of the County of San Bernardino, State of California, within
ten days after the service on you of this summons—if served within this County, or within thirty days if served
elsewhere.

Cross-complainants

And you are hereby notified that unless you appear and answer as above required, the said ~~plaintiff~~ will
take judgment for any money or damages demanded in the complaint, as arising upon contract, or
will apply to the Court for any other relief demanded in the complaint.

Given under my hand and the Seal of the Superior Court
of the County of San Bernardino, State of California,
this 22 day of
August A. D. 1930

HARRY L. ALLISON, Clerk.
By M. F. Redding Deputy Clerk.

SWING & SWING
ATTORNEYS
GARDNER BLOCH, CORP. COURT & E. ST.
SAN BERNARDINO, CALIFORNIA

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

DEL ROSA MUTUAL WATER COMPANY, a } No. 31798
corporation, }
Plaintiff, }
-vs- } NOTICE OF TRIAL.
D. J. CARPENTER, et al, }
Defendants. }

To the defendants in the above entitled action and to
Messrs. O'Connor & Findlay, attorneys for defendants, D. J.
Carpenter, Isabel C. Turner, George S. Mason, J. B. Jeffers,
L. R. McKesson, sued herein as John Doe McKason, and National
Thrift Corporation of America; Messrs. Lawler & Degnan, attorneys
for defendants, California Consolidated Water Company and
California Consumers Company (sued herein as California Consumers
Corporation); Messrs. Gibson, Dunn & Crutcher and C. L. MacFarland,
Esq., attorneys for defendants, Arrowhead Springs Company and
Arrowhead Springs Corporation, Ltd.:

You and each of you will please take notice that the
above entitled action has been set for trial for Monday, October
19th, 1931, at the hour of ten o'clock a. m. of said day, and will
be tried at said time in Department III of the above entitled
Court, at the court house, in the City of San Bernardino, County
of San Bernardino, State of California, or in such other depart-
ment of said Court as said case may then be assigned.

Dated: October 13th, 1931.

Swing & Wilson
Paul E. Swing
Attorneys for Plaintiff.

cc

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

2 IN AND FOR THE COUNTY OF SAN BERNARDINO.

3 DEL ROSA MUTUAL WATER COMPANY,
4 a corporation,

Plaintiff,

No. 31798.

5 vs.

STIPULATION

FOR

JUDGMENT

6 D. J. CARPENTER, ISABEL C. TURNER,
7 J. B. JEFFERS, GEORGE S. MASON,
8 NATIONAL THRIFT CORPORATION OF
9 AMERICA, a corporation, JOHN DOE
10 MCKASON, MARY GLEASON, C. M. CHRIST,
11 GREAT VIEW WATER COMPANY, NETTIE
12 D. PHILLIPS, PACIFIC-SOUTHWEST TRUST
13 & SAVINGS BANK, a corporation,
14 ARTHUR R. PECK, CARRIE A. PECK,
15 ELLEN A. McLAUGHLIN, ARROWHEAD
16 SPRINGS CORPORATION, a corporation,
17 ARROWHEAD SPRINGS COMPANY, a
18 corporation, J. N. BAYLIS, CALIFORNIA
19 CONSOLIDATED WATER COMPANY, a
20 corporation, CALIFORNIA CONSUMER
21 CORPORATION, a corporation, et al.,

Defendants.

22 IT IS HEREBY STIPULATED by and between Del Rosa Mutual
23 Water Company, plaintiff above named, and defendants, California Con-
24 solidated Water Company, a corporation, Arrowhead Springs Corporation,
25 Ltd. (sued herein as "Arrowhead Springs Corporation"), a corporation,
26 Arrowhead Springs Company, a corporation, California Consumers Com-
27 pany, (sued herein as "California Consumers Corporation"), a corpora-
28 tion, D. J. Carpenter, Isabel C. Turner, J. B. Jeffers, George S.
29 Mason, ~~E. B. McKason~~, (sued herein as "John Doe McKason"), and
30 National Thrift Corporation of America, a corporation, and between
31 defendants themselves, as follows:

32 That the judgment in said action attached to this stipula-
tion and made a part hereof may be decreed and entered in said action
as the judgment determining and adjudicating the rights of the vari-
ous parties to this action to take, divert, and use water from the
sources and supply referred to in the complaint, and such rights shall
be as in said judgment specified and adjudicated, and not otherwise,
and as full and complete settlement of all the issues raised in the

1 pleadings in said cause and of the entire controversy between the
2 parties to this litigation, and that said judgment, immediately up-
3 on the entry thereof, shall be final and not subject to appeal or
4 review in any manner by any of the parties, ^{herein} ~~to said cause.~~ JCM
JEA
JES
R. 107.

5 IT IS FURTHER STIPULATED, by and between defendant
6 Arrowhead Springs Corporation, Ltd. and defendant California Con-
7 solidated Water Company, that nothing in this stipulation, nor in
8 said judgment, shall in anywise affect, amend or otherwise impair
9 any contracts now in existence, or which may be executed as of the
10 date of said judgment, by and between said defendants, Arrowhead
11 Springs Corporation, Ltd. and California Consolidated Water Com-
12 pany, relating to the water of East Twin Creek or any of its
13 tributaries.

14 IT IS FURTHER STIPULATED that findings of fact and con-
15 clusions of law, except as set out and contained in the judgment,
16 are waived.

~~Sept 26 1931~~
Oct 19, 1931

17
18 SWING & WILSON

19 By Paetz & E. Spring
Attorneys for Plaintiff JCM
JEA
JES
R. 107.

20
21 O'CONNOR & FINDLAY

22 By R. Bruce Findlay
Attorneys for defendants and cross-
23 complainants, D. J. Carpenter, Isabel
C. Turner, J. B. Jeffers, George S.
24 Mason, L. R. McKee and National
Thrift Company of America.

25
26 GIBSON, DUNN & CRUTCHER,

27 By J. C. Macfarland
Attorneys for Arrowhead Springs Cor-
28 poration, Ltd. and Arrowhead Springs
Company.

29
30 LAWLER & DEGNAN,

31 By K. A. Barry, James E. Degnan
Attorneys for California Consolidated
32 Water Company and California Consumers
Company.

FILED
OCT 19 1931
HARRY L. ALISON
Deputy

STIPULATION
for
JUDGMENT.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
IN AND FOR THE COUNTY OF ~~LOS ANGELES~~ ^{SAN BERNARDINO}

No. 51728

(For Clerk's Filing Stamp)

DEL ROSA MUTUAL WATER COMPANY,
a corporation,
Plaintiff
vs.
D. J. CARPENTER, et al.,
Defendant

GIBSON, DUNN & CRUTCHER
634 SOUTH SPRING STREET
MUTUAL BLDG
LOS ANGELES, CAL.

Attorneys for Defendants Arrowhead Springs Company
and Arrowhead Springs Corporation, Ltd.

Received copy of the within this day of 19

Attorney for Plaintiff.

Received copy of the within this day of 19

Attorney for

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

DEL ROSA MUTUAL WATER COMPANY,
a corporation,

Plaintiff,

vs.

D. J. CARPENTER, ISABEL C. TURNER,
J. B. JEFFERS, GEORGE S. MASON,
NATIONAL THRIFT CORPORATION OF
AMERICA, a corporation, JOHN DOE
MCKASON, MARY GLEASON, C. M. CHRIST,
GREAT VIEW WATER COMPANY, NETTIE
D. PHILLIPS, PACIFIC-SOUTHWEST TRUST
& SAVINGS BANK, a corporation,
ARTHUR R. PECK, CARRIE A. PECK,
ELLEN A. McLAUGHLIN, ARROWHEAD
SPRINGS CORPORATION, a corporation,
ARROWHEAD SPRINGS COMPANY, a cor-
poration, J. N. BAYLIS, CALIFORNIA
CONSOLIDATED WATER COMPANY, a
corporation, CALIFORNIA CONSUMERS
CORPORATION, a corporation, et al.,

Defendants.

No. 31798

J U D G M E N T

The above entitled action coming on regularly to be
heard before the Court without a jury, a trial by jury having been
waived by the respective parties, Messrs. Swing & Wilson and Ralph
E. Swing appearing as attorneys for the plaintiff, Messrs. Lawler &
Dignan appearing for and as attorneys for defendants, California
Consolidated Water Company and California Consumers Company (sued
herein as "California Consumers Corporation"), respectively, and
Messrs. Gibson, Dunn & Grutcher appearing for and as attorneys for
defendants Arrowhead Springs Company and Arrowhead Springs Corpora-
tion, Ltd. (sued herein as "Arrowhead Springs Corporation"), and
Messrs. O'Connor & Findlay appearing for and as attorneys for the
other defendants above mentioned, and this cause being at issue and
the parties having entered into a stipulation in writing for the
entry of this judgment, and findings of fact and conclusions of law,
except as set out and contained in this judgment, having been duly

1 *and oral evidence having been introduced*
waived by the respective parties, and the Court being fully advised
2 in the premises, and good and sufficient cause appearing therefor;
3 *and the evidence*

NOW, THEREFORE, in accordance with said stipulation,

4 IT IS HEREBY ADJUDGED:

5 1. That plaintiff is, and defendants California Con-
6 solidated Water Company, Arrowhead Springs Corporation, Ltd. (sued
7 herein as "Arrowhead Springs Corporation"), Arrowhead Springs Com-
8 pany and California Consumers Company (sued herein as "California
9 Consumers Corporation") are corporations duly organized and existing
10 and duly qualified and authorized to do and transact business within
11 the State of California.

12 2. That neither the California Consumers Company nor
13 the Arrowhead Springs Company have at this time any right, title or
14 interest in or to any of the water or in or to the right to take,
15 divert, use or transport any of the water referred to in the com-
16 plaint in said action or in this judgment.

17 3. That East Twin Creek is a natural stream of water
18 situated in the County of San Bernardino, State of California, and
19 has its source in the San Bernardino Mountains lying and being to
20 the north of the City of San Bernardino. That all of the waters of
21 what is known as East Twin Creek watershed, except as diminished by
22 use by defendant Arrowhead Springs Corporation, Ltd., and its prede-
23 cessors in interest and by use by defendant California Consolidated
24 Water Company and its predecessors in interest, and except as the
25 waters thereof are lost by evaporation, transpiration, seepage and
26 other natural causes, drain into and become a part of said East
27 Twin Creek above the point of plaintiff's diversion hereinafter
28 referred to. That the principal tributaries of said East Twin Creek
29 are Strawberry Creek, Coldwater Creek, Hot Springs Creek, and other
30 named and unnamed tributaries and springs, all of which flow and
31 percolate into and, except as diminished as aforesaid, become a part
32 of said East Twin Creek; also waters seep and percolate into said

1 East Twin Creek and its tributaries from the adjacent hills and
2 lands draining into said East Twin Creek and its various tributaries
3 and the canyons draining into said stream. That Strawberry Creek
4 and its tributaries are the easterly branch of East Twin Creek above
5 the junction of Strawberry Creek and Coldwater Creek; Coldwater
6 Creek and its tributaries are the westerly branch of East Twin Creek
7 above the junction of Strawberry Creek and Coldwater Creek; Hot
8 Springs Creek and its tributaries are the lowest branch of East Twin
9 Creek. That at the time of the appropriation, as hereinafter set
10 forth, of the waters of said East Twin Creek by plaintiff's predeces-
11 sors in interest all of the waters of said East Twin Creek and of
12 its tributaries, except that part thereof then being used by defen-
13 dant Arrowhead Springs Corporation, Ltd. and its predecessors on
14 lands in Section 7, Township 1 North, Range 3 West, S.B.B. & M., and
15 on lands in Sections 11 and 12, Township 1 North, Range 4 West,
16 S.B.B. & M., above the point of plaintiff's intake, and that part
17 lost by evaporation, transpiration, seepage and other natural causes,
18 flowed in a southerly direction in a natural stream to and into the
19 San Bernardino Valley, and at the time of the appropriation of the
20 right to use such water by plaintiff's predecessors in interest none
21 of said water had been appropriated, diverted, or used except by
22 said Arrowhead Springs Corporation, Ltd. and its said predecessors
23 for use upon said lands above plaintiff's point of appropriation.

24 That subsequent to the time when defendant, Arrowhead
25 Springs Corporation, Ltd., or its predecessors in interest, acquired
26 title to all the lands described in paragraph 4 below, except the
27 north half of the northwest quarter ($NE\frac{1}{4}$ of $NE\frac{1}{4}$) of Section 12, Town-
28 ship 1 North, Range 4 West, S.B.B. & M., plaintiff or its predeces-
29 sors in interest entered into and upon said East Twin Creek at about
30 one mile north of the mouth of said East Twin Creek and appropriated
31 and diverted all of the water of said stream flowing at said point
32 and thereafter, except as hereunder provided, diverted all of the

1 water of said stream flowing at said point into a ditch and conduit
2 and conveyed the same away to nonriparian lands for beneficial uses
3 thereon.

4 That the point on said stream where said appropriation and
5 diversion was so made by plaintiff, or its predecessors in interest,
6 was below the confluence of all of said branches of said East Twin
7 Creek and below where all of the waters of said East Twin Creek
8 watershed converge, except as diminished as aforesaid. That ever
9 since said appropriation and diversion of said stream all of the
10 waters of said stream flowing at said point have been and now are
11 taken and used for irrigation and other beneficial uses and purposes
12 by plaintiff and its predecessors in interest, and by defendants and
13 cross complainants named in paragraph 6 hereof, except as diminished
14 from time to time the use by defendant Arrowhead Springs Corpora-
15 tion, Ltd. and its predecessors in interest and by natural causes
16 as aforesaid, and except that said California Consolidated Water
17 Company and its predecessors in interest have for more than five
18 years prior to the commencement of this action diverted into reser-
19 voirs and tanks and have diverted, taken and transported to Los
20 Angeles and other places for bottling purposes and other commercial
21 uses, water from said watershed adversely to said plaintiff, and to
22 all other defendants, except Arrowhead Springs Corporation, Ltd.

