

COMPTROLLER GENERAL OF THE UNITED STATES

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The Honorable,

The Secretary of Agriculture.

Sir:

Your letter of November 18, 1938, is as follows:

"This Department is encountering difficulties in obtaining water for its use at the U. S. Regional Salinity Laboratory at Riverside, California, because of the existence of the following circumstances and conditions:

"On May 31, 1938, the Department of Agriculture purchased approximately 9.5 acres of land from Frank A. Miller, Inc., located in the City of Riverside, California, for use by the U. S. Regional Salinity Laboratory, established under funds allotted by the Secretary of Agriculture on December 23, 1937, from Bankhead-Jones Research Funds appropriated by the Agricultural Appropriation Act of 1938.

"There was a water right attached to this land, as evidenced by seventeen shares of stock in the Riverside Water Company, these shares to be transferred to the United States of America.

"The By-Laws of the Riverside Water Company require under Section (c) of Article X that:

" * * * The party or parties to whom stock is issued shall be required to sign the By-Laws of the company and be bound thereby * * *".

and under Section 8 of Article IV:

"All water or water rights belonging to this corporation shall be allotted to persons and corporations who are the owners or holders of shares of the capital stock of this corporation and to no other persons or corporations * * *".

"Section 7(a) of Article IV of said By-Laws provides:

"The Board of Directors of this corporation shall have the power to levy and collect assessments upon the issued and outstanding shares of the capital stock of the company for the purpose of paying the debts of the company, and all costs and expenses at the time incurred, or estimated to be incurred by the company; or in lieu of said assessments said Board may, for said purposes, fix from time to time, water rates or charges for water delivered, or to be delivered to its stockholders; or, may in its discretion levy said assessments for the purposes of paying a portion of said debts and expenses, and fix water rates or charges for the purpose of paying the balance of said debts and expenses. Said assessments and such water rates or charges as may be fixed as hereinabove provided, shall not be greater in amount than that required to pay the debts and expenses of the company, and without profit to the company. It shall be in the discretion of the Board of Directors to withhold the water from any person failing to pay any assessment after the same has become delinquent according to law, until said assessment is paid."

"On August 16, 1938, Dr. O. C. Magistad, Director of the Laboratory, advised that the Riverside Water Company was satisfied with photostatic copies of deeds and certificates, and requested that he be given authority to subscribe to the By-Laws of the company, receive and sign a receipt for the certificate of stock, and be authorized to attend and represent the United States at stockholders' meetings, when, in his judgment, the interest of the Government warranted such attendance."

"The Solicitor of the Department of Agriculture examined the By-Laws of the company and, after consideration of the provisions of Section 7(a) of Article IV, entertained doubt as to whether the Department is permitted under authority of law to subscribe to the By-Laws and thus bind the Government to pay past, current, or future indeterminate debts of the Riverside Water Company."

"On October 18, 1938, Dr. Magistad was requested to visit the Riverside Water Company, advise them of the Solicitor's opinion, and endeavor to have the Board of Directors of the company waive the requirements in the first part of Section 7(a) of Article IV. Dr. Magistad replied on October 26 that Mr. F. Cuttle, president of the Riverside Water Company, telephoned him on October 25 stating that the Board of Directors

had met that afternoon and there was a likelihood the representative of the Government would be permitted to sign the By-Laws and accept stock certificates, eliminating the objectionable paragraph regarding assessments. However, prior to doing this, the company required assurance from some responsible authority that the Government will pay the assessment against the stock and also will pay water bills quarterly or oftener. The Riverside Water Company would expect the Government to pay assessments as levied against the stock and the failure to pay such assessments would mean forfeiture of stock.

"On October 31, 1938, a letter was sent to the Riverside Water Company, signed by the Chief of the Bureau of Plant Industry of this Department, in which it was stated:

"The Bureau of Plant Industry expects to pay all bills rendered by the Riverside Water Company for water used by it at the U. S. Regional Salinity Laboratory."

