

Opinion No. 51-5406

August 28, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Elliott S. Barker State Game Warden State of New Mexico

{*107} I have your letter of June 26, 1951, requesting an official opinion of this office concerning whether or not the War Department or any individual company or corporation owning lands adjacent to the Conchas Lake can legally put docking facilities and boats on the lake for hire without the State's consent for recreational purposes. You further request an opinion as to whether or not the War Department can prohibit any other person or company from putting docking facilities and boats for hire on the lake for recreational purposes.

From a discussion with you concerning this matter, I understand that your actual problem involves the placing of docking facilities on land owned by the War Department. Since this is the actual question that you have in mind, I will restrict this opinion to the actual problem involved, which concerns only land owned by the United States Government and not land owned by any other individual on other portions of the lake. If any problem should arise in the future in connection with lands individually held where persons are to place docking facilities open to the general {*108} public, then and in that event we will study the particular problems that may be raised in connection with the identical fact situation presented.

This opinion is, therefore, strictly limited to the fact situation involving the placing of docking facilities open to the public generally on land owned by the United States Government for recreational purposes and in competition to the State recreational area and without the consent or approval of the State Game Commission.

We will first summarize the material instruments of record relating to the recreational facilities of the Conchas Dam.

I first refer you to an indenture executed the 25th day of January, 1940, by and between the United States of America, Party of the First Part, and the Red River Valley Company, a New Mexico corporation, Party of the Second Part. In this instrument, the United States conveyed a small tract of land to the Red River Valley Company, and the Red River Valley Company conveyed certain other tracts of land to the United States of America which included the so-called State Recreational Area and all other areas which I understand you have reference to. Paragraph 2 of this instrument stated:

"The right to use for fishing, boating and bathing, and any other recreational purposes, the water area of the Conchas reservoir within the exterior boundaries of the Pablo Montoya Grant * * *" (Omissions of immaterial portions in view of the holding of the Supreme Court of New Mexico in the case of State vs. Red River Valley Company, 51

N.M. 207, 182 P. 2d 421. " * * * and provided further that the right granted by the paragraph numbered 2, is on the condition that the recreational facilities which it is now contemplated will be erected on the tract described in paragraph numbered one hereof, be made available to the public at reasonable cost, that they be properly and adequately operated and maintained, that they and the part of Conchas reservoir hereinabove in this paragraph numbered 2 described, be adequately patrolled and be under such supervision and police protection as will insure protection to private property, law enforcement, and a reasonably high standard of maintenance."

This language indicates that it was only contemplated by the parties that one recreational area be maintained on the Conchas reservoir on the specific location where the State Recreational Area is now maintained. This is emphasized by the specific provision of the contract relating to maintenance and police protection of the entire area, both land and water.

We next refer to an easement deed dated the 8th day of March, 1943, between the United States of America and the State of New Mexico. This easement deed is made subject to a prior conveyance recorded May 14, 1936, that is not referred to in this opinion other than here, and also the prior indenture of January 25, 1940, a portion of which is quoted in the preceding paragraph. Specifically, this deed provides that the use and operation of the recreational area shall be subject to the reservations and conditions contained in previous conveyances and that of January 25, 1940, which includes the proper supervision of the entire lake area for the protection of private property. In this instrument, the State agrees "to operate and maintain the public recreational area at Conchas Dam, New Mexico, designated the Conchas Dam State Recreational Area." The State agreed to operate and maintain the area and the facilities thereon for the use and benefit of the general public and assumed the obligations of the United States Government in connection with the quoted obligation.

It is significant to note that all {*109} of these instruments clearly contemplate that there be one recreational area for the entire Conchas Dam, which will be maintained, operated and policed by the State for the protection of the public using the same and also for the protection of private property, and there is nothing in any of these instruments that would indicate that more than one recreational area could or would be maintained.

The easement deed to the State was obtained by the State under the statutes of this State authorizing the acquisition of state parks (See Chapter 57, Laws of 1935.)

Also see Chapter 118 of the Laws of 1941, authorizing State Park Commission to participate in developing recreational facilities at Conchas Dam.

All general appropriation acts subsequent and including 1943 have contained the following language:

"Provided that the operation and maintenance of the Conchas Dam Park shall be under the direction of the State Game Commission * * *".

All of the waters in the Conchas reservoir while in said reservoir belonging to the State of New Mexico. State vs. Red River Valley Company, supra.

In view of the foregoing, and in view of the holding of our Court that the entire Conchas Dam area for recreational purposes is subject to the jurisdiction of the State Game Commission, it is my opinion that no recreational facilities may be maintained or used contrary to the rules, regulations or orders or licenses of the State Game Commission. It is further my opinion that the State Game Commission may require that all persons going on said reservoir in boats must use the facilities furnished through the State Game Commission. The State Game Commission may prohibit persons from using and enjoying said recreational facilities except as permitted by the State Game Commission.

Hoping that the above fully answers your question, I remain