CHAPTER VI
1910-1919

HISTORY OF THE DENVER WATER SYSTEM
## INDEX

### CHAPTER VI

#### 1910-1919

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CHAPTER VI

1910-1919

Conduits Nos. 6, 7, 8, & 9-East Denver Municipal Irrigation District City Ditch - Misc. Water Property owned by City-Platte & Denver Ditch Company (Mullen Ditch)-Rough & Ready Ditch-Littleton Mill Platte Canon Reservoir Site-City Government 1910-1919-Jones Pass Tunnel (renamed August P. Gumlick Tunnel) Board of Water Commissioners.

This decade is notable for being the period of World War II, as well as for the transfer of the Denver water utility from private to public ownership and operation, following many years of controversy and litigation. It seems significant that the local war between the advocates of public versus private ownership of this important utility should have ended only ten days prior to the Armistice of November 11, 1918.

Under the conditions surrounding these two dominating factors of the period, it was only to be expected that expansion of the water system to meet the demands of a fast growing city would be held to a minimum by the water company.

Consequently when the first Board of Water Commissioners assumed charge of the property, it found itself confronted with demands for plant expansion, a pressing need for replacement of obsolete units and a backlog of deferred maintenance items that represented a total expenditure far in excess of its ability to finance at the time.

The problem of transforming the life of the nation from a war time economy to a peace time basis, was a difficult one indeed, with the Board caught in a period of hard times that, while of relatively short duration, nevertheless added much to the difficulties encountered during the early years of its existence.
However, some construction projects of importance were carried forward by the water company in the early years of this decade.

These included the completion of Conduit No. 6 from Wynetka to the Capitol Hill Reservoir on June 24, 1910; Conduit No. 7 running from Platte Canyon to Marston Lake completed in May 1911 with the first Cheesman Lake water delivered by it to that Lake on May 22, 1911; Conduit No. 8 extending from the upper end of Conduit No. 7 at Platte Canyon, upstream to a new intake then built to divert water from the South Platte River into the system completed on November 13, 1912; and Conduit No. 9 running from Marston Lake to a connection at Alameda Avenue and Federal Boulevard with Conduits No. 1 and No. 3 not completed until April 1915.

Despite the unsettled conditions of affairs during the whole of this period, the company also built a new pumping station in 1911 located at South University Boulevard and East Jewell Street, laying mains to and from it in that year for the purpose of improving peak load pressures in the district lying east of Washington Park.

Extensive improvements were likewise made to the Ashland Avenue and Capitol Hill pumping stations in 1916!

Conduit No. 6

During the heat of the campaign for a 20 year franchise to be voted upon in May 1910, the water company announced on March 25, 1910 that a new 48-inch main running from Wynetka Junction to the Capitol Hill Reservoir was actively under construction, the work having been started on it in October 1909. It was said that Mr. Moffat had ordered the pipe materials during the preceding winter and that he was willing to take his chances on the franchise
being passed at the coming election.

This 48-inch wood stave conduit was 12.2 miles long and when completed, had a maximum carrying capacity of 26 million gallons a day. (See Plan and Profile as constructed in Engineering Division Vault, Case A, No. 103.)

On June 1, 1910 the water company directed an advertisement to the water consumers of Denver asking them to avoid the unnecessary use of water until this additional conduit could be completed.

On June 16, 1910 the Chamber of Commerce took the matter of water shortage up with the Public Utilities Commission asking that body to request the people of Denver to use as little water as possible during the next few days so that a supply of water could be built up in the distributing reservoirs, preliminary to a temporary shut off of existing conduits in order that the new conduit could be connected to the system. This was done, but it became necessary on June 20th for a temporary restraining order to be issued by Judge Whitford, specifically directed against irrigation of lawns and parks.

At 3 o'clock A. M. on June 23, 1910 the cutting in of the new conduit was begun at Wynetka with three days time estimated as being required to complete the job. The injunction was dissolved on June 24, 1910 and the water situation within the city slowly returned to normal.

Conduit No. 7

Work on this 10 mile long, 48-inch diameter wood stave pipe line, was begun on February 7, 1911, and completed and put in operation on May 21, of that year. Its cost was approximately $350,000. It connected the works at Platte Canyon with Marston Lake and had an estimated carrying capacity of

3. 653
30 million gallons daily. In reporting upon its completion, the Republican of May 18, 1911 noted that "the largest valve west of New York, weighing 34,000 pounds would control the delivery of water to it, near the point where a 36-inch pipe line extension leading from the Platte Canyon Reservoir terminated.

The following news item taken from the Republican of May 20, 1911 gives some idea of the confused water distribution picture in Denver, resulting in part at least, from the water litigation then in progress.

One of the results of the long water litigation and the determination of an element in the community that has been supporting Mr. Patterson in his attacks upon the water company to keep the water question in politics indefinitely, is to be found in the shortage of water in South Denver, Berkeley and a part of Highlands. These localities were originally independent communities with water plants of their own. When they were annexed, Denver took possession of these plants. They belong to the City, not the water company. The company is running water through the pipes.

The mains were laid a score of years or more ago when the population of the districts in question was much less than it is now. It is not a question of water supplied by the company, but a question of putting in pipes having a carrying capacity equal to the increased population. The mains will not convey water to all consumers. If the water company had secured a franchise last year, this matter would have been remedied before now. As it is, the company cannot interfere with property not its own. The utilities commission says the city has no money to make extensions during the winter season. The water company is bringing to Denver 60 million gallons of water a day and
it can raise that figure to 80 million gallons, but the increase would not benefit the dwellers in the districts that originally had plants of their own.

Armour C. Anderson, President of the Public Utilities Commission, said yesterday that, within ten days the Commission would begin extending at least two water mains in South Denver to afford relief to the residents suffering from lack of water because of the present insufficient size of the pipes.

Yesterday afternoon committees from South Denver and Berkeley called on the Commission with petitions that something be done. The Berkeley petitioners were told that there was no money on hand with which to extend mains in North Denver. According to the commission, the only money within its power to use is that collected from the water company for annual rental of the South Denver Water Plant. There is now something over $9,500 in the city treasury representing rentals which the commission has power to use. It maintains that this money being revenue derived from South Denver can only be expended in South Denver.

The city can appropriate sufficient money to relieve the North Denver situation if it cares to do so, but the Commission only has the South Denver fund to draw upon, being so tied up in the courts that it cannot do more.

Conduit No. 8

This 60-inch wood stave pipe line, 2.6 miles long, was in reality an extension upstream of Conduit No. 7 to a new diversion structure. It replaced a like section of Conduit No. 2 with its old intake, built in 1897. The new point of diversion built in 1912 was about 1828 feet higher up on the stream than the old one.
The new conduit was carried over the South Platte River on a steel bridge about 150 feet long supported by concrete piers.

Following the completion of Conduit No. 8 and the new intake works on the South Platte River in 1912, raw water was for the first time, conveyed by it and its northern extension, Conduit No. 7, directly into Marston Lake.

From this time on, Conduit No. 2 carried raw water from Platte Canyon Reservoir to the Willard filter plant and from Marston Lake to the filter plant there, with the effluent from both plants being delivered by Conduit No. 2 as originally built to the Capitol Hill distribution reservoir.

Conduit No. 1 continued to take water from the Kassler underground galleries, with Conduit No. 3 being served as before by the Kassler slow sand filter plant.

For the "as constructed" plan and profile of Conduits No. 7 and No. 8 see Case C, No. 492 in the vault. Also see Case C, No. 491 for construction details and Drawer 27 No. 8 for filing map on Intake Structure at head of Conduit No. 8.

It should be noted that this is the point of diversion to which many of the early water rights were transferred by the Douglas County District Court in its decree of June 16, 1930.

A tracing showing the conduits of the Denver Union Water Company in color, as of November 1913, is to be found in Drawer 46, No. 24 of the Engineering Division vault. See also "Diagramatic Sketch of Reservoir Elevations and Locations of Conduits dated June 1, 1915 in Drawer 130, number 348."
Conduit No. 9

The first section of this 48-inch wood stave pipe line was built in 1915. It started at the North Tower of Marston Lake and ended at West Alameda Avenue and South Irving Street, the overall length being 5.98 miles, including 1400 lineal feet of steel pipe laid at the approaches and within the 748 foot Loretto Heights tunnel.

A 36-inch wood stave feeder line 1300 feet long was laid from it on West Jewell Avenue from South Irving Street, easterly to a connection with Conduit No. 3 at the intersection of West Jewell Avenue and South Federal Boulevard.

Also, a 36-inch wood stave connecting line, 1318 feet long was laid on West Alameda Avenue from South Irving Street to South Federal Boulevard where cross connections were made to both Conduits No. 1 and No. 3 at that intersection, as well as to an existing 24-inch line running east from South Federal Boulevard across town to the Capitol Hill reservoir.

The estimated capacity of this Conduit was 35 million gallons a day. Its purpose was to give better service to all of Denver by augmenting the supply delivered previously to the city through Conduits No. 1, 2 and 3.

The second section, began with wood stave construction, 48 inches in diameter, 2,654 feet in length and was built in 1916. It was laid from the end of the first section at West Alameda Avenue and South Irving Street to the intersection of South Irving Street and West 1st Avenue.

From this point northerly to the intersection of Lipan Street and West Colfax Avenue the conduit was constructed of cast iron pipe, 30 inches in diameter. The total length of this second section was 3.52 miles, making
the length of the combined sections, as constructed in 1915 and 1916, 9.50 miles. (See plans and profiles as constructed in Case C, No. 503 and Case A, No. 110, Engineer’s vault.) (Also see sketch map of this conduit dated July 8, 1918 filed in Drawer 77, No. 34).

A 36-inch branch was plugged off at West 1st Avenue and South Irving Street for a future 36-inch line to be constructed west in West First Avenue to Perry Street, thence north on Perry Street to West 17th Avenue, thence west to Fenton Street and north on Fenton Street to the Ashland Avenue Reservoir. Construction of this second extension to Conduit No. 9 was strongly recommended by President Kassler of the water company to the Public Utilities Commission in a letter dated October 23, 1917.

In that letter Mr. Kassler, acting in accordance with the terms of the option agreement of February 21, 1916, stated that by its construction, an additional 15 million gallons of water a day would be made available in North Denver. The estimated cost was $280,878.52 for 4.62 miles of line consisting of about 4,000 feet of 36-inch cast iron pipe and 20,000 feet of 36-inch wood stave pipe.

On October 25, 1917 Commissioner Armour C. Anderson replied to Mr. Kassler, saying that he believed that, except in the most urgent cases, it was better not to go ahead and spend large amounts of money just at that time, and that after giving the matter most careful consideration it would be better to let this work go over until the coming spring.

Mr. Kassler, in acknowledging the above letter on October 26, 1917 stated that while he believed the work of great importance, he would in view of Mr. Anderson’s decision not press the matter further.
However, on November 3, 1917, President Kassler wrote Mr. Hodges, Counsel for the Bondholders Committee explaining the great need for the extension and asked his consent to go ahead with the work using company funds.

The last information available on this subject is a letter dated December 7, 1917 written by Mr. Kassler to Mayor Speer sending him copies of the correspondence noted above, saying that the matter was one of such importance that he thought the Mayor should be familiar with the facts. In any event, the extension as then planned was never built.

Apparently this Conduit was the last major construction project to be financed and put into operation by the Denver Union Water Company before the Denver Water plant and system passed from private to public control.

Completion of Conduit No. 6 in the summer of 1911 made it possible to improve the inadequate service rendered up to that time in the southeast section of the city, with the Water Company announcing in May of 1911 that a pumping station would be built near the intersection of East Jewell Avenue and South University Boulevard to relieve poor pressure conditions at times of peak demand.

According to an old plan dated May 25, 1911, this new plant to be known as the "Myrtle Hill Pumping Station", was built at the northeast corner of that intersection.
The Metcalf and Anderson inventory of October 31, 1913 lists this plant under the heading of University Park Pumping Station and describes it in brief as follows:

The pumphouse was a one story frame, iron clad building 46' x 53' in plan erected on a concrete foundation.

Pumping equipment consisted on one "Fairbanks-Morse" pumping engine having a capacity of 2 million gallons a day installed in 1911, and one "Snow" pumping engine of the same capacity placed in service in 1912.

Power was supplied from two Kewanee coal fired boilers each having a rated capacity of 150 horsepower, installed in 1911.

As will be indicated later, this pumping station was abandoned in 1932 and a new one built on an enlarged site, a portion of East Jewell Street being closed for that purpose with the name changed to The Charles M. Einfeldt Pumping Station. This was done in honor of a member of the Board of Water Commissioners of that name who made a preliminary report to the Board on the physical condition of pumping stations on November 19, 1931, which resulted in the building of this new and enlarged station.

In its issue of February 19, 1916, the Republican quoted John Evans as saying that a 10 million gallon pump was to be installed at the Capitol Hill Reservoir and another addition was proposed for the Ashland Avenue pumping station.

Plans on file in the Engineering Division vault show that major additions were made to the Capitol Hill Plant in 1916-17, bringing the maximum daily pumping capacity at that point up to 20 million gallons.

It was in connection with this work that the American Bridge Company erected the present steel pressure tank, 10 feet in diameter and 140 feet high.
on a concrete foundation provided by the Company.

In commenting on this station in his report of 1932, Mr. Einfeldt said: "The two 10 million gallons daily capacity Worthington Pumps installed in 1907 and 1917 are very bulky, which is characteristic of this type of pump, and, while they are in working condition and probably would continue to work for an indefinite period, they are entirely obsolete."

In that same report, in speaking of the Ashland Avenue Pumping Station, Mr. Einfeldt said: "It is to be noted that one of the steam pumps was installed in 1907 and the other in 1917. The latter installation was made by me and the pump was purchased from Grand Junction after having been in use many years at that station."

Plans on file show that in 1916 it was proposed to install a new pump at this location in a one story building 22 feet by 36'6" in a building to be constructed for that purpose.

There is no record, available to show that this new building was built as planned at the time.

In any event, the pumping capacity of this station was raised to 10 million gallons a day previous to the sale of the water system to the city in 1918.

The statistical data that follows is here recorded for the purpose of showing in brief the composition of the Denver water system together with some operating information at the time it was sold to the City and County of Denver.

1. The storage capacity of Lake Cheesman, Marston Lake and Platte Canyon Reservoirs totalled 99,762 acre feet, later reduced to 96,609 acre feet by order of the State Engineer, who cut the maximum operating capacity
of Marston Lake back from 19,793 to 16,640 acre feet.

2. The three city distribution reservoirs, at Ashland Avenue, West Side and Capitol Hill, had a total capacity of 94 million gallons, with the two standpipes at University Park and Mountain View holding an additional 1.5 million gallons.

3. The system at the end of 1918 was using three types of filtration to purify the water supplied to its customers. These were: (a) The Mississippi Street, Platte Canyon and Cherry Creek underground galleries and cribs having a total nominal production capacity of 26.5 million gallons daily; (b) The Willard and South Side (Marston) mechanical plants with a combined rated capacity of 35 million gallons daily and (c), the slow sand filter plant at Kassler rated at 30 million gallons daily, giving a total rated capacity in all of these plants of 91.5 million gallons a day.

4. Water was conveyed to the City by Conduits No. 1 to No. 6 inclusive, having a combined estimated maximum daily capacity of 85.5 million gallons of filtered water, with Conduit No. 9 of 30 million gallons a day capacity used to deliver "settled" but not filtered water, from Marston Lake to various city connections as noted in the earlier description given of it.

It should be remembered that Conduit No. 7, with its No. 8 extension from Platte Canyon station upstream to Intake, was used at the time to carry raw water from the South Platte River, including releases from Cheesman to both the Platte Canyon Reservoir and to Lake Marston, before it was sent to the Kassler, Willard and South Side filter plants for treatment.

5. Distribution system pressures were maintained where necessary by five pumping stations located at the West Side distribution center, Ashland
Avenue, Capitol Hill, University Park and the booster station at Montclair. These stations had a combined maximum daily capacity of 55 million gallons.

In addition, a reserve pumping station of 18 million gallons daily capacity was located near the Kassler filter plant at the mouth of Platte Canyon.

6. Mains and Conduits owned by the City and County of Denver on November 1, 1918 including both the plant purchased from the Denver Union Water Company and property previously owned by it through annexations and otherwise, totalled 613.52 miles in length of which 522.93 miles was located within and 90.59 miles without the city limits.

7. At this time, 3,445 fire hydrants were in use with 46,384 service connections reported as being active.

8. During the year 1918, water was diverted for city use from the following sources: (a) Direct rights from the South Platte River, 49,992 acre feet; (b) Underground galleries, 5,908 acre feet; and (c) Net storage taken from Marston Lake, 296 acre-feet bringing the total amount to 63,669 acre feet. This was equivalent to 212 gallons per capita per day, for an estimated population served of 268,000.

**Legislation and Litigation**

Although not compiled by an attorney, it is hoped that the summary that follows will prove to be a reasonably clear and accurate account of the legal and other steps taken by both parties to the controversy during the early years of the period, before a settlement, on what now appears to have been a fair and equitable basis, was eventually consummated late in the year 1918.
Two important municipal elections were held during the year 1910.

The regular one of May 17, 1910 resulted in a decisive defeat for the water company and its friends.

Three water propositions were then voted upon, (1) a twenty year extension of the franchise of The Denver Union Water Company, already expired, with private water rates to continue unchanged and with $100,000 worth of "free water" for city purposes. This proposal was defeated by a vote of 9,737 for and 13,722 against. (2) A transfer of all control of water works matters from existing city officials to a board of five, four to be selected, (one each) by four commercial organizations and one to be appointed by the Mayor. This Board was to investigate the water question and to submit to popular vote a recommendation to buy the existing private plant or build a new one. The proposal, popularly known as the "Speer" water amendment, was defeated by a vote of 6,706 for and 14,785 against. (3) The creation of a Public Utility Commission consisting of Messrs. A. Lincoln Fellows, Armour C. Anderson and Edwin VanCise, to serve for 6, 4 and 2 years each, to be succeeded by members elected by popular vote for 6 year periods. This proposal, called the "Citizens" water amendment was approved by a vote of 12,342 for with 10,399 against. (4) Amendments providing for "The Initiative, The Referendum and the Recall" were also among those approved at this time.

The successful "Citizens" amendment gave the Public Utility Commission all the power and control over all public service corporations that was formerly vested in the then existing city authorities.

It required the Commission to make an immediate investigation of the
plant of the Denver Union Water Company and the cost of an independent system. The commission was authorized to offer the water company 7 million dollars for its property and gave it until July 1, 1910 to accept the offer.

On September 6, 1910 an election was to be held to vote on a bond issue of 8 million dollars to be used either to buy and improve the property of the company if the latter accepted the purchase offer, or else to build new works.

The Commission was authorized to employ engineers, attorneys, etc. and its warrants for running expenses were to be paid from the general revenue of the city, regardless of whether a specific appropriation for the purpose had been made by the city administration.

It is of interest to remember, that on March 20th, 1909, a valuation of $14,400,000 had been placed on the water company plant, with a further sum of $676,000 spent in making additions, extensions and betterments between that time and the first of June 1910.

The Public Utilities Commission held its first meeting on May 31, 1910 and immediately sent a letter to President Moffat of the water company making a formal offer of 7 million dollars for the property of that company as required by the amendment.

This letter was dated May 31, 1910 and delivered personally by Commissioner Anderson to Mr. Moffat.

Mr. Moffat replied to it on June 9, 1910 and after reciting a number of facts concerning the valuation of 1909 concluded by saying: "In view of all
the facts and circumstances affecting the proposition, the Denver Union Water Company cannot accept the offer contained in your communication of May 31, 1910."

Thus the stage was set for business and legal strategy upon the part of both sides which did not end until the "option" agreement of February 21, 1916 had been signed.

An early step taken by the Public Utilities Commission to confirm the 7 million dollar offer for the water plant, was the employment of Mr. Hiram Phillips of St. Louis, Missouri, a Consulting Engineer, who was asked on July 12, 1910 to advise on the probable cost of a new water works system for Denver.