23 4. That in the year 1863 David Noble Smith, predecessor
24 in interest of defendant Arrowhead Springs Corporation, Ltd., set-
25 tled on the East half of the Southeast quarter and the Southeast
26 quarter of the Northeast quarter of Section Eleven (11) and the
27 Northwest quarter of the Southwest quarter of Section Twelve (12),
28 Township 1 North, Range 4 West, S.B.B. & M., which lands were then
29 and until 1878 unsurveyed, and thereafter, on the 1st day of Febru-
30 ary, 1882, patent was issued therefor; that on the 3rd day of April,
31 1871, pursuant to the Acts of Congress approved July 27, 1866, and
32 March 3, 1871, there was granted to Southern Pacific Railroad Company

1 of California, predecessor in interest of defendant Arrowhead Springs
2 Corporation, Ltd., all of Section Seven (7), Township 1 North, Range
3 3 West, S.B.B. & M., and thereafter, on the 1st day of November, 1897,
4 patent was issued therefor (which patent contained no reservation of
5 water rights whatsoever); that on the 3rd day of April, 1871, pur-
6 suant to the Acts of Congress approved July 27, 1866, and March 3,
7 1871, there was granted to Southern Pacific Railroad Company of
8 California, predecessor in interest of defendant Arrowhead Springs
9 Corporation, Ltd., the west half of the southeast quarter ($W\frac{1}{2}$ of $SE\frac{1}{4}$)
10 and the southwest quarter of the northeast quarter ($SW\frac{1}{4}$ of $NE\frac{1}{4}$) of
11 Section 11, Township 1 North, Range 4 West, S.B.B. & M., and there-
12 after, on the 9th day of January, 1885, patent was issued therefor
13 (which patent contained no reservation of water rights whatsoever);
14 that on the 3rd day of May, 1877, A.B. Chapman and others, predeces-
15 sors in interest of the defendant Arrowhead Springs Corporation, Ltd.,
16 made application to the United States Land Office to purchase the
17 following described land as timberland:

18 The northeast quarter of the southwest quarter ($NE\frac{1}{4}$ of $SW\frac{1}{4}$),
19 the north half of the southeast quarter ($N\frac{1}{2}$ of $SE\frac{1}{4}$) and
20 the southeast quarter of the northeast quarter ($SE\frac{1}{4}$ of $NE\frac{1}{4}$)
of Section 12, Township 1 North, Range 4 West, S.B.B. & M.;

21 that thereafter, on the 15th day of August, 1889, patent was issued
22 therefor; that in the year 1880 Thomas B. Elder, predecessor in in-
23 terest of defendant Arrowhead Springs Corporation, Ltd., entered in-
24 to possession of the south half of the northwest quarter ($S\frac{1}{2}$ of $NW\frac{1}{4}$)
25 and the west half of the northeast quarter ($W\frac{1}{2}$ of $NE\frac{1}{4}$) of Section 12,
26 Township 1 North, Range 4 West, S.B.B. & M., and that thereafter, on
27 the 6th day of October, 1888, patent was issued therefor; that on the
28 29th day of October, 1891, Herbert J. Royer, predecessor in interest
29 of the defendant, Arrowhead Springs Corporation, Ltd., entered upon
30 the north half of the northwest quarter ($N\frac{1}{2}$ of $NW\frac{1}{4}$) of Section 12,
31 Township 1 North, Range 4 West, S.B.B. & M., and that thereafter, on
32 the 12th day of November, 1897, patent was issued therefor; that all

1 of the lands described in this paragraph are contiguous and, except
2 such portions thereof as lie outside of the watershed of East Twin
3 Creek, are bordering on and have access to, and are riparian to,
4 said East Twin Creek, and all of said lands are now the property of
5 defendant, Arrowhead Springs Corporation, Ltd., and all that portion
6 of said lands which lie within the watershed of said East Twin Creek
7 are hereinafter referred to as the Arrowhead Springs property. That
8 the whole of said land is located above plaintiff's point of ap-
9 propriation and intake.

10 That said defendant, Arrowhead Springs Corporation, Ltd.,
11 is now and it and its predecessors in interest have, for more than
12 fifty (50) years last past, been conducting and operating on said
13 Arrowhead Springs property a health and pleasure resort, consisting
14 of a hotel building, cottages, bungalows and all usual and customary
15 outbuildings, swimming pools, baths and other accessories, which es-
16 tablishment is now, and for many years last past has been, known as
17 "Arrowhead Springs Hotel", and, adversely to the said plaintiff and
18 said defendants and cross-complainants, has taken and diverted water
19 from said East Twin Creek and its tributaries above plaintiff's point
20 of diversion for use in said hotel, cottages, bungalows and out-
21 buildings for domestic purposes and for baths, swimming pools and other
22 purposes in connection therewith and for irrigation of said Arrow-
23 head Springs property, and has also, for more than five (5) years
24 prior to the commencement of this action, taken and diverted water
25 from said East Twin Creek and its tributaries, above plaintiff's
26 point of appropriation and diversion, for use in its steam cave baths
27 situated in Waterman Canyon adversely to the said plaintiff and de-
28 fendants and cross-complainants named in paragraph 6 hereof, and has
29 also, for more than five (5) years prior to the commencement of this
30 action, used adversely to the said plaintiff and said defendants and
31 cross-complainants, the waters of Penyugal Spring, Granite Spring and
32 other hot springs, all of which are located in Hot Springs Canyon on

1 of the lands described in this paragraph are contiguous and, except
2 such portions thereof as lie outside of the watershed of East Twin
3 Creek, are bordering on and have access to, and are riparian to,
4 said East Twin Creek, and all of said lands are now the property of
5 defendant, Arrowhead Springs Corporation, Ltd., and all that portion
6 of said lands which lie within the watershed of said East Twin Creek
7 are hereinafter referred to as the Arrowhead Springs property. That
8 the whole of said land is located above plaintiff's point of ap-
9 propriation and intake.

10 That said defendant, Arrowhead Springs Corporation, Ltd.,
11 is now and it and its predecessors in interest have, for more than
12 fifty (50) years last past, been conducting and operating on said
13 Arrowhead Springs property a health and pleasure resort, consisting
14 of a hotel building, cottages, bungalows and all usual and customary
15 outbuildings, swimming pools, baths and other accessories, which es-
16 tablishment is now, and for many years last past has been, known as
17 "Arrowhead Springs Hotel", and, adversely to the said plaintiff and
18 said defendants and cross-complainants, has taken and diverted water
19 from said East Twin Creek and its tributaries above plaintiff's point
20 of diversion for use in said hotel, cottages, bungalows and out-
21 buildings for domestic purposes and for baths, swimming pools and other
22 purposes in connection therewith and for irrigation of said Arrow-
23 head Springs property, and has also, for more than five (5) years
24 prior to the commencement of this action, taken and diverted water
25 from said East Twin Creek and its tributaries, above plaintiff's
26 point of appropriation and diversion, for use in its steam cave baths
27 situated in Waterman Canyon adversely to the said plaintiff and de-
28 fendants and cross-complainants named in paragraph 6 hereof, and has
29 also, for more than five (5) years prior to the commencement of this
30 action, used adversely to the said plaintiff and said defendants and
31 cross-complainants, the waters of Penyugal Spring, Granite Spring and
32 other hot springs, all of which are located in Hot Springs Canyon on

1 said Arrowhead Springs property and are tributary to Hot Springs
2 Creek, which Creek is the lowest branch of East Twin Creek, for the
3 purpose of bottling the same and shipping the same outside of the
4 watershed of East Twin Creek and selling the same in bottles and
5 other containers for human consumption as mineral water, and has the
6 right, except as limited by the provisions of paragraph (i) hereof,
7 as such riparian owner and as appropriator and by prescription to
8 continue so to take and use water from said East Twin Creek and its
9 tributaries and to take and use said water on said Arrowhead Springs
10 property for all beneficial and riparian uses and to whatever extent
11 may be required for such uses and to take and use water from said
12 source for use in its steam cave baths in Waterman Canyon and to take
13 and use water from said Penyugal Spring, Granite Spring and other hot
14 springs and to bottle and ship the same outside of the watershed in
15 East Twin Creek, and to sell the same in bottles and other containers
16 for human consumption as mineral water.

17 5. That the defendant, California Consolidated Water
18 Company, now is and it and its predecessors in interest have been en-
19 gaged in the business of diverting water from East Twin Creek and/or
20 its tributaries into reservoirs and tanks and from thence transport-
21 ing the same by means of cars and other conveyances to the City of
22 Los Angeles, where said water is bottled for domestic use and used
23 for the manufacture of beverages and other purposes; that said defen-
24 dant, California Consolidated Water Company, has entered in and upon
25 the springs at the headwaters of said Strawberry Creek and developed
26 the water at said Springs that would not naturally flow to plain-
27 tiff's said point of diversion, and diverted the water of said
28 springs including the water so developed into a pipe line and by
29 means thereof conveyed a part thereof to its said tanks and reser-
30 voirs and transported said part thereof from such tanks and reser-
31 voirs to Los Angeles where such water has been and is now being used
32 by said defendant in its said business. That said defendant has ex-

1 pended large sums of money in so developing said springs and convey-
2 ing said water, and has developed an extensive business dependent
3 entirely upon such supply of water, and it would be inequitable to
4 enjoin said defendant from continuing to so take and use said water;
5 that said defendant requires the use of all the water now flowing
6 and hereafter developed and flowing from said springs tributary to
7 said Strawberry Creek lying north of the north line of the south half
8 of Section 31 and north of the north line of the south half of Sec-
9 tion 32, both in Township 2 North, Range 3 West, S.B.B. & M., and, ex-
10 cept as limited by the provisions of paragraph (1) hereof, is entitled
11 to take and use said water; that the taking of such water will be
12 injurious to plaintiff's right, but such injury can be compensated
13 in damages and such damage is hereby determined to be and is the sum
14 of twenty thousand dollars (\$20,000.00). That such diversion by
15 defendant, California Consolidated Water Company, will not, subject
16 to the terms of paragraph (1) hereof, impair any right of any other
17 party hereto.

18 6. That defendants and cross-complainants, D. J.
19 E. C. Jeffers (and herein as John Noy)
20 Carpenter, Isabel C. Turner, J. B. Jeffers, George S. Mason, L. R.
21 McKesson and National Thrift Company of America, were at the time of
22 the commencement of this action and they and their successors in
23 interest now are the owners of the right to take and use the first
24 ten (10) inches of the flow of the water of East Twin Creek reach-
25 ing plaintiff's point of diversion; that said ten inch right is part
26 of the right appropriated by plaintiff's predecessors in interest;
27 that all of said ten inches, or fraction thereof, when reaching
28 plaintiff's point of diversion, has been diverted by plaintiff and
29 its predecessors in interest into its pipe line and delivered to said
30 defendants at a diversion box at a point about one mile easterly from
31 plaintiff's said point of diversion, and said defendants and cross-
32 complainants are hereby determined to be the owners of said first
 ten (10) inches of the flow of said creek reaching plaintiff's point

1 of diversion and entitled to have said ten (10) inches of water
2 reaching plaintiff's point of diversion delivered to them by plain-
3 tiff at the said diversion box, and said plaintiff shall continue
4 to take and divert and deliver the same.

5 7. That the taking of such water as set forth in para-
6 graph 5 above may be injurious to the rights of defendants and
7 cross-complainants, D. J. Carpenter, Isabel C. Turner, J. B.
8 *E. C. Jeffers (and herein as John A. Co.)*
9 Jeffers, George S. Mason, L. R. McKesson and National Thrift Com-
10 pany of America, unless said water from said Hot Springs Creek and
11 said East Twin Creek be diverted at a point at or adjacent to the
12 point of confluence of said Hot Springs Creek and East Twin Creek
13 and from thence conveyed into plaintiff's present pipe line, the
14 northerly terminus of which is plaintiff's diversion box located
15 about one mile northerly from the mouth of said East Twin Creek
16 Canyon, and that said defendants and cross-complainants are
17 entitled to have said ten (10) inches thereof belonging to them so
18 diverted and conveyed and delivered to them by plaintiff at the
19 present diversion box located about one mile easterly from plain-
20 tiff's said present point of diversion.

21 IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

22
23 (a) That defendant, Arrowhead Springs Corporation, Ltd.,
24 is, subject to the provisions of subdivision (1) hereof, the
25 owner of the right to take water from said East Twin Creek and its
26 tributaries and to use said water upon its said Arrowhead Springs
27 property riparian to East Twin Creek, to the extent that such
28 water is or may be required for any beneficial or riparian use
29 upon said property, and to use said water to the extent of five (5)
30 minor's inches, measured under a four inch pressure, in its steam
31 cave baths and for domestic purposes in Waterman Canyon during the
32 period from the first day of November to the *first* ~~15th~~ day of May of

1 each year at all times during said period when the taking thereof
2 will not reduce the water flowing at plaintiff's intake below
3 ten (10) inches, and to use said water to the extent of one (1)
4 miner's inch, measured under a four inch pressure, in its steam
5 cave baths and for domestic purposes in Waterman Canyon at all
6 other times, and is also, subject to the provisions of sub-
7 division (1) hereof, the owner of the right to bottle and ship,
8 out of the said East Twin Creek watershed, waters of Penyugal
9 Spring, Granite Spring and other hot springs tributary to Hot
10 Springs Creek, provided, however, that said defendant, Arrowhead
11 Springs Corporation, Ltd., shall not so use the waters of Hot
12 Springs Creek, for shipment, irrigation or otherwise, as to re-
13 duce the flow of the waters of Hot Springs Creek at the point of
14 its confluence with East Twin Creek below ten (10) miner's
15 inches, measured under a four inch pressure, provided further,
16 however, that no part or portion of any of the water of East Twin
17 Creek, or any of its tributaries, except as otherwise herein
18 provided, shall ever be taken to or used upon lands not riparian to
19 said East Twin Creek.
20

21 (b) That defendant, California Consolidated Water Com-
22 pany, is, subject to the provisions of subdivision (1) hereof, the
23 owner of the right to take, impound, divert, transport and carry
24 away water of that certain spring known as "Indian Spring" and any
25 and all of the water of all springs situated or obtainable in that
26 part of East Twin Creek known as "Strawberry Creek and Canyon" and
27 canyons lateral thereto lying north of a line drawn east and west
28 through Sections 31 and 32, Township 2 North, Range 3 West, S.B.B.
29 & M., coincident with the northerly line of the south half of Sec-
30 tion 31 and the south half of Section 32, Township 2 North, Range
31 3 West, S.B.B. & M., and it may enter in and upon that portion of
32

1 said Strawberry Creek and Canyon and lateral canyons thereto lying
2 north of said line and develop, by means of tunnels or otherwise,
3 any and all springs or water situated or obtainable from said area
4 north of said line, and may take and divert all of said water
5 flowing and to flow in and from said springs and/or obtainable in
6 said area into a pipe line and divert and carry the same, by and
7 through such pipe line, to tanks and reservoirs upon said Arrowhead
8 Springs property, and may take and transport the same beyond and
9 out of said watershed for bottling or other purposes or uses.

10 (c) Defendant, Arrowhead Springs Corporation, Ltd.,
11 shall at all times maintain suitable and proper septic and treating
12 tanks upon its lands and shall cause all sewage to pass through
13 such septic and treating tanks and be properly treated before re-
14 turning the same to or permitting the same to return to or flow in-
15 to said East Twin Creek, and said tanks shall be so constructed and
16 located that all water flowing from said septic tanks, not used on
17 the premises, shall return and flow into said East Twin Creek
18 above plaintiff's point of diversion.

19 Defendant, Arrowhead Springs Corporation, Ltd., shall al-
20 so cause all water that may be diverted for use by said Arrowhead
21 Springs Corporation, Ltd., not actually consumed in the exercise of
22 the rights hereinbefore decreed to Arrowhead Springs Corporation,
23 Ltd., to return and flow into said East Twin Creek above plaintiff's
24 point of diversion.

25 (d) That plaintiff have and recover of and from the
26 defendant, California Consolidated Water Company, the sum of fifteen
27 thousand dollars (\$15,000.00), and from defendant, Arrowhead Springs
28 Corporation, Ltd., the sum of five thousand dollars (\$5,000.00).

29 (e) That plaintiff is the owner of the right to have all
30 the water of East Twin Creek and its tributaries which flows to its
31 said intake, subject only to the rights of defendants Arrowhead
32 Springs Corporation, Ltd., California Consolidated Water Company,

1 and defendants and cross-complainants designated in paragraph 6,
2 as herein set forth.

