

Provo, Utah, July 20th, 1916.

T. F. Wentz,

Water Commissioner,

Provo, Utah.

Dear Sir:--

Since June 29th of this year we have been short of water to provide for our needs. During all of this time we have been asking you to provide us with the water, and have not yet been able to get enough to provide for the ordinary requirements, to say nothing of catching up with the irrigation on lands which have been deprived of their supply. During all this time there has been about 90 second feet constantly going to the Provo Reservoir Company, and you have never at any time decreased this stream to them although Provo City, having the oldest right on the river has been short.

We are now suffering for water when there is still more than sufficient water to supply the needs of all primary rights and we have called for more water, and under the stipulation it is your duty to deliver it to us, either from other users under decreed rights, if any of them have a surplus, or from the Provo Reservoir Company. This we shall expect you to do without delay.

Attached hereto is a schedule of water in the Provo City canals which will give you an idea of the insufficient quantities which we have been receiving.

Should you continue as a court commissioner to deny Provo City the water ~~to~~ which it is entitled to have, and which is necessary to preserve and keep in growing condition the crops, and operate the mills and for municipal uses to which the inhabitants of this city are entitled, we cannot do otherwise

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than report your arbitrary action and refusal to the court  
under whose appointment you are acting as water commissioner.

Very respectfully

H. W. Goddard  
Commissioner of Water and  
Water supply.

Thomas L. Thompson  
Chief Deputy Water Master.

E. C. Brown  
City Engineer.

Measurements of water in City Canals.

June 30th, 1916	about 2:45 p.m.	80.70	sec	ft
July 1st	" " 12, noon	82.86	"	"
July 5th	" " 5:15 a. m.	80.53	"	"
July 6th	" " Wentz Measurement	93.48	"	"
July 7th	" " " "	98.77	"	"
July 8th	" " 6 a.m.	75.28	"	"
July 9th	" " 10:30 a.m.	45.31	"	"
July 9th	" " 12, noon,	44.77	"	"
July 10th	" " 6:15 a. m.	82.35	"	"
July 10th	" " 3:00 p. m.	95.28	"	"
July 11th	" " 6:30 a. m.	89.90	"	"
July 12th	" " 2:45 p.m	97.71	"	"
July 13th	" " 12, noon,	84.68	"	"
July 14th	" " 9:00 a.m	65.95	"	"
July 14th	" " 10:00 a.m	87.05	"	"
July 15th	" " 2:30 p.m	82.80	"	"
July 15th	" " 10:50 " "	70.05	"	"
July 16th	" " 9:30 a.m	65.68	"	"
July 17th	" " 6:30 a.m	97.28	"	"
July 17th	" " 8:35 p.m (falling)	65.10	"	"
July 18th	" " 5:20 a.m	52.44	"	"
July 18th	" " 7:00 a.m	75.61	"	"
July 18th	" " 2:30 p.m	84.90	"	"
July 19th	" " 6:15 a. m.	82.55	"	"
July 19th	" " 9:30 p.m	68.40	"	"
July 20th	" " 8:30 a.m.	62.20	"	"
July 20th	" " 9:00 a.m	63.80	"	"

Provo, Utah, July 22, 1916.

Provo City;

H. J. W. Goddard; Commissioner Of Water and Water Supply.

T. C. Thompson, Chief Deputy Water Master.

G. C. Swan, City Engineer.

Provo City, Utah.

Gentlemen;

Your favor of the 20th inst. received this a.m., in reply you are advise ,that, the Commissioner intends and desires to supply to Provo City amounts of water ~~is~~ fully adequat and sufficient for all its necessities.

The Commissioner is fully aware of the amounts diverted by other users, and takes the view that Provo City's place in the distribution of Provo River is confined to the amount received for its own use;- therefore the question for settlement is " What amount is necessary for the uses of Provo City?"

I have been furnished a copy of the list of irrigated lands under the Provo City system as submitted in evidence in the trial of this cause, and which was agreed upon by Provo City and the Plaintiff.

I now desire to know from Provo City the respective amounts necessary for each item as listed below:

Total area outside platted, less farm lands irrigated from Factory Race is 1960.6 acres, necessary for proper irrigation \_\_\_\_\_ second feet.

Total area in platted portion of city, less amount irrigated from Factory Race 670.00 acres, necessary for proper irrigation \_\_\_\_\_ second feet.

