

Opinion No. 48-5148

May 6, 1948

BY: C. C. McCULLOH, Attorney General

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

{*147} In your letter dated May 5, 1948 you inquire whether the Interstate Stream Commission may employ an attorney who will be designated a Special Assistant to the Attorney General for a limited time in order to assist the District Attorney in the prosecution of injunction suits against the persons making illegal appropriation of ground water in the Pecos Valley Artesian Conservancy District.

Section 77-3303, 1941 Compilation, in dealing with the powers of the Commission, authorizes the Commission to act as follows:

"To investigate water supply, to develop, to conserve, to protect and to do any and all other things necessary to protect, conserve and develop the waters and stream systems of this state, interstate or otherwise; to institute or cause to be instituted in the name of the state of New Mexico any and all negotiations and/or legal proceedings as in its judgment are necessary to carry out the provisions of this act (secs. 77-3301 -- 77-3303); to do all other things necessary to carry out the provisions of this act, to employ such attorneys, engineers, and clerical help as, in its judgment, may be necessary to carry out the provisions of this act, and to fix their compensation and expenses; together with such other powers and duties, as may, from time to time, be given said commission by the legislature of New Mexico; the attorney general shall be the legal advisor of such commission and attorneys employed as above shall be subject to his approval and supervision and be designated as 'Special Assistant Attorneys-General'".

Where an underground basin is adjacent to a stream system, the underground waters are somewhat connected with the waters of the stream system and depletion of the underground waters would have to be taken into consideration in making interstate compacts for the stream system. In addition to that fact, the Supreme Court of New Mexico, in the case of Pecos Valley Artesian Conservancy District vs. Peters, 50 N.M. 165, gave a broad interpretation to the meaning of the word "conserve."

In view of the specific statute above quoted and the Court's definition of the word "conserve," I am of the opinion that the Interstate Stream Commission can legally spend its funds for the purpose above mentioned and that an attorney may be appointed by the Commission to be designated a Special Assistant Attorney General, subject to the approval and supervision of the Attorney General.