3 (f) Plaintiff shall have the right to enter in and upon
4 the lands of the defendant, Arrowhead Springs Corporation, Ltd.
5 and construct a diversion weir and box and submerged dam upon said
6 East Twin Creek at a point three hundred (300) feet northerly of
7 the confluence of Hot Springs Creek and East Twin Creek, and also
8 at the confluence of said streams, and may construct a pipe line
9 or conduit from such point to plaintiff's present diversion box and
10 may take and divert all of the water ordinarily flowing in said
11 East Twin Creek at such diversion point subject only to the rights
12 of defendants Arrowhead Springs Corporation, Ltd. and California
13 Consolidated Water Company, and defendants and cross-complainants
14 designated in paragraph 6, as herein set forth. The right of
15 ingress and egress for construction and maintenance of said
16 diversion weir and box, dam and pipe line or conduit shall be
17 exercised in such a manner as to do the least possible damage to
18 land, improvements, plantings and natural trees and shrubbery upon
19 said Arrowhead Springs property, and said pipe line, if constructed,
20 shall be maintained as free from leaks as possible and shall at all
21 times have a depth of cover of at least two feet over the top of
22 the pipe.

23 (g) Cross-complainants, D. J. Carpenter, Isabel C. Turner,
24 *E.C. Jeffers (owned herein as John Doe)*
25 *J. H. Jeffers*, George S. Mason, L. R. McKesson and National Thrift
26 Company of America, and their successors in interest, are the
27 owners of the right to take and use the first ten (10) inches of
28 water, or fraction thereof, reaching the point of diversion referred
29 to in paragraph 6 hereof, and diverted by plaintiff into its pipe
30 line from East Twin Creek and may take and divert said first ten
31 (10) inches of water, or fraction thereof, reaching said point of
32 diversion, from plaintiff's said pipe line at the diversion box now
in place and used for such purpose.

1 That plaintiff shall immediately hereafter, at its own
2 expense and cost, undertake and thereafter diligently prosecute
3 the construction of such pipe line and such diversion dams, weirs,
4 and boxes as may be necessary to divert and convey the water to
5 which plaintiff and/or cross-complainants are entitled hereunder,
6 from Hot Springs Creek and East Twin Creek from a point at or ad-
7 jacent to the point of confluence of said Hot Springs Creek and
8 East Twin Creek to and into plaintiff's present diversion box and
9 pipe line, and said plaintiff shall complete said construction work
10 on or before the 1st day of May, 1932, and shall thereafter maintain
11 the same at its own expense, and shall thereafter convey through
12 said pipe line and structure at least ten (10) miner's inches of
13 said water of Hot Springs Creek and East Twin Creek if that amount
14 be flowing therein from said point at or adjacent to the conflu-
15 ence of Hot Springs Creek and East Twin Creek to and into its
16 present diversion box and pipe line, and convey such ten (10)
17 inches thereof from thence to the point of the present diversion
18 box of plaintiff from which diversion box defendant and cross-
19 complainants are now taking their said ten (10) inches of said
20 water, it being the intent and purpose hereof that said plaintiff
21 shall deliver the first ten (10) inches of the flow of East Twin
22 Creek at plaintiff's present point of diversion or the first ten
23 (10) inches of water flowing in Hot Springs Creek and East Twin
24 Creek at their point of confluence to defendants and cross-
25 complainants at the present diversion box located at a point on
26 plaintiff's pipe line about one mile easterly from plaintiff's
27 present point of diversion.

28 (h) Each of the parties hereto is perpetually enjoined
29 from taking, using or interfering with the use of the waters of
30 East Twin Creek and its tributaries except as herein decreed.

31 (i) This judgment shall not in anywise affect, amend, or
32 otherwise impair any contracts now in existence, or which may be

1 executed as of the date of this judgment, by and between defendant
2 Arrowhead Springs Corporation, Ltd. and defendant California
3 Consolidated Water Company, relating to the water of East Twin
4 Creek or any of its tributaries.

5 (j) That pursuant to said stipulation, this judgment
6 shall be final upon the entry thereof, and not subject to appeal
7 or review in any manner by any of the parties to said ^{stipulation} ~~case~~.

8 (k) Each of the parties hereto shall pay its own costs.

9
10 Done in open court this 19th day of October,
11 1931.

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13 J. G. Leonard
14 Judge
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By *William L. Allison* Deputy

HARRY L. ALLISON

OCT 19 1931

Return of Pleading)

FILED
U D E N T

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
IN AND FOR THE COUNTY OF ~~LOS ANGELES~~ ^{SAN BERNARDINO}

No. 31728

(For Clerk's Filing Stamp)

DEL ROSA MUTUAL WATER COMPANY,

a corporation,

Plaintiff

vs.

D. J. CARPENTER, et al.,

Defendant

GIBSON, DUNN & CRUTCHER

634 SOUTH SPRING STREET
MUTUAL 9281
LOS ANGELES, CAL.

Attorneys for Defendants Arrowhead Springs Company and
Arrowhead Springs Corporation, Ltd.

Received copy of the within Judgment this day of September 1931

Attorney for Plaintiff.

Received copy of the within this day of 1931

Attorney for

By *William L. Allison* Deputy
Entered *Oct 19 1931*
Book *60*
Page *200*

Booked - *Oct 20 1931*
At *10:47 a.m.*
Entered *Oct 19 1931*
Book *60* Page *200*
By *Harry L. Allison* Clerk
By *William L. Allison* Deputy

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

DEL ROSA MUTUAL WATER COMPANY,
a corporation,

Plaintiff,

vs.

No. 31798

J U D G M E N T

D. J. CARPENTER, ISABEL C. TURNER,
J. B. JEFFERS, GEORGE S. MASON,
NATIONAL THRIFT CORPORATION OF
AMERICA, a corporation, JOHN DOE
MCKASON, MARY GLEASON, G. E. CHRIST,
GREAT VIEW WATER COMPANY, NETTIE
D. PHILLIPS, PACIFIC-SOUTHWEST TRUST
& SAVINGS BANK, a corporation,
ARTHUR R. PECK, CARRIE A. PECK,
ELLEN A. MOLAUGHLIN, ARROWHEAD
SPRINGS CORPORATION, a corporation,
ARROWHEAD SPRINGS CO. NY, a cor-
poration, J. N. BAYLIS, CALIFORNIA
CONSOLIDATED WATER COMPANY, a
corporation, CALIFORNIA CONSUMERS
CORPORATION, a corporation, et al.,

Defendants.

The above entitled action coming on regularly to be
heard before the Court without a jury, a trial by jury having been
waived by the respective parties, Messrs. Swing & Wilson and Ralph
E. Swing appearing as attorneys for the plaintiff, Messrs. Lawler &
Degnan appearing for and as attorneys for defendants, California
Consolidated Water Company and California Consumers Company (sued
herein as "California Consumers Corporation"), respectively, and
Messrs. Gibson, Dunn & Crutcher appearing for and as attorneys for
defendants Arrowhead Springs Company and Arrowhead Springs Corpora-
tion, Ltd. (sued herein as "Arrowhead Springs Corporation"), and
Messrs. O'Connor & Findlay appearing for and as attorneys for the
other defendants above mentioned, and this cause being at issue and
except the defendant S.R.M. = Kason
the parties having entered into a stipulation in writing for the
entry of this judgment, and findings of fact and conclusions of law,
except as set out and contained in this judgment, having been duly

and oral evidence having been introduced
waived by the respective parties, and the Court being fully advised
in the premises, and good and sufficient cause appearing therefor;
NOW, THEREFORE, in accordance with said stipulation, *and the evidence*

IT IS HEREBY ADJUDGED:

1. That plaintiff is, and defendants California Consolidated Water Company, Arrowhead Springs Corporation, Ltd. (sued herein as "Arrowhead Springs Corporation"), Arrowhead Springs Company and California Consumers Company (sued herein as "California Consumers Corporation") are corporations duly organized and existing and duly qualified and authorized to do and transact business within the State of California.

2. That neither the California Consumers Company nor the Arrowhead Springs Company have at this time any right, title or interest in or to any of the water or in or to the right to take, divert, use or transport any of the water referred to in the complaint in said action or in this judgment.

3. That East Twin Creek is a natural stream of water situated in the County of San Bernardino, State of California, and has its source in the San Bernardino Mountains lying and being to the north of the City of San Bernardino. That all of the waters of what is known as East Twin Creek watershed, except as diminished by use by defendant Arrowhead Springs Corporation, Ltd., and its predecessors in interest and by use by defendant California Consolidated Water Company and its predecessors in interest, and except as the waters thereof are lost by evaporation, transpiration, seepage and other natural causes, drain into and become a part of said East Twin Creek above the point of plaintiff's diversion hereinafter referred to. That the principal tributaries of said East Twin Creek are Strawberry Creek, Coldwater Creek, Hot Springs Creek, and other named and unnamed tributaries and springs, all of which flow and percolate into and, except as diminished as aforesaid, become a part of said East Twin Creek; also waters seep and percolate into said

1 East Twin Creek and its tributaries from the adjacent hills and
2 lands draining into said East Twin Creek and its various tributaries
3 and the canyons draining into said stream. That Strawberry Creek
4 and its tributaries are the easterly branch of East Twin Creek above
5 the junction of Strawberry Creek and Coldwater Creek; Coldwater
6 Creek and its tributaries are the westerly branch of East Twin Creek
7 above the junction of Strawberry Creek and Coldwater Creek; Hot
8 Springs Creek and its tributaries are the lowest branch of East Twin
9 Creek. That at the time of the appropriation, as hereinafter set
10 forth, of the waters of said East Twin Creek by plaintiff's predeces-
11 sors in interest all of the waters of said East Twin Creek and of
12 its tributaries, except that part thereof then being used by defen-
13 dant Arrowhead Springs Corporation, Ltd. and its predecessors on
14 lands in Section 7, Township 1 North, Range 3 West, S.B.B. & M., and
15 on lands in Sections 11 and 12, Township 1 North, Range 4 West,
16 S.B.B. & M., above the point of plaintiff's intake, and that part
17 lost by evaporation, transpiration, seepage and other natural causes,
18 flowed in a southerly direction in a natural stream to and into the
19 San Bernardino Valley, and at the time of the appropriation of the
20 right to use such water by plaintiff's predecessors in interest none
21 of said water had been appropriated, diverted, or used except by
22 said Arrowhead Springs Corporation, Ltd. and its said predecessors
23 for use upon said lands above plaintiff's point of appropriation.

24 That subsequent to the time when defendant, Arrowhead
25 Springs Corporation, Ltd., or its predecessors in interest, acquired
26 title to all the lands described in paragraph 4 below, except the
27 north half of the northwest quarter ($N\frac{1}{2}$ of $NW\frac{1}{4}$) of Section 12, Town-
28 ship 1 North, Range 4 West, S.B.B. & M., plaintiff or its predeces-
29 sors in interest entered into and upon said East Twin Creek at about
30 one mile north of the mouth of said East Twin Creek and appropriated
31 and diverted all of the water of said stream flowing at said point
32 and thereafter, except as hereunder provided, diverted all of the

1 water of said stream flowing at said point into a ditch and conduit
2 and conveyed the same away to nonriparian lands for beneficial uses
3 thereon.

4 That the point on said stream where said appropriation and
5 diversion was so made by plaintiff, or its predecessors in interest,
6 was below the confluence of all of said branches of said East Twin
7 Creek and below where all of the waters of said East Twin Creek
8 watershed converge, except as diminished as aforesaid. That ever
9 since said appropriation and diversion of said stream all of the
10 waters of said stream flowing at said point have been and now are
11 taken and used for irrigation and other beneficial uses and purposes
12 by plaintiff and its predecessors in interest, and by defendants and
13 cross complainants named in paragraph 6 hereof, except as diminished
14 from time to time by the use by defendant Arrowhead Springs Corpora-
15 tion, Ltd. and its predecessors in interest and by natural causes
16 as aforesaid, and except that said California Consolidated Water
17 Company and its predecessors in interest have for more than five
18 years prior to the commencement of this action diverted into reser-
19 voirs and tanks and have diverted, taken and transported to Los
20 Angeles and other places for bottling purposes and other commercial
21 uses, water from said watershed adversely to said plaintiff, and to
22 all other defendants, except Arrowhead Springs Corporation, Ltd.

23 4. That in the year 1863 David Noble Smith, predecessor
24 in interest of defendant Arrowhead Springs Corporation, Ltd., set-
25 tled on the East half of the Southeast quarter and the Southeast
26 quarter of the Northeast quarter of Section Eleven (11) and the
27 Northwest quarter of the Southwest quarter of Section Twelve (12),
28 Township 1 North, Range 4 West, S.B.B. & M., which lands were then
29 and until 1878 unsurveyed, and thereafter, on the 1st day of Febru-
30 ary, 1882, patent was issued therefor; that on the 3rd day of April,
31 1871, pursuant to the Acts of Congress approved July 27, 1866, and
32 March 3, 1871, there was granted to Southern Pacific Railroad Company

1 of California, predecessor in interest of defendant Arrowhead Springs
2 Corporation, Ltd., all of Section Seven (7), Township 1 North, Range
3 3 West, S.B.B. & M., and thereafter, on the 1st day of November, 1897,
4 patent was issued therefor (which patent contained no reservation of
5 water rights whatsoever); that on the 3rd day of April, 1871, pur-
6 suant to the Acts of Congress approved July 27, 1866, and March 3,
7 1871, there was granted to Southern Pacific Railroad Company of
8 California, predecessor in interest of defendant Arrowhead Springs
9 Corporation, Ltd., the west half of the southeast quarter ($W\frac{1}{2}$ of $SE\frac{1}{4}$)
10 and the southwest quarter of the northeast quarter ($SW\frac{1}{4}$ of $NE\frac{1}{4}$) of
11 Section 11, Township 1 North, Range 4 West, S.B.B. & M., and there-
12 after, on the 9th day of January, 1885, patent was issued therefor
13 (which patent contained no reservation of water rights whatsoever);
14 that on the 3rd day of May, 1877, A.B. Chapman and others, predeces-
15 sors in interest of the defendant Arrowhead Springs Corporation, Ltd.,
16 made application to the United States Land Office to purchase the
17 following described land as timberland:

18 The northeast quarter of the southwest quarter ($NE\frac{1}{4}$ of $SW\frac{1}{4}$),
19 the north half of the southeast quarter ($N\frac{1}{2}$ of $SE\frac{1}{4}$) and
20 the southeast quarter of the northeast quarter ($SE\frac{1}{4}$ of $NE\frac{1}{4}$)
of Section 12, Township 1 North, Range 4 West, S.B.B. & M.;

21 that thereafter, on the 15th day of August, 1889, patent was issued
22 therefor; that in the year 1880 Thomas B. Elder, predecessor in in-
23 terest of defendant Arrowhead Springs Corporation, Ltd., entered in-
24 to possession of the south half of the northwest quarter ($S\frac{1}{2}$ of $NW\frac{1}{4}$)
25 and the west half of the northeast quarter ($W\frac{1}{2}$ of $NE\frac{1}{4}$) of Section 12,
26 Township 1 North, Range 4 West, S.B.B. & M., and that thereafter, on
27 the 6th day of October, 1888, patent was issued therefor; that on the
28 29th day of October, 1891, Herbert J. Royer, predecessor in interest
29 of the defendant, Arrowhead Springs Corporation, Ltd., entered upon
30 the north half of the northwest quarter ($N\frac{1}{2}$ of $NW\frac{1}{4}$) of Section 12,
31 Township 1 North, Range 4 West, S.B.B. & M., and that thereafter, on
32 the 12th day of November, 1897, patent was issued therefor; that all

1 of the lands described in this paragraph are contiguous and, except
2 such portions thereof as lie outside of the watershed of East Twin
3 Creek, are bordering on and have access to, and are riparian to,
4 said East Twin Creek, and all of said lands are now the property of
5 defendant, Arrowhead Springs Corporation, Ltd., and all that portion
6 of said lands which lie within the watershed of said East Twin Creek
7 are hereinafter referred to as the Arrowhead Springs property. That
8 the whole of said land is located above plaintiff's point of ap-
9 propriation and intake.