After a hasty study of all the information available to him at the time, Mr. Phillips on August 19, 1910, reported to the Commission that, in his opinion, a modern system of water works with 100,000 acre feet of storage, with duplicate wooden stave supply mains direct from storage reservoirs to duplicate distribution reservoirs of 100 million gallons capacity, near the city and at such elevations as to obviate the necessity of pumping, and a city distribution system of 333.83 miles of Class D cast iron pipe of a minimum size of 6 inches, and 20 miles of wood stave pipe feeder mains, with all necessary hydrants, valves and pavement repairs, could be constructed for the sum of $7,319,503, which total included an item of $500,000 for the necessary purchase of water rights.

In commenting on the Phillips report, the Commission wrote: "It is undoubtedly true, as stated by him, Mr. Phillips, that Denver ought to have a better plant than can be constructed for the amount stated. In other words,
if it were practicable at the present time, we would prefer to construct a plant capable of furnishing a supply for a city of 400,000 inhabitants, this supply to be conducted through reinforced concrete or cast iron pipes, and to be derived only from the highest mountain sources."

"We are of the opinion, however, in view of the urgency of the present situation, due to the uncertainty as to a supply of water for Denver during the next few years, that the easiest and cheapest course should be pursued at the present time, and we have therefore adopted for the present the plans outlined in Mr. Phillips report."

Defeat of its franchise proposal and the "Speer" Amendment which provided for a profit sharing plan acceptable to it, left the water company with no alternative but to turn to the Federal Courts for help.

This was done on August 22nd through an action brought by the New York Trust Company, together with a similar one filed by the water company in which the circuit court of the United States was asked to enjoin the City and its Public Utility Commission from holding the election set for September 6th and in addition be restrained from issuing the proposed bond issue of 8 million dollars if the people should vote in favor of such issuance.

In effect, the court was asked to prevent the carrying out in any way of the Public Utility Commission amendment to the City Charter.

The hearing began on August 30th and continued until September 5th, the day preceding the election, at which time the presiding Judge, R. E. Lewis rendered a decision in which he refused to enjoin the holding of the election, but issued an order restraining the city from issuing or attempting to issue the bonds provided for in section 264-A of the Charter of the City and County of Denver.
Notwithstanding this adverse court ruling on bonds, the election of September 6th was held and the issuance of 8 million dollars in bonds was authorized by the qualified tax paying electors of Denver, the vote being 7,032 for and 2,334 against the proposal.

An appeal to the United States Court of Appeals was at once taken by the city and its Public Utilities Commission.

The necessary records were filed at St. Louis and the arguments there made on January 24, 25 and 26, 1911. In noting the situation as it existed at that time, the Public Utilities Commission in its report for the year 1910 wrote:

"Stated in the briefest terms, the respective claims as made appear to be as follows: "The New York Trust Company, as mortagee, claims that the city should purchase the plant of the Denver Union Water Company at the appraised valuation under the terms of Ordinances Nos. 44 of 1890 and 163 of 1907, purchase price to go towards paying bond holders.

"The water company contends that the city having failed to purchase, the franchise of the water company has been automatically renewed; this contention being based upon Ordinance No. 44 of 1890.

"Both the New York Trust Company and the Denver Union Water Company contended that Section 264-A of the City Charter is invalid.

"The City, through the Public Utilities Commission and by its attorneys, contends that the City of Denver has never waived its right to operate a water plant of its own, and may therefore, construct a municipal-owned plant and operate the same at its discretion. Further, that the franchise of the Denver Union Water Company has expired and that it was then furnishing water to the
city only by sufferance, and that the adoption of Section 264-A was entirely within the rights of the people of Denver, is constitutional and is the first step toward the acquisition, by the City, of a municipal water plant."

The Denver Times in its issue of May 19, 1911 reported that: "The temporary injunction issued by Judge R. E. Lewis of the United States Circuit Court on September 5, 1910, prohibiting the City of Denver from issuing 8 million dollars in bonds to construct a water works system was affirmed today by the United States Circuit Court of Appeals setting in St. Paul."

This same newspaper, in its October 20, 1911 edition reported that the United States Circuit Court of Appeals sitting at St. Louis had denied a rehearing of the case as petitioned for by the City and that as a result the case would be remanded to the Circuit Court of the District of Colorado for a hearing upon its merits.

In its issue of December 28, 1911, the Times reported that the above case was being heard with the testimony taken before United States Commissioner S. C. Hinsdale to be submitted, when completed, to Judge Robert E. Lewis of the United States District Court for a decision upon whether or not the temporary injunction ordered by him on September 5, 1910 should be dissolved or made permanent.

Judge Lewis was notified on February 19, 1912 that the testimony taken in the water case involving the right of the city to build a municipal water plant had been finished.

The final arguments in the case before Judge Jacob Treiber, who was called in by Judge Lewis to hear it, began on April 23, 1912, and were finished on April 27, 1912 with the Judge complimenting C. C. Dorsey, Attorney for the Denver Union Water Company, upon his lucid and convincing statement of facts.
Judge Treiber sustained the action of Judge Lewis in his ruling of September 5, 1910, but while the case was still pending on a motion for a new trial, an appeal was taken to the United States Supreme Court by the City.

On August 24, 1912, President VanCise of the Public Utilities Commission reported to the Mayor that the United States Supreme Court had granted a writ of certiorari to the United States Circuit Court of Appeals on May 23, 1912, for a review of the case and had set down October 15, 1912 as the date for hearing in that court.

Arguments before the United States Supreme Court started on October 28, 1912 with 2-1/2 hours time allotted to each side; however, they were not concluded until the following day.

On Monday, May 26, 1913, the United States Supreme Court, in an en banc decision, reversed the Circuit Court of Appeals and found in favor of the City and County of Denver, over ruling the Denver Union Water Company on every point.

A rehearing was asked for and denied, with the formal mandate of the Supreme Court filed in Denver about July 12, 1913.

In that mandate the City and County of Denver was authorized to proceed with any plan it might desire and the costs of the suit assessed against the water company.

In this all important decision, the Court held that the City and County of Denver was not compelled to purchase the plant of the Denver Union Water Company at its appraised valuation of $14,400,000 or at any other price. It also held that the City was not required to renew the company's 1890 franchise.
which expired by limitation in 1910.

The immediate effect was, of course, to give the city the right to
issue the 8 million dollars worth of bonds voted by the taxpayers on September
6, 1910 for the purchase of the existing plant or the construction of a new one.

The Public Utilities Commission, created by the Charter Amendment
of May 1910, was thus for the first time in its stormy history, in a position
to proceed without further delay with whatever plans it might have to secure
an adequate water system for Denver.

Recognizing this fact, and in an attempt to prevent the construction of
a new plant, President Robinson of the water company wrote the Public
Utility Commission on June 14, 1913, explaining the position then taken by its
Directors and concluded by stating:

"If any just method of arbitration can be agreed upon to definitely
determine the equitable value of its properties, then, the company will
cooperate in bringing about the immediate sale of said properties to the
City at the value so to be fixed; or, if it should be thought not desirable to bond
the city for this purpose under present existing conditions, then it will agree
to continue in the operation of the property with an option to the City to purchase
its properties at short intervals.

"In closing the Directors trust that the above statement may be received
in as good faith as it is submitted and urge your honorable Commission to suggest
a fair method of procedure toward a just solution of this question which will
avoid wasteful duplication of property."

This offer to arbitrate was answered on June 18, 1913 by a seven and
one half page letter signed by Edwin VanCise, President of the Public Utilities
Commission.

After reviewing the situation in what seems now to have been an unnecessarily long dissertation, Mr. VanCise wrote:

"We see no course open to us but to proceed, so soon as relieved from the injunction orders referred to, to make surveys, plans, specifications, estimates, etc, for the construction of a new water plant, (and in that behalf secure the passage of a bonding ordinance and prepare for the issuance of bonds) and proceed along the lines laid down in Section 264-A, unless you are prepared now to indicate your willingness to accept the $7 million of bonds offered you May 31, 1910 and then declined, which we are advised we may now reoffer you, for a clear title to all your properties. If you think you have a claim in equity for betterments since May 17, 1910 is it not your duty to present such claim?

"You must appreciate that in this matter we are not acting as private citizens with sympathy for your stockholders, but as public servants with duties to perform."

Other correspondence followed, with the Commission requesting on July 26, 1913 a copy of the schedule of rates under which the company had been operating since April 10, 1910. Data concerning gross income, operating expenses and fixed charges over the last three years was also requested at that time.

Again on July 29th, President VanCise wrote the water company stating that the mandate of the Supreme Court had been received, and that since the company debt was a matter of public concern which the Commission was not disposed to ignore, it preferred if it could be accomplished under the
authority vested in it, to acquire the plant of the Denver Union Water
Company including Cheesman Lake, rather than to proceed with the con­
struction of a new water plant.

Mr. Van Cise also stated: "You are as well acquainted with the
sentiment of the people of Denver in this matter as we are, and you must
know that, while undoubtedly endorsing the position as outlined above, they
will not pay an exorbitant price for the plant, nor any price that does not
appear to be based upon as good foundations and principles as would control
a private transaction of a similar character.

"The Charter makes it mandatory upon us to proceed with our duties
under its provisions, but before taking any action looking towards the con­
struction of a new water plant, we think it only fair and just to give your
Company another opportunity to submit whatever proposals you may wish to
present to us on the subject of the acquiring of your water system by the City
and County of Denver."

The financial data requested by the Commission of the Company was
sent to it in a letter dated August 16, 1913, and the letter of July 29, 1913
answered at the same time.

In his letter of August 16, 1913, John Evans, Chairman of the Board of
Directors of the Denver Union Water Company, suggested five plans, any one
of which would be agreeable to the company for a settlement of the long
standing controversy over water plant ownership at a price to be determined
(1) by condemnation proceedings, (2) by a valuation committee or arbitration
board, (3) under a gradual contract of purchase; (4) for a future purchase with
company operation under reasonable supervision and regulation of the Com­
mission or (5) the granting of a twenty year permit for company operation.
with a purchase option to be considered at frequently recurring intervals of time.

The last paragraph of this highly diplomatic, if unsatisfactory, reply to the Commission's request that the company name a flat cash consideration, read as follows:

"In closing, we believe that if past political prejudice is eliminated, if the citizens of this city are now placed in possession of all of the facts, and if they realize that the result of their action, whether for better or worse, must be borne by them, their homes and other property, as well as by their fellow citizens, who have invested in the securities of this company, then they will decide that by giving simple justice to our company they will thereby do only what is for their best interests as citizens of our city."

On August 21, 1913 Mr. VanCise acknowledged receipt of the above letter, stating that the Commission still desired to know the lowest sum or sums the Company would take in cash or city water bonds for Cheesman and Marston Lakes and for its distribution system.

At this time also Mr. VanCise informed Mr. Evans that the Commission had appointed a committee of engineers, consisting of Charles P. Allen, former Chief Engineer of the water company, Mr. Edmund C. VanDiest, an engineer of Colorado Springs and A. Lincoln Fellows, a member of the Commission, to make a detailed report as to the value to the city of the existing water plant.

He asked that this engineering committee be given full access to company records so that they might ascertain all the facts bearing upon the situation.

On August 23, 1913, Mr. Evans advised Mr. VanCise that the management of the company would not assume to arbitrarily set a price upon the
company's property except its value be first determined by some reasonable method of valuation that would be fair to both sides. Full cooperation was promised by the company in putting all facts and information in its possession before the Commissioner's valuation committee.

After a further exchange of letters, Mr. VanCise, on September 22, 1913 wrote again, chiding Mr. Evans on the position taken, saying among other things, that his offer of arbitration by one of the five methods proposed in the letter of August 16, 1913 was regarded by the Commission as being tardy and impracticable.

This letter was answered by Mr. Evans on September 27, 1913, who proceeded to tell Mr. VanCise in polite, but nevertheless firm terms, that since the Commission had no authority to offer or agree to pay more than 7 million dollars for the entire property, manifestly far less than its present worth, it would be futile for him to name a price in excess of that amount.

Mr. Evans further stated that since the matter of plant purchase must in any event be resubmitted to the people, he suggested the equitable procedure would be for the Commission to seek authority to purchase the plant at its just value and no more, such value to be determined without further guess work by condemnation proceedings in the courts, or by prompt arbitration.

Mr. Evans at this time also reminded Mr. VanCise that the decision of the Supreme Court of the United States did not take from the water company its title to the property nor did it determine its value. He said the company was possessed of a successfully operating water system, capable of delivering an abundance of pure water to the city, and that the company was willing to sell
to the city at a price not one dollar in excess of its fairly proven useable value to the city.

The favorable decision of the United States Supreme Court announced on May 11, 1913 incidentally temporarily disposed of the Wheeler-Lusk case, in favor of the city, since the 25 year old suit brought by Clarence Venner against the Denver Union Water Company had earlier been ordered dismissed by a New Jersey Federal Court on February 7, 1913. (See later comments on the Wheeler-Lusk and Venner litigation since both of these cases were subsequently revived.)

Confident that, at long last, it now held the whip hand in the water controversy, the Public Utilities Commission began, early in the summer of 1913 to investigate numerous plans for supplying water to Denver by means of a new plant.

In talks given before the Progressive Club of Denver on September 20, 1913, each of the three Commissioners expressed himself freely, revealing the fact that they were not agreed among themselves as to what the best solution of the problem confronting them might be.

Mr. Fellows, the principal speaker explained in some detail the various plans thene being considered by the Commission. He said the possibilities were two in number, namely, we can acquire the plant of the Denver Union Water Company, or we can build a new plant.

The existing plant could be acquired in two ways, either by condemnation proceedings or by arbitration to be followed by outright purchase.
He said there was much to be said in favor of acquiring the existing water plant. It had adequate water rights and was in general in good physical shape.

Investigations regarding the construction of a new plant were, he said, centered around three projects, none of which had been studied in sufficient detail to determine its exact cost.

One of these was for the diversion of the waters of the Fraser River through a 4 mile tunnel, another for the diversion of the waters of the Blue also through a transcontinental tunnel, and a third, the construction of a reservoir system on the South Platte.

He estimated that the South Platte system could be developed for about 8 million dollars, with both of the other proposals which involved the construction of canal systems on both slopes as well as storage reservoirs costing considerably more. He then stated that the engineering committee of which he was a member was even then preparing its report on the problem.

Chairman VanCise of the Commission was severe in his denunciation of the water company, declaring that prior to the determination of the suit carried to the Supreme Court of the United States, its officials had insulted the members of the Public Utilities Commission and had refused to have any dealings with them. After losing its case the water company was then suggesting arbitration, which Mr. VanCise was violently opposed to, saying, "I will die in office before I will consent to arbitrate the matter."

Commissioner Anderson, declared that, as a businessman on the commission, he felt that something should be done at once to settle the matter. Personally, he stated that he favored the purchase of the existing water plant, but if that could not be done, then he would favor building a new plant.
He reminded his audience that the commission was powerless to proceed until the State Supreme Court had passed upon the legality of the Commission form of municipal government for Denver then pending before it.

Friction between the members of the Public Utilities Commission and the City Attorney developed in November 1913, when Commissioner Van Cise sent a note to City Attorney I. N. Stevens on November 28, requesting him to return all data earlier furnished to him for use in drafting an ordinance authorizing the 8 million dollar bond issue. In commenting on the matter Mr. VanCise would not admit that there was lack of harmony between the two city offices, saying that the delay was no doubt due to an excessive work load in the City Attorney's office. He did say however, that it was well known that the Assistant City Attorney, Mr. Richmond, was hostile to the Commission.

In any event, the bond ordinance was eventually prepared by the City Attorney and after being reviewed by members of the Public Utility Commission and its legal advisers was passed by the City Council on January 12, 1914.

Meanwhile, deeply concerned over the adverse effect the water controversy was having upon the business climate of the community and irked by the uncompromising stand of the Public Utilities Commission against arbitration, the Chamber of Commerce decided in the fall of 1913 to undertake the preparation of a plan which, if accepted by the people at the polls, would settle the matter once and for all.

After several meetings of various committees, and a great deal of effort upon the part of many sincere and well meaning businessmen, a plan
developed by the Retail Dealers Association of the Chamber of Commerce was prepared as an initiated ordinance including the necessary Charter Amendment.

The requisite number of signatures was obtained to a petition asking that it be submitted to vote at a special election to be held for that purpose.

The City Council on January 12, ordered the measure placed on the ballot for an election to be held on February 17, 1914.

This proposed "profit sharing" or purchase after appraisement plan, had previously been approved by the Directors of the Denver Union Water Company, who, on February 11!, 1914 placed in escrow with the German American Trust Company more than 50,000 shares of the Company's capital stock having a par value of more than 5 million dollars. This was done to further bind the company to the acceptance and ratification of the proposed contract and a supplemental agreement outlining the company's interpretation of it, in case it was approved by the voters on February 17, 1914.

The campaign preceding this election was a bitter one, marked by personal encounters and said by the News to have broken all "mud slinging!" records in Denver.

The proposed profit sharing plan was actively and energetically supported by most of the business interests of Denver with the News and Times, no longer under the control of Senator Patterson, leading the fight for it. Mayor Speer also came out in support of it.

The opposition was lead by Senator Patterson and John Rush of the Water Consumers League. They had the active assistance of the members of the Public W
the Public Utility Commission and that of the Denver Post. All of the political and other enemies of the water company also took this occasion to oppose the plan. The proposed plan was defeated at the election of February 17, 1914 by a vote of 6,864 for and 13,272 against.

Another important proposal at that election was the one asking Denver to support a bond issue of 3 million dollars for the construction of a Moffat railroad tunnel under James Peak. This proposal was carried by a vote of 12,708 for and 6,732 against. Note: This tunnel bond issue was later declared unconstitutional by the Colorado Supreme Court.

So once more the Consumers Water League and the Public Utilities Commission defeated the Denver Union Water Company in its attempt to keep control of the water plant and system.

One of the factors, no doubt, influencing the outcome of the above election was the release on January 16, 1914 of the long awaited report of the Public Utility Commission's Committee of Engineers on its valuation of the Denver Water System.

In that report, the then present value of the water company's holdings as of October 1, 1913, was stated to be $10,044,778 exclusive of "going value" and water "rights".

The estimated cost of a completely new water system for Denver was also estimated by the committee to be about $12,750,000.

The Public Utilities Commission interpreted the results of the February 17, 1914 elected as being a mandate from the people for it to proceed
at once with plans for a publicly owned independent water plant and system.

Within less than a week's time, the News on February 20th, announced that officers of the Water Consumers League had met with the members of the Commission for the purpose of outlining the procedure to be followed which would best accomplish that result.

Senator Patterson, moving spirit in the Water Consumers League, was quoted as saying that one of the first things to do was to get a 20 percent rate reduction ordinance passed by the City Council and that, the employment of an outside engineer was also necessary to advise upon how best an independent water supply could be obtained and what it would cost. It was likewise stated that bids would be taken for the sale of bonds to provide funds for all of these undertakings.

On March 3, 1914, the City Council unanimously passed, and the Mayor approved an initiated bill for an ordinance which would make a 20 percent horizontal reduction in water rates to become effective on May 1st.

An announcement was made some four days later to the effect that J. B. Lippincott, a consulting engineer of Los Angeles, had been employed by the Utility Commission to assist it in formulating plans for a new water plant.

Soon thereafter, W. H. Bryant, formerly city attorney, was employed by the Commission as special counsel to assist it in the legal phases of its proposed plans.

Mr. Bryant died in Baltimore on April 6, 1914 and was replaced as special counsel to the Utilities Commission by George L. Nye.

R. W. Meeker, a local engineer was employed about this time to prepare
a report for the Utilities Commission on the availability of water on the Western Slope which could be used to supply Denver.

At this time, with 8 million dollars, par value, of 5% gold bonds due to mature on July 1, 1914, the water company with no franchise to operate under and no arrangements of any kind made to sell its properties to the City or any one else, found itself in desperate straits, with various bond holders committees struggling to find a way out of what appeared to be an impossible situation.