Amount in waterworks system by an actual measurement \_\_\_\_\_ second feet.

The Commissioner has been allowing a continous flow of 19.3 second feet, and this quantity will not be reduced below <sup>17.5</sup> ~~17.00~~ second feet, <sup>for the 12 hours a day</sup> unless you are advised later for the interests along the Factory Race.

You will please furnish me with the information desired, and if the amounts you designate are within reasonable limits the commissioner

2.

Provo City 7-22-16

will make every effort to deliver to you the amounts submitted.

I am mailing this letter in duplicate, please answer in duplicate.

Resp.

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Commissioner.

JOSEPH L. RAWLINS    WILLIAM W. RAY    ATHOL RAWLINS

**RAWLINS, RAY & RAWLINS**

ATTORNEYS AND COUNSELORS AT LAW

SUITE 1020 BOSTON BLDG.

SALT LAKE CITY, UTAH

September 5, 1916.

Frank Wentz, Esq.,  
Court Commissioner  
Provo Reservoir Co. vs. Provo City, et al.  
Provo, Utah.

Dear Sir:

Provo Bench Canal & Irrigation Company hereby makes demand upon you to turn to it a quantity of water in excess of that now being received by it sufficient to properly irrigate the lands lying under its canal. Mr. John Stratton, President of the Company, will be very glad to go over the farms lying under the canal with you at your convenience, for the purpose of showing you that the quantity now being distributed to the company is inadequate. At the present time Provo Reservoir Company is receiving about 15 second feet of water and Provo City is continuing to run large quantities of water into the lake during the night. While this continues, the users under the Provo Bench are suffering.

I am sure this statement will be borne out by an investigation by you. Unless some relief can be obtained, I am instructed by my clients to present the matter to the court.

Respectfully,

*William W. Ray*  
Atty for Provo Bench Canal  
Reservoir Co.

WWR:PG.

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Provo, Utah, Sept.30,1916.

Provo PRESSED Brick Company.

Provo,Utah.

Gentlemen:

Your verbal protest of this date regarding the amount of water turned to the Provo Reservoir Company at this time and your application for more water for power purposes,has been duly considered and you are advised as follows:-

The application of the Provo PRESSED Brick Company number 1221 of date Feb.28,1907,for 100 second feet of water was for power purposes.

And the application of the Provo Reservoir Company number 1828 of date April 16,1908,for 150 second feet of water was for irrigation.

The application of the Provo Reservoir Company,although later in point of time to your application,was for a higher use-irrigation, and under section 1288X27 must be satisfied before your application can participate.

Should the purpose of use of application number 1828 be changed from the higher use to the generating of power,as provided in section 1288X24, then your application number 1221 must be satisfied before number 1828 can participate. At the present time the uses of the water diverted by the Provo Reservoir Company are exclusively for irrigation,and are due to receive the consideration of this office, \*\*\*\* while priority of appropriation shall give the better rights as between those using water for the same purpose, the use for domestic purposes shall have preference over use for all other purposes,and use for agricultural purposes shall have preference over use for any other purpose except domestic use.\*\*\*\*

To my knowledge during the years 1913,1914,1915 and 1916 and during the years 1909 to 1913 as far as I know,the Provo Reservoir Company have been using water without regard to your application number 1221,and have not been restrained in this use.. Section

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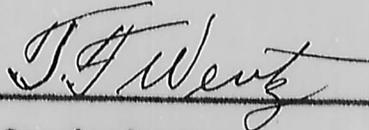
1288x23 may also have some bearing on this matter, the writer cites these sections that are questions for determination and that are given consideration in this matter.

Under present conditions, I can see of no way wherein the Commissioner can make a distribution that will afford you any relief.

With the foregoing in view your protest for a reduction of volume of flow to the Provo Reservoir Company is refused, and your application for more water is denied.

You are further advised, that, you may appeal to the Court for an order in this matter. I have desired to satisfy all parties in the distribution of Provo River pending the trial of this case, but if you now ask for an order from the Court, I will be pleased to assist you by making a complete measurement of Provo River and give you all the information that we have that will enable you to present the conditions and facts to the Court properly.

Resp.



Commissioner.

Copy delivered to Provo Pressed Brick Company.

Copy to Provo Reservoir Company.

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Harvey Cluff  
Attorney and Counsellor at Law  
Suite 1, Holbrook Block  
Provo, Utah

August 4th, 1916.