10 That said defendant, Arrowhead Springs Corporation, Ltd.,
11 is now and it and its predecessors in interest have, for more than
12 fifty (50) years last past, been conducting and operating on said
13 Arrowhead Springs property a health and pleasure resort, consisting
14 of a hotel building, cottages, bungalows and all usual and customary
15 outbuildings, swimming pools, baths and other accessories, which es-
16 tablishment is now, and for many years last past has been, known as
17 "Arrowhead Springs Hotel", and, adversely to the said plaintiff and
18 said defendants and cross-complainants, has taken and diverted water
19 from said East Twin Creek and its tributaries above plaintiff's point
20 of diversion for use in said hotel, cottages, bungalows and out-
21 buildings for domestic purposes and for baths, swimming pools and other
22 purposes in connection therewith and for irrigation of said Arrow-
23 head Springs property, and has also, for more than five (5) years
24 prior to the commencement of this action, taken and diverted water
25 from said East Twin Creek and its tributaries, above plaintiff's
26 point of appropriation and diversion, for use in its steam cave baths,
27 situated in Waterman Canyon adversely to the said plaintiff and de-
28 fendants and cross-complainants named in paragraph 6 hereof, and has
29 also, for more than five (5) years prior to the commencement of this
30 action, used adversely to the said plaintiff and said defendants and
31 cross-complainants, the waters of Penyuget Spring, Granite Spring and
32 other hot springs, all of which are located in Hot Springs Canyon on

1 said Arrowhead Springs property and are tributary to Hot Springs
2 Creek, which Creek is the lowest branch of East Twin Creek, for the
3 purpose of bottling the same and shipping the same outside of the
4 watershed of East Twin Creek and selling the same in bottles and
5 other containers for human consumption as mineral water, and has the
6 right, except as limited by the provisions of paragraph (1) hereof,
7 as such riparian owner and as appropriator and by prescription to
8 continue so to take and use water from said East Twin Creek and its
9 tributaries and to take and use said water on said Arrowhead Springs
10 property for all beneficial and riparian uses and to whatever extent
11 may be required for such uses and to take and use water from said
12 source for use in its steam cave baths in Waterman Canyon and to take
13 and use water from said Penygul Spring, Granite Spring and other hot
14 springs and to bottle and ship the same outside of the watershed in
15 East Twin Creek, and to sell the same in bottles and other containers
16 for human consumption as mineral water.

17 5. That the defendant, California Consolidated Water
18 Company, now is and it and its predecessors in interest have been en-
19 gaged in the business of diverting water from East Twin Creek and/or
20 its tributaries into reservoirs and tanks and from thence transport-
21 ing the same by means of cars and other conveyances to the City of
22 Los Angeles, where said water is bottled for domestic use and used
23 for the manufacture of beverages and other purposes; that said defen-
24 dant, California Consolidated Water Company, has entered in and upon
25 the springs at the headwaters of said Strawberry Creek and developed
26 the water at said Springs that would not naturally flow to plain-
27 tiff's said point of diversion, and diverted the water of said
28 springs including the water so developed into a pipe line and by
29 means thereof conveyed a part thereof to its said tanks and reser-
30 voirs and transported said part thereof from such tanks and reser-
31 voirs to Los Angeles where such water has been and is now being used
32 by said defendant in its said business. That said defendant has ex-

1 pended large sums of money in so developing said springs and convey-
2 ing said water, and has developed an extensive business dependent
3 entirely upon such supply of water, and it would be inequitable to
4 enjoin said defendant from continuing to so take and use said water;
5 that said defendant requires the use of all the water now flowing
6 and hereafter developed and flowing from said springs tributary to
7 said Strawberry Creek lying north of the north line of the south half
8 of Section 31 and north of the north line of the south half of Sec-
9 tion 32, both in Township 2 North, Range 3 West, S.B.B. & M., and, ex-
10 cept as limited by the provisions of paragraph (1) hereof, is entitled
11 to take and use said water; that the taking of such water will be
12 injurious to plaintiff's right, but such injury can be compensated
13 in damages and such damage is hereby determined to be and is the sum
14 of twenty thousand dollars (\$20,000.00). That such diversion by
15 defendant, California Consolidated Water Company, will not, subject
16 to the terms of paragraph (1) hereof, impair any right of any other
17 party hereto.

18 6. That defendants and cross-complainants, D. J.
19 Carpenter, Isabel C. Turner, *E. C. Jeffers (owed herein as John H. H.)*
20 McKesson and National Thrift Company of America, were at the time of
21 the commencement of this action and they and their successors in
22 interest now are the owners of the right to take and use the first
23 ten (10) inches of the flow of the water of East Twin Creek reach-
24 ing plaintiff's point of diversion; that said ten inch right is part
25 of the right appropriated by plaintiff's predecessors in interest;
26 that all of said ten inches, or fraction thereof, when reaching
27 plaintiff's point of diversion, has been diverted by plaintiff and
28 its predecessors in interest into its pipe line and delivered to said
29 defendants at a diversion box at a point about one mile easterly from
30 plaintiff's said point of diversion, and said defendants and cross-
31 complainants are hereby determined to be the owners of said first
32 ten (10) inches of the flow of said creek reaching plaintiff's point

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1 of diversion and entitled to have said ten (10) inches of water
2 reaching plaintiff's point of diversion delivered to them by plain-
3 tiff at the said diversion box, and said plaintiff shall continue
4 to take and divert and deliver the same.

5 7. That the taking of such water as set forth in para-
6 graph 6 above may be injurious to the rights of defendants and
7 cross-complainants, D. J. Carpenter, Isabel C. Turner, J. B.
8 *E. C. Jefferson (owned herein as John Doe)*
9 *Jefferson*, George S. Mason, L. R. McKesson and National Thrift Com-
10 pany of America, unless said water from said Hot Springs Creek and
11 said East Twin Creek be diverted at a point at or adjacent to the
12 point of confluence of said Hot Springs Creek and East Twin Creek
13 and from thence conveyed into plaintiff's present pipe line, the
14 northerly terminus of which is plaintiff's diversion box located
15 about one mile northerly from the mouth of said East Twin Creek
16 Canyon, and that said defendants and cross-complainants are
17 entitled to have said ten (10) inches thereof belonging to them so
18 diverted and conveyed and delivered to them by plaintiff at the
19 present diversion box located about one mile easterly from plain-
20 tiff's said present point of diversion.

21 IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

22
23 (a) That defendant, Arrowhead Springs Corporation, Ltd.,
24 is, subject to the provisions of subdivision (1) hereof, the
25 owner of the right to take water from said East Twin Creek and its
26 tributaries and to use said water upon its said Arrowhead Springs
27 property riparian to East Twin Creek, to the extent that such
28 water is or may be required for any beneficial or riparian use
29 upon said property, and to use said water to the extent of five (5)
30 minor's inches, measured under a four inch pressure, in its steam
31 cave baths and for domestic purposes in Waterman Canyon during the
32 period from the first day of November to the ^{first} last day of May of

1 of diversion and entitled to have said ten (10) inches of water
2 reaching plaintiff's point of diversion delivered to them by plain-
3 tiff at the said diversion box, and said plaintiff shall continue
4 to take and divert and deliver the same.

5 7. That the taking of such water as set forth in para-
6 graph 5 above may be injurious to the rights of defendants and
7 cross-complainants, D. J. Carpenter, Isabel C. Turner, J. B.
8 *EC Jeffers (owned herein as John Doe)*
9 Jeffers, George S. Mason, L. R. McKesson and National Thrift Com-
10 pany of America, unless said water from said Hot Springs Creek and
11 said East Twin Creek be diverted at a point at or adjacent to the
12 point of confluence of said Hot Springs Creek and East Twin Creek
13 and from thence conveyed into plaintiff's present pipe line, the
14 northerly terminus of which is plaintiff's diversion box located
15 about one mile northerly from the mouth of said East Twin Creek
16 Canyon, and that said defendants and cross-complainants are
17 entitled to have said ten (10) inches thereof belonging to them so
18 diverted and conveyed and delivered to them by plaintiff at the
19 present diversion box located about one mile easterly from plain-
20 tiff's said present point of diversion.

21 IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

22
23 (a) That defendant, Arrowhead Springs Corporation, Ltd.,
24 is, subject to the provisions of subdivision (1) hereof, the
25 owner of the right to take water from said East Twin Creek and its
26 tributaries and to use said water upon its said Arrowhead Springs
27 property riparian to East Twin Creek, to the extent that such
28 water is or may be required for any beneficial or riparian use
29 upon said property, and to use said water to the extent of five (5)
30 miner's inches, measured under a four inch pressure, in its steam
31 cave baths and for domestic purposes in Waterman Canyon during the
32 period from the first day of November to the ^{first} 15th day of May of

1 each year at all times during said period when the taking thereof
2 will not reduce the water flowing at plaintiff's intake below
3 ten (10) inches, and to use said water to the extent of one (1)
4 miner's inch, measured under a four inch pressure, in its steam
5 cave baths and for domestic purposes in Waterman Canyon at all
6 other times, and is also, subject to the provisions of sub-
7 division (1) hereof, the owner of the right to bottle and ship,
8 out of the said East Twin Creek watershed, waters of Penygai
9 Spring, Granite Spring and other hot springs tributary to Hot
10 Springs Creek, provided, however, that said defendant, Arrowhead
11 Springs Corporation, Ltd., shall not so use the waters of Hot
12 Springs Creek, for shipment, irrigation or otherwise, as to re-
13 duce the flow of the waters of Hot Springs Creek at the point of
14 its confluence with East Twin Creek below ten (10) miner's
15 inches, measured under a four inch pressure, provided further,
16 however, that no part or portion of any of the water of East Twin
17 Creek, or any of its tributaries, except as otherwise herein
18 provided, shall ever be taken to or used upon lands not riparian to
19 said East Twin Creek.
20

21 (b) That defendant, California Consolidated Water Com-
22 pany, is, subject to the provisions of subdivision (1) hereof, the
23 owner of the right to take, impound, divert, transport and carry
24 away water of that certain spring known as "Indian Spring" and any
25 and all of the water of all springs situated or obtainable in that
26 part of East Twin Creek known as "Strawberry Creek and Canyon" and
27 canyons lateral thereto lying north of a line drawn east and west
28 through Sections 31 and 32, Township 2 North, Range 3 West, S.B.B.
29 & M., coincident with the northerly line of the south half of Sec-
30 tion 31 and the south half of Section 32, Township 2 North, Range
31 3 West, S.B.B. & M., and it may enter in and upon that portion of
32

1 said Strawberry Creek and Canyon and lateral canyons thereto lying
2 north of said line and develop, by means of tunnels or otherwise,
3 any and all springs or water situated or obtainable from said area
4 north of said line, and may take and divert all of said water
5 flowing and to flow in and from said springs and/or obtainable in
6 said area into a pipe line and divert and carry the same, by and
7 through such pipe line, to tanks and reservoirs upon said Arrowhead
8 Springs property, and may take and transport the same beyond and
9 out of said watershed for bottling or other purposes or uses.

10 (c) Defendant, Arrowhead Springs Corporation, Ltd.,
11 shall at all times maintain suitable and proper septic and treating
12 tanks upon its lands and shall cause all sewage to pass through
13 such septic and treating tanks and be properly treated before re-
14 turning the same to or permitting the same to return to or flow in-
15 to said East Twin Creek, and said tanks shall be so constructed and
16 located that all water flowing from said septic tanks, not used on
17 the premises, shall return and flow into said East Twin Creek
18 above plaintiff's point of diversion.

19 Defendant, Arrowhead Springs Corporation, Ltd., shall al-
20 so cause all water that may be diverted for use by said Arrowhead
21 Springs Corporation, Ltd., not actually consumed in the exercise of
22 the rights hereinbefore decreed to Arrowhead Springs Corporation,
23 Ltd., to return and flow into said East Twin Creek above plaintiff's
24 point of diversion.

25 (d) That plaintiff have and recover of and from the
26 defendant, California Consolidated Water Company, the sum of fifteen
27 thousand dollars (\$15,000.00), and from defendant, Arrowhead Springs
28 Corporation, Ltd., the sum of five thousand dollars (\$5,000.00).

29 (e) That plaintiff is the owner of the right to have all
30 the water of East Twin Creek and its tributaries which flows to its
31 said intake, subject only to the rights of defendants Arrowhead
32 Springs Corporation, Ltd., California Consolidated Water Company,

1 and defendants and cross-complainants designated in paragraph 6,
2 as herein set forth.

3 (f) Plaintiff shall have the right to enter in and upon
4 the lands of the defendant, Arrowhead Springs Corporation, Ltd.
5 and construct a diversion weir and box and submerged dam upon said
6 East Twin Creek at a point three hundred (300) feet northerly of
7 the confluence of Hot Springs Creek and East Twin Creek, and also
8 at the confluence of said streams, and may construct a pipe line
9 or conduit from such point to plaintiff's present diversion box and
10 may take and divert all of the water ordinarily flowing in said
11 East Twin Creek at such diversion point subject only to the rights
12 of defendants Arrowhead Springs Corporation, Ltd. and California
13 Consolidated Water Company, and defendants and cross-complainants
14 designated in paragraph 6, as herein set forth. The right of
15 ingress and egress for construction and maintenance of said
16 diversion weir and box, dam and pipe line or conduit shall be
17 exercised in such a manner as to do the least possible damage to
18 land, improvements, plantings and natural trees and shrubbery upon
19 said Arrowhead Springs property, and said pipe line, if constructed,
20 shall be maintained as free from leaks as possible and shall at all
21 times have a depth of cover of at least two feet over the top of
22 the pipe.

23 (g) Cross-complainants, D. J. Carpenter, Isabel C. Turner
24 *E.C. Jeffers (and herein as John Doe)*
25 J. B. Jeffers, George S. Mason, L. R. McKesson and National Thrift
26 Company of America, and their successors in interest, are the
27 owners of the right to take and use the first ten (10) inches of
28 water, or fraction thereof, reaching the point of diversion referred
29 to in paragraph 6 hereof, and diverted by plaintiff into its pipe
30 line from East Twin Creek and may take and divert said first ten
31 (10) inches of water, or fraction thereof, reaching said point of
32 diversion, from plaintiff's said pipe line at the diversion box now
in place and used for such purpose.

