

Opinion No. 53-5734

April 17, 1953

BY: RICHARD H. ROBINSON, Attorney General

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

{*132} Receipt is acknowledged of your letter dated March 20, 1953 in which you request an opinion regarding the ownership and distribution of purchased reservoir water by individuals under a community ditch.

It appears that certain individuals irrigating from community ditches which divert from Costilla Creek have purchased reservoir water and that the major-domos have distributed that water to all the users under the community ditch and have refused to deliver the correct amount of purchased water to the individual users.

Section 77-802, N.M.S.A., 1941 Comp., provides in substance that local community associations or organizations which set up their own rules and regulations can pass these rules and regulations for the governing of these organizations. But the said statute further provides that said rules and regulations shall not be molested or changed, unless so desired by the persons interested and using said custom or customs, but nothing in this section shall be taken to impair the authority of the State Engineer and water master to regulate the distribution of water from the various stream systems of the State to the ditches and irrigation systems entitled to water therefrom.

I believe that under the above statute the people can remove these major-domos if they are not distributing the correct amount of water to the users that have purchased same. However, if these major-domos have become so powerful that they cannot be removed by the people, I believe that you still retain jurisdiction under the following section, to-wit, 77-209, N.M.S.A., 1941 Comp., if the waters in question are public waters, and if the waters in question are private waters, it is our opinion that you have jurisdiction under Section 77-201, N.M.S.A., 1941 Comp. p.s., which statute enumerates the general powers of the State Engineer, the pertinent part of which reads as follows:

"He shall have general supervision of waters of the state and of the measurement, appropriation, distribution thereof, and such other duties as are required by this article."

This, of course, refers to the State Engineer.

It is further the opinion of this office that under this section you have the authority to order any major-domo, who is not fairly and equitably distributing purchased water as he should, to desist from doing so, and, if necessary, go into court to force him to do so in case the user cannot afford to go into court himself, and the fact that you had warned the major-domo would naturally be of some weight before the court in case the user should mandamus the major-domo for his share of purchased water.

Trusting that this fully answers your inquiry, I remain

By: Hilario Rubio

Assist. Attorney General