However, it was announced in April that there was no intention on the part of the bond holders to ask for a Receiver at the time, and an official of the company let it be known that the company's taxes would promptly be paid together with the $267,000 in bond interest due on July 1, 1914.

The Denver Times in its issue, of April 17th, stated that it was expected the company would file a request within a few days asking for an injunction restraining the City from enforcing its 20 percent water rate reduction which was to become effective on May 1, 1914.

On May 13th, Judge Riner of Cheyenne issued a temporary restraining order against the city, preventing it from placing that rate reduction in effect. It was stated at the time that the validity of the Ordinance was no longer questioned by the water company, the only question to be decided by the proceedings being one of fairness and whether or not it would yield a reasonable return upon the investment in the plant as it then existed.

The News in its issue of May 19, 1914 announced that Judge Robert A. Lewis had appointed W. J. Chinn of Colorado Springs, Master in Chancery, to take evidence in the water company's injunction suit against the enforcement
of the rate cut ordinance with the testimony to be confined to the question as to whether or not the ordinance for the rate reduction was confiscatory or not in its nature, or in other words, did it or did it not take property without due process of law.

Mr. Chinn accepted the assignment on May 22, 1914 and stated he would begin work on June 3, 1914.

The taking of testimony was begun as planned and continued until March 13, 1915.

On March 14, 1915 the News reported on the matter as follows:

"After ten months of evidence during which time several million words of testimony were taken and scores of expert witnesses placed on the stand for plaintiff and defendant, the suit of the Denver Union Water Company to declare illegal the city ordinance providing for a 20 percent reduction in rates ended yesterday before Special Master Chinn. The arguments by the attorneys in the case have lasted since March 1st.

"The matter now passes into the hands of Chinn who, after considering the evidence and the arguments before him, will make a report to Federal Judge Lewis who will then render a decision. The chief problem before the court is whether it shall pass on the value of the plant or simply on the rate question."--

The report of Special Master Chinn was dated October 5, 1915. In that report, Mr. Chinn found the reasonable value of the Denver Water Plant and System as of May 1, 1914 to be $13,415,899.

After discussing some of the law applying to the case, Mr. Chinn said:

"I find that 3.64 percent is not a fair or just return for the use of the
property of the Water Company by the public."

"I find that the rates prescribed by Ordinance No. 26, Series of 1914 do not permit the Water Company to earn for the use of its property such compensation as is fair to it and to the City and that the enforcement of said Ordinance will result in the taking of the use of said property without just compensation."

(Note: Printed briefs and the testimony produced in this hearing before Judge Chinn are available for reference in the files of the Legal Division.)

The Chinn report was filed with the deputy clerk of the Court on the afternoon of October 5, 1915.

The Times on October 9th stated that Judge Lewis had allowed a period of 30 days within which attorneys would be permitted to file exceptions to the Chinn report after which the Judge would render his opinion.

Attorneys for both sides concluded their arguments as to exceptions taken by them to the Chinn report on January 28, 1916 and on that same day Judge Lewis overruled all exceptions made by the City and County of Denver, the Public Utilities Commission and the Denver Union Water Company. By this action, he confirmed the Chinn report giving a valuation of $13,415,899 as of May 1, 1914 to the water plant for rate making purposes.

The formal decree in this case was entered on February 1, 1916 with all costs assessed against the City and County of Denver.

Negotiations for the purchase of the water plant by the city, suspended during the course of these proceedings, were resumed soon after the Chinn report was filed.

Anticipating the signing of the decree that would settle the litigation,
John S. Flower, Chairman of the water committee of the Denver Real
Estate Exchange sent a letter to John Evans of the water company on January
31, 1916 in which he said that now the rate suit was settled his committee was
ready to resume conferences having in view arrangements for the purchase
of the plant by the city.

On February 12, 1916, the Times quoted A. Lincoln Fellows as saying:

"Several conferences have been held within the past few days between
members of the Denver Public Utilities Commission and representatives of the
Denver Union Water Company for the purpose of discussing various phases of
the water question and trying to arrive at some basis for reaching an agreement
between the company and the city for a settlement of the water controversy.
Although no conclusions have been reached, the conferences were held for the
purpose of thrashing out some of the questions that complicate the situation.
Several propositions have been discussed, but all of them hinge upon propositions
submitted by the Executive Committee of the Water Consumers League of which
T. M. Patterson is Chairman. These had been submitted to the Water Company
prior to the decision of the Federal District Court, in the rate suit.

With so many people, in and out of public office attempting to settle
the matter, it was obvious that the Water Company, through Mr. Evans, had
to again make its position clear, namely that it was willing to sell to the City
on the basis of a decision, yet to be made, by the United States Supreme Court.

When questioned on the matter, Mr. Evans said that all conferences up
to February 14, 1916 had been informal, but that they indicated a desire upon the
part of all concerned to work out some kind of a proposition which could be
approved by the Water Consumers League, the Real Estate Exchange and the
Utilities Commission.
Under the active leadership of T. M. Patterson of the Water
Consumers League, with the support in the background of A. Lincoln Fellows
and Armour C. Anderson, the remaining two members of the Public Utility
Commission, an option agreement to purchase was reached with the water
company on February 21, 1916.

A synopsis of this agreement follows:

1. The property covered by the option was that embraced in the
rating base by the Special Master.

2. The actual additions, extensions and betterments added to the
plant between May 1, 1914 and November 1, 1918.

3. The purchase price was $13,415,899 to which was added the items
under (2) above; with deduction therefrom of the accrued depreciation at the
rate set by the Special Master, namely $140,000 per annum. Deductions were also
to be made for items of property that were removed, replaced or eliminated.

4. The property was to be taken subject to $400,000 unimproved bonds of The
South Platte Canal and Reservoir Company which the city assumed and agreed
to pay, after $888,000 in bonds owned by the Water Company were turned over
to it, making this net indebtedness $1,112,000.

The option was to extend for 12 months after the United States Supreme
Court had finally disposed of the appeal to be taken by the City in the Rate Case.
During the life of the option the City agreed to refrain from construction or entering
upon the construction of any duplicate water plant, and likewise agreed to re­
frain from selling or otherwise disposing of any of the bonds voted in September
1910, except such as might be legally deliverable under valid contracts then
outstanding, if any.
The option agreement was approved by the Stockholders of the Denver Union Water Company on February 21, 1916; by the Public Utility Commission of Denver - two members only, and by Resolution of the Council of the City and County of Denver with Mayor Sharpley's signature attached on that same date, after it had been previously recommended for approval by the Water Consumers League.

Note: See File 296, Document 59 in the vault of the Denver Board of Water Commissioners.

The appeal provided for in the option agreement of February 21, 1916 was filed by the City with the United States Supreme Court on July 29, 1916, and was immediately accepted by that court.

On March 20, 1917, it was announced that the Supreme Court, in view of the urgency of the case, had advanced the date for hearing on the court docket to October 2, 1917.

In order to expedite matters, it was decided by City officials to not wait for the outcome of that hearing, but to initiate a Charter Amendment providing for the purchase of the water plant under the provisions of the option agreement to be voted upon at the May 15, 1917 municipal election. The proposal then submitted to the people was approved by a vote of 18,058 for and 7,931 against.

In due time, briefs were filed and arguments heard on the appeal in Washington during the month of October 1917.

The Supreme Court handed down its decision on March 4, 1918, at which time it passed only upon the rate reducing ordinance of 1914, and did not go into the other questions raised by the city. Thus the Supreme Court in effect, upheld the findings of Special Master Chinn in all points, except the allowance for water rights, which it found unnecessary to pass upon. Even
with this item omitted from the valuation, the annual return of $488,820 or 4.28 percent was found to be confiscatory, and the injunction granted by Judge Lewis against the enforcement of the 1914 rate ordinance was made permanent.

Since the Secretary of the Treasury had issued a war time order to the effect that public bond issues in excess of $100,000 would not be permitted to be sold during the war the next problem confronting the City was to get permission from him to permit it to pay for the plant with bonds which it was hoped would be authorized for that purpose.

This permission was secured as announced in the News on March 21, 1918, leaving the way clear for the holding of a special election which Mr. Anderson, sole remaining member of the Public Utilities Commission hoped to have done before his term of office expired on May 31, of that year.

However, there were so many details to be worked out before the exact amount of the bond issue could be determined that the election was not held until August 6, 1918 at which time bonds in the amount of $13,970,000 were authorized by the taxpaying electors by a vote of 6,061 for and 1,782 against. At this same election the charter amendment creating the Board of Water Commissioners was passed by a vote of 7,296 for and 2,340 against.

The Board members chosen at that time were: John C. Skinner, Frank L. Woodward, Benjamin A. Sweet, Charles H. Reynolds and Finlay L. MacFarland.

The total bond issue of $13,970,000 was made up as follows: $13,415,899 the reasonable value of the plant as established in the Chinn Report for May 1, 1914, plus $1,184,000 of additions, betterments and other allowable items between May 1, 1914 and May 1, 1918, less $630,000 accrued.
depreciation on the plant over that same period of time. It is to be noted that the value of water rights, $2,947,617 and going concern value amounting to $800,000 were included in the item of $13,415,899 listed above.

The total amount paid for the plant after all adjustments had been made, when possession was turned over to the City on November 1, 1918 was $13,922,826.60 or $47,163.40 less than the amount of the authorized bond issue. (See Municipal Facts, November 1918 issue).

An editorial in the August 1918 issue of Municipal Facts, the city official publication, is believed worthy of quoting here in part as follows:

"After thirty years of civic strife, Denver at last is able to employ the possessive in relation to its water plant. The peaceful election on August 5, when taxpayers voted to issue $13,970,000 in bonds for the purchase of the plant, was so free from the bitterness that characterized previous water elections that it seems to augur well for the future operation of the plant.

"Since the bonds have been voted there also has risen a difference of opinion as to the feasibility of a metered service.

"Some favor this plan on theory that everyone would then pay for exactly what he consumes, while others are opposed to it on the grounds that it would tend to diminish the lawn area which has always been Denver's pride. The fact that the Water Company, for the past two summers, has been able to supply several thousand war gardens free of cost, without visible diminution in the supply, would seem to favor the advocates of the flat rate system."

Returning to the Supreme Court decision of May 26, 1913, in which the City was given the right to proceed with whatever plans it might have
for the purchase of the existing plant or the construction of a new one
we find the Public Utilities Commission actively engaged in investigating
various proposals submitted to it for the construction of an independent
water plant and system.

The Meeker report, dated May 18, 1914 was confined to studies
relative to possible available water supplies that might be diverted to Denver
from the Fraser, Williams Fork and Blue Rivers on the western slope.

Mr. Meeker's conclusions were in brief as follows: The proposed
Fraser River project, would produce in a dry year 69,000 acre feet of water
at an investment cost of $3,250,000, with 42.5 miles of collection canals
on the west slope. The water so collected would be delivered to either South
Boulder or Clear Creek through a transcontinental tunnel 5.92 miles long.

The Williams Fork project would, in a dry year, produce 45,700 acre
feet of water at an investment cost of $1,850,000 with 21.0 miles of collection canal:
on the west slope. This water would be delivered to Clear Creek on the
eastern slope through a tunnel 2.79 miles in length.

The Blue River project would, in a dry year, produce 80,000 acre
feet of water at an investment cost of $4,600,000, with 79.9 miles of feeder
and collection canals and ditches. The water from this source would be
delivered to the South Platte River by means of a 4.40 mile tunnel.

In his letter of transmittal to the Public Utilities Commission dated
May 18, 1914, Mr. Meeker concluded by saying:

"If the day is not here, it is surely on the horizon, of the time when
the City of Denver will at least have to seek a supplemental supply from
beyond the mountains." (See Drawer 60, No. 14-11 for copy of the above
report).
As already noted, Mr. J. B. Lippincott, Consulting Engineer of Los Angeles, California was employed by the Public Utilities Commission of Denver in March 1914. The directive to Mr. Lippincott was:

"To prepare an estimate for an independent water supply and new distribution system for the City of Denver."

In addition to consulting all the pertinent public records available to him, Mr. Lippincott employed Mr. E. E. Baker, an experienced local hydraulic engineer, to study and report on the High Line Canal property and its physical condition.

Likewise, Mr. W. L. Reynolds, another hydraulic engineer familiar with local conditions, was detailed to study the available water supply from the South Platte and its relation to existing water rights.

The surveys of George Bancroft were used, in connection with a personal survey by Mr. Lippincott, as the general basis of the water and cost estimates for the Blue River project, with the earlier Meeker report being available to him for this and other west slope projects estimates.

C. C. Hezmalhatch, an hydrographer was also detailed to report on the South Park meadow area lying generally above the proposed reservoir sites in South Park along Michigan, Jefferson and Tarryall Creeks.

All of the information thus obtained was assembled under the personal supervision of Mr. Lippincott, who submitted the result of his investigation to the Public Utilities Commission in a preliminary report dated August 1914.

In brief, his conclusions and recommendations were: 1. That particular attention should be given at once to the mountain meadow lands of South Park. He said that the city could here promptly obtain a water supply at a minimum cost and with minimum damage to water users.
"Including the construction of storage reservoirs in South Park, with 184,000 acre feet of capacity, for the regulation of this water, the purchase of 27,000 acres of South Park meadow land, the buying of the High Line Canal (which is necessary to control the Antero reservoir site), the cost of this water, which is estimated at about 100,000 acre feet, delivered to the mouth of Platte Canyon would be between $30.00 and $35.00 an acre foot, or one half of what the waters of the Blue River will cost, and one-third of the cost of water obtained by storage at the Two Forks Reservoir site in Platte Canyon. This 100,000 acre feet is twice the present consumption of the city and three times what it ought to be if the service is metered.

"The control of these two reservoirs and the High Line Canal, will form important factors in the ultimate project of obtaining waters from Blue River. The ownership of the High Line Canal has strategic advantages and any surplus waters may be used through it to advantage."

"The purchase of the High Line Canal, which is herein recommended, is a portion of the general project that should ultimately be carried out."

"It is strongly urged that the field information requested be promptly obtained, with the view of the completion of these estimates, together with the diversion of the water to the city and its distribution. In the meantime, options should be obtained on the lands in South Park and on the High Line Canal and rights obtained on Blue River."

(See Drawer 57, No. 3-4 for Copy of the above report).

The matter of providing funds with which to continue the investigations recommended by Mr. Lippincott revived the long standing feud between City
Officials and members of the Public Utilities Commission, when the City budget for 1915 came up for discussion.

On December 7, 1914 the Times reported that: "In a statement sent to the City Council today, City Attorney Stevens maintains that the council should appropriate for the Public Utilities Commission next year, only such sums as are necessary to pay the salaries of the members and their Secretaries and such other clerical help as may be actually needed by the Commission in the discharge of its duty.

In his opinion, "Stevens holds that the duties of the utilities body are limited to the building of a municipal water plant for $8,000,000."--

"He favors the appropriation of $25,000 to pay the cost of the water case now in the Federal Court, but says that the expenditure of this money should be under the direction of the Commissioner of Improvements. A heated argument which for a time threatened to assume the proportions of physical combat, was indulged in Saturday afternoon, December 5th, by Stevens and A. Lincoln Fellows of the Utilities Commission when the 1915 appropriation for the Commission was discussed with the City Commissioners. Asked whether the Utilities Commission could not limit its legal help next year to the office of the City Attorney, Fellows declared it could if it had a City Attorney's office in which the Public Utilities Commission could place confidence. In the exchange of remarks that followed, Mr. Stevens reminded Mr. Fellows that Senator Patterson had charged him with selling out to the water company. This, Mr. Fellows characterized as a falsehood, and declared among other things, that the Commission had been compelled to employ its own Attorney, because
in every instance when it had asked for legal advice from the City Attorney's office, such advice had either been delayed for months or had not been given at all."

After several conferences had been held between the City Commissioners and members of the Public Utilities Commission, the 1915 budget was adopted with $10,296 allowed for the payment of salaries and office expenses of the Public Utilities Commission to be paid out as nearly as practicable in 12 equal installments. There was also appropriated the sum of $25,000 for attorneys fees and court costs in the water rate and the Wheeler-Lusk cases to be paid out on order of the Council for the City and County of Denver.

This budget did not provide for the back salary of George L. Nye, special counsel to the Public Utilities Commission, who had acted for it in the water rate case before the Federal Court. On March 2, 1915 the City Council ordered the sum of $3,500 to be paid Mr. Nye in partial settlement of his then pending claim of $10,000.

On March 21, 1915 Mr. Fellows announced that the Public Utilities Commission had advertised for bids to be received for the purchase of all or part of the 8 million dollar bond issue on April 2, 1915.

Mr. Fellows stated that all legal obstacles to such a sale had by then been removed and that for the first time the Commission was in position to go ahead with the construction of a new water plant.

However, no bids were received on April 2nd, the reason being that fear of the suits involving the entire water question and still pending in the Courts was responsible for the lack of interest by bond buyers.
A movement to abolish the Public Utilities Commission by amendment to the City Charter was begun early in April 1915, but was defeated by a vote of 6,269 for and 12,770 against at the regular municipal election of May 18, 1915.

At the Council reorganization meeting subsequent to that election, Mr. J. A. Marsh succeeded Mr. I. N. Stevens as City Attorney.

In June 1915, the Utilities Commission again applied to the City Council for funds to make surveys for a new plant, this time asking for $100,000. On Monday, June 21, 1915 the City Council discussed the matter and with both Commissioners Hunter and Pitcher being opposed, the request was denied and filed.

Refusing to accept defeat in the matter, the remaining two members of the Public Utilities Commission, Mr. Fellows and Mr. Anderson signed a contract on July 27, 1915 with the VanSant-Houghton Engineering Company of San Francisco to make preliminary surveys, plans and specifications for the construction of a municipal water plant for Denver.

The expense of this work was not to exceed $150,000 with the engineering firm agreeing to take bonds at par and accrued interest in payment therefore.

Work was to start not later than August 20, 1915 with payments to be made as the work progressed.

In reporting upon this important step, the Times on July 21, 1915 stated that: "The action of the Commission indicates that it will conduct no further negotiations for purchase of the existing plant of the Denver Union Water Company, but will construct a new plant."

In a news article dated August 15, 1915, the Times reported that the Utilities Commission had spent $164,848 since its organization in June of 1910.
Attorneys fees alone up to that time totalled $45,243.58, of which
amount Senator Charles S. Thomas had received $15,132.46, C. W. Waterman
$16,411.12, George L. Nye, $13,200 and John H. Gabriel, $500. In addition,
court costs and fees for expert witnesses were estimated to have totalled
more than $20,000.

On Saturday, August 21, 1915, the Public Utilities Commission secretly
closed a deal with the Antero and South Park Reservoir Company for the
purchase of the Antero Reservoir in Park County and the High Line Canal for
the sum of $1,050,000. In explaining the reason for handling the matter in
the way it did, Commissioner Armour C. Anderson said: "It was feared that
the Denver Union Water Company would block the deal if they learned of it.
He further said: "We held meetings for ten days before the purchase with
Mr. Clark, Judge James Owens and one or two others. On Friday night
an agreement was reached, Saturday morning the deed conveying the property
to Denver was signed and placed in my hands. I set out by automobile for
Fairplay to record it. We did not tell Arthur D. Wall, one of the directors
of the Antero and High Line Company because we believed him to be a protege
of the Denver Union Water Company and we did not want the company to learn
of our intentions."

This surprise move by the Denver Public Utilities Commission met
with almost universal opposition from interested parties, living both within
and without the city and as might have been expected, brought litigation over
the many issues involved, preventing completion of the purchase until May
23, 1924. Some of the details of this phase of the story will be discussed
later on.
In explaining the reasons leading up to this purchase, Mr. Fellows was quoted in the News of August 23, 1915 as saying, "The purchase of the Reservoir and Canal was in accordance with the recommendations made by Engineer J. B. Lippincott in his special report to the commission a year ago. It is proposed to make this the nucleus for Denver's new municipal water plant for the construction of which the people five years ago voted a bond issue of 8 million dollars.