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B.F.*

1 That plaintiff shall immediately hereafter, at its own
2 expense and cost, undertake and thereafter diligently prosecute
3 the construction of such pipe line and such diversion dams, weirs,
4 and boxes as may be necessary to divert and convey the water to
5 which plaintiff and/or cross-complainants are entitled hereunder,
6 from Hot Springs Creek and East Twin Creek from a point at or ad-
7 jacent to the point of confluence of said Hot Springs Creek and
8 East Twin Creek to and into plaintiff's present diversion box and
9 pipe line, and said plaintiff shall complete said construction work
10 on or before the 1st day of May, 1932, and shall thereafter maintain
11 the same at its own expense, and shall thereafter convey through
12 said pipe line and structure at least ten (10) miner's inches of
13 said water of Hot Springs Creek and East Twin Creek if that amount
14 be flowing therein from said point at or adjacent to the conflu-
15 ence of Hot Springs Creek and East Twin Creek to and into its
16 present diversion box and pipe line, and convey such ten (10)
17 inches thereof from thence to the point of the present diversion
18 box of plaintiff from which diversion box defendant and cross-
19 complainants are now taking their said ten (10) inches of said
20 water, it being the intent and purpose hereof that said plaintiff
21 shall deliver the first ten (10) inches of the flow of East Twin
22 Creek at plaintiff's present point of diversion or the first ten
23 (10) inches of water flowing in Hot Springs Creek and East Twin
24 Creek at their point of confluence to defendants and cross-
25 complainants at the present diversion box located at a point on
26 plaintiff's pipe line about one mile easterly from plaintiff's
27 present point of diversion.

28 (h) Each of the parties hereto is perpetually enjoined
29 from taking, using or interfering with the use of the waters of
30 East Twin Creek and its tributaries except as herein decreed.

31 (i) This judgment shall not in anywise affect, amend, or
32 otherwise impair any contracts now in existence, or which may be

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executed as of the date of this judgment, by and between defendant Arrowhead Springs Corporation, Ltd. and defendant California Consolidated Water Company, relating to the water of East Twin Creek or any of its tributaries.

(j) That pursuant to said stipulation, this judgment shall be final upon the entry thereof, and not subject to appeal or review in any manner by any of the parties to said ^{stipulation} ~~case~~. *9/2/31*

(k) Each of the parties hereto shall pay its own costs. *H.B.G.*

Done in open court this 19th day of October, 1931.

J. A. Leonard
Judge

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
IN AND FOR THE COUNTY OF ~~LOS ANGELES~~ ^{SAN BERNARDINO}

No. 21792

(Nature of Pleading)

(For Clerk's Filing Stamp)

J U D G M E N T

DEL ROSA MUTUAL WATER COMPANY,
a corporation,
Plaintiff
vs.
D. J. CARPENTER, et al.,
Defendant

GIBSON, DUNN & CRUTCHER
634 SOUTH SPRING STREET
MUTUAL 2381
LOS ANGELES, CAL.

Attorneys for Defendants Arrowhead Springs Company and
Arrowhead Springs Corporation, Ltd.

Received copy of the within Judgment this day of September 19 31

Attorney for Plaintiff.

Received copy of the within this day of 19

Attorney for

LAWLER & DEGNAN
ATTORNEYS AT LAW
800 STANDARD OIL BUILDING
TEL. TWENTY SEVEN

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

DEL ROSA MUTUAL WATER COMPANY,
a corporation,

Plaintiff,

vs.

D. J. CARPENTER, et al,

Defendants.

NO. 31798

SATISFACTION
OF JUDGMENT.

The Judgment herein in favor of plaintiff, Del
Rosa Mutual Water Company, a corporation, and against defendant
California Consolidated Water Company, a corporation, in the sum
of Fifteen Thousand Dollars (\$15,000.), having been paid, full
satisfaction is hereby acknowledged of said Judgment entered
in Book 60, page 200, of Judgments; and the Clerk
is hereby authorized and directed to enter full satisfaction
of record in said action.

Dated: October 19th
~~September 26, 1931~~

George E. Gannett
Ray E. Gannett

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss.

On this 24 day of September, 1931, before me,

George E. Gannett, a Notary Public in and for said
County and State, residing therein, duly commissioned and sworn,

personally appeared Ray E. Gannett
a member of the firm of Gannett & Wilson
known to me to be the person whose name is subscribed to the

within instrument, and he duly acknowledged to me that

he executed the same.

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

George E. Gannett
Notary Public in and for the County
of San Bernardino, State of
California.

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

DEL ROSA MUTUAL WATER COMPANY,
a corporation,

Plaintiff,

vs.

D. J. CARPENTER, et al,

Defendants.

NO. 31798

SATISFACTION
OF JUDGMENT.

The Judgment herein in favor of plaintiff, Del Rosa Mutual Water Company, a corporation, and against defendant Arrowhead Springs Corporation, Ltd., a corporation, in the sum of Five Thousand Dollars (\$5,000.), having been paid, full satisfaction is hereby acknowledged of said Judgment entered in Book 60, page 200, of Judgments; and the Clerk is hereby authorized and directed to enter full satisfaction of record in said action.

October 19th
Dated: ~~September 26~~, 1931.

*Ernest J. Wilson &
Cash E. Leonard
attorneys for Plaintiff*

LAWLER & DEGNAN
ATTORNEYS AT LAW
800 STANDARD OIL BUILDING
TEL. TWENTY EIGHT

LAWLER & DEGNAN
ATTORNEYS AT LAW
800 STANDARD OIL BUILDING
TEL. TWENTY SIX

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN BERNARDINO) ss.

3 On this ____ day of September, 1931, before me,
4 Guarino, a Notary Public in and for said
5 County and State, residing therein, duly commissioned and sworn,
6 personally appeared Ralph E. Guerin,
7 a member of the firm of Guerin & Wilson
8 known to me to be the person whose name is subscribed to the
9 within instrument, and he duly acknowledged to me that
10 he executed the same.

11 IN WITNESS WHEREOF, I have hereunto set my hand and
12 affixed my Official Seal th day and year in this certificate
13 first above written.

14 Guarino
15 Notary Public in and for the
16 County of San Bernardino, State
17 of California.
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1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
2 IN AND FOR THE COUNTY OF SAN BERNARDINO.

3 DEL ROSA MUTUAL WATER COMPANY,
4 a corporation,

5 Plaintiff,

6 vs.

7 D. J. CARPENTER, ISABEL C. TURNER,
8 J. B. JEFFERS, GEORGE S. MASON,
9 NATIONAL THRIFT CORPORATION OF
10 AMERICA, a corporation, JOHN DOE
11 MCKASON, MARY GLEASON, C. M. CHRIST,
12 GREAT VIEW WATER COMPANY, NETTIE
13 D. PHILLIPS, PACIFIC-SOUTHWEST TRUST
14 & SAVINGS BANK, a corporation,
15 ARTHUR R. PECK, CARRIE A. PECK,
16 ELLEN A. McLAUGHLIN, ARROWHEAD
17 SPRINGS CORPORATION, a corporation,
18 ARROWHEAD SPRINGS COMPANY, a
19 corporation, J. N. BAYLIS, CALIFORNIA
20 CONSOLIDATED WATER COMPANY, a
21 corporation, CALIFOR A CONSUMERS
22 CORPORATION, a corporation, et al,

23 Defendants.

No. 31798.

NOTICE OF ENTRY OF
JUDGMENT.

24 To the plaintiff above named and to MESSRS. SWING & WILSON
25 and RALPH E. SWING, her attorneys:

26 To the defendants CALIFORNIA CONSOLIDATED WATER COMPANY
27 and CALIFORNIA CONSUMERS COMPANY (sued herein
28 as California Consumers Corporation) and to
29 MESSRS. LAWLER & DEGNAN, their attorneys:

30 To the defendants and cross-complainants D. J. CARPENTER,
31 ISABEL C. TURNER, J. B. JEFFERS, GEORGE S.
32 MASON and NATIONAL THRIFT COMPANY OF AMERICA
and to MESSRS. O'CONNOR & FINDLAY, their
attorneys:

YOU AND EACH OF YOU will please take notice that
judgment in the above entitled matter heretofore stipulated to
by the attorneys for the respective parties hereto, was entered
on the 19th day of October, 1931.

DATED: October 28, 1931.

GIBSON, DUNN & CRITCHER,

By 

Attorneys for Arrowhead
Springs Corporation, Ltd.
and Arrowhead Springs
Company.

*Lawler & Regan
Standard Oil*

FILED
HARRY E. GIBSON
NOTICE OF ENTRY
OF JUDGMENT
1931

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
AND FOR THE COUNTY OF LOS ANGELES No. 31798

(Notice of Filing)
DEL ROSA MUTUAL WATER COMPANY,
a corporation, Plaintiff
vs.
D. J. CARPENTER, et al., Defendant
(For Clerk's Filing Stamp)
CANCELLED
JAN 10 1931
JAN 10 1931
JAN 10 1931

GIBSON, DUNN & CRUTCHER
824 SOUTH SPRING STREET
MUTUAL 5381
LOS ANGELES, CAL.

Attorneys for Arrowhead Springs Company
and Arrowhead Springs Corporation, Ltd., Defendants.

Received copy of the within this 9th day of Nov. 1931

Thomas J. Indley

Attorneys for def. and Cross Defendants

Received copy of the within this 7th day of Nov. 1931

Ralph E. Krumpholtz

Attorney for plaintiff

*Recd copy of the within
this 9 day of Dec. 1931*

*Lawler & Regan
Atty for. estau defts.*

**NESTLÉ WATERS NORTH AMERICA INC.
PRELIMINARY RESPONSE**

Exhibit 7

PIONEER TITLE INSURANCE AND TRUST COMPANY

NWNA EX 7



OFFICERS
PRESIDENT
FIRST VICE PRES.
VICE PRESIDENT
TREASURER, SECY. & TRUST
SAN BERNARDINO, CALIF.
VICE PRESIDENT
EL CENTRO, CALIF.
VICE PRES. AND ASST. SECY.
LAS VEGAS, NEVADA
MACK, ATTORNEY
MACK, TRUST OFFICER

MAIN OFFICE
SAN BERNARDINO, CALIF.
445 COURT STREET
PHONE 4751
OTHER OFFICES
EL CENTRO, CALIF.
222 MAIN STREET
PHONE 178
LAS VEGAS, NEVADA

San Bernardino, California
September 23, 1930

O'MELVENY, TULLER & MYERS
Order No. 95536
RECEIVED

SEP 2 1930

AM 7 59 10 11 12 1 2 3 4 5 6 PM

O'Melveny, Tuller & Myers, Attorneys,
Title Insurance Building,
433 South Spring Street,
Los Angeles, California.

Gentlemen:

Attention: Mr. Homer I. Mitchell

In accordance with Mr. Mack's letter of September 10, 1930 and your further instructions of September 11, 1930, relative to the interests of the parties to that certain Action entitled Del Rosa Water Company vs. California Consolidated Water Company, et al., being Case No. 31798 in the Superior Court for San Bernardino County, we would report the following matters with liability not to exceed \$1.00 on the part of the Pioneer Title Insurance and Trust Company.

The Arrowhead Springs property, so-called, may be divided for our purposes, into two classes; first: That property lying in the East Twin Creek Water Shed; second: That property lying in the West Twin Creek Water Shed. No report has been made on the latter class of property since the property in the West Twin Creek Water Shed, said Creek also being known as Waterman Creek, consists mainly of the Old Waterman Ranch and other property in Waterman Canyon, and the rights to water from this stream have already been litigated in an old Action No. 4733 in the Superior Court for San Bernardino County, entitled West Twin Creek Water Company vs. C. E. Follwell, Jane G. Waterman and Sather Banking Company, et al., in which Case a stipulated Judgment was entered binding the parties to the Action. In connection with the property of Arrowhead Springs Corporation lying in the East Twin Creek Water Shed, we are enclosing copies (uncertified) of the following documents.

1st: Possessory Claim of D. N. Smith, recorded March 21, 1865 in Book "A" of Possessory Claims, page 75.

2nd: Patent from United States of America to David Noble Smith, dated February 1, 1882 and recorded in Book "B" of Patents, page 91. The description in this Patent was recorded erroneously and the instrument was re-recorded to correct this error.

- EXHIBIT "A" -

Page 1 of 30 of BB&K
Opinion Letter to BCI

3rd: A Patent from the United States of America to David Noble Smith dated February 1, 1882 and recorded in Book "B" of Patents, page 573, covering the East half of the Southeast quarter and the Southeast quarter of the Northeast quarter of Section 11, and the Northwest quarter of the Southwest quarter of Section 12, Township one North, Range four West.

4th: Water Location Notice showing appropriation by the Arrowhead Hot Springs Hotel Company recorded in Book "B" of Water Records, page 476, on March 26, 1887.

5th: Water Location Notice showing appropriation by the Arrowhead Hot Springs Hotel Company recorded May 7, 1887, in Book "C" of Water Records, page 40.

6th: Water Location Notice showing appropriation by Arrowhead Hot Springs Hotel Company recorded May 9, 1887 in Book "C" of Water Records, page 22.

7th: Amended Notice of Appropriation by Arrowhead Hot Springs Hotel Company recorded November 30, 1887 in Book "C" of Water Records, page 296.

8th: Amended Notice of Appropriation by Arrowhead Hot Springs Hotel Company recorded November 30, 1887 in Book "C" of Water Records, page 298.

9th: Patent from United States of America to Thomas B. Elder covering the South half of the Northwest quarter and the West half of the Northeast quarter of Section 12, Township one North, Range four West, dated October 6, 1888 and recorded in Book "C" of Patents, page 338.

10th: Water Appropriation Notice by Herbert J. Royer recorded June 10, 1892 in Book "D" of Water Records, page 312.

11th: Water Appropriation Notice by Herbert J. Royer recorded June 10, 1892 in Book "D" of Water Records, page 313.

12th: Patent from United States of America to Benjamin F. Coulter, et al., covering the Northeast quarter of the Southwest quarter; the North half of the Southeast quarter and the Southeast quarter of the Northeast quarter of Section 12, Township one North, Range 4 West, dated August 15, 1889 recorded in Book "C" of Patents, page 374.

13th: Notice of Water Appropriation by H. J. Royer recorded November 7, 1891 in Book "D" of Water Records, page 133.

14th: Patent from United States of America to Southern Pacific Railroad Company of California, covering all of Section 7, Township one North, Range three West, (other property in this Patent not set out in this copy), dated November 1, 1897 and recorded in Book "E" of Patents, page 386.

15th: Patent from United States of America to Herbert J. Royer covering the North half of the Northwest quarter of Section 12, Township one North, Range four West, dated May 12, 1897 and recorded in Book "G" of Patents, page 63.

An examination of the records subsequent to the date of the instruments above set out indicates that the property described in the above patents, together with the interest of the appropriators of the water described in the Water Notices has descended to Arrowhead Springs Corporation (a Delaware Corporation) by Deed from Arrowhead Springs Company, (a Maine Corporation) to said Arrowhead Springs Corporation, dated July 1, 1925 and recorded August 22, 1925 in Book 19 of Official Records, page 20. At the time of the filing of this Deed there was a memorandum made on our office records relative to the transaction which reads as follows:-

"Note the exception contained in the deed of Arrowhead Springs Company, a corporation, (Maine) to Arrowhead Springs Corporation, a corporation, (Delaware), dated July 1, 1925 and recorded August 22, 1925 in Book 19 of Deeds, page 20, which deed, after granting ten parcels of land, proceeds as follows:

"SAVING AND EXCEPTING from all of the above described property all roads and highways.