Mr. Frank Wentz.  
Water Commissioner,  
City.

Dear Sir,-

In behalf of the Provo Pressed Brick Co. I am requested to protest to you that the said Company is not receiving the necessary water with which to operate its plant, and no where near the amount to which the Company claims it is entitled to at this season of the year or the present stage of the river, and unless this matter is adjusted AT ONCE and the amount of water to which the said Company is entitled for power purposes if furnished, the said Company will hold the responsible person liable in damages.

I trust you will see to this matter at once and arrange to have more water pass the wheels of the Brick Company.

A copy of this letter will be mailed to the Hon. C.W.Morse , Judge.

Yours truly,

Harvey Cluff

Provo, Utah, Aug. 6, 1916.

Harvey Cluff, Attorney Provo Pressed Brick Company.

Provo, Utah.

Dear Sir;

Your letter of the 4th inst. received, and in reply you are advised to acquaint yourselves with the stipulation and Court Order upon which the distribution of Provo River is made.

Resp.

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Court Commissioner.

IN THE FOURTH JUDICIAL DISTRICT COURT. IN AND FOR UTAH COUNTY. STATE OF UTAH.

Provo Reservoir Co. a corporation.

vs

Request for order.

Provo City et al. defendants.

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To the Hon. C.W.Morse, Judge presiding in the above entitled action.

Comes now the Provo Pressed Brick Co. a Corporation, one of the defendants in the above entitled action, and hereby requests your Honor, to make a temporary order ,pending the further hearing of the case, directing the Commissioner, Mr. Frank Wentz to turn sufficient water from the above named plaintiff, so that this defendant can receive the full amount it is entitled to by reason of its appropriation, and this request is based on the letter from said Frank Wentz, which is hereto attached, and also on the following affidavit.

Attorney for Provo Pressed Brick Co.

State of Utah.

County of Utah. SS.

Thomas Boardman being first duly sworn on oath deposes and says, that he is the president of the Provo Pressed Brick Co. a Corporation, one of the defendants in the above entitled action; That on the 28th day of Feb. 1917, the said Brick Co. made application No. 1221, to appropriate 100 second feet of the waters of Provo River for power purposes, which said application was duly approved by the State Engineer, and the said appropriation was duly completed and the said State Engineer thereafter duly issued to said Company the patent for said appropriation of water; That said application and appropriation was made before any appropriation of the waters ~~by the said~~ of said River by the said plaintiff, and is therefore entitled to prior right and consideration over the said plaintiff; that the said Frank Wentz is the duly appointed and acting Commissioner of the said Court to control and distribute the waters of the said Provo River to and among those entitled to the same as their rights and interests may appear, and on the 30th day of Sept. and on diverse and sundry times prior thereto, affiant, for and in behalf of the said Provo Pressed Brick Co. demanded from the said Frank Wentz more water, and protested against his turning large quantities of water to the said plaintiff, when the said Provo Pressed Brick Co. was not receiving and could not get from Provo River or any of its tributaries, the amount of water to which it was entitled because of the fact that the said Frank Wentz was unlawfully and against the rights of said Brick Co and to its great ~~and~~ damage, turning large quantities of water to the said plaintiff

and the said Brick Co. has been without sufficient water with which to properly operate its plant.

That on the said 30th day of Sept. 1916, there was 374 second feet of water in Provo River at or near the mouth of Provo Canyon, and said Frank Wentz was on said date turning to the said plaintiff 85 second feet, and the said Brick Co, was not getting anything like the amount to which it was entitled under its appropriation, and upon making protest and demand to the said Frank Wents, to turn more water to the said Brick Co. and take same from the said plaintiff which was receiving water that belonged to the said Brick Co., the said Frank Wentz refused absolutely to comply with said request and demand, and furnished this affiant with the letter which is hereto attached and made part of this request and affidavit. That this affiant believes that the said Frank Wentz as such Commissioner as aforesaid has wrongfully assumed the province of the Court and wrongfully and unlawfully interperated Section 1268X27 of the Compiled Laws of Utah for 1907 and is construing said law against the said Brick Co. and in favor of the said Plaintiff, and all of which will appear from his said letter.

Wherefore affiant prays for the order above asked for in behalf of the Provo Pressed Brock Co.

Thomas Barton

Subscribed and sworn to before me this 4th day of October 1916.

Harvey Coffey  
Notary Public.

meat

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