"The bonds are still in litigation, but a decision as to their validity is expected soon. The purchase price of the reservoir will be paid in part as soon as the Utilities Commission has advertised bonds for sale and the remainder will be paid after the Antero and Lost Park Reservoir has paid off a mortgage of $150,000 outstanding against the Reservoir. The price for the properties will be $1,050,000."

When questioned on the available water supply, Mr. Fellows said:

"The City now owns 182.18 cubic feet per second in the City Ditch, the Farmers Ditch and other decrees. The High Line Ditch decree calls for 1184 cubic feet as of 1879. The Antero decree calls for 85,600 acre feet of water. The present amount of water needed to supply Denver's domestic system is 100 cubic feet a second. I think that these figures answer the question."

When asked by a News reporter on August 24, 1915, to elaborate upon the effect the Antero-High Line purchase would have upon the construction program designed to provide a new water plant for Denver, President Fellows of the Utilities Commission said: "That the construction of a reservoir at the Two Forks site would be necessary to make the water rights obtained through..."
the Antero purchase available to the best possible advantage to the city.

He admitted that such a reservoir project would be an expensive one, and that the plant then being considered by the Commission, including the cost of additional water rights in South Park, would cost in the neighborhood of $12,750,000 or $4,750,000 more than the authorized bond issue of $8,000,000. However, he made it clear that the Commission was not then in position to make a definite recommendation to the people, and would not be until the VanSan-Houghton study had been completed and reported upon. It was emphasized again that the Commission intended to proceed with the construction also of a distribution system if it was found impossible to come to terms with the Water Company for a reasonable price on that portion of its plant.

The late summer and fall months of 1915 saw much activity by the opponents of the Antero sale with the Public Utilities Commission unable to secure funds with which to meet its Van-Sant Houghton or Antero commitments.

On February 1, 1916 it was announced in the Times that the Secretary of the Interior had given the Public Utilities Commission permission to file a brief in connection with its request to have a previous ruling of the Secretary against the city on the Two Forks dam site controversy. At this time it was stated that the city had been denied its filings on the Reservoir site and the rights thereto awarded to the Denver Power and Reservoir Company. Unless those findings were reversed the city would have to abandon its plans to build a dam there or buy out those of the rival concern.

With a successful completion of an agreement about to be reached for the purchase of the existing water plant, Mr. Fellows announced on February 12, 1916 that the Commission had abandoned all hope of ever building a new municipal water plant for Denver. On that same day a conference was held by
the members of the Utility Commission with the city attorney to devise ways and means to clear the Antero project from litigation as well as to advance the Two Forks Reservoir Site plans. It was decided at the time to pay for the Antero Project and the cost of the VanSant surveys out of the 8 million dollar bond issue voted for a new plant, with the balance of the bonds to be cancelled. It was thus estimated that the cost to the city for the new plant surveys, litigation, incidental expenses and other proper items would total in excess of $350,000.

Reference has heretofor been made to the VanSant-Houghton Engineering Company Agreement of July 27, 1915, wherein that company was employed by the Public Utilities Commission "to complete the engineering work and do any and all things necessary and incident to the preparation of plans, specifications and estimates for a complete and adequate system of water works for the City and County of Denver, carried to such a state of completion that the Utilities Commission would be enabled to proceed with advertisement for proposals for contracts for the construction of such system."

Work under this agreement was commenced forthwith and diligently prosecuted for some time after the "Option Agreement" of February 21, 1916 was executed between The Denver Union Water Company and the City and County of Denver. The terms of this agreement were such as to change many phases of the general situation as it existed at the time the VanSant-Houghton agreement was entered upon, and brought a letter from the VanSant people dated May 19, 1916 which said in part as follows:

"We take the liberty of suggesting that the Commission may desire:

1. To have the report and estimate of a new and independent system carried
to the point of a comprehensive plan and estimate for the same, giving
particular study and consideration to the matter of available water supply.

2. In connection with the option to purchase the present system of the
Denver Union Water Company, to have a similar comprehensive report and
estimate on the necessary additions and improvements to this system to
meet the demands of future growth.

"Such comparative plans and estimates will be of vital importance in
the decision that must be made by a vote of the people.

"Further, the preparation of detailed specifications may quite properly
be deferred until after such election and only those made that may at that
time be actually required.

"The recommendation is made with the idea that such a policy will
save the expenditure of a considerable sum of money and at the same time,
adequately provide all the information essential to the settlement of such a
problem by vote."

By mutual agreement, the work thereafter proceeded for several
months under the above outline.

On September 16, 1916 the Public Utilities Commission notified the
Van-Sant Houghton Company that it was desirous of suspending all work and
expense under the agreement of July 27, 1915 and a supplemental contract to
that effect was entered into.

In that modified contract, it was mutually agreed that the party of the
second part will conclude and suspend all work under the contract of July
27, 1915 on or before October 5, 1916 and will prepare and submit a brief
summary and tabulation of the work already done together with a preliminary
estimate and report of the cost of a new water plant and of the several factors thereof contemplated."

In compliance with the terms of that modified contract, the Van Sant-Houghton Company submitted a preliminary report with a letter of transmittal dated December 14, 1916. In that report the estimated cost of a new water system for Denver including the Blue River Diversion was given as $27,479,498.57. (See Engineering Division Vault records. Drawer 59, Numbers 1 to 18 for a copy of this report)

Payment for the work done by the Van-Sant-Houghton Company under the July 27, 1915 contract was not made until authorized by a resolution of the Board of Water Commissioners passed on November 30, 1918 which recited the fact that the amount earned, $99,669.74, including interest had never been paid. The resolution further provided that a portion of the bonds of the 1910 authorized issue of 8 million dollars be used at par to settle the account in full.

**East Denver Municipal Irrigation District**

This district was organized in 1909 to extend the High Line Canal so as to make it possible to irrigate a much larger area of land to the east and north of Denver than was possible at that time.

It was announced in March 1910, that the work of enlarging the High Line Canal had been commenced for the purpose of carrying the additional water required to irrigate a total of 60,000 acres after the canal extension and its laterals had been completed. It was then stated that the Antero Reservoir contained 25,000 acre feet of water sufficient to irrigate all of the land available under the ditch for the year 1910.
In its issue of October 11, 1910, the Republican announced that
the District had voted, the day before, to issue $3,000,000 in bonds
for the purpose of taking over the English High Line Canal, the Antero
Reservoir and the two reservoirs along the Canal and to finance the
completion of the main ditch extension and laterals which would eventually
develop 60,000 acres of garden tracts northeast of Denver.

Concreting of the upstream face of the Antero Dam was completed
at a cost of $70,000 on August 12, 1911, making it ready to be filled to
capacity.

The next news item of note concerning this great irrigation promotion
scheme came on January 5, 1913 when it became known that a New York
syndicate had purchased the East Denver Municipal Irrigation District
from the Antero and Lost Park Reservoir Company and would proceed at
once to complete the irrigation system, promising to have water on all of the
60,000 acres by June 15 of that year.

The water was to be taken from the Antero Reservoir and conveyed
by the High Line Canal and its extension to the land in question. Three
contracts to that effect were duly entered into with the syndicate by the
officers of the several interested corporations and H. L. Doherty and
Company, the latter agreeing to underwrite the $3,000,000 bond issue voted
in October 1910.

The East Denver Municipal Irrigation District was bounded by the
Kansas Pacific Railroad, the Burlington Railroad, Barr Lake and the Town
of Watkins.
Joseph Osner of Denver was the successful bidder on the remaining work to be done at an estimated cost of $700,000. Work was begun by him on February 18, 1913 with date of completion set as June 15, 1913. At the time Osner took over the job there remained 35 miles of new main line canal to be built with approximately double that amount in laterals to be excavated.

A suit alleging fraud was filed in the Denver District Court by Schuyler H. Alexander on February 21, 1913 against the Antero and Lost Park Reservoir Company and its Directors asking for a judgment of $50,000 with jail sentences, in which it was claimed that the company had attempted to assign $19,000 to H. L. Doherty and Company in order to avoid paying $50,000 to Alexander who claimed that amount due him as a commission in handling the transaction which resulted in the Doherty Company agreeing to complete the project and place water on the lands of the District.

On January 21, 1913 the gates of the Canal were opened and a great celebration begun with Governor Amnons delivering the principal address.

In describing the events of the day the Republican said in part:

"The Antero System which supplies the East Denver Irrigation District consists of the Antero Reservoir in Park County, the High Line Canal taking water out of the Platte River above the filter beds of the Denver Union Water Company and the High Line Extension with its main laterals.

"The Antero Reservoir covers 4,000 acres, having a capacity of 85,000 acre feet and is formed on the headwaters of the South Platte by construction of an earthen dam, 4,600 feet long. The reservoir empties into the South Platte where the water is picked up again by the High Line Canal above
the filter beds of the Denver Water Company. This canal has a capacity of 1,100 cubic feet a second at its headgate and delivers 600 second feet of water at Toll Gate Creek 48 miles from its head where the High Line Extension takes out. From here new canals have been constructed for the delivery of water to the East Denver Municipal Irrigation District. The crossing of the High Line Canal at Cherry Creek has been replaced by a siphon consisting of two, eight foot stave pipes with concrete ends. The High Line Extension starts at Toll Gate Creek and runs east and north to a point 21 miles from its head where it has a capacity of 300 second feet. From the point where it enters the District to its end, six laterals are taken out varying in capacity from 50 to 190 second feet and having a total length of 45 miles. These laterals will supply water to the farm levels to be constructed as the land comes under cultivation. The enlargement of the High Line Canal and construction of the extension and laterals was started in March and will be ready for delivery of water on June 20, 1913.

This celebration was climaxed by a banquet tendered Mr. Doherty with the program of events in charge of the Denver Chamber of Commerce.

Senator C. S. Thomas sent the following telegram to the Denver Chamber of Commerce on June 18, 1913 which speaks for itself.

"I congratulate the people of Denver upon the opening of the Antero District. Such an enterprise under the direction of an administrator like Mr. Doherty is of immeasurable greater value to a community like ours, than one financed through the expedience of a municipal bond issue.

"The Antero is neither a philanthropic nor a dependent enterprise. It is a great business undertaking whose benefit, both direct and indirect, to the whole State cannot be overestimated. The faith in Colorado which
Mr. Doherty has shown by his works and the Chamber of Commerce honors itself by honoring him on this occasion.

The following information on this complicated and involved corporation set up has been taken from a letter written on September 11, 1915 by the officers of the water consumers league to the members of the Denver Utilities Commission, protesting the purchase of the Antero property by that Commission.

In the year 1910, the Antero and Lost Park Reservoir Company owning the Antero Reservoir and High Line Canal entered into a contract with the Antero Land and Irrigation Company to construct an irrigation system on the plains adjoining Denver, and to do certain work on the reservoir and canal. This irrigation company, in pursuance of its contract, caused the East Denver Municipal Irrigation Company to be organized. The purpose of the District was to take over the proposed irrigation system, and the Antero Reservoir and the High Line Canal which proposal was submitted to the voters of the District for approval and ratification. Three million dollars in bonds were to be issued, one million five hundred thousand dollars in money and the rest in bonds was to be paid to the owners of the Antero and High Line properties.

The irrigation system agreed upon consisted of ditches, laterals, flumes etc. on the plains with certain additional work to be done on the Antero Reservoir and High Line Canal.

The Antero and Lost Park Reservoir Company was to continue in possession of the property and to operate it during the progress of the work. When the system was completed in accordance with the terms of the contract, settlement was to be made and the properties conveyed by deed to the District.
"After a long period of unsuccessful effort to finance the project, H. L. Doherty and Company of New York was induced to underwrite it. These negotiations took place in the latter part of 1912 and the early part of 1913.

The result was the execution of three contracts, the first one between the Antero Land and Irrigation Company, who assigned its interests in the enterprise to the Doherty people; the second was between the Doherty interests and the Antero and Lost Park Reservoir Company, whereby the Doherty concern undertook to construct the proposed irrigation system, paying the Reservoir Company $50,000 in cash, $1,000,000 in bonds of the Irrigation District and $200,000 in cash to be paid on January 15, 1915 in return for the two properties, Antero and High Line.

The third contract was between the Doherty interests, on the one side, and the officers of the Irrigation District on the other, by which certain alterations were made in the original contract for the construction of the irrigation system. The two important changes being the omission of the construction of the Terminal and Abbott reservoirs out on the plains.

These contracts were sent to Denver where they were ratified and executed by the officers of the Irrigation District of the Antero and Lost Park Reservoir Company and by the officers of the Antero Land and Irrigation Company.

Under the law, the contract signed by the officers of the Irrigation District should have been submitted to the land owners for approval before becoming effective. However, it was thought that this formality was not necessary and all parties proceeded under the contract without it.
"Doherty and Company, in the early part of 1913, following the execution of these contracts, commenced work in good faith on the irrigation system and pushed it with vigor and claimed to have expended in the neighborhood of $700,000 upon it when they were stopped by the action of the reservoir company.

"We recall very well that in June 1913 the work on the construction of the system had progressed so far that when Mr. Doherty came to Denver he was congratulated by business men on the work he had done and a banquet was extended to him. Almost without exception, Denver's prominent business men were present at this function, several hundred in number. Mr. Horace Clark, the President of the Antero and Lost Park Reservoir Company was present and among others he made a speech congratulating Mr. Doherty upon the success of his work and predicting the benefits that were to flow to Denver from it. At this time it was claimed by Mr. Doherty, Mr. Clark and the officers of the several interested companies that the work had been practically completed. We know that they turned water into the irrigation system and several hundred of our people went out to view it, and we all looked with a good deal of confidence and hope to the great benefits the system would bring to Denver.

"At this time it was estimated by Doherty and Company that more than 90 percent of the work that they were to do had been completed. Mr. Doherty continued after this function in the completion of the work when on October 16, 1913 Mr. Horace Clark, President of the Antero Company, wrote a letter to the Doherty interests in which he complained that the two reservoirs on the plains that had been expressly eliminated from the work by the contracts under which
the Doherty interests commenced and carried it on, were not being built, and that, unless they were built, the Antero Company would not accept in payment for their properties, the $1,000,000 in bonds they were to receive. The builders paid no attention to this letter, but continued the work.

"Again, in January 1914, Mr. Clark wrote the Doherty interests a similar letter, making practically the same complaint, and finally on March 18, 1914, Mr. Clark wrote them a letter stating that his company construed their silence into an abandonment of their contract and that they would consider it as such and ordered them to cease all operations and not to trespass any further on the property of which the reservoir company was the owner.

"To the undersigned, it appears that for the five or six months during which the great bulk of the work had been done and money expended by the Doherty interests, the Antero Company knew that by the contract with the officers of the District, those two reservoir had been eliminated and they stood by, aiding and encouraging the construction of a plant with the reservoirs eliminated. It is claimed by the Doherty interests that they have spent in the neighborhood of $100,000 in the direct improvement of the High Line Canal and that the $50,000 cash paid the Antero people was to enable them to meet obligations incurred in the purchase of that Canal. $200,000 was to have been paid by the Doherty interests to the Antero people on the contract on or before the 15th day of January 1915, but, since they had been driven from the work and prohibited from completing their contract, the Antero people having decided to declare the contract at an end, they did not pay this $200,000.

"It is claimed by the Doherty interests that not more than 2 percent of the work on the system in the plains area is unfinished and that the only
additional work that they contracted to do was to face the Antero dam
all of which would long since have been done, if they had not been prevented as
set forth above.

"We are informed by the Doherty people that they will, as soon as it
can be done, commence suit against the Antero and Lost Park Reservoir
Company for specific performance of their contract, and demand that the
Antero Reservoir and High Line Ditch be conveyed as contracted to the
Irrigation District, and that the Bonds of the Irrigation District be trans­
ferred to them as per the terms of their contract with it.

"They will demand the right to proceed to complete the irrigation
system in strict accordance with the terms of the contract and if it should be
decided that the contract with the District by which the two reservoirs were
eliminated, is unenforceable, they stand ready to add them to the work.

To say that there are not strong reasons to believe that the Courts
will decree that the Antero and Lost Park Reservoir Company shall be
compelled to carry out their contract with the Doherty Interests, provided
those interests are ready to and will be admitted again to the works and
complete them, including the two reservoirs, if it shall be required by the
Court to do so, is at least a hazardous conclusion. That specific performance
will be decreed may be anticipated.

"Under these circumstances, it is our strong belief that no money
should be paid to the Antero Company, and that none of the City's bonds
should be delivered to it until this and all clouds shall be removed from
the title of the property, and the City completely safeguarded.

"We further recommend that, if you shall be permitted by the Courts
to execute and deliver the bonds on this contract that before doing so, you
shall insist upon a supplemental agreement with the Antero people by which the bonds shall be delivered in escrow to some responsible trust company to be held by it awaiting the termination of pending litigation, and that soon to be commenced.

"Also, that if the Antero people refuse this suggested arrangement then you absolutely decline to deliver any of the bonds to them or pay them any of the purchase money.

"Should the Doherty suit be decided in its favor, the city will have no rights whatever either to the Antero Reservoir or the High Line Ditch. Should the bonds be delivered, the city shall be compelled to look to the Antero and Lost Park Reservoir Company for whatever reimbursement it can force that organization to make.

"We regret more than we can express, that in this important matter, we must differ from the Utilities Commission but, having in mind the interest of Denver taxpayers, we cannot endorse the issuance and delivery of one million and fifty thousand dollars of the City's bonds for properties they may never be permitted to enjoy."

A news item in the Republican of January 13, 1918 stated that the Doherty Company had lost its Antero suit, with Judge Butler of the District Court entering judgments against Doherty and Company, the Antero Land and Irrigation Company and Fred L. Lucas, agent for Doherty and Company.

At the time it was reported that unless reversed by a higher tribunal, the amount of the judgment would approximate $1,500,000.

This protest brought quick results as will be seen from the following taken from a Times release on September 15, 1915.
The Denver Public Utilities Commission will not issue or turn
over any water bonds to the Antero and Lost Park Reservoir Company
until the Courts have settled the question as to whether Denver has acquired
title to the Antero Reservoir and High Line Canal."

"The alleged anxiety of the Antero Company to break the door to
the contract is said to have dated from the time more than one year ago
when the chance to get municipal bonds instead of irrigation bonds first
became a possibility through negotiations with the Utilities Commission.
Irrigation bonds of late years in Colorado, due to the promotion of speculative
irrigation districts, have brought far less than par, less than 50 percent in
many cases."

In any event, litigation started about this time did not end until the
case of Antero Reservoir vs Lowe, 69 Colorado Page 409, was decided by
the Supreme Court on November 23, 1920.

Mr. Chief Justice Garrigues, in delivering the opinion of the court
began by saying:

"This case contains probably the largest record even brought to this
court. There were 165 days spent in the trial, 80 witnesses were examined
and 385 exhibits introduced in evidence. The record contains 40,000 folios
of typewritten matter. The printed abstract contains 16,294 pages and there
are 1,428 printed pages of brief and argument."

By the decision in this case, the Supreme Court held, with two
Justices dissenting that the rights of the Irrigation District had terminated
and that the purchase contract with Denver dated August 21, 1915 was valid.
For the Supreme Court decision establishing the Antero Reservoir storage appropriation for 85,564 acre feet as of October 8, 1907, see Colorado Reports, Volume 65, page 161, decided March 5, 1917.

The early years in the life of the Denver water utility were marked by numerous legal disputes, impracticable to record in detail, which kept both corporate and municipal attorneys almost constantly before the State and Federal Courts.

Among these were a group of associated suits brought by minority interests in an attempt to void the foreclosure proceedings held on April 21, 1894, which resulted in the sale of the Denver property of the American Water Works Company, to a group of bond holders who, by previous agreement, had joined with the controlling interests of the Citizens Water Company to form a new corporation to be called The Denver Union Water Company.