"ALSO all water rights, easements and privileges belonging to said real property or any part thereof, and all water rights and all easements, servitudes and privileges with respect to water owned by Arrowhead Springs Company in regard to any water of or in any Canyon which enters said land.

"TOGETHER with all water of West Twin Creek and other water rights appurtenant to said premises, described in decree rendered June 14, 1894 in Action entitled "West Twin Creek Water Company, a corporation, plaintiff, vs Mrs. J. G. Waterman, et al" being Action No. 4733 in the Superior Court of the State of California in and for the County of San Bernardino, as being owned by the Sather Banking Company, the interest of which Company is now held by Arrowhead Springs Company.

"TO HAVE AND TO HOLD unto the said grantee, its successors and assigns forever."

"Note 1: The location of the roads which may have been excepted by this provision in the deed is uncertain, it being understood that there are a number of private roads on the property, the exact location of which is not a matter of record."

"Note 2: The apparent exception of the water rights in connection with the land covered by this search is capable of the construction that it was intended to convey such water rights and the exception is here noted because of its ambiguity."

The title of the Arrowhead Springs Corporation, a corporation (Delaware), was subject to:

"Those certain rights contained in the Deed of Arrowhead Hot Springs Company, a corporation, (Maine) to Seth Marshall, dated October 18, 1923 and recorded October 24, 1923 in Book 813 of Deeds, page 254, which Deed grants a parcel of land described as:-

BEGINNING at corner No. 1, the Southwest corner, a one-inch pipe, whence the South quarter corner of Section 11, 1N-4W, SBBM, bears South 40° 1' West 2070.3 feet; thence North 18° 39' West 171.9 feet to corner No. 2, a 1½ inch iron pipe; thence North 26° 34' East 268.72 feet, corner No. 3, a 2 inch pipe; thence South 89° 5' East 79.68 feet to corner No. 4, 2 inch iron pipe; thence South 4° 51' West 405.19 feet to corner No. 5, a 2 inch iron pipe; thence North 89° 5' West 110.67 feet to corner No. 1, the point of beginning, which deed contains the following recital:

"During the occupancy of said premises, the Grantee, his heirs or assigns, shall have the right to use the waters of the grantor for domestic purposes only, including in that term the household, private lawns, shrubberies and gardens adjacent thereto."

And also subject to:

"That certain Lease made and entered into between Arrowhead Springs Corporation, as Lessor, and Arthur R. Peck and Carrie A. Peck, his wife, as joint tenants, Lessees, dated June 30, 1927 and recorded August 16, 1927 in Book 262 of Official Records, page 304, being a lease for the term of twenty years, on the property described as follows:-



"All that certain parcel of land containing 1 acre, more or less, situate in the County of San Bernardino, in the Southeast quarter of the Northeast quarter of Section 11-1N-4W, described as follows:-

"That portion of the present Arrowhead Springs Hotel property described as - Lot 7 upon a plan on file in the office of the Lessor prepared by Roland E. Coate, architect, and showing the location of proposed cottages to be erected in connection with said hotel property, which demised parcel is situated in a Southerly direction from the main building of said Arrowhead Springs Hotel and about 500 feet therefrom and is delineated upon the ground by monuments indicating the exact boundaries thereof, together with all rights, easements and appurtenances to the same belonging and usually had and enjoyed therewith, including an easement over the adjacent land of the lessor to afford access to the demised land by automobile or other vehicle, from the public highway by which said hotel property is reached and egress therefrom in the same manner.

Lease recites:

"Section X: The lessor agrees at its own expense to install and maintain pipe-lines to the north line of the demised land from its main hotel building water system and to furnish unto the lessees through said pipe lines such water as may be needed by them for domestic purposes, and for the irrigation of flowers, shrubs, plants and trees which may be planted by them upon the demised land; and also such hot water as the lessees may require for their domestic use. The lessor further agrees that the lessees may carry electric wires upon any pole lines of the lessor so that connection may be thereby made with the feet lines of the lessor, by which such service is supplied to the lessor's hotel; and the lessees shall also have an easement for the installation and maintenance of underground conduits for telephone and electric wires from such lines of the lessor to the demised land without consideration other than that upon which this lease is based; said telephone wires to be connected with the switchboard in the hotel of the lessor. And the lessor agrees that telephone service shall always be given the lessees by such connection with its switchboard, the lessees to pay therefor the usual extension rates. A meter shall be installed to measure the electric current supplied to the lessees and they shall make payment therefor to the lessor monthly, at the same rates paid to the Southern California Edison Company or other Company supplying said hotel, and in force from time to time during the term of the lease; and always during the term of the lease the lessees shall be entitled to electric service by connection with the system by which said hotel is supplied at the actual cost thereof to the lessor.

"At the election of the lessees they shall be entitled to the overflow water from Granite spring to irrigate their garden and grounds, together with an easement for a pipe line from said spring to the demised land, which pipe-line shall be installed and placed underground by and at the expense of the lessees. No charge shall be made against the lessees for said easement nor for any water rendered under any provisions of this lease, and the lessor agrees to furnish such water service without additional consideration

"Section XIII: The lessor agrees with the lessees that if any of its lands in its tract surrounding said hotel shall hereafter, during the term of this lease, be sold for residence purposes, then, and in such event, the lessees shall have the right, at their election, to purchase the demised land at a price per acre not greater than the price per acre received by the lessor for the land so sold. The price of the land unimproved shall be the basis of the price so to be paid, and the value of the improvements on the demised land shall not be considered.

"Section XV: The main consideration moving to the lessor for the making of this lease is the construction upon the demised land of the improvements aforesaid, and the resulting benefit to the lessor according to the provisions hereof. In addition to their obligations aforesaid, the lessees agree to pay the lessor rental at the rate of One Dollar per annum from the date of the beginning of the term, which payment shall be made annually on the 30th day of June in each year hereafter until the expiration of the term. Failure of the lessees to pay such installment of rental shall entitle the lessor to interest thereon at the rate of 7% per annum, from the time when payment shall be made as herein provided, but otherwise no penalty shall attach hereunder to default in the making of any such payment.

"If the lessees shall fail to begin the construction of said improvements with__ the time herein limited; or, if after beginning such work they should fail to complete the improvements within the designated time, then, and in either of such events, this lease may be terminated at the election of the lessor.....

"Section XVIII: The covenants and agreements of the lessor hereunder shall be deemed to run with the land....."

Arthur R. Peck and Carrie A. Peck, the lessees in this lease are made parties defendant in this Action by reason of their leasehold interest and option to purchase involving use of that certain water as above shown.

The property was also subject to a Deed of Trust securing a bond issue, which Deed of Trust has since been reconveyed.

Also apparently subject to the final determination in that certain Action pending in the Superior Court for San Bernardino County, entitled Del Rosa Water Company, plaintiff, vs. Arrowhead Springs Company, et al., defendant, being Action No. 18154. Swing and Wilson, Attorneys for the plaintiff and Byron Waters of San Bernardino was Attorney for defendants. This Action seeks to quiet title in the plaintiff to 130 inches of water from East Twin Creek. After the joinder of the issues the Case has lain dormant in the files while the property of both the plaintiff and defendant has passed to new owners. This Action apparently arises out of the same cause of Action as that claimed in the present case. Should you desire a copy of the pleadings in this Case, you will please advise.

It must be assumed for the purpose of this report that the deed of Clinton Andre and Dell Andre, his wife, to Arrowhead Hot Springs Company, a corporation, dated May 29, 1905 and recorded June 1, 1905 in Book 344, page 163 of Deeds, and conveying the North half of the Northwest quarter of Section 12, Township one North, Range four West, together with appurtenances thereunto belonging, conveyed all the interest of the grantor in and to the diversion rights of the said Clinton Andre originating under the Water Location Notices of Herbert J. Royer, hereinabove referred to. Reference to the water rights not having been specifically set out in this instrument, it is assumed that these rights pass as appurtenant to the property described in said deed.

Subsequent to the recordation of the Deed from the Arrowhead Springs Company, a corporation (Maine) to the Arrowhead Springs Corporation, a corporation (Delaware) the following instruments have been recorded affecting the land or water rights above referred to:

1st: A Licensed Land Surveyor's Map showing the location of certain pipe lines and easements of the Arrowhead Springs Corporation, recorded February 11, 1929 in Book 2, Record of Surveys, page 18.

2nd: A Notice of Sale by Arrowhead Springs Corporation, a corporation, to California Consolidated Water Company, a corporation, recorded February 18, 1929 in Book 469 of Official Records, page 91, showing notice of intended sale of the water bottling and distributing business

of the vendor. Sale to be made February 27, 1929 at the Sixth and Spring Street Office of the Los Angeles First National Trust and Savings Bank.

3rd: The Deed from Arrowhead Springs Corporation, a corporation, (Delaware) to California Consolidated Water Company, a corporation, (Delaware), dated February 27, 1929 and recorded March 12, 1929 in Book 476 of Official Records, page 175, the property in this Deed is described as follows:-

"1. A perpetual right and easement to use, operate, maintain, repair and replace the reservoirs, pipe lines, tunnels and collecting basins hereinafter described, together with the easement to enter and go across other property of the grantor hereinafter described, in order to use, operate, maintain, repair and replace such facilities and the other facilities hereinafter mentioned. The reservoirs, pipe lines, tunnels and collecting basins above mentioned are described as follows:

"Water Lot No. 1 as shown and delineated on Licensed Surveyor's Map "Showing Certain Pipe Lines and Easements Arrowhead Springs Corporation", recorded in Book 2, Record of Surveys, Pages 18 and 19.

"Water Lot No. 2, as shown and delineated on said Licensed Surveyor's Map recorded in Book 2, Record of Surveys, Pages 18 and 19.

"Also the existing reservoir site and tanks as shown on said Licensed Surveyor's Map.

"Also the proposed reservoir site as shown on said Licensed Surveyor's Map.

"Also a right of way 10 feet wide for pipe line, the center line of which is designated as "Waterman Canyon Pipe Line" on said Licensed Surveyor's Map.

"Also a right of way 10 feet wide for pipe line, the center line of which is designated as "Indian Springs Pipe Line" on said Licensed Surveyor's Map.

"Also a right of way 40 feet wide for pipe line designated as "Proposed Pipe Line "B", the center line of which is the center line of Pacific Electric Railway as shown on said Licensed Surveyor's Map.

"Also a right of way 10 feet wide for pipe line, the center line of which is designated as "Proposed Pipe Line 'A' on said Licensed Surveyor's Map.

"Also a perpetual easement to lay, construct, erect, use, operate, maintain, repair and replace necessary additional reservoirs, pipe lines, tunnels, collecting basins and similar facilities as may be hereafter needed by the grantee, its successors or assigns, in, on and across other property of the grantor, hereinafter described.

"Also all pipe lines, pipe racks and loading facilities for the transportation of water from the existing collecting basins and tunnels of the grantor to Pacific Electric Railway, or elsewhere, and also all reservoirs and tanks of the grantor, now being used by it in the development and distribution of its water.

"2. All subterranean waters in Waterman Canyon (also known as West Twin Creek) and in Strawberry and Cold Water Canyons (also known as East Twin Creek), belonging to the grantor, including all waters now being developed and produced by said grantor in said Canyons, together with such additional subterranean waters now belonging to the grantor as the grantee, its successors or assigns, may hereafter desire to develop, together with necessary rights of way for pipe lines to convey such water to the reservoirs of the grantee, its successors or assigns, and the right to go upon the premises of the grantor and erect necessary tunnels and collecting basins for the development of such water; excluding, however, all water of the grantor from surface streams and hot springs.

"3. Also whatever rights and interest ARROWHEAD SPRINGS CORPORATION owns and possesses in water flowing from Indian Springs and in the tunnels located at and adjoining said Springs.

"4. Also, in the event of emergency creating a shortage in the supply of water available to grantee, its successors or assigns, from the above sources of supply the right and privilege on the part of the grantee, its successors or assigns, to take hot water from any of the springs or other sources of supply owned or controlled by the grantor in such amounts and at such times as will not interfere with or interrupt the hot water uses and service of the grantor."

4th: Trust Indenture from California Consolidated Water Company, a corporation (Delaware) to Los Angeles First National Trust and Savings Bank, a National Banking Association, as Trustee, covering all property of the California Consolidated Water Company, to secure a bonded indebtedness of \$1,500,000.00, which Trust Indenture is dated March 1, 1929 and recorded March 12, 1929 in Book 475 of Official Records, page 261.

5th: The filing of complaint in that certain Action No. 31798, in the Superior Court of San Bernardino County, entitled Del Rosa Mutual Water Company, a corporation vs., California Consumer's Corporation, et al., for the purpose of quieting title to 130 inches of water in East Twin Creek.

6th: An Agreement between Arrowhead Springs Corporation, a corporation (Delaware) and California Consolidated Water Company, a corporation, (Delaware) amending the provisions of the Deed recorded in Book 476 of Official Records, page 175, and certain particulars regarding the water to be developed and taken from East Twin Creek and its tributaries and the construction and maintenance of diversion works and reservoirs, which Agreement is dated August 6, 1930 and recorded August 21, 1930 in Book 648 of Official Records, page 122. Reference to which Agreement and the record thereof is hereby made for further particulars.

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The water claims, evidences of which we find in the records, may for the purpose of this report, be classified as follows:-

FIRST: Water claims of Arrowhead Springs by reason of appropriation and by riparian use. These claims have been covered by the first part of this report.

SECOND: Water claims of appropriators from the surface flow below the property of Arrowhead Springs.

These are the interests growing out of the instruments, copies of which are enclosed as follows:

(a) Notice by John Hancock and Henry Hancock, recorded May 15, 1874 in Book "A" of Water Records, page 22.

(b) Notice by John Hancock, recorded February 20, 1875 in Book "A" of Water Records, page 42.

(c) Notice recorded by John Hancock April 12, 1875 in Book "A" of Water Records, page 52.

(d) Notice recorded by John Hancock, September 30, 1884 in Book "B" of Water Records, page 106.

(e) Notice recorded by John Hancock December 18, 1884 in Book "B" of Water Records, page 141.

(f) Notice recorded by John Hancock December 30, 1884 in Book "B" of Water Records, page 144.

(g) Notice recorded by John Hancock January 28, 1885 in Book "B" of Water Records, page 151.

(h) Notice recorded by Kansas City Real Estate Investment Company August 27, 1890 in Book "C" of Water Records, page 632.

(i) Patent from United States of America to Andrew Leedom covering the Northwest quarter of the Northeast quarter and the Northeast quarter of the Northwest quarter and Lot 5, Section 15, Township one North, Range four West, dated May 5, 1904 and recorded in Book "G" of Patents, page 163.

The interest of the locators in the Location Notices and of the patentee in the Patent, (so far as the same affect that portion of Section 14, described as follows: Beginning at the Northeast corner of the Northwest quarter of the Northeast quarter of Section 14, Township one North, Range four West; thence West two hundred eight and seventy-one hundredths feet; thence South four hundred seventeen and four tenths feet to a point which is South forty-six degrees thirty minutes West one hundred twenty-seven and nine tenths feet from the Southwesterly corner of concrete sand box of Del Rosa Water Company; thence East two hundred eight and seventy-four hundredths feet; thence North four hundred seventeen and four tenths feet to the point of beginning), descends to Del Rosa Mutual Water Company with the following exceptions:

I. That certain five inches of water from the flow of East Twin Creek, reserved to John Hancock in his Deed dated May 23, 1887 and recorded August 20, 1887 in Book 62 of Deeds, page 466, to R. H. Hunt, Charles H. Condee, C. H. Rhodes, Cyrus Newkirk, J. C. Thompson, E. A. Phillips, predecessors in interest of the Del Rosa Mutual Water Company.

