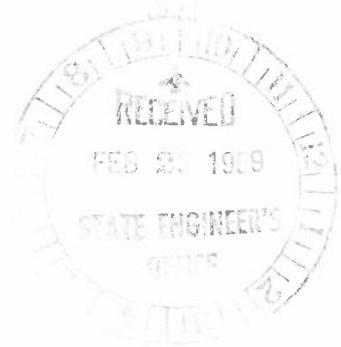


Notes: (72)
D.C. 11.
2-21-59

February 20, 1959



Mr. Wayne D. Criddle
Utah State Engineer
403 State Capitol Bldg.
Salt Lake City, Utah

Dear Sir:

Reference is made to the meeting of the users of water from the Provo River System held in the County Commissioners chambers in the Utah County Courthouse in Provo, Utah, on February 17, 1959. As a result of such meeting we feel compelled to, and do hereby protest and object to your acting on the recommendations resulting from that meeting with respect to the appointment of the commissioners, the duties which they shall perform, or the compensation which they shall receive, for the reasons that such consultation and recommendations resulting therefrom would not meet the requirements of Section 73-5-1, Utah Code Annotated, 1953. It is our position that such meeting did not meet the requirements of the foregoing Section, and that any recommendations resulting therefrom are void for the following reasons:

1. Insufficiency of the notice of the meeting as required by Section 73-5-1, Utah Code Annotated, 1953. In this respect the "group" present, passed a motion to the effect that each water user present was entitled to one vote on the matters to be considered. The term "water users" was construed to mean any person using water from the Provo River, under his own right, or any stockholder of a mutual irrigation or water corporation actually using water from the Provo River, distributed to him by such Corporation. No notice was given to the stockholders of the Provo River Water Users Association, or of any other mutual stock corporations using water from the river system. The effect of the foregoing is that the "group" present determined that a class other than those who received notice were entitled to vote.

2. The form of the consultation was not determined by the State Engineer as required by Section 73-5-1, Utah Code Annotated, 1953. We are of the opinion that the statute

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places upon the State Engineer the burden of determining the form of such consultation and the basis for voting or selecting the commissioner, which basis shall best suit the local conditions with full expression of the majority opinion being provided for. The purpose of the foregoing is to prevent a "controlled group", such as attended this meeting, from determining the basis for voting which would best suit their interests, and would not give full expression of the majority opinion. The "group" present made their own determination of the form of the consultation and the basis for voting. The "group" present adopted the basis for voting stated in the above paragraph (1), irrespective of the quantity of water to which he was entitled, and received, or whether his portion of the budget to be paid was the minimum of \$1.00, or \$2,645.21.

Under the interpretation adopted by the "group" present as we understand it, the Provo River Water Users Association, which is assessed 23.1 percent of the entire budget, or the Provo Reservoir Water Users Company, which is assessed 9.17 percent of the entire budget, each was not entitled to vote, but any stockholder thereof, or any stockholder of any of the mutual irrigation corporations who happened to be present, were entitled to one vote each.

We recognize that the terms "majority of the water users" as used in Section 73-5-1, Utah Code Annotated, 1953, is ambiguous and we are of the opinion that it is subject to any one of the three following interpretations.

(a) A majority of the users of water, whether they be persons, corporations or any other legal entity, who appear on the assessment rolls of the State Engineer with each entitled to one vote.

(b) A majority of such users defined in paragraph (a) above, with each entitled to a weighted vote based upon the proportion of the water which each received, or based upon the proportion of the total budget in cash assessed against such user.

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(c) A majority of the users of water whether they be users under individual decreed rights, or as individuals who use water as stockholders in the mutual irrigation corporations which divert and distribute the waters of the Provo River System.

We recognize that the statute is silent with respect to the form of such consultation, and the basis for voting and selection of the commissioner and knew that the form and basis could not be determined at such meeting. We therefore strongly urged the chairman to call for three separate ballots in line with each of the foregoing interpretations, and submit the results of each ballot to you for your interpretation and determination. The proposal so recommended was voted down by the "group" present, and as a result the consultation was a complete failure.

3. The consultation or meeting, was one of the most unorganized and irregular meetings we have ever attended. No roll call was taken to ascertain whether the persons voting were water users under any one of the three interpretations suggested above. We demanded a poll for each voter to declare himself as to whether he was a water user under any interpretation, and how he cast his vote. Our demand for a poll was denied. There is nothing to show whether those voting were assessed users of water, individually or acting in representative capacities, or as stockholders in any of the irrigation corporations, or merely someone from off the street. The meeting did not in any manner conform to the requirements of the consultations provided by Section 73-5-1, Utah Code Annotated, 1953, and in our opinion any appointment or assessment made as a result of the recommendations of the "group" attending such meeting would be void and unenforceable.

We realize that you may have some hesitancy to intervene in this matter. However, since the statute provides that the form of such consultation shall be

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determined by you, we believe it is proper to make our position known to you. In view of the inadequacies and irregularities of the foregoing meeting, we suggest that the present commissioner be retained and appointed for an additional year until the form of the consultation is determined by you, and until a meeting is called and held in accordance with Section 73-5-1, Utah Code Annotated, 1953. In any event, it is our desire to meet with you and the executive committee of the water users as soon as possible and before any action is taken by you on the recommendations resulting from such meeting.

PROVO RIVER WATER USERS ASSOCIATION

BY Fisher Harris
Fisher Harris

Joseph Novak
Joseph Novak

PROVO RESERVOIR WATER USERS COMPANY

BY Fisher Harris
Fisher Harris

Joseph Novak
Joseph Novak