These suits, originated by C. H. Venner, a bond broker of New York City, soon became known by his name, started on February 9, 1892 when a suit was brought by this man in the District Court of Arapahoe County against Dennis Sullivan, Receiver of the American Water Works Company in Denver for misappropriation of funds. They did not end until 20 years later, when John S. McMasters, who had succeeded E. Hyde Rust as statutory receiver for the American Water Works Company, who had revived the Venner case in his own name in 1911, moved for dismissal before Judge Robert E. Lewis of the United States District Court.

The motion was granted by Judge Lewis on December 3, 1913, following a decision of a New Jersey Court handed down in November 1913, in which McMasters was ordered to dismiss the litigation begun with the organization of The Denver Union Water Company after it became the owner of the properties.
of the Denver City Water Company.

However, this did not stop Mr. Venner from flooding the money markets of the country in March 1914 with a circular attacking the City for its alleged confiscation of the property of the water company and warning investors to have nothing to do with the 8 million dollar city bond issue which had been authorized for the construction of a new plant.

For some of the cases as reported in this long drawn out controversy see: (a) Volume 15, page 495, Colorado Court of Appeals; (b) Volume 32, pages 205 and 207, Colorado Reports and; (c) Volume 40, page 212, Colorado Reports.

Another suit known as the Wheeler-Lusk case, was started on June 24, 1911 when a bill in equity was filed in the United States District Court at Denver by Frank S. Lusk of Montana and Clara A. Wheeler of Nevada suing for themselves and in behalf of the taxpayers of Denver to obtain an injunction against the City and County of Denver restraining the Public Utilities Commission from issuing 8 million dollars worth of bonds for the construction of a water plant.

On October 13, 1911, Judge Lewis postponed hearing the application for the above injunction, declaring that his mind was not clear as to whether the defendants were acting in collusion and insisted that they appear in court personally to be questioned.

Following this action, the Judge on October 31, 1911 dismissed the suit upon petition of the Attorneys for the Public Utilities Commission, their motion being based upon collusion between the plaintiffs and the Denver Union Water Company.
At this time it was stated that the plaintiffs had no controversy with the Public Utility Commissioners but had allowed their names to be used at the request of the water company. A telegram was introduced to that effect which was sent by F. G. Moffat of the company reading as follows: "Would you be willing as a non resident taxpayer to bring suit in the Federal Court, etc. If so, wire me authority in your name to engage an attorney and bring suit."

Upon dismissal of the suit, the attorney for the plaintiff gave notice of an appeal to the Supreme Court and asked leave to have a certificate of judgment prepared, which was granted.

The Republican on November 24, 1912 announced that attorneys for the Denver Union Water Company had filed, the day before, an application by which they hoped to secure an early decision from the United States Supreme Court in the case.

It was then stated that earlier in the month the Supreme Court had denied an application by the company for advancement of the suit upon the Court's docket.

The United States Supreme Court, June 10, 1913 reversed the decision of Judge Lewis in this case, saying in part: "It is true that the recent decision of the Denver Water Company on May 26, 1913, the merits of the controversy have been decided against the plaintiffs in error, but this case must be judged as of the time the suit was commenced, and so judged. We think the suit was not collusively brought and should not have been dismissed for want of jurisdiction."
In substance, the decision stated that while Judge Lewis was wrong in dismissing the suit, the plaintiffs were entitled to a rehearing even though the points involved in the case had subsequently been decided against them as noted above.

At this time the Public Utilities Commission erroneously thought that the case had been permanently disposed of and proceeded to act accordingly. However, the case was revived in March 1914 by the filing of an amendment to the complaint in the United States District Court.

Judge Lewis heard the case again on June 10, 1914 and dismissed the complaint for the second time. Attorneys for the plaintiff promptly appealed the case once more, this time to the United States Circuit Court of Appeals.

The case was heard in due time with it being taken under advisement by the Court of Appeals on October 11, 1915.

The Times on February 10, 1916 reported that the decision of the United States District Court at Denver denying a petition to have the 8 million dollar bond issue for a municipal water works declared void was upheld on that date by the United States Circuit Court of Appeals setting at St. Louis, Missouri.

Once again, the city believed all legal obstacles to prevent the issuance of its bonds for a new water plant had been removed, but found that the case had been appealed to the United States Supreme Court with notice to that effect having been received by the City Attorney on March 30, 1917.

The case was finally disposed of by the United States supreme court on October 15, 1917 when a decision was handed down upholding the Circuit
Court of Appeals, thus validating after 6 years of litigation, the 8 million dollar bond issue authorized by vote of the people of Denver on September 6, 1910.

**CITY DITCH**

The Denver Times on January 18, 1917 announced that surveys had been completed and work would be started without delay toward moving the City Ditch headgate about one mile upstream in order that the supply of water available to the ditch might be increased. This action was approved at a meeting of the Park Board Advisory Committee held on that date.

Although construction details are lacking, the original tracing under which the work was done, dated May 4, 1917, is on file in the City Engineer's office, (D-'14) with a print thereof available in the Water Department vault.

This map shows the proposed new headgate to be located near the south boundary of Section 14, TWP. 6S, Range 69 West, a distance of 188.6 feet S. 89°47'30" West of the southeast corner of the SW-1/4, SE-1/4 of said Section 14 on land owned by the Denver Union Water Company. (Becky Archer Ranch). The survey notes on the map indicate that the new headgate was actually by the courses given 7,388 feet upstream from the old one, or about 1.4 miles. As far as the writer has been able to determine, this change in point of diversion was never officially approved by court action.

At this time, the State Supreme Court had before it, upon appeal by the City, the Sherman Brown case which that court had earlier reversed, but which decision the lower court had seen fit to ignore.
In the decision handed down on July 2, 1917 with rehearing denied on November 5, 1917, the Supreme Court said: "This is an application to compel the District Court of the City and County of Denver to enter a decree in accordance with our judgment and opinion in the case of City and County of Denver vs Brown et al. 56 Colorado 215." (Decided November 3, 1913, rehearing denied February 2, 1941).

"In the general statutory adjudication settling the relative priority of irrigating ditches in water district No. 8, on the South Platte River, what is now known as the City Ditch, was awarded priority No. 1 by original construction dated November 28, 1860, priority No. 75, by first enlargement dated November 1, 1873, and priority No. 131, by second enlargement, date March 7, 1881. (Note: Should be priority No. 130, date March 7, 1882). The volume of these appropriations while determined by the decree, is immaterial for the purposes of this case.

"July 21, 1902, an action was brought in the District Court to have adjudicated the respective rights of consumers from this ditch and June 15, 1908, the court entered what is termed the original decree in that behalf.

"The City and County of Denver, as the proprietor and owner of the ditch, and in possession of its decreed appropriations, brought the case here for review.

"The trial court in that case decreed and held that the consumers from the ditch were the appropriators from the stream, with vested perpetual water rights in the ditch for the amount used, which accrued and continued from the date water was first utilized from the ditch on the lands of the
consumers, regardless of the amount contracted for, and, being the appropriators from the stream owning the ditch appropriations, they were in no way affected by their contractual relations with the ditch owner, or by cessation in the use of water short of abandonment. In November 1913, we reversed the case and handed down a written opinion in which we held this ruling and decision of the District Court, under the circumstances of this case, fundamentally wrong in every particular; that the original company constructing and owning the ditch, as well as its successors in interest were in possession of and controlled the appropriations."

(See Colorado Reports, Volume 56, page 216. Decided Nov. 3, 1913, rehearing denied February 2, 1914.)

Continuing: "March 4, 1914 remittur was issued to the lower court; March 15, 1915, the Brown heirs filed supplemental claim; March 24, 1915, the court entered what is termed the second decree; November 15, 1916, the city filed a motion in the District Court asking the court to vacate and hold for naught the second decree, and enter a decree complying with our judgment and remittur; March 10, 1917, the District Court overruled the motion and March 17, 1917, an original petition was filed in this court which, among other things alleged, "

After discussing the complaint of the city and reviewing some pertinent legal cases the court said: "The trial court is directed to vacate and set aside the second decree entered March 24, 1915 and to proceed in conformity with the prior mandate of this court, and the writ issued herein will be made absolute." (See Colorado Reports. Vol 63, page 511.)
The result was a decree, entered by Division 11 in Case No. 34488 on May 27, 1919. Samuel W. Brown vs. the City and County of Denver, which complied with the mandate of the Supreme Court, and which in effect restored the water rights originally adjudicated to the "City Ditch" as owned by the City and County of Denver. (See Secretary's file No. 42, Doc. 15 for this decree to which is attached a list of 148 users of water from the City Ditch and the number of inches allocated to each, about the year 1899).

Although open ditch irrigating was replaced by water supplied through the water company's pipe system, this ditch has been used by the city continuously down to the present time, principally for park irrigation and the filling of lakes in both Washington and City Parks.

During the early years of this period, City Ditch water rights were given considerable publicity by members of the Public Utilities Commission and others. It was then seriously contended by the advocates of an independent water system that water owned by the city in this and other irrigating ditches was of ample volume which, when converted to year around use for municipal purposes, would meet all of the needs of the city for many years to come, thus placing the city in a completely independent position as far as the supply controlled by the water company was concerned.

Fortunately, purchase of the then existing water plant as finally consummated made it unnecessary for that line of specious reasoning to be tested and found not to be in accordance with the cold facts insofar as uncommitted water supplies were concerned.
SMITH'S LAKE

Better known as the north lake in Washington Park, this historic body of water was first created in 1867 or about the time Contractor, J. W. Smith completed the city ditch for the Platte Water Company.

A lease dated February 23, 1872 from Frederick A. Clark and John W. Smith to the Platte Water Company gave that company, for a term of ninety nine years, the right and privilege of enlarging the lake to twice its capacity, or size, and to supply water for the same from their canal. The Platte Water Company was authorized to draw water from said lake or reservoir only for irrigation or fire purposes for the City of Denver when actually necessary, and was given permission to erect fixtures to let in and draw off water from the lake as might be deemed proper.

The rental was fixed at $2,500, $1500 of which was paid at the time the lease was signed with the balance of $1,600 falling due on July 4, 1880. The owners reserved the right to cut and remove ice from the lake. The Platte Water Company agreed to fill the lake every year in the month of October or November and to keep a fair supply of water in the lake at all times, except when necessary to draw off the same for use in the city and then to replenish it again as soon as possible. The balance due, $1,000, was paid on May 21, 1875 and Mr. Smith duly acknowledged that full payment for all demands under the lease had been met.

The lease-purchase agreement of May 26, 1875 under which the City of Denver obtained title to the Platte Water Company assets on May 24, 1882 including the City Ditch, provided that the Platte Water Company lease for the
use of Smith's Lake should inure to the benefit of the city, with the city assuming the obligations named therein as originally accepted by the Platte Water Company.

Apparently, the lease continued in effect until about the year 1910, when Mayor Speer, in connection with his city wide improvement program, decided to purchase the property upon which the lake was located. The basis for this assumption comes from the following news item in the Times of July 27, 1915.

"Through a blunder in the transfer of the title at Smith Lake in Washington Park at the time it was acquired by the city, the lake may have to be re-purchased from the holder of a $5,000 mortgage who has foreclosed on the lake.""

"The property was purchased under the regime of former Mayor, Robert W. Speer. It was purchased from Charles H. Smith, popularly known as American House Smith, one of the oldest and best known residents of Denver. For the lots underlying the lake, the city paid $5,000. At the same time there was a $5,000 mortgage on the lots and the name should have been included in the deed transferring the property to the city. The city took the property over and spent thousands of dollars in installing a pumping plant, beautifying the adjacent land, erecting a bathing pavilion and making other improvements. News of the foreclosure reached the Commissioners yesterday. No suspicion ever having existed that the title to the lake was not perfect."--

"The matter has been placed in the hands of City Attorney James A. Marsh who will report to the Council upon the situation."
Former City Attorney Harry A. Lindsley who was City Attorney at the time said, the report sounds incredible. "The Auditor at that time must have made a mistake in not issuing a warrant for the payment of the obligation jointly to Smith and the holder of the mortgage. As I remember, the lake was bought under condemnation proceedings."

The next and last item of information found in the records on this matter was a news item printed on August 3, 1915 in the Times in which it was said: "City Attorney James A. Marsh will ask Judge Wright of the District Court to reopen the foreclosure proceedings brought against the city to gain possession of several lots underlying the Smith Lake in Washington Park.

"The mortgagee obtained an order from the court that the City must pay $5,000 for the release of this mortgage or the mortgagee can sell the property, at the end of the year. "I have investigated the matter, said Mr. Marsh, and find that some peculiar circumstances entered into the case. The City Attorney at that time, Harry A. Lindsley, was not responsible for the failure to settle the mortgage claim. Thomas L. Woodrow, the deputy who handled the case, demanded that the $5,000 paid for the property in question be paid into court. This indicated that there was a cloud on the title of which the City Attorney's office knew and that it intended to have the matter cleared up before the money was paid to the owner.

"The money was paid from the District Court without the knowledge or consent of the City Attorney's office. It also developed that there is no order from a Judge of the District Court releasing the money."
Evidently the matter was later settled in a manner satisfactory to the city, since the lake now is and for many years past been an outstanding recreational feature at Washington Park.

Miscellaneous Water Property Owned by the City

One of the first duties of the Public Utilities Commission after assuming office in May 1910 was to ascertain as nearly as possible, the extent of water property then owned by the city.

Its inquiries resulted in showing that the city was the owner of partial distributing systems for water in South Denver, Berkeley and Globeville and a number of fire hydrants in Highlands and Barnum in addition to those belonging to the three systems before mentioned.

It found that an appraisal had been made of this property, in use and in operation as of November 1, 1907, the total fair cash value of which was then found to be $315,000. Soon after its election, the Public Utilities Commission approved of an additional expenditure totalling $14,495.45 for an extension of the South Denver distribution system.

The best information available in connection with this miscellaneous water property and its location is to be found in the 1910 Report of the Commission listed on pages 43 to 49 thereof.

On page 50 of that report is a tabulation of the water rights belonging to the city as well as a short paragraph dealing with the return flow of water from the city sewers and its possible value to the city from a sale or lease point of view.
Farmers and Gardeners Ditch

Reference has been made in an earlier chapter to the early history of this ditch, its purchase by the City of Denver, and the date upon which its operation and maintenance was transferred from the Department of Improvements and Parks to the Board of Water Commissioners.

File 290, Document No., 27, in the Secretary's vault contains a valuable memorandum on this ditch, prepared by Mr. George M. Bull about the year 1923.

In its investigation of the water holdings of the city, the Public Utilities Commission in 1912 found, much to its chagrin, that the water rights of this ditch were under lease to a private party. The situation as reported by the Republican on June 28, 1912 was said to be as follows:

"The entire water rights of the Farmers and Gardeners Ditch, one of the oldest water priorities in the State, has passed from the control of the city to private hands for 3 years, under a lease which has just been discovered by the Public Utilities Commission. This lease was one of the last official acts of the old Board of County Commissioners. (Prior to the City-County consolidation).

The city administration is more stirred up over the discovery than any of the acts of the past that it has inherited. An investigation will be demanded of the entire history of the ditch for the past 4 or 5 years. The lease grants one man absolute control of the ditch. The large part of the flow is wasting into a ditch of the Standley Lake Reservoir Irrigation Company of
which Milton Smith, a democratic politician and lawyer of Denver and County Attorney under the last Board of County Commissioners, is attorney and stockholder. Smith was formerly chairman of the Democratic State Central Committee.

"The lease has been referred to City Attorney Harry W. Bryant for it is of peculiar construction and the Public Utilities Commission is fearful of its scope and meaning. The Boards of Aldermen and Supervisors are also wrought up over the lease, and it is through these bodies that the investigation will be ordered, probably by Joint Resolution."

"The Globe Smelter Company has acted as agent for the city, collecting water rent from the ditch for years. For the last two years, it has turned over no rents, although the amount is supposed to be about $500.00.

"The lease granted by the Board of County Commissioners gives A. Sosney, who has a lease upon the poor farm lands, the power to take away from the Smelter Company its rights to water from the ditch. This right extends back about 20 years. The smelter was allowed to use the water to cool its water jackets and boilers. The water was returned to the ditch and used by farmers to whom it was sold by the county.

"There are 12 or 15 gardeners using the water, yet the city has received no rent from them, according to Commissioner Anderson. After their contracts expire for 1921, Sosney assumes control. The lease says: "If it is found that the full amount of the decreed appropriation of said ditch cannot be utilized and used by said lessee upon the premises hereby leased (the poor farm) during the term of this lease, the lessee will have the right to lease or rent or otherwise dispose of such water. This clause is the
one feared by the city officials and the investigation will take up the question of whether the entire flow might not be diverted to Standley Lake Reservoir alone."

Again on July 4, 1912 the Republican reported that the users of water from the ditch disputed the Public Utilities Commission's right by breaking a lock placed by it upon a ditch headgate. This news item stated that the representatives of the Smelter Company were siding with the Commission who then insisted upon taking control of all Denver water. It was also noted that suit would be started to set aside this lease, as well as a contract given by former health commission W. H. Sharply to the Burlington Ditch for water discharged from east side sanitary sewer No. 1.

This period ended with the following item taken from the proceedings of the Board of Water Commissioners at its meeting of October 21, 1919.

"The City Attorney called attention to certain correspondence which he had received relative to the cancellation of the contract between the City and County of Denver and the Globeville Smelter, relative to the use of water in the Farmers and Gardeners Ditch. The City Attorney was instructed to advise the authorities of the Globeville Smelter that if the said smelter would open the ditch through their property so that there can be carried from fifteen to eighteen cubic feet of water per second, and agree that the interest heretofore claimed by the American Smelting and Refining Company in the Farmers and Gardeners Ditch was abandoned and all claims to rights acknowledged to be in the City and County of Denver, that the contract between the Globeville Smelter and the City and County of Denver, relative to the use of said water, would be cancelled."
Smith Canal Ditch Company

In the 1883 adjudication proceedings for District No. 8, this ditch was given priority No. 12 for an unspecified amount of water as of December 1, 1863. The 1st enlargement has priority No. 26 as of December 30, 1866 again for an unspecified amount of water, with priority No. 86 given it for 50 cubic feet of water per second of time as of December 30, 1874, this being its second enlargement.

The headgate was located in Section 9, Twp 4 South Range 68 West on the east bank of the South Platte River at about West 4th Avenue and Tejon Street. It joined the Mullen ditch at a point near the center of Block 66 bounded by Larimer and Lawrence and 8th and 9th Streets in old Ward 1. (See Thayer's Map of Denver, 1872, on which it is labelled as the "Excelsior Mill Ditch").

The diagram showing location of and distances between ditches on the South Platte River, Antero Reservoir to Kersey, prepared by the State Engineer's office in April 1925 gives the decree of December 1, 1863 as covering 5.20 cubic feet a second, with 50 cubic feet a second decreed for non-consumptive use as of December 30, 1866.

For many years the Denver Union Water Company and its predecessors did, under an agreement with J. K. Mullen and the Smith Canal Company, carry the water appropriations of the Smith Canal through Lake Archer and after using the water for power purposes in one of the water company's turbine water wheels, situated at its West Denver pumping plant, delivered the water back to the Smith Canal at the tail race below the pumping plant from whence
the water was conducted by the Smith and Mullen ditches to the flouring mill owned by the Excelsior Milling and Elevator Company, located at the corner of Eighth and Lawrence Streets, where it was used again for power purposes.

**Platte and Denver Ditch Company**

*(Mullen Ditch)*

At the general adjudication proceedings held at Castle Rock, Colorado, for District No. 8, ending with the establishment of priorities for ditches No. 1 through 112, on December 10, 1883, this ditch was numbered 14, with a No. 16 priority for 61.71 cubic feet of water a second as of October 7, 1864.

The water was decreed to be used for the irrigation of 500 acres with the balance to be used for milling or other purposes save irrigation.

The headgate was located on the east bank of the South Platte River behind the depot of the Denver and Rio Grande Railroad at Petersburg south of West Hampden Avenue seven miles south of the city of Denver. Its course was northerly and its length was approximately 8 miles to the point ending in the South Platte River near the mouth of Cherry Creek.