We find no record of any conveyance by John Hancock of the five inches of water reserved in the Deed above referred to recorded in Book 62 of Deeds, page 466 and we know of no party other than the Del Rosa Mutual Water Company and the parties claiming under the ten inches granted to Samuel W. Little, et al., who are diverting water under the Hancock appropriations.

II. That certain ten inches of water conveyed by R. H. Hunt, Charles H. Condee, C. H. Rhodes, Cyrus Newkirk, J. C. Thompson, E. A. Phillips to Samuel W. Little, David B. Alexander, Wm. H. Avery, Benson Wood, by Deed dated April 22, 1890 and recorded December 24, 1890 in Book 122 of Deeds, page 348, being a conveyance of ten inches of water from the waters of East Twin Creek, so long as that Creek shall flow that amount of water. This Deed recites that it is made pursuant to an Agreement of Exchange between Samuel W. Little, David B. Alexander, Wm. H. Avery, Benson Wood and R. H. Hunt, Charles H. Condee and E. A. Phillips, dated April 22, 1887 and recorded March 1, 1888 in Book "K" of Agreements, page 199. This Agreement recorded in Book "K" of Agreements, page 199, recites that the first parties, Samuel W. Little, et al., hold from John Hancock, a "small interest" in the waters of East Twin Creek, and that that interest shall be relinquished on the proper conveyance to the first parties of ten inches of water referred to in the Agreement. We find no specific conveyance from John Hancock of any interest in the waters of East Twin Creek, to said Samuel W. Little, et al., although we do find a conveyance of a large tract of land in this vicinity, now known as the S. W. Little Tract, but without specifically setting out any water right as being conveyed with or appurtenant to the property.

The interest conveyed to Samuel W. Little, et al., in the Deed recorded in Book 122 of Deeds, page 348, was by two certain Agreements, one dated February 1, 1889 and recorded June 28, 1890 in Book "O" of Agreements, page 280 and the other by Agreement dated December 23, 1889 and recorded June 28, 1890 in Book "O" of Agreements, page 276, made appurtenant to the property described as the S. W. Little Tract, which Tract consists of fourteen lots aggregating an area of 281.46 acres according to the acreage shown on the recorded plat, and also a parcel marked "Reservoir Lot", said to contain 4.70 acres. Under the agreement above referred to, the Reservoir Lot and its appurtenances including the 10 inches of water from East Twin Creek, were divided into 281.66 parts and provision was made that one of such parts should pass with the conveyance of each acre of land in the Tract, except the Reservoir Lot.

By various conveyances, the title to all of the Tract known as the S. W. Little Tract, recorded in Book 9 of Maps, page 12, descends to Daniel J. Carpenter. The following persons named as defendants in Action No. 31798, derived their interest in the Creek through Daniel J. Carpenter:

George S. Mason, as to one inch of the perpetual flow of the water of the Reservoir Lot above referred to as shown on the Map of S. W. Little Tract which flow of water includes ten inches of water in constant flow from East Twin Creek, as conveyed by D. J. Carpenter and Mary I. Carpenter, his wife, to George S. Mason by Deed dated August 5, 1914 and recorded August 10, 1914 in Book 554, page 260 of Deeds, said water to be delivered not oftener than two days each month in cumulated heads, from the water of East Twin Creek, belonging to said Reservoir Lot through what is known as the Avery pipe line.

Mary E. Gleason, as to the property described as the equivalent of two-thirds of an inch of the perpetual flow of the waters of East Twin Creek, as owned by D. J. Carpenter and Mary I. Carpenter, to be delivered from what is known as the Avery pipe line in not more than three days of each month as may be agreed upon, as conveyed by D. J. Carpenter and Mary I. Carpenter, his wife, to Lamont E. Hill, by Deed dated June 13, 1913, and recorded in Book 538 of Deeds, page 134, Mary Gleason being the successor in interest through mesne conveyances, to Lamont E. Hill.

L. R. McKesson, (shown in your letter as John Doe McKasson), wife's name Nina McKesson, owner and National Thrift Corporation of America, beneficiary in Trust Deed to American National Bank of San Bernardino, Trustee, as to an interest described as follows:-

An undivided 100/281.66 part of the following described parcels lettered "A" and "B".

(a) Certain reservoir lot containing four and seventy hundredths acres as shown on Map of S. W. Little Tract. Together with all water flowing from wells and reservoir situated on said Lot.

(b) Also that certain ten inches perpetual flow of waters of East Twin Creek, all as more particularly described in Agreement recorded in Book "0" of Agreements, page 276, and that certain Agreement recorded in Book "0" of Agreements, page 280, and being a portion of those certain water rights conveyed by William H. Avery and wife, to Daniel J. Carpenter by Deed recorded in Book 409 of Deeds, page 328, and conveyed to Daniel J. Carpenter by Benson Wood and wife, by Deed recorded in Book 432 of Deeds, page 225.

EXCEPTING from the Parcels above described that certain water right described as two-thirds of one inch of the water of East Twin Creek as conveyed by Daniel J. Carpenter to Lamont E. Hill, by Deed dated June 13, 1913 and recorded in Book 538 of Deeds, page 134.

ALSO SAVING AND EXCEPTING from said Parcels one inch of perpetual flow of the water of said Reservoir Lot as conveyed by Daniel J. Carpenter and Mary I. Carpenter, his wife, to George S. Masan, by Deed dated August 5, 1924 in Book 554 of Deeds, page 260.

J. B. Jeffers and Johnie C. Jeffers, husband and wife, and E. C. Jeffers, a single man, owners and D. J. Carpenter as beneficiary in the Deed of Trust to the American National Bank of San Bernardino, as to an interest in said water described as follows:

An undivided 130.66/281.66 interest in the following described parcels:

(a) That certain reservoir lot containing four and seventh hundredths acres, as shown on the Map of S. W. Little Tract, above described, together with all water flowing from the wells and reservoir situated on said Lot.

(b) Also ten inches perpetual flow of the waters of East Twin Creek, more particularly described in Agreement recorded in Book "0" of Agreements, page 276, and in Agreement recorded in Book "0" of Agreements, page 280.

EXCEPTING from the Parcels above described, that certain water right described as two-thirds of one inch of the water of East Twin Creek, as conveyed by Daniel J. Carpenter to Lamont E. Hill, by Deed dated June 13, 1913 and recorded in Book 538 of Deeds, page 134.

ALSO SAVING AND EXCEPTING from said Parcels, one inch of perpetual flow of the water of said Reservoir Lot as conveyed by Daniel J. Carpenter and Mary I. Carpenter, his wife, to George S. Masan, by Deed dated August 5, 1924 in Book 554 of Deeds, page 260.

Isabel Carpenter Turner, formerly Isabella Carpenter, as to an interest described as follows:

An undivided 34.23/281.66 interest in the following described parcels:

(a) That certain reservoir lot containing four and seventy hundredths acres, as shown on the Map of S. W. Little Tract, above described, together with all water flowing from the wells and reservoir situated on said Lot.

(b) Also ten inches perpetual flow of the waters of East Twin Creek more particularly described in Agreement recorded in Book "0" of Agreements, page 276, and in Agreement recorded in Book "0" of Agreements, page 280.

EXCEPTING from the Parcels above described, that certain water right described as two-thirds of one inch of the water of East Twin Creek as conveyed by Daniel J. Carpenter to Lamont E. Hill, by Deed dated June 13, 1913 and recorded in Book 538 of Deeds, page 134.

ALSO SAVING AND EXCEPTING from said Parcels, one inch of perpetual flow of the water of said Reservoir Lot as conveyed by Daniel J. Carpenter and Mary I. Carpenter, his wife, to George S. Masan, by Deed dated August 5, 1924 in Book 554 of Deeds, page 260.

Daniel J. Carpenter, as to any remaining interest in the ten inches of water from East Twin Creek, which were made appurtenant to the Reservoir Lot on the S. W. Little Tract by the Agreements recorded in Book "0" of Agreements, page 280 and in Book "0" of Agreements, page 276. It is understood that Daniel J. Carpenter claims to own a portion of the reservoir lot and the water estimated to be the fraction 16.77/281.66, description being the same as of the property hereinabove shown as owned fractionally by Isabell Carpenter Turner, although the conveyances of interest in the water of this Creek as shown above vested in Mary E. Gleason and George S. Mason, together with the other conveyances listed above, would divest Daniel J. Carpenter, apparently, of all his remaining interest in said ten inches of water. The conveyances by Carpenter to the predecessors in interest of L. R. McKesson and J. B. Jeffers, et al., did not except from the conveyance the portions previously conveyed to Mason and Hill and as to such descriptions, the one and two-thirds inches may properly be eliminated in determining the fraction although for our own Policy purposes, we prefer to add the exception as a protection to this Company.

III. Any water in excess of that claimed in the complaint in Action No. 31798, and any interest in excess of the right to 93.16 inches of water, title to which 93.16 inches we find deducible from the record based on the Appropriation Notices listed above.

The chain of title to the water coming into the Del Rosa Mutual Water Company is quite an extended run starting with the above Location Notices and continuing the conveyance of "all interest" by various conveyances down into a Company known as "Kansas City Real Estate Investment Company", who subdivided a large tract of land known as the Orange Grove Tract. This Company placed a Deed of Trust on their land and water rights and proceeded to convey farm lots together with a proportionate interest in their water right which they described as 200 inches of water in East Twin Creek.

Most of the Deeds out of this Company provide for the conveyance of one inch of water to each seven acres of land conveyed, the water to be made appurtenant to the land. Following down the chain of title to the various lots conveyed by Kansas City Real Estate Investment Company, 51 Deeds in all, mentioning water rights, and following the title to the property so conveyed with water rights, we found that by 46 separate instruments the title to the water descending with the land comes vested in Del Rosa Water Company, the Company later being reorganized as Del Rosa Mutual Water Company. After 51 conveyances of land with water rights and the release of property sold from the Deed of Trust, the balance of property of the Kansas City Real Estate Investment Company was sold under foreclosure and no further mention is made of water rights in East Twin Creek by the owners of land purchased under the foreclosure.

The full 200 inches was never conveyed away piecemeal, doubtless due to the fact that that quantity of water was not continuously obtainable.

There are a few parties, as we understand it, who are still hanging on to their conveyance of inches of water from the Creek, although these parties are apparently permitting the Mutual Water Company to handle the diversion and serve them in a manner similar to their stockholders. There are many Deeds in the chain of title to the land conveyed by the Kansas City Real Estate Investment Company subsequent to the original Deed that do not specifically mention the water right and as to such instruments, it has been assumed that the water right has passed with the land conveyed as appurtenant.

Should you desire copies of all of the Deeds into the Del Rosa Mutual Water Company and the Del Rosa Water Company you will so advise, although it is our experience that many of these Deeds do not set out in the interest, but merely state a conveyance of all interest in the Creek and it has been necessary to go back and determine the number of acres of land which the party conveying owned in the Orange Grove Tract before we were able to determine the quantity of water which the conveyance represents.

We are also enclosing copies of the following instruments apparently covering diversions below Arrowhead Springs.

(j) An Agreement between George I. Burton, John Anderson, and William H. Stones, recorded February 2, 1881 in Book "A" of Water Records, page 187. Said parties recite themselves to be the owners of all the water and water rights in East Twin Creek and agree as to the division of the water between them. This is apparently an agreement relative to what is now known as the Stone Ditch and the source of the water in which is a tunnel in the bed of the stream below the Del Rosa diversion. No search has been made as to the chain of title nor present vesting of this property.

(k) Notice of Appropriation by Noye Wicks, et al., recorded March 26, 1887 in Book "B" of Water Records, page 475.

(l) Notice of Appropriation by Edwin A. Meserve, recorded May 26, 1887 in Book "C" of Water Records, page 52.

Some interest of the locators in the above three instruments (j), (k) and (l), apparently descended to the water company known as Alta Land and Water Company, by Deed dated July 15, 1887 and recorded in Book 63 of Deeds, page 114, which instrument conveyed all the interest of Shirley C. Ward, Edwin A. Meserve, Noye Wicks and Chas. J. Perkins, in and to the waters of East Twin Creek.

In Action No. 1684 in the District Court for San Bernardino County, entitled Alta Land and Water Company, plaintiff, vs. John Hancock, C. H. Rhodas, R. H. Hunt, Cyrus Newkirk, J. C. Thompson, E. A. Phillips and Charles H. Condee, defendants, a Judgment was rendered, dated August 19, 1889 entered August 19, 1889 in Book 4 of Judgments, page 294, being a Judgment for the defendants, John Hancock, et al. The files in this Case contain among other things, depositions by witnesses for the defendants, witnesses apparently being laborers who actually performed the work of constructing ditches and diversion works for John Hancock in the year 1874 and in the year 1875. Reference is made in the papers on file in this Action to an Action covering similar subject matter tried in Los Angeles County in the year 1886. We do not have the number of the Action.

We note also, a Case in the District Court for San Bernardino County being Case No. 948, wherein Andrew Leedom, George I. Burton, John Anderson, W. H. Stones, M. Segars and L. Deck, plaintiffs, vs. John Hancock, defendant, relative to the ownership of water diverted below the Arrowhead Springs property. This Case was dismissed as to Andrew Leedom, Stipulation for dismissal reciting that the interest of Andrew Leedom had passed to John Hancock. It is likely that the interest of the other plaintiffs was litigated in the above Action No. 1684, but no further filings have been made in this proceeding.

THIRD: Water claims of appropriators above Arrowhead Springs Diversion.

We are enclosing copies of the following water appropriation notices by J. N. Baylis, one of the defendants in Action No. 31798.

(a) Location recorded September 7, 1908 in Book "H" of Water Records, page 209.

(b) Application for permit by John N. Baylis, covering one-half cubic feet per second from the spring tributary to Strawberry Creek, filed as Document #16 in the office of the County Recorder on April 21, 1919.

(c) Permit #667 for the diversion of one-half cubic feet per second from a spring tributary to Strawberry Creek for use on Section 25, Township two North, Range two West, recorded as Document #1 in the office of the County Recorder on January 8, 1920. The water represented by these instruments is evidently diverted for use on mountain resort property known as Pine Crest.

(d) We are also enclosing a copy of Water Appropriation Notice by E. H. Neuls and Thomas Mapstead recorded April 8, 1912 in Book "H" of Water Records, page 337. No attempt has been made to run down this location. It apparently covers a diversion high up in the mountains.

(e) We are also enclosing copies of instruments as follows:

Three Location Notices made by the Sextette Mining Company. If these instruments affect this water in any way, its diversion is above the Arrowhead Springs property. No search has been made covering the interest of the locators and we have incidentally noticed nothing further in the record respecting the interest of the parties named in the Location Notices.

FOURTH: Lower riparian claims and claims to under flow and percolating water and storm water for storage.

