

## Opinion No. 47-5107

November 24, 1947

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. John H. Bliss, State Engineer, Santa Fe, New Mexico.

{\*113} We wish to acknowledge receipt of your inquiry of November 18, 1947 pertaining to whether or not the Springer Ditch Company, under decree of the district court entered in cause No. 5054, Colfax County, New Mexico (Tr. p. 135, 136) has the right to divert 8,000 acre feet of water in any one year, in addition to storage water which has been held over unused from the previous irrigation season?

We deem it advisable at this time to set forth the pertinent part of the court's decree relating to this matter, which reads as follows:

"Wherefore, it is ordered, adjudged and decreed by the court that The Springer Ditch Company and its stockholders have the **right during each year to divert from the Cimarron River at the intake canal of said The Springer Ditch Company not to exceed 6,000 acre feet of water delivered on the land** as of the priority of Dec. 1, 1887, through said Springer Ditch, 5,550 acre feet of said water being for the irrigation of the 7,500 acres of land hereinbefore described, to which said water is hereby declared to be appurtenant, and 450 acre feet of said water being for the domestic and municipal uses of The Town of Springer, with the right to regulate the flow thereof by means of said Town of Springer Reservoir and said company and its stockholders have the right also to store water in said Springer Lake Reservoir as of the same priority for use in connection with said Springer Ditch, including the right to fill and refill said Springer Lake Reservoir as often as there is water in said Cimarron River for that purpose; provided, however, that the total water to be used in any year under this priority shall not exceed 6,000 acre feet of water delivered on the land whether the same was diverted for direct irrigation or for storage."

It might be well to note at this time, that by agreement, the 6,000 acre feet of water delivered on the land has been interpreted as allowing the company to divert 8,000 acre feet of water at their headgate, it being assumed that there is a 25% transmission loss.

Under our interpretation of this portion of the decree, it is our opinion that The Springer Ditch Company and its stockholders have the right to divert from the Cimarron River each year waters not to exceed 6,000 acre feet delivered on the land (which you state by agreement means 8,000 acre feet at their headgate), provided, however, that the total water to be used in any year under this priority shall not exceed 6,000 acre feet of water delivered on the land whether the same was diverted for irrigation or storage.

{\*114} In other words, The Springer Ditch Company and its stockholders, in our opinion, has hold-over storage rights, and said hold-over waters are not to be taken into

consideration in determining said Company's right to divert waters from the Cimarron River in said following year.

As heretofore pointed out, The Springer Ditch Company and its stockholders will not be permitted to use more than 6,000 acre feet of water delivered on the land in any one year, whether the water is diverted directly from the river or taken from the reservoir.

Trusting the aforementioned satisfies your inquiry, I am

By ROBERT V. WOLLARD,

Asst. Atty. General