Thayer's 1872 map of Denver shows the name of this ditch to be "Merchants Mill Ditch" which, for about the last one half mile or so, was operated jointly with the Excelsior Mill ditch as above noted.

The September 17, 1910 issue of "Denver Municipal Facts", page 12 carried a news item which seems worth quoting here. It started out by saying that, "Public attention has been attracted during the past week to the
progress reported on three important municipal improvements of great benefit to the people.

"The first of these was the final closing of negotiations for the abolishment of the Mullen Ditch, which has long been a menace to the life of children and the health of residents of the West Side. The agitation for the doing away with this unsanitary affair has been going on for several years, and in his last budget to the council, Mayor Speer recommended an appropriation of $20,000 to pay the City's share of the expense which totals $40,000, the balance to be borne by the railroads and other corporations interested.

"The ditch extends through a part of the Eleventh, Twelfth, Thirteenth, and First Wards. It was constructed for a water supply for power purposes by a number of milling companies which are now using steam. Besides being dangerous to life and health it has been a source of considerable expense to the highway department. The original price asked by the owners for the ditch was $20,000 but this did not include any water.

"The Mayor took the matter up with the parties concerned and it was finally agreed that the city should receive one-half the water without extra cost. The water has been turned off and will be diverted into the city ditch.

"Under the water appropriation the water must be used for power purposes.

In accordance with the Mayor's recommendation, contained in the budget, a power plant will be erected at York Street, where the City Ditch crosses Cherry Creek, the plant to be used in lifting sand from the bottom of the creek for use of the highway department."
"The flow of water in Cherry Creek will be increased by the water that goes through the power plant. It is likely that the City Ditch will have to be widened to carry the additional water, though no extra right-of-way will be required as the city owns sufficient land along the ditch."

The negotiations leading up to the abandonment of this ditch between Arkansas Avenue on the south and Lawrence Street on the north were quite involved, covering as they did the settlement of long standing water right controversies, the adjudication of appropriations as between consumptive and non-consumptive uses, and conflicting interests between other ditches on the river between Platte Canyon and the City proper all extending over a long period of time.

The agreement which resolved these many differences and conflicts was dated August 2, 1910 with six parties named therein as follows: The Denver Union Water Company, party of the first part; J. K. Mullen, party of the second part; The Platte and Denver Canal and Milling Company, party of the third part; The Smith Canal or Ditch Company, party of the fourth part; The Eagle Milling and Elevator Company, party of the fifth part; and the Excelsior Milling and Elevator Company, party of the sixth part.

The interests of each of the parties to this agreement were set out in detail following this general statement: "All the parties to this agreement are interested in and owners of water rights and water right appropriations and priorities out of the South Platte River and its tributary streams, in Irrigation Diversion Number One, Water District Number Eight of Colorado; which water rights have been and are applied to useful and beneficial purposes, and in the appropriations and use thereof."
"The Water Company is the owner of certain water appropriations made by the Platte Canon ditch and is, and for many years last past, has been using said water for irrigation purposes as well as for an all-the-year supply for municipal and domestic purposes in the City and County of Denver and the inhabitants thereof, and is the owner and claimant of certain appropriations of water from said South Platte River and its tributaries for a domestic and municipal supply in the City and County of Denver, founded upon the construction of water works in the City of Denver in the year 1870, and the appropriations of water then and subsequently made by the predecessors of said Water Company.

"The said J. H. Mullen's interests in said water rights are represented by priorities and appropriations owned by the Platte and Denver Company, and the Smith Canal Company, for power purposes, and are used by said companies and the said J. K. Mullen as water power in the flouring mills in which the said J. K. Mullen is interested or is a large owner, situated in the City and County of Denver.

"The Eagle Mill's interest in said water rights are represented by a certain contract in writing with the Platte and Denver Company, under and by virtue of which the Eagle Mill has a perpetual right to appropriate to its own use, for generating power for the operation of said Eagle Mill, on Lots one, Two and Three, Block 76, West Denver, the water flowing in said Platte and Denver Canal, which contract is dated December 3, 1868 and recorded in Book 20, page 147, of the records of the then County of Arapahoe, now the City and County of Denver."
"The Excelsior Mill's interest in said water rights are represented by a similar contract in writing with the said Platte and Denver Company under and by virtue of which the Excelsior Mill has a perpetual right to divert and appropriate to its own use, after said water has left the tail race of the Eagle Mill, the water flowing in said Platte and Denver Canal, for generating power for the operation of the Excelsior Mill located on lots 11 and 12, Block 66, West Denver, which said contract is dated July 16, 1879 and recorded in Book 158, Page 284 of the records of the then Arapahoe County, now the City and County of Denver.

After reciting in minute detail, the water rights involved, the decrees covering them and the conflicts of interest between the parties named that had heretofore existed, this agreement provided that:

"The Platte and Denver ditch would be abandoned between Arkansas Avenue and Lawrence Street upon the payment to the owners thereof $40,000. In order to arrive at an adjustment of the differences existing between the Water Company and the other parties to the agreement, it agreed to contribute the sum of $12,500 as part payment of $40,000 to J. K. Mullen, the Platte and Denver Company, the Smith Ditch Company and the Eagle and Excelsior Mills, with the understanding and agreement that the appropriations, as decreed of the Platte and Denver Ditch of 61.71 cubic feet a second for power purposes, except the fraction decreed for irrigation purposes would be conveyed and transferred, one half to the City and County of Denver for diversion and flow from the City Ditch through Cherry Creek to the Platte River, and the other one half to be conveyed to the Denver Union Water Co. for power purposes through Lake Archer, and then to be delivered into the Smith Canal."
Aa already noted, the City and County of Denver paid $20,000 for the other one half water interest, leaving $7,500 or the balance of the total payment of $40,000 to be supplied by other corporations, presumably the railroads, to abate this ditch nuisance.

In order to have its share of this ditch water delivered by the City Ditch to Cherry Creek as desired by Mayor Speer, it was necessary for the City and County of Denver to ask the District Court at Castle Rock for permission to change the point of diversion from its original decreed location to the headgate of the City Ditch.

A petition to that end was prepared and presented to the District Court at Castle Rock in February 1911. Following this, a decree was prepared providing for 28,355 cubic feet of water a second to be moved from the head of the Platte and Denver Canal and Milling Company's ditch at Petersburg upstream to the headgate of the City Ditch in Section 12, Twp 6 South, Range 69 west. This proposed decree limited the conveyance of that amount of water from the headgate of the City Ditch to the point in Denver where it crossed Cherry Creek, there to be used for power purposes, and then permitted to flow down Cherry Creek to the Platte River. This proposed decree was written in such a manner as to fully protect the vested rights of the Denver Union Water Company, the Littleton Milling and Water Power Company, the Nevada and Last Chance ditches and the Brown ditch.

This proposed decree, copies of which are to be found in the Secretary's file - 55 Doc. No. 25 and 55-Doc. No. 10 was not dated. There seems to be no record of its ever having ben accepted by District Judge Allen and it is therefore to be assumed that it was never completed.
On April 18, 1912 a supplemental agreement to the one of August 2, 1910 was entered into by the interested parties which specified that the 61.71 cubic feet of water a second named therein was to be divided into 5.0 cubic feet a second for irrigation purposes leaving the remainder of 56.71 cubic feet a second to be used for power purposes only, with one-half of that amount going to the City of Denver and one half to the Denver Union Water Company.

The one half interest owned by the Denver Union Water Company was deeded to the city and county of Denver with the rest of the property purchased from that company on November 1, 1918.

Rough and Ready Ditch
Littleton Mill

The early history of this combined facility has been covered in the first chapter of this narrative.

A memorandum prepared by Chief Engineer, D. D. Gross in 1926, has the following to say about this Mill Race.

'"Decree of the District Court of Douglas County entered in the proceedings of 1883 but new decree obtained under the 1903 law of the same priorities and amounts granted to Rough and Ready Ditch and Mill Race priorities of appropriation as follows: Priority No. 2, date December 31, 1860 for 37 second feet, Priority No. 35, dated December 31, 1867 for 31.37 second feet, Total 68.27 second feet.

Commenting on the above, Mr. Gross said: "There is 0.27 second feet in the above Decree out of priority of December 31, 1860 for 37 second feet, for irrigation as provided in the first decree and recognized in the new decree. These rights were originally acquired by The Denver Union
Water Company on December 29, 1903 to protect their junior rights at Platte Canyon.

"During the year 1902 when the river ran so low the Denver Union Water Company paid the Littleton Milling and Water Power Company $1,500 damages for taking their water.

In the Metcalf and Anderson Inventory of October 31, 1913, the following statement is to be found on page 19 thereof: "The title is vested in the Littleton Milling and Water Power Company, and all of the stock of that company has been purchased by and now belongs to the Denver Union Water Company. There is 0.27 cubic feet in the above decree, out of priority of December 31, 1860, for 37 cubic feet for irrigation as provided in the first decree and recognized in the new decree, a small right, but of a very early date and worth remembering."

Capital (issued) $11,700; 117 shares of $100 each, held in the treasury of The Denver Union Water Company purchased on December 29, 1903:"

This property was transferred to the City and County of Denver on November 1, 1918 by the Denver Union Water Company.

Platte Canon Reservoir Site

Among the many reservoir projects promoted by Engineers and others over the years along the reaches of the Canyon located downstream from Lake Cheesman were three directly conflicting with the plans of the Denver Public Utilities Commission.
Much of the information concerning them that follows has been abstracted from a printed statement submitted in 1916 by the Public Utilities Commission of the City and County of Denver to the United States Department of the Interior.

This statement was presented in connection with a then pending request for approval of an application authorizing the construction of the Denver or Two Forks dam by Denver.

In its statement of facts, it was said: "Unfortunately for the City, the Two Forks Reservoir Site conflicts with an easement already granted by the Department of the Interior to the Denver Power and Irrigation Co., a company which appears to have been particularly favored by the General Land Office for many years.

A brief history of the official proceedings leading up to the present situation is as follows:

"In the year 1895, one J. E. Rhodes filed with the State Engineer of Colorado a claim for water in connection with a reservoir site at the Narrows on the South Fork of the South Platte River, about two miles above the town of South Platte.

This filing contemplated a low dam - 125 feet high - and with but small capacity - less than 8,000 acre feet. In 1897 Mr. Rhodes expanded his project to embrace a dam at the same point 160 feet high and with a capacity of approximately 29,000 acre feet, and with a diversion dam on the North Fork with a conduit and tunnel across the divide between the forks, to his reservoir site and power plant on the South Fork.

"Rhodes then incorporated the Denver Power and Irrigation Company for the purpose of constructing and maintaining reservoirs, etc."
storage and use of water for power and irrigation, mining, milling, manufacturing and other beneficial and useful purposes, and expended "a big chunk" of $35,000 in procuring from the City of Denver a franchise (dated November 9, 1898) (see 1907 Book of Franchises, page 769).

This franchise was for an overhead wire and underground conduit system for the transmission of electric power, to be produced only at a plant in Platte Canyon by water power from the North and South Forks of the South Platte River.

Mr. Rhodes then was and still is the president and principal stockholder of the Denver Power and Irrigation Company, and is, to all intents and purposes, the company."

"On March 13, 1899, Rhodes filed with the United States Land Office an application for an easement under the provisions of the Acts of March 3, 1891, and May 11, 1898, making affidavit that the project was for the main purpose of irrigation, this application being for a reservoir site located at the Narrows, the point above described as being on the South Fork of the South Platte River, about two miles above the railroad station known as South Platte which is located at the junction of the North and South Forks of the South Platte River. This dam was said to be about 160 feet high and to have a capacity of about 75,000 acre feet.

This application was approved June 20, 1901 and an easement was granted as applied for, Rhodes having the advantage at that time of not being obliged to disclose his plans in connection with such an application.

Within the next few years examinations of the project were made by a number of parties, but all dropped it after examination. Among these
were the General Electric Company, the Central Colorado Power Company, Stone and Webster Engineering Corporation and H. M. Byllesby and Company, all prominent engineering and contracting companies.

"No construction work of importance was done upon this reservoir site, and on July 3, 1905, C. F. Allen and J. E. Maloney, civil engineers of Denver, in the employ of The Denver Union Water Company, believing that the five year easement granted to the Denver Power and Irrigation Company would expire on June 20, 1906, filed in the United States Land Office an application for the Two Forks Reservoir Site, located about one-half mile below the town of South Platte. This application was also made under the Acts of March 3, 1891 and May 11, 1898 for the main purpose of irrigation, with development of power and furnishing water for the domestic use of the City of Denver as incidental uses of the water. The reservoir proposed by Allen and Maloney would necessarily, though its dam site was located two and one half miles below the dam site filed upon by Rhodes, flood a large part of Rhodes dam and reservoir site.

Finally, on June 17, 1907, one William E. Bates made a filing on still another reservoir site, located within the lands included within both the Rhodes and the Allen and Maloney filings. This application was said to be solely for the purpose of furnishing water for the irrigation of lands in the vicinity of Denver, these lands being located under what is known as the High Line Ditch,

"On November 20, 1907, one year and five months after its easement, on the Narrows site should have expired, Rhodes made application for a
new easement at a new location with a dam located approximately a mile below the old site, but much higher and including the former location within the boundaries of the new reservoir site proposed.

"Several filings have been made at this new location at different times but it may be stated in brief that at the present time the plans contemplate a dam 325 feet in height (almost the highest dam in the world) and proposing to store 400,000 acre feet of water.

"It is interesting to note in this connection that all filings made by Rhodes in the office of the State Engineer have been what are known as preliminary filings and that no perfected filings have ever been made. The last preliminary filing upon this site made in the year 1909, was said to have as its excuse, "inclement weather". However, no perfected filing has been made, although there has been considerable good weather in the six years that have elapsed since that time.

"At about this period, the United States Government was particularly interesting itself in possible power sites, and it became the policy of the government to permit of power development in Forest Reserves and on public lands only under certain control and restrictions by the Federal Government.

"Among many other power possibilities, this one was investigated, and on January 7, 1910, the Interior Department, in accordance with reports and recommendations of the United States Geological Survey, issued a departmental order, segregating certain lands and creating Power Site Reservoir No. 105, comprising those portions of the South Platte River Valley in controversy, this order being confirmed on July 2, 1910, by an executive order.
The claims of the various contestants were urgently pushed by the contestants before the General Land Office, but no final action was taken by the Secretary of the Interior until February 7, 1913. On this date, the Secretary issued an order accepting a surrender of the Rhodes Easement, rejecting the Rhodes application for a new easement upon his larger reservoir site, and also rejecting the application of Allen and Maloney for easement covering Two Forks Lower Reservoir Site and the Bates application for the High Line Reservoir Site, this action, as it was then stated, "clearing the entire record of all pending claims-----, before the Department, thereby leaving the land clear and open for the exercise by the Department of Agriculture of its discretion prior to issuing a permit to the Denver Company for its said reservoir site if said Department deemed said action proper, as to which this (The Interior) Department expresses no opinion."

"In accordance with an understanding already arrived at, however, the Agricultural Department granted a permit to Rhodes upon the same day, February 7, 1913, he having filed a relinquishment of all his claims contemplating the use of water for irrigation purposes and making it clear that at this time, he was again admitting that his project was to be considered solely as a power project. Upon the very next day, however, February 8, 1913, Mr. Rhodes filed a new application for another easement under the Acts of 1891 and 1898, again making affidavit that the main purpose of his project was irrigation.

"In further explanation of the reasons why such conclusions were arrived at, it may be stated that in order to accomplish his ends, Mr. Rhodes
had testified at great length as to the suitability of his project for the
development of power and did agree to surrender his easement if a power
permit would be granted to him in place thereof. The surrender of the
existing easement was then accepted and later applications involving the
use of water for irrigation purposes were rejected and a temporary permit
was granted Mr. Rhodes for a power project.

"From the time that the United States Supreme Court, in May 1913,
handed down its decision favoring the contentions of the Public Utilities
Commission, Mr. Rhodes, at frequent intervals importuned the said
Commission to purchase all of his claimed rights. In fact, previous to that
time, he had, in 1912, assured Walter L. Fisher, then Secretary of the
Interior, that he would be willing to dispose of his rights to the City for the
sum of $100,000, and it may reasonably be assumed that it was with this
statement in mind that Mr. Fisher took the action which he did take on
February 7, 1913. Incidentally, however, it should be mentioned that all
of the contestants against the Rhodes claims had also offered to sell their
rights to the City and for much more reasonable amounts than any named by
Mr. Rhodes.

After the permit of February 7, 1913 was granted, Mr. Rhodes, 
renewed his efforts to sell his rights to the City of Denver, offering to
relinquish all of his claims to the city for the sum of $250,000 and when
his statement to Secretary Fisher was quoted to him, he replied, "Oh, I
had to tell him something."
"The Public Utilities Commission, however, acting for the city, would not consent to the hold-up proposed, but instead of that purchased for a nominal sum $500, the rights of Allen and Maloney to the Two Forks Site, on October 6, 1914, formally protested against granting a new easement to Rhodes, and then, January 29, 1915 made a new application, in accordance with the advice of various government officials, upon this reservoir site, which it renamed the "Denver Reservoir Site".

"The history of this latest application can be briefly told: Made on January 29, 1915, it was finally rejected March 20, 1915, without notice to the Commission or to anyone representing the Commission, although it and also Senator Charles S. Thomas of Colorado, had been promised a hearing in the matter, and although the attorneys for Rhodes were given due notice of pending action by letter. It is doubtful if so quick action had ever before been taken by the Department upon so important a proposition.

"It is interesting to note in this connection that as soon as Rhodes had been given his new easement, on March 31, 1915, almost fourteen years after his first easement had been granted to him, he raised his price to the City to $300,000. The fact should also be noted that Mr. Rhodes had, on March 25, 1915, five days before the granting of this application for an easement and the contemporaneous rejection of the City's application, promised, stipulated and agreed that "if said application be approved by the Secretary of the Interior that the reservoir and conduit therein described will be used solely for the purpose of irrigation."

"It appears, therefore, that from being willing to stipulate on February 7, 1913, that his project should be used for power only, he had now
changed to a frame of mind in which he could stipulate that it should thereafter be used only for irrigation purposes."

"What the city now asks is that an order be issued similar to the order issued in the case of San Francisco, to the effect that the Interior Department will not approve any application, either for irrigation or power purposes, within the South Platte drainage area until the City of Denver shall have decided what it needs to acquire."

"The city is at the present time under contract with the Van Sant-Houghton Company, Engineers and Contractors of San Francisco, and under the terms of this contract some $30,000 have already (November 1, 1915) been expended and it is expected that much more will be expended for the purpose of determining just what sites are best adapted to the City's needs. Numerous sites have been examined, including the Two Forks and the Eagle Rock sites, and in all probability, the next six months will warrant a definite and final conclusion as to what reservoir sites the city should have. Regarding the Two Forks or Denver Reservoir Site, the City asks merely an easement subject to existing rights, a course which the Interior Department has repeatedly adopted.

The facts were more fully set forth in an affidavit made by members of the Public Utility Commission and included with the application as Appendix A, pages 155 to 172 inclusive of the statement from which the above information has been taken.

The above statement was referred to in a news item dated February 2, 1916 in the News which stated in part that: "A. Lincoln Fellows of the
Commission has just returned from Washington bringing the word that the Interior Department had granted the Utilities Commission permission to file a brief in the controversy over the Two Forks Reservoir Site in Platte Canyon. He said Denver had 30 days in which to file the brief and the Denver Power and Reservoir Company, a like time in which to file an answer. The site was ceded to Denver by Allen and Maloney. The power company disputes the title claiming the Allen and Maloney rights had elapsed. Secretary of the Interior, Lane is expected to decide the matter in the early spring, (1916).

Since negotiations looking toward the long standing water controversy were successfully concluded by the signing of the "Option Agreement" for the purchase of the existing plant on February 21, 1916, plans for a reservoir to be built at either the Two Forks Reservoir or the Eagle Rock site seem to have been laid aside until after the City took over the plant on November 1, 1918.