Ellen A. McLaughlin, one of the defendants named in Action No. 31798, is the owner of the balance of property described in the Patent from United States of America to Andrew Leedom, recorded in Book "G" of Patents, page 163, above referred to not conveyed to the Del Rosa Water Company. This property is apparently riparian to the stream. The chain of title to this property does not indicate the use of East Twin Creek Water on the property.

Nettie D. Phillips is apparently the owner of parcel of land described as Lot 1, Section 14, Township one North, Range four West, lying East of the West bank of East Twin Creek. Property was acquired by Nettie D. Phillips under a Decree dated March 27, 1930; said Decree being in the nature of a Decree quieting title under a 20 year adverse claim. The chain of title does not indicate any use of East Twin Creek water on the property.

The City of San Bernardino are the owners of the property riparian to the stream in the Muscupiabe Rancho and are prosecuting a program of water conservation in this district.

In our study of the chain of title of water rights in East Twin Creek, we have observed no interest coming into the parties named as C. M. Crist and Great View Water Company, although it is believed that these parties may have some interest in diversions for mountain resort property.

Since it has been difficult to separate the search on the property of the three principal defendants named in your letter and the other parties to the Action, we have thought it best to bring them all down in this form and are consequently adjusting the price quoted to you in Mr. Mack's letter of September 10, 1930.

Very truly yours,

J. W. Muir
J. W. MUIR,
Title Examiner.

JWM:J
Encl.

INDEX OF ENCLOSURES

Instrument	Book	Page	First Party	Second Party
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Application for permit to appropriate unappropriated waters			Do	
Do			Do	
Water Notice	H	337	E. H. Neuls	
Water Notice	H	70	Thos. Mapstead	
Water Notice	H	82	Sextet Mining Co	
Water Notice	H	89	Do	

COPY OF BOOK "A" POSSESSORY CLAIMS, PAGE 75

STATE OF CALIFORNIA)
)
SAN BERNARDINO COUNTY)

D. N. Smith being duly sworn says that he is a citizen of the United States, settled upon occupying and claiming the following described public lands with intention of holding the same as a possessory claim under the act of the Legislature of California of April 20th 1852, and also of securing it as a homestead, as soon as surveyed by government under the provisions of the Act of Congress of May 20th, 1862, to-wit:- Situated on East Twin Creek, about 6 miles North 17° East of San Bernardino in the County of San Bernardino, embracing the table land and hot springs at the foot of Arrowhead Mountains, commonly known as the "Ace of Spades" and the bottom land and wash of said Creek from a little below the mouth of "Hot Canon" up to the mark hereinafter specified in survey of lines said tract embracing the hot canon and the springy and brushless land on the West or right bank of said canon immediately below the main forks formerly located improved and abandoned by Wagoner also the springs and grassy plot surrounding the hot springs on the East or left bank of said canon formerly located improved and abandoned by John Brown Esq.-

The lines of said tract of land are as follows commencing at a stone set in the ground marked X on a little knole at the forks of the first dry canon west of the brushless plat on the right bank of Hot Canon, and running North 63° East, to a rock mound on a line from the East Hot Springs to the lower point of the Arrowhead marked on the mountains, thence South 69° East to a rock marked X on a bluff point above wood Road, thence North 35° and 3 minutes East to a bunch of green bushes or rock marked X on the left bank of East Twin Creek thence following down the left bank at the foot of the mountain in a general bearing South 52° 30' West to a rock marked X at little below the mouth of Hot Creek, thence North 24° 30' West on the West bank of Hot Creek to its junction with dry fork following up the West bank of the latter to point of beginning.

Deponent further says that said boundary lines do not embrace more than one hundred and sixty (160) acres of land. That he has taken no other claim under said act of April 20th, 1852, and to the best of his knowledge and belief that the said lands are not claimed under any existing title and that he has already put real improvement thereon to the value of over two hundred dollars.

D. N. SMITH

0539

Subscribed and sworn to
before me this 11th day of
March A. D. 1865

H. C. ROLFE
Notary Public.

I hereby certify the foregoing to be a true, full
and correct copy of the original filed for record March
1865 and recorded March 21st A. D. 1865, 11 o'clock A. M.

A. F. Mc KENNEY
Recorder

By HENRY WILKES
Deputy.

0544

COPY OF BOOK "C" OF WATER RECORDS, PAGE 40.

NOTICE

The undersigned corporation claims the water here flowing or to flow in this Strawberry Canon (being the North west fork of Twin Creeks in Township one North Range four West San Bernardino Base and Meridian to the extent of one hundred and forty inches measured under a four inch pressure for irrigation domestic, mechanical, manufacturing, bathing and medical purposes upon its lands in the Township and Range above mentioned to which the said water is to be conveyed from this the point of diversion through a flume twelve by twelve inches for the first 30 or 40 feet and thence by iron pipe diameter ten inches to seven inches diameter at the point of use.

Done at Arrowhead Hot Springs Cal May 5th, A. D .
1887

The Arrowhead Hot Springs Hotel Company
By. A. F. Coulter President
(CORPORATE SEAL)

A. B. Chapman
Acting Secretary

A full true and a correct copy of the original
Recorded at the request of R. R. Darby, May 7th
A. D. 1887 at 2:50 o'clock P. M.

Legare Allen
County Recorder
By O. J. Treen
Deputy

0545

COPY OF BOOK "C" OF WATER RECORDS, PAGE 22.

NOTICE

The undersigned corporation claims the water here flowing or to flow in this Strawberry Canyon being the North West fork of Twin Creeks in Township one North of Range four West, San Bernardino Base and Meridian to the extent of one hundred and forty four inches measured under a four inch pressure for irrigation, domestic, mechanical manufacturing, bathing and medical purposes upon its lands in the Township and range above mentioned to which said water is to be conveyed from this point of division through a flume twelve by twelve inches for the first 30 or 40 feet and thence by iron pipe diameter ten inches to seven inches diameter at the point of use.

Done at Arrowhead Hot Springs Cal. May 5th 1887.
The Arrowhead Hot Springs Hotel Company

By B. F. Sculter President

(CORPORATE SEAL)

A. B. Chapman
Acting Secretary
State of California)
County of San Bernardino)

R. R. Darby being first duly sworn deposes and says that on the 5th day of May 1887 he posted a notice of which the foregoing is true copy in a conspicuous place in Strawberry Canon at the place of intended division as stated in said notice to wit at the point in said Canyon where the water in said Canyon is now diverted by means of a flume (in said County and State).

Subscribed and Sworn to before me R. R. Darby
this 9th day of May 1887 (NOTARIAL SEAL)
W. J. Curtis
Notary Public

A full true and correct copy of the original Recorded
at the request of R. R. Darby
May 9th A. D. 1887 at 1:00 o'clock P. M.

Legare Allen
County Recorder
By O. J. Freen
Deputy

COPY OF BOOK "C" OF WATER RECORDS, PAGE 296

AMENDED NOTICE OF APPROPRIATION OF WATER

Notice is hereby given, that the Arrowhead Hot Springs Hotel Company, a corporation, has appropriated and desires to continue to appropriate and does claim the water flowing and to flow at the point where this notice is posted, to wit: In the Canon known as Cold Canon and also as Strawberry Creek at the upper end of a rocky precipice on the Westerly side of said Canon where it changes from a westerly to a southerly course, about one eighth of a mile above the house in said Canon where D. N. Smith resided at the time of his death, March 14th, 1885, a recess in said precipice known as the Grotto being on one side and a large boulders on the other side of the exact point of diversion situate in the South east quarter of the North west quarter of Section twelve in Township one north, Range four West, San Bernardino Base and Meridian, to the extent of Seventy two inches measured under a four inch pressure. That the purposes for which said Arrowhead Hot Springs Hotel Company claims said water are for domestic and irrigating purposes. That the place of intended use of said water is upon lands belonging to said Arrowhead Hot Springs Hotel Company, to-wit: The South half of the North west quarter and the Northwest quarter of the South west quarter of Section twelve, Township one North, Range four West, San Bernardino Base and Meridian, and upon such lands adjoining as said Corporation shall hereafter acquire. That the means by which said Arrowhead Hot Springs Hotel Company has diverted and intends to continue to divert said water, is first, by an ordinary dam of earth, brush and stone; thence along west side of said canon as follows; a ditch 2 feet wide, and 2 feet deep for 120 feet, or thereabout a wooden flume of a v shape, sides 18 inches each, depth 14 inches, 2 feet wide at top and about 250 feet long, builded along and against the rocky wall on west side of said canon; thence a ditch about 350 feet long to place of intended use at and beyond the said house where D. N. Smith resided as above recited. General Course of said line being South Westerly, and it and said dam being such as are at present constructed and existing at the point of diversion and by means whereof said water is at present diverted and conducted to and upon the said particularly described lands.

Dated November 21st of A. D. 1887.

(SEAL) The Arrowhead Hot Springs Hotel Company,
By J. W. Gillette, Secretary.

State of California.)
County of San Bernardino.) SS

J. W. GILLETTE, being duly sworn, says that he is now and the time hereinafter mentioned, was a white male citizen of the United States and a resident of the State of California, over the age of twenty one years, and Secretary of the Board of Directors of the Arrowhead Hot Springs Hotel Company, the corporation named in the within notice. That on the 25

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day of November, A. D. 1887, pursuant to a resolution of the said Board of Directors, he posted a notice in writing signed by said Corporation by affiant as Secretary thereof and under the seal of said Corporation, of which notice the foregoing is a full, true and correct copy upon the South side of an Alder tree of about 2 feet diameter that grows about 12 feet easterly of said point of diversion, about 4 1/2 feet above the roots of said tree. Said notice being enclosed to protect it from rain (the front being protected by glass) and perfectly legible; being at the point of intended diversion mentioned in said notice and where the water mentioned in said notice was actually diverted on said day. Said notice being so posted in a conspicuous place as to be easily seen and read by any person passing said point.

J. W. Gillette

Subscribed and sworn to before me this thirtieth day of November A. D. 1887.

(SEAL)

Legare Allen, County Recorder

A full, true and correct copy of the original Records at request of J. W. Gillette. Nov. 30th 1887, at 9:55 A. M.

Legare Allen, County Recorder
By T. J. Bolton Jr., Deputy

COPY OF BOOK "C" OF WATER RECORDS, PAGE 298

AMENDED NOTICE OF APPROPRIATION OF WATER.

Notice is hereby given that the Arrowhead Hot Springs Hotel Company, a corporation, has appropriated and desires to continue to appropriate and does claim the water flowing and to flow at the point where this notice is posted, to-wit: At a point of rocks on the West side (as the Canon there runs) of the Canon commonly known as Cold Canon, and also as Strawberry Creek, distant 20 feet from a blazed oak tree two feet in diameter growing on top of same rocky point a short distance from North line of Section twelve, Township one North, Range four West, San Bernardino Base and Meridian, to the extent of seventy two inches measured under a four inch pressure. That the purposes for which said Arrowhead Hot Springs Hotel Company claims said water are for domestic, irrigating, bathing and manufacturing purposes. That the place of intended use of said water is upon lands belonging to said Arrowhead Hot Springs Hotel Company, to-wit: the east half of the Southeast quarter and the southeast quarter of the North east of Section Eleven, and the North West quarter of the Southwest quarter, the South half of the North West quarter and West half of North East quarter of Section Twelve, all in Township one north, Range 4 West, San Bernardino Base and Meridian, and upon such lands as said Corporation shall hereafter acquire. That the means by which said Arrowhead Hot Springs Hotel Company has diverted and intends to continue to divert said water, is as follows; An ordinary dam of earth, brush and stone; thence along north west side of said Canon by a wooden flume 104 feet long, 12 inches wide, 10 inches deep, (with waste way emptying into bed of creek); then a sand box 12 feet long, 4 feet wide, 4 feet deep, thence by iron pipe as follows; 10 inches in diameter for first 28 feet, 7 inches diameter for about 6500 feet to road from Bridge over Hot Canon to Arrowhead Hot Springs Hotel, and thence through iron pipes 4 inches in diameter directly applied to said purposes. General course of said line is South Westerly, and it and said dam being such as are at present constructed and existing at the point of diversion, and by which said water is diverted and conducted to and upon said particularly described lands.

Dated November 21st A. D. 1887.

(CORPORATE SEAL)

The Arrowhead Hot Springs
Hotel Company

By J. W. Gillette, Secretary

STATE OF CALIFORNIA)

) SS

COUNTY OF SAN BERNARDINO)

J. W. Gillette being duly sworn says, that he is now and at the times hereinafter mentioned was a white male citizen of the United States and a resident of the State of California, over the age of twenty-one years and Secretary of the Board of Directors of the

Arrowhead Hot Springs Hotel Company, the Corporation named in the within notice. That on the 25th day of November A. D. 1887, pursuant to a resolution of the said Board of Directors, he posted a notice in writing signed by the said corporation, by official as secretary thereof and under the seal of said Corporation of which notice the foregoing is a full, true and correct copy upon 2 x 4 inch pine post attached to said flume 4½ feet above the same, 6 feet from where water enters, and about opposite said tree. Said notice being enclosed to protect it from rain, (the front being protected by glass) and perfectly legible, being at the intended point of diversion mentioned in said notice and where the water mentioned in said notice was actually diverted on said day. Said notice being so posted in a conspicuous place as to be easily seen and read by any person passing said point.

J. W. Gillette,
Subscribed and sworn to before me this thirtieth day of
November A. D. 1887.

(SEAL)

Legare Allen, County Recorder

A full, true and correct copy of the original Recorded
at request of J. W. Gillette, Nov. 30th, 1887 at 9:50
A. M.

Legare Allen,
County Recorder

By J. T. Bolton Jr.,
Deputy.

THE UNITED STATES OF AMERICA

CERTIFICATE) TO ALL TO WHOM these presents
No. 1435) shall come, Greeting.

WHEREAS Thomas B. Elder, of San Bernardino County, California, has deposited in the General Land Office of the United States, a Certificate of the Register of the Land Office at Los Angeles, California, whereby it appears that full payment has been made by the said Thomas B. Elder according to the provisions of the Act of Congress of the 24th of April, 1860, entitled "An Act making further provisions for the sale of the Public Lands" and the Acts supplemental thereto, for the South half of the Northwest quarter and the West half of the Northeast quarter of Section twelve in township one, North of range four West of San Bernardino Meridian in California, containing one hundred and sixty acres, according to the Official Plat of the Survey of the said Lands returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said Thomas B. Elder.

Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided. Have given and granted and by these presents do give and grant unto the said Thomas B. Elder, and to his heirs, the said Tract above described. To have and to hold the same, together with all the rights, privileges, immunities and appurtenants of whatsoever nature thereunto belonging, unto the said Thomas B. Elder and to his heirs and assigns forever; subject to any vested and accrued water rights for mining agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws and decisions of Courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law.

In testimony whereof I, Grover Cleveland, President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the Sixth day of October, in the year of our Lord one thousand eight hundred and eighty eight and of the Independence of the United States the one hundred and thirtieth

By the President
Grover Cleveland

By M. Mc Kean
Secretary

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Robert W. Ross,

Recorder of the General Land Office, Recorded
Cal. 4, Page 234.

A full, true and correct copy of the original,
recorded at request of Arrowhead Hot Springs Hotel
Company, April 15th, 1889, at 11.21 A. M.

A. S. DAVIDSON,
County Recorder
By E. Mulcaly,
Deputy.