Furthermore, in this letter the following comment was made:

"I am informed that the By-Laws of your company require forfeiture of stock in the event of failure to pay assessments. Unfortunately it will not be possible for anyone in the Department of Agriculture to give the Riverside Water Company assurance that the Government will pay any assessments on the stock, which, according to the By-Laws, are levied for the purpose of paying debts of the company. To agree to such proposal would be the equivalent of committing funds which have not been appropriated for conduct of work."

This letter also contained the following paragraph:

"In order that a contract might be drawn and all arrangements made for the Riverside Water Company to begin to furnish water as required to the Laboratory in December 1938, will your Board of Directors be kind enough to consider the question of holding in escrow the seventeen shares of stock issued in the name of Frank A. Miller, Inc., and agree to bill the Laboratory for water it uses at the prescribed rate, with the understanding that in the event the Government disposes of the land acquired by purchase from Frank A. Miller, Inc., transfer of the certificate of stock will be made to such purchaser."

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"Mr. Cuttle replied to the letter from the Chief of the Bureau of Plant Industry by addressing Dr. Magistad under date of November 3, 1938, as per copy of such letter attached.

"It is evident that other governmental agencies have been subscribing to stock and paying assessments under like conditions to the Riverside Water Company. Although the By-Laws authorize assessments for debts of the company, under the existing circumstances these can be nothing more or less than water service rates or charges. As will be noted by the copy of the voucher from the Interior Department, Indian Field Service-Sherman Institute, assessments as per notice attached were paid in the amount of \$1,296 as water assessments, the assessments being exactly the same as the assessment, No. 9, against this Department in the amount of \$51.

"It is absolutely essential that water be obtained immediately at the U. S. Regional Salinity Laboratory, as there is no other source of supply. It is requested, therefore, that you advise this Department if the assessment as levied may be paid, not as a direct assessment for debts, but as an assessment for water, and also whether the Department may subscribe to the By-Laws and sign said By-Laws in order that the transfer of stock may be made to the United States Government.

"It will be noted from Mr. Cuttle's letter that a 5% penalty has already been assessed as of November 5 on this assessment, and that unless the bill is paid by the 7th of December the stock will be sold to cover the cost of the assessment.

"It is, therefore, respectfully requested that this matter be expedited.

"A copy of the By-Laws of the Riverside Water Company, of January 27, 1938, the Notice of Assessment No. 9 in the amount of \$51, and a copy of the voucher of the Riverside Water Company on the Department of the Interior, Indian Field Service-Sherman Institute, in the amount of \$1,296 for water assessment, are enclosed for your information."

Sections 1 and 3 of the act of June 29, 1935, 49 Stat. 436,

437, provide:

"The Secretary of Agriculture is authorized and directed to conduct research into laws and principles underlying basic problems of agriculture in its broadest aspects; research relating to the improvement of the quality of, and the development of new and improved methods of production of, distribution of, and new and extended uses and markets for, agricultural commodities and by-products and manufactures thereof; and research relating to the conservation, development, and use of land and water resources for agricultural purposes. Research authorized under this section shall be in addition to research provided for under existing law (but both activities shall be coordinated as far as practicable) and shall be conducted by such agencies of the Department of Agriculture as the Secretary may designate or establish.

* * *

" * * * Moneys appropriated in pursuance of this title shall also be available for the purchase and rental of land and the construction of buildings necessary for conducting research provided for in this title, for the equipment and maintenance of such buildings, and for printing and disseminating the results of research. * * *"

If the laboratory was established and is to be maintained and operated pursuant to the above statutory authority and the water necessary for its operation can not be obtained except by the department's becoming a stockholder of the Riverdale Water Company and paying the regular fees and assessments incident thereto, this office is not required to object to such arrangements as may be administratively determined to be necessary for that purpose, or to the use of funds appropriated for the maintenance and operation of the laboratory to pay such fees, assessments, or other reasonable charges as may be necessary to obtain the required water.

Respectfully,

Acting Comptroller General
of the United States.