The minutes of the meeting of the Board of Water Commissioners held on December 17, 1918 contain the following item: "Mr. J. E. Rhodes appeared before the Board with maps and literature, urging the purchase by the City of the Denver Power and Irrigation Company site at Eagle Rock for the storing of flood waters and generating electricity." Again, at the meeting of January 22, 1919, the matter came up with the following recorded item: "The Board of Water Commissioners met in an adjourned meeting at 2 o'clock P.M. January 22, 1919 to listen to Mr. J. E. Rhodes present his project for a Reservoir and Power Site at Eagle Rock on the south branch of the Platte above the Forks: also George Bancroft, who proposes
to collect the waters of the Blue on the Western Slope, and bring them via a tunnel to this side, for irrigating and domestic purposes. It was the opinion of the Commission that the expense of bringing the water from the Blue made it prohibitive.

The former scheme - Rhodes - to collect the flood waters of the Platte was a proposition that the City could well afford to give serious consideration at some future time, to enter into the plan at present.

On February 28, 1919, the Eagle Rock Project was again discussed by the Board following a visit by Commissioner Skinner to the project site.

The Board minutes for July 15, 1919 contain the following item which indicates that interest had again been aroused over storage in the Canyon. The item reads: "It was moved that the City Attorney be instructed to proceed at once to make the necessary filings at Two Forks, Eagle Rock dam site and other suitable locations and to take the necessary steps to safeguard the interest of the rights of the City of Denver."

On October 6, 1919 the Board received an offer of sale from an attorney, Mr. W. R. Eaton, representing clients holding the entire issue of Series A bonds of the Denver Power and Irrigation Company, par value $8500 then in default, for the sum of $7,500 who offered to undertake and prosecute all legal proceedings incident to the foreclosure of the mortgage, or as an alternate to accept $5,000 for the bonds in question with the Board to prosecute foreclosure at its own cost and expense.

There were four parcels of property covered by the mortgage listed as follows:

Parcel No. 3, being that certain easement for a canal from Eagle Rock Reservoir to land to be irrigated as granted and approved by the
Department of the Interior under date of March 31, 1915.

Parcel No. 4 being that certain easement granted by the Department of the Interior based upon a filing dated July 14, 1913 for the Eagle Rock Reservoir Site and rights of way approved and granted by the Department of the Interior, March 31, 1915.

Parcel No. 6 covering all rights acquired under and by virtue of that certain application dated September 16, 1913, for an easement for the Geneva Reservoir Site, then pending before the Department of the Interior.

Parcel No. 5 covering rights of way secured by The Denver Power and Irrigation Company by proceedings in condemnation in the District Court of Douglas County, Colorado under decree in Cause No. 69 in said court, dated February 26, 1915.

The matter was taken under advisement for action at the next regular meeting of the Board.

At the Board meeting of October 21, 1919 the proposition of Mr. W. R. Eaton to sell certain bonds of the Denver Power and Irrigation Company was considered and it was unanimously agreed that the proposition could not be entailed.

At the meeting also, the proposition of Mr. Rhodes that the Board enter into an optimal contract to purchase the rights of The Denver Power and Irrigation Company in what was known as the Eagle Rock Reservoir on the South Fork of the South Platte River, was considered, and after discussing with the City Attorney the legal phases of the situation, it was
determined that no further negotiations with Mr. Rhodes in regard to this matter would be considered by the Board.

"The City Attorney, however, was directed to protect by legal action the rights of The City and County of Denver in connection with its application for a reservoir at Two Forks and to take such steps as might be necessary prior to the expiration of the rights of The Denver Power and Irrigation Company, as would protect the interests of the City and County of Denver."

The minutes of the regular meeting of the Board of Water Commissioners held on December 16, 1919 included the following notation:

"The President called the attention of the Board to the necessity of taking action to protect the rights of the City in connection with the reservoir sites in South Platte Canyon and the necessity of providing additional storage capacity of domestic water for the City and County of Denver. After discussion, Mr. Woodward offered the following resolutions, both of which were seconded by Mr. Reynolds and unanimously carried:

"Whereas, In view of the necessity of providing additional storage capacity in order to furnish the City and County of Denver with an adequate supply of water for the use of said City and the inhabitants thereof, to provide a reserve for dry years and to meet the demands of the future growth of the City,

"It is resolved that the Board of Water Commissioners proceed forthwith to acquire the best available reservoir site or sites of sufficient capacity to impound not less than 75,000 acre feet of water, such reservoir
site or sites to be located above the City's main intake either on the South Platte River or one or more of its principal tributaries.

"Whereas, heretofore the City and County of Denver has acquired certain reservoir filings situate on the South Platte, in the vicinity of the junction of the North and South Forks of the said River, and -

"Whereas certain reservoir filings have also been made on the reservoir site known as the Eagle Rock Reservoir Site, which latter filings are in conflict with the filings of the City, and

"Whereas, the Board is desirous of ultimately constructing a reservoir for additional storage of water for the City and County of Denver on the South Platte, River and -

"Whereas, the permit of the Secretary of the Interior of the United States of America, given to the owners of the Eagle Rock Reservoir Site, will expire on or about the 31st of March, 1920, and

"Whereas, the owners of the Eagle Rock Reservoir Filings have not heretofore been able to finance their enterprise, and furthermore, have not proceeded in a manner to entitle them to any extension:

Now, therefore: Be it resolved, that the City Attorney be directed to immediately take all proper steps for the purpose of protecting the City and County of Denver in the reservoir filings aforesaid and to take whatever action that may be necessary to prevent the granting of an extension of time to the owners of the Eagle Rock Reservoir Filings and to advise this Board what official action it should take, if any, in connection with the matter."
Board minutes record a number of references to the Two Forks, Eagle Rock conflict with Mr. Rhodes during the year 1920 and the early months of 1921, with a resolution being passed at the regular meeting of April 19, 1921 which referred to the filing, on April 16, 1921 with the State Engineer of an amended map of the Eagle Rock and Two Forks Reservoir Sites as prepared by George M. Bull from his own surveys as well as those of the VanZant Houghton Company.

Work was said to have been commenced by survey on January 18, 1905.

This filing, in three sheets, covers the lower Eagle Rock Site located near the northeast corner of Section 1, Twp. 8 South, Rge 70 West; the Two Forks Site located near the W 1/4 corner of Section 30, Twp 7 South, Rge 69 West and shows the proposed conduit under the divide between the north and South Forks of the South Platte River extending from a point near Foxton with a 5,200 foot tunnel at the end thereof discharging into Spring Creek, a tributary of the South Fork, which would deliver diverted North Fork water into the South Fork above the proposed Eagle Rock Dam.

The Eagle Rock dam was to be 230 feet high and have a maximum storage capacity of 3,402,428,000 cubic feet or 78,109 Acre Feet of water.

The Two Forks dam was to be 280 feet high and have a maximum storage capacity of 6,321,993,400 cubic feet or 145,133 acre feet of water.

The resolution passed in connection with this filing reads in part as follows:

Whereas, the application heretofor made by the City and County of Denver for a right of way and easement of the Two Forks Reservoir Site...
is inaccurate in many particulars, and the water lines called for do not
cover the exact lines of the construction now proposed;

"Now, Therefore be it Resolved, that the Engineering Department
and Legal Department of the Board of Water Commissioners be instructed
to proceed at once to file the necessary maps and statements, which have
already been prepared, for the purpose of acquiring the right-of-way and
easement from the United States Government for the lands proposed to be
covered by said reservoir, and,

Be It Further Resolved, that as soon as the necessary maps and
papers have been filed, and as soon as the application for said easement
and right-of-way has been approved by the United States, the Engineering
Department of the Board be instructed to commence immediately such pre-
liminary work as may be necessary in order that the Board may be advised
as to what further steps are necessary to be taken in the construction of
said reservoir, and that as soon as such preliminary work is completed, the
Board will proceed as rapidly as possible with the work necessary for the
construction of said reservoir."

City Government
1910-1919

Denver, at the beginning of this period, was operating under a
Home Rule Charter first adopted in 1904.

At the first municipal election held under the home rule charter, on
May 17, 1904, there was elected one set of merged county and city officers.

A case was almost at once taken to the Supreme Court to test the
constitutionality of merging city and county officers.
In what is known as the Johnson case a majority of the Court, 5 to 2, ruled against the constitutionality of the merger. (See Colorado Reports, Vol. 34, page 143, decided in April 1905).

Following that decision a dual set of officers for the City and County were elected at the municipal and state elections through the election of May 17, 1910.

Early in 1911, with new personnel being in the majority on the Supreme Court, the commercial bodies of the city instituted a case by which it was hoped, in the interests of economy and efficiency to get the Supreme Court to reverse itself on the constitutionality of the charter with respect to the merging of city and county offices.

This objective was realized, the vote being 5 to 2 as before but this time in favor of the consolidation. (See Colorado Reports, Vol. 50, page 505, decided on May 1, 1911)

Administration at this time was by a Mayor and a bicameral council consisting of seven Supervisors and sixteen Aldermen. (One for each Ward).

R. W. Speer was serving his second four year term as Mayor, having been re-elected at the general municipal election held in May 1908.

He did not seek another term at the election of May 17, 1912. There were three candidates for the office at that time, with Henry J. Arnold, candidate of the "Citizens" party being elected by a vote of 38,540, with Mr. Hunter running a poor second with 16,038 votes and Mr. Bailey last with a vote of 12,200.

The Arnold administration took office on June 1, 1912 and soon thereafter passed a bill making the Public Utilities Commission a Bureau of...
Board of Public Works, the ordinance resulting therefrom being the first one signed by the new Mayor.

This action was apparently taken for the purpose of making it possible to pay salaries and other expenses of the commission which had been held up by litigation in the Federal Court questioning the validity of the Charter Amendment under which the Public Utilities Commission was created.

The news that the State Supreme Court had dismissed the suit to test the validity of the Public Utility Commission was released by the Times on June 3, 1912.

This news item said that by this means, the validity of the Commission as far as the payment of money was concerned was unquestioned and permitted the payment of fees to Attorney Thomas and others for services rendered, which otherwise they would not have received had the State Supreme Court followed the ruling of the Federal Court that had previously held the Public Utilities Commission to be illegal.

Dissatisfied with the general city governmental picture, as it then was, caused a movement to be started in 1912 which resulted in the city charter being amended at a special election held on February 14, 1913 which provided among other things for the then popular form of Commission government. The vote for the change was 14,594 in favor and 10,631 against.

The municipal election of May 20, 1913 resulted in the election of James F. Markey as Auditor, Otto Thum, Commissioner of Property, Clare J. Pitchu, Commissioner of Finance, Alexander Nesbit, Commissioner...
of Safety, John B. Hunter, Commissioner of Improvements and Dr. J. M Perkins, Commissioner of Social Welfare. Mayor Arnold having been elected for a 4 year term in 1912 continued to serve in that capacity until June 1, 1916.

A news item in the News of June 1, 1916 seems worthy of repeating at this time for the purpose of clarifying the status of affairs as they concerned the members of the Public Utility Commission and their changing relationship with the City Government itself.

On June 1, 1916 the Public Utilities Commission was reduced to one member with the retirement at midnight May 31, 1916 of A. Lincoln Fellows, who left the service under the statutes creating that Commission. The remaining member, Armour C. Anderson would retire on May 31, 1918, with the Commissioner's duties becoming vested after that time in the general city government.

A brief resume' of the Public Utilities Commission, as published in the News on June 1, 1916, follows:

"The Commission was created by charter amendment in May 1910. A. C. Anderson, E. C. VanCise and A. L. Fellows were the three Commissioners elected at the time.

The charter amendment passed then authorized the Commission to purchase the plant of the Denver Union Water Company for 17 million dollars, or to construct a municipal plant by a bond issue of 8 million dollars. In the fall of 1915 the Commission entered into a contract to purchase the Antero and Lost Park Reservoir Company and the High Line Ditch which it was planned would form the nucleus of the proposed new municipal water plant.
The price to be paid for the property was $1,050,000 and was to be paid with the authorized bonds."

As earlier noted, this purchase contract brought a flood of litigation from various sources that prevented its consummation until the year 1924. In the concluding negotiations at that time, the question arose as to the liability of the City for interest on the purchase price between 1915 when the contract was entered into and 1924 when it was finally completed.

A compromise agreement was finally agreed upon which (a) allowed the Antero Company to keep the net returns from this nine year period of operation, and (b) the City purchased from the Antero Company the Lost Park Reservoir Site, paying the further sum of $151,500 for it.

With the expiration of Mr. Anderson's term of office on June 1, 1918, the Public Utilities Commission of Denver ended its short but turbulent career of about 8 years.

Disillusioned over the mediocre results obtained under the Commission form of Government, caused the advocates of good government in Denver to again seek a charter amendment at a special election held on May 9, 1916.

At that time, the so-called "Speer Amendment" was passed and R. W. Speer was elected Mayor after a lapse of 4 years by a majority of 8835 votes. Mayor Speer was sworn in on May 17, 1916 with the abandonment of the bicameral council being one of the important changes made at the time.

Mayor Speer died on May 14, 1918 and was succeeded by W. F. R. Mills, Manager of Improvements and Parks and Deputy Mayor, who served out the unexpired Speer term, making a sincere effort to carry out the plans of Mayor Speer as he had previously formulated them.
Perhaps the best account of Mayor Speer's philosophy of local government is the one printed in "Municipal Facts" for May 1918 shortly after his death.

In part it read as follows:

"Mayor Speer was the only man ever elected to the mayoralty of Denver three times, the only Mayor who ever came back to the executive chair after his retirement to private life. That return was the crowning political triumph of his life, and the most impressive tribute ever paid a city executive in America by his electorate.

At the close of eight years' occupancy of the Mayor's chair, during which he had undergone extraordinary newspaper attacks from personal enemies, Mayor Speer retired without seeking to gain office again. This was in 1912. A so-called reform movement had been built up by the constant agitation. At the time every elective office of the city and county was in the hands of the Democratic organization, but the people swept every office holder out, even to the constables. It was a complete political reversal, probably without a parallel in the country.

The reform government lasted one year, although it had been elected for four. The people changed the charter and installed commission government. This lasted three years, when the people signified unmistakably that they had had enough.

The most influential business men of the city urged Mayor Speer to become a candidate for Mayor again, and led by a desire to see certain of his constructive plans carried out, he consented to do so, provided the people
would accept him on a charter amendment of his own making.

Mayor Speer believed a highly centralized form of government more efficient than diffused responsibility. He believed in progressive ideas that yielded practical results and drew a charter amendment which embodied his ideas of what city government should be. The experience of his whole life was concentrated in this document.

"The character of the man", he often said, "is more important than the clothes he works in." 

The Speer amendment gave the mayor more power than was ever given the mayor of an American city before. The best in the old mayor form, the commission form and the manager form was selected and incorporated. The Mayor was given the appointment, without confirmation, of every city and county official, directly or indirectly, except the council of nine, the auditor and the election commission. The charter retained the initiative, referendum and recall, and the preferential system of voting as a check against an abuse of power by the mayor. The people showed their confidence in his integrity and ability by voting him this extraordinary power.

Jones Pass Tunnel, renamed August P. Gumlick Tunnel by Board of Water Commissioners on September 14, 1965.

This tunnel was originally projected by the Henrylyn Irrigation District in 1902 to divert 1200 cubic feet of water per second from the headwaters of the Williams River into Clear Creek for conveyance in that stream to irrigate 100,000 acres of land lying to the north and east of Denver.

The information that follows is included here for two principal reasons. First - Although this initial attempt to secure western slope water from the
Williams Fork River by a tunnel under Jones Pass was not successful as promoted by private interests, it later was adopted by the City and County of Denver as a PWA project and eventually became a valuable unit in the present Denver water system of transmountain water diversions. Second - The opposition sponsored by the Federal Government to stop this proposed diversion and the reasons given therefore, seems to be the first of the long series of such attempts by western slope interests to prevent such diversions and is of historical interest for that reason.

According to available records the first filing in connection with this project was made some nine years before actual construction work was started in 1916.

On Sunday, August 20, 1911, the Denver Republican ran a news item under a Greeley date line of August 19, describing the project as follows:

"Before October 15th, Engineer Mc. Ilwhee, who recently completed the Laramie-Poudre tunnel, will begin construction of an irrigating tunnel under the Continental Divide to divert waters of the Williams Fork, a tributary of the Grand River, to the 200,000 acres of the Henrylyn Irrigation District in Southeastern Weld County. The main tunnel will cost $589,000, but a smaller tunnel, 3,000 feet long with 17 miles of ditches, both on the western slope, will be necessary before the main tunnel is used and, with these, the cost of construction will reach $1,000,000. Three years are given for the completion of the project. Engineer McIllwee believes the tunnel will run through solid granite similar to that found in building the Laramie-Poudre Tunnel, with little timbering or concrete work required."
A power plant will be operated by water from the Williams Fork for generation of electricity used in boring the tunnel. The altitude of the west portal will be 9,665 feet and of the east portal, 9,600 feet.

All the water of Steelman, Bobtail and South Fork Creeks will be carried through this tunnel and in Clear Creek to a point near Riverside Cemetery, Denver, where it will be diverted from there into the Henrylyn ditches. Note: The elevation of the west and east portals of the tunnel as actually built by Denver are 10,400 and 10312.75 feet above sea level. Obviously the tunnel as actually built did not follow the plans developed and described above.

The Denver Republican in its issue of August 24, 1911, forecast trouble to come when it stated that: "The company backed by the Henrylyn Project has filed application with the Forest Service for right-of-way for an irrigation tunnel to be built to obtain water from the Fraser River and Williams Fork. Yesterday, Assistant United States Attorney Ethelbert B. Ward examined the application. The two streams are among the headwaters of the Grand River and the government fears that the 1200 feet of water the Henrylyn people want will hurt the Grand Valley Project. "If Mr. Ward finds from his investigation that taking 1200 feet of water from the two streams will interfere with the government project, he will so advise the Department of Justice in Washington and when he receives orders from it, will start proceedings in the United States Court to stop the diversion".

On September 13, 1911, the Times quoted Assistant United States Attorney Ethelbert Ward at length on the legal position the United States
would take in opposing the Henrylyn diversion. In part this news item said: "According to Mr. Ward, irrigation companies cannot divert the waters of the Grand and Fraser Rivers to the eastern slope because the Constitution of Colorado has never been ratified by Congress as the law provides. He contends that Colorado is a State but that the formality of making it such has not been gone through with as the United States Constitution provides. He will allege that on this account the claims of the owners of water are faulty.

"The government claims 1200 feet of water flowing on the western slope. This water is necessary to carry out the High Line Project which the government proposes to build through the Grand Valley. The Henrylyn Company expects to bore through Berthoud Pass and divert the water of the Williams Fork of the Grand River to the eastern slope for irrigation purposes. The government will give notice that because of the failure of Congress to ratify the constitution, all filings on the waters claimed by private parties made since 1876, the year of admission are void. Mr. Ward contends that all unappropriated water on the western slope belongs to the government."

This news item was inspired by a suit that had been filed by riparian owners in Middle Park who claimed senior priorities to western slope water.

In due time, suit was filed, as reported in the Republican of December 20, 1911:

"The government, through Assistant United States Attorney, Ethelburt Ward, has filed suit in the United States Court seeking to restrain the Henrylyn Irrigation District from crossing through the Pike and Arapahoe National Forest Reserves for the purpose of building canals and a tunnel to
divert water from tributaries of the Grand River into Clear Creek to irrigate lands east and north of Denver.

"The Henrylyn people declare that, if rights-of-way through the two reserves is denied them, their irrigation project, one of the most important ever undertaken in the State will be seriously hampered.

"They applied for a permit to cross the reserves two years ago but it was never acted upon because the government feared that the water it sought to divert from the Grand would diminish the government's own supply for the Grand Valley Project."--

"According to the complaint filed, the District decided not to wait for action to be taken on the application, but to build its tunnel and canals according to plan, permit or no permit for right-of-way.

"It obtained from the Intermountain Water Company title to 700 cubic feet per second of water in McQueary Creek and Williams Fork.

"Contract was then let, it is alleged, to J. A. McIlwee to build a tunnel 10 feet by 10 feet in cross section and 14,725.3 feet long."

(Note: the present A. P. Gumlick Tunnel is 15,571.32 feet long between portals.)

"On October 2, 1911, the complaint states, McIlwee started the construction of the canals and tunnels and pitched his construction camp on the Pike Reserve.

"Already, it is alleged, he has caused much timber to be destroyed to clear the way for construction.

"Both McIlwee and the Intermountain Water Company are, made
co-defendants in the suit with the Henrylyn District.

"The government asks that the defendants be permanently restrained from crossing the Forest Reserves with right-of-way permits and asks damages for the timber McIlwee has cut, and also asks for an order compelling him to remove all his buildings and equipment from the Pike Reserve.

The complaint further says that the wrongful and unlawful acts of the defendants tend to create open defiance of the laws of the United States in the minds of other persons and corporations contemplating the construction of irrigation projects."

Although available records are quite sketchy on this interesting dispute, we do know that in January 1912 Mr. Ward notified the Judge of the Colorado District Court at Hot Sulphur Springs that in adjudicating water rights in the Grand Valley he must be careful not to interfere with the superior rights of the Federal Government to the waters of the Grand River.

The Attorney General respectfully suggested that the Colorado District Court adjust its judgment in the Henrylyn and similar situations to the rights of the Federal Government with respect to waters needed to irrigate large tracts of arid land located in Indian reservations which had superior claims controlled by Indian tribes.

The next available item of interest in this controversy appeared in the Times of July 17, 1912, in which it was stated that District Judge Charles McCall had handed down a decision at Hot Sulphur Springs on July 16, 1912 which held that there was no law or other authority which authorized the Secretary of the Interior of the United States by proclamation or otherwise
to withdraw or reserve any of the non-appropriated waters of the public
streams of the State for any purpose.

In this decision, Judge McCall held that the waters of the public
streams of Colorado belong to the people of Colorado and are subject to
appropriation only by compliance with the laws of the State. He stated
that the only way the Federal Government could appropriate water was by
filing upon it in strict compliance with State law. He found that the Inter­
mountain Company rights dated back to 1902, whereas the federal government
had no filings with the State Engineer before 1908. That filing was for 1,200
second feet made on April 8, 1908 or six years after the Intermountain filing.
The court therefore held that the Intermountain Company claim was a valid
one and that it would not modify its judgment or decree relative to that company
as suggested by the Attorney General of the United States.

This newspaper item stated that the case would be taken by the
Attorney General to the United States Supreme Court.

A temporary injunction was soon thereafter issued by Judge Lewis
of the United States District Court, restraining the Henrylyn Irrigation
Company from taking water from the headwaters of the Grand River.

The hearing on whether that injunction should be made permanent
was begun on August 19, 1912 before Judge Pope of New Mexico who had been
called in by Judge Lewis for that purpose.

In its September 30, 1912 issue, the Times reported that testimony
was being taken by Register Ford of the United States Land Office in the
Henrylyn case. The question here being whether or not the land required for
right-of-way was mineral bearing and could be developed as such.

It was stated that the Intermountain Company and the Henrylyn District had filed mineral claims in order to get the necessary right-of-way with the government seeking to have them set aside on the ground that the claims were not taken as mineral in good faith.

On November 25, 1912, Judge Pope handed down his decision in the case, holding that the Irrigation Company, Henrylyn, had no right to construct a tunnel across a forest reserve without permission of Forestry Officials. This decision stopped work on the project with resumption thereon delayed until the promoters secured the necessary permit.

Upon receipt of the adverse decision of Judge Pope, Attorneys for the Irrigation Company announced that the case would be appealed if Judge Pope did not reverse his decision upon further hearings.

Attorney Ward said an appeal to the high court would be welcome since it would settle for all time the question of forcing irrigation companies to get permits before building water ways across government reserves.

The last news item recorded by the writer in connection with this right-of-way controversy was printed in the Republican on June 22, 1913. It carried a Grand Junction date line of June 21 and stated in part:

"The diversion of water from the western slope to the watershed of eastern Colorado for the irrigation of lands near Denver may become an international dispute.

"For many years there has been a controversy between the water users on the western slope and the Henrylyn Project near Denver over the headwaters of the Grand River. The Henrylyn people propose to construct a
tunnel through the Rocky Mountains for the transfer of the water. They were blocked in this until last February - 1913 - when Interior Secretary Fisher granted them right-of-way across public land for their irrigation canal upon condition that they use no water during the low water period, if there was not enough for projects on the western slope.

Attorney Charles Tew has gone to Washington in an effort to secure Secretary Lane's consent to an unconditional right of way across federal land.

"The State of California has already filed a strong and vigorous protest against the diversion of water from the western slope to the eastern slope in this state."

Apparently the Henrylyn people did not succeed in their efforts to get an acceptable permit and the project was eventually abandoned.

In the construction report on the Vasquez Tunnel and lining of the Jones Pass Tunnel prepared by Tipton and Kalmbach, Inc. in December 1960, the following historical comment is made:

"In 1911 construction of a tunnel under the Continental Divide was started at the location of the Jones Pass Tunnel by the Henrylyn Irrigation District, but had been abandoned due to right of way problems after excavation of about 500 feet of tunnel from the East Portal."

A milestone in Colorado water history was reached in July 1914 when the Times announced on the 25th of that month that:

"The first water brought from the Western Slope in Colorado for use in irrigation on the eastern slope of the range has been turned into the Laramie-Poudre Tunnel west of Fort Collins, which was constructed at a cost of more

113. 764
than one million dollars to bring water over the range for use on the lands of the Greeley-Poudre Irrigation District."

Board of Water Commissioners

The newly elected Water Commissioners met in the Mayor's office at the City Hall for the first time at 3:00 P. M., August 12, 1918.

Present were Commissioners John C. Skinner, Benjamin A. Sweet, Frank L. Woodward, Charles L. Reynolds and Finlay L. McFarland, with Mayor W. F. R. Mills and James A. Marsh, City Attorney, also there.

The first meeting was an organizational one with Mr. McFarland being elected President, Charles H. Reynolds, Vice President and B. A. Sweet chosen as temporary Secretary.

At this time the City Attorney was directed to check up and examine the title to all properties included in the Rate Case preparatory to taking them over by the City at the time the Bonds were to be delivered.

A notice to Water Company employees was also adopted stating that the policy of the Board, when it assumed control of the water plant and system, would be to retain the present employees of the Water Company, so long as their services were required and they rendered efficient service in the positions they occupied.

The Board approached its task of managing and operating the Denver water utility with cautious deliberation. No less than eleven other formal meetings were held prior to November first, during which the many details of closing out the purchase of the water plant were solved in friendly cooperation.
with the officials of the Denver Union Water Company.

Among these was the necessity to employ an assistant Chief Engineer. On August 19th the President reported the name of Burton Lowther of Kansas City as being available, since the water company had already decided to employ him in case the City failed to purchase the plant.

Mr. D. A. Thomas, Chief Engineer, was thereupon requested to invite Mr. Lowther to visit Denver for an interview.

The minutes of the August 29, 1918 Board meeting note that Mr. Woodward was excused from the meeting to be held on September 3, 1918, so that he might confer with the Adjutant General in Washington concerning Mr. Lowther, who was about to be called for Army service.

At this same meeting a report was received from the Committee on By-Laws, with a draft of the same, which was adopted.

The necessary preliminary legal steps with respect to the issuance of $13,750,000 of 4-1/2 percent General Obligation Bonds to be used in paying for the Denver water system was taken at the meeting of September 3, 1918.

Action was taken to lease the quarters then occupied by the water company in the Shirley building for office use at the meeting of September 10, 1918 at which time a statement was also presented for services rendered by C. Van Sant and Houghton which had not been paid by the extinct Public Utilities Commission.

Mr. MacFarland, President of the Board, was selected at this meeting to take charge of the Municipal Plant as General Manager, on a temporary basis without increase in salary, when the city assumed control
on November 1, 1918.

At the meeting of October 15, 1918 an agreement was entered into with the Gates Rubber Company for an enlargement of service to the plant of that company.

An agreement dated October 21, 1918 between the Denver Union Water Company and the Board concerning the method of arriving at the vexatious problem of appraising the value of the tools, implements, and personal property in actual use in the operation of the plant was entered into and approved at the meeting of October 24, 1918. At this same meeting, Mr. MacFarland and Mr. Reynolds reported the sad news that Mr. D. G. Thomas, Chief Engineer, intended to sever his connection with the water company on November 1, 1918.

Mr. Kassler, President of the water company, presented a request that the Board of Water Commissioners pay one half of the salary of Mr. Lowther during the time he was getting acquainted with the system. This request was approved and placed in the hands of the Executive Committee with power to act.

At the meeting of October 29, 1918 the question of paying a portion of the cost incurred in connection with the guarding of Federal, State and Water Company property was discussed and appropriate action taken. Likewise, the final amount of the payment to be made for the property, including the personal property turned over was formalized by agreement at this time, with the maximum amount to be paid set at not more than $14,970,000 or the amount of bonds authorized for the purpose.
At the final meeting of October 31, 1918, or just before the formal transfer was to be made, the Board passed a resolution approving the various instruments of conveyance that had been prepared in connection with the agreement of February 21, 1916 and subsequent actions, thus clearing the way legally for the actual transfer on the following day.

A special meeting was held by the Board of Water Commissioners on November 1, 1918 at which time several important matters were considered. Among these was a conditional acceptance of a five year lease on a portion of the building then occupied by the water company for office quarters; abolishing a position held by a Mr. Scouland, and confirmation of the decision that no permanent appointment to the office of General Manager would be made for the present.

At this meeting the Mayor suggested that an effort be made to exchange City Bonds for the $2,910,000 of outstanding South Platte Canal and Reservoir. The suggestion was approved by the Board and later consummated with a saving in interest charges resulting therefrom. The South Broadway extension to the Gates Rubber Company was authorized and the Chief Engineer, Mr. Lowther instructed to proceed at once on it.

Eight meetings of the Board of Water Commissioners, including the one on November 1, were held during the balance of the year 1918, with many interesting and informative subjects being taken up and acted upon, all to be found recorded in the Board minutes on file in the Secretary's office.

Among the more important of these items will be found an exchange of letters between President Finlay L. MacFarland of the Board and President E. S. Kassler of the Denver Union Water Company regarding the period of
negotiations extending from the election of August 6 to November 1, 1918.

The letters follow:

First, on November 9, Mr. MacFarland wrote Mr. Kassler as follows: "Dear Mr. Kassler: The final closing of the negotiations between the City of Denver, through its Board of Water Commissioners, and the Denver Union Water Company for the acquisition of the property and rights formerly owned by the Company and their conversion into a municipal water plant, is a matter of congratulations to the citizens of Denver and marks a decided step forward in our history full of high promise for the future welfare of the city.

The Board of Water Commissioners takes this, its first opportunity, to express its warm appreciation of the fairness and public spirit displayed at every point of the negotiations by the company and its officers. This commendable attitude was especially marked in connection with the necessary adjustments growing out of the inventory and appraisement of the personal property where obviously many situations of difference and delay might otherwise have arisen.

"Furthermore, the many details involved in the preparations for the closing up and transfer of so large a business as that conducted by the Water company had been foreseen and thoroughly attended to so that the final steps were accomplished with such smoothness and promptness as to elicit unstinted praise and gratification.

"We take pleasure, therefore, in herewith making a public record of our share in the acknowledgments that are so abundantly due in this connection and to congratulate the company and its officers and employees upon
the faithful performance not only of the obligations arising of its contract
of sale entered into with the city, but a great public service capably rendered
throughout a long period of years.

"It is but simple justice also to record that our own duties as members
of the Board of Water Commissioners will have been well fulfilled if we are
able to turn over to our successors a plant and business in as good condition
and as efficiently managed as the one we have received.

"The Board of Water Commissioners desire to express also our full
appreciation of the courtesies you and your associates extended during the
interim between the date of our election and the time the water system was
delivered to us."

"Second, the reply to this letter by President Kassler of the Water
Company was dated November 14, 1918 and read as follows:

"It gives me great pleasure to acknowledge receipt of your letter of
November 9th, expressing your appreciation of the spirit of cooperation of
the water company during the preliminary period covering the transfer of the
water plant to the City and County of Denver.

"It is indeed remarkable when a transfer of property valued at 14
million dollars, which has been a constant source of controversy and bitter
feeling for over twenty years, can be finally consumated without a jar or hitch
of any kind. That this was possible is due, I believe, as much to the hearty
cooperation of your self and your associates as to the efforts of the water company."
"From the time the City, at the election of August 6th, voted to purchase the plant, it has been the desire of the company and its officials to assist in every way to make the taking over of the management of the plant as easy as possible and to give the greatest possible information to the Commissioners concerning same. That this effort on the part of the Company has been recognized by you and your associates makes the time and effort spent by the company officials seem well worth while, and we truly appreciate your recognition of same.

"We also greatly appreciate your expression covering the condition of the plant and management when same was turned over to you, and we do not doubt your desire and ability to maintain and improve the service heretofore rendered.

"For myself and on behalf of the officials of the Water Company, I desire to thank you and the Board of Water Commissioners for your kind expressions and to wish you the greatest success in your operation of the plant in the future."

Thus the long standing controversy ended on a happy note with the Water company succeeding in getting a settlement on the appraised value of its plant, a position consistantly maintained by it over the years, and the City realizing its long cherished ambition to have its water utility brought under public management and control.

At the Board meeting of November 15th, a special committee was appointed to investigate the Farmers and Gardeners Ditch and the connection therewith of the Globe Smelter and the gardeners taking water from it.
At this meeting also a report was received from the City Auditor to the effect that the total amount of the VanSant Houghton bill, including interest, was $99,486.00 up to November 15, 1918. This bill was referred to the executive committee with instructions to settle the matter and pay the bill.

On November 30, 1918 the Board met in special session for the purpose of considering the exchange of Bonds for the VanSant-Houghton bills with the result that a resolution was adopted reading as follows:

"Therefore be it resolved by the Board of Water Commissioners that Bonds to the amount of $99,669.74, authorized by Section 264 A of the Charter, be issued and delivered to the Van-Sant-Houghton Company, in full payment and settlement of said account, to be used at par only, and that Finlay L. MacFarland, President of the Board of Water Commissioners, be and he is hereby authorized to sign and endorse the approval of the Board of Water Commissioners on said Bonds as the successors of the Public Utilities Commission of the City and County of Denver."

Note: The bond issue referred to was that much litigated and controversial one of $8,000,000 authorized at the election of September 6, 1910.

The final payment of the VanSant-Houghton account was made by the issuance of $1000 bonds, 1-$500 bond, 1-$100 bond of the above bond issue with a warrant for $69.74 to complete the total amount due.

At the Board meeting of December 3, 1918, the Mayor called attention to the pending suit to adjudicate water rights, suggesting that the City Attorney be asked for advice and counsel in the matter. At this meeting also the
President called attention to the fact that the Board had not yet adopted any rules and regulations relative to the use of water and rates therefor, whereupon a motion was passed adopting the Rules and Regulations of the Denver Union Water Company for use until such time as the Board may desire to change them.

Mr. J. E. Rhodes appeared before the Board on December 17, 1918 with maps and literature, urging the purchase by the City, of the Denver Power and Irrigation Company site at Eagle Rock for the storing of flood waters and generating electricity. No action on the proposal as submitted was taken by the Board at the time.

The three transition years, 1919, 1920 and 1921 were unusually frustrating ones for the newly created Board of Water Commissioners.

The underlying causes were many, notably among them being, first—
a natural reluctance upon the part of the inexperienced Commissioners to face the many problems confronting them with other than a cautious approach particularly since their Chief Engineer, while competent, was a newcomer to Denver and not yet thoroughly familiar with all the details of plant;
second, the poor support given them by the established business interests of the city, the representatives of which had largely been against public ownership at all, and third, the political and other pressures put upon them by individuals and special groups who had supported municipal ownership for favors they thought they should have by reason of that fact regardless of whether or not their demands contributed to the welfare of the system as a whole.
Over and above these more or less intangible obstacles, there was the hard cold practical fact, that due to poor advance planning, the Board found itself almost completely out of capital funds with which to finance badly needed additions and betterments to plant, which had been postponed by the previous owners many at the instance of the Public Utilities Commission during the option period that proceeded the 1918 change in management.

Although the Charter amendment of 1918 established the Denver Water Department as an independent, non-political unit of the municipal government, with its Board having complete authority in all matters pertaining to its operation, Mayor Barley and the City Council elected in May of 1919, refused to accept that fact and attempted, without success, to dictate and determine the program of improvements in a series of ordinances passed in 1919, demanding main extensions and the setting of fire hydrants thereon at points throughout the city beyond the limits of the existing distribution system.

This embarrassing situation was brought to the attention of the Board in a formal manner at its meeting of February 17, 1920 at which time Resolution No. 22 of the Series of 1920 as passed by the City Council, was presented to the Board for consideration.

The Resolution read as follows: "WHEREAS, the Council of the City and County of Denver has passed several ordinances providing for the extension and maintenance of water mains and locating fire hydrants thereon in the City and County of Denver; and
"WHEREAS, up to the present time, the said Board of Water Commissioners have not complied with the provisions of said ordinances and have given the reason therefor that it has no funds; and

"WHEREAS, upon investigation we find that the income for the past twelve months amounts to $1,644,575.11; operating and maintenance expenses $530,668.55; interest on bonds, $647,967.59, making a total expense of $1,178,636.14, which leaves a surplus of $464,939.27 to make improvements and extensions.

"NOW, THEREFORE, Be it Resolved by the Council of the City and County of Denver: That the Board of Water Commissioners of the City and County of Denver be, and is hereby requested to report to the Council stating the reason why said ordinances have not been complied with."

Adopted by the Council and signed by its President, this 9th day of February 1920. Louis F. Bartels, President. Signed and approved by me this 13th day of February 1920. D. C. Bailey, Mayor.

The Board, in a financial statement published for the period November 1, 1918 to December 31, 1921, showed that, out of gross income of $5,415,098.36 received during the period, it had expended $1,185,351.59 on construction with all other expenses, including interest on outstanding bonds amounting to $4,253,420.28, leaving a deficit of $23,673.51 from operations on December 31, 1921.

Major improvements made with this construction money included:

1. Replacement of the old wood stave Conduit No. 1 on West 29th Avenue leading to the Ashland Avenue Reservoir with 36 inch cast iron pipe at a cost of $142,003.
2. A 24-inch cast iron pipe line extension to the Stockyards and vicinity to provide fire protection and prevent a water famine at Denver's largest industry, costing $88,876.97.

3. Extended a large main to take care of the increased demand at Fitzsimmons General Hospital, at a cost of $31,052.43.

4. Laid a 12-inch cast iron main to the plant of the Gates Rubber Company. Cost $15,180.32.

5. Extended the distribution system into Valverde to supply 500 homes whose surface wells had been condemned as unsanitary at a cost of $31,702.44.

6. Extended distribution mains north of West 46th Avenue and east of Federal Boulevard to take care of 100 North side families whose wells had been condemned at a cost of $6,745.21.

7. Built a new screen house at Marston Lake to reduce the number of micro organisms in unfiltered water at a cost of $23,626.

8. Laid 8-inch and 12-inch mains on West 38th Avenue in the vicinity of Fox Street to supply fire protection to the oil storage district in that locality, as well as supply domestic water there at a cost of $14,561.21.

9. Laid a 54-inch reinforced concrete conduit No. 10, from the filter beds at Kassler to Massey Hill, a distance of five and one half miles, at a cost of $664,672.37.

10. Purchased Harriman Lake near Morrison, with valuable water rights for the sum of $30,000.
11. Repairs, replacements and protective measures necessitated by the damage caused by the 1921 floods, estimated to cost, when completed at least $200,000.

Note: The total of the first 10 of these items was $1,048,420.21 leaving but $136,931.38 of the reported construction cost to be applied toward the flood damage costs mentioned in item 11.