

Opinion No. 65-105

June 22, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. Henry L. Eager, State Senator, 1923 S. 3rd Street, Tucumcari, New Mexico

QUESTION

FACTS

A private individual owns the Land on the west side of the Conchas Lake. The owner, whose title to the land runs to the center line of the lake and the Canadian River, wishes to develop this land by selling lots for residential purpose, by perhaps building a lodge and other facilities and by building marinas.

QUESTION

Can the owner develop the area in this manner?

CONCLUSION

See analysis.

OPINION

{*177} ANALYSIS

There is no question that the owner of the land on the West side of Conchas Lake may develop the **land** in the manner proposed. He may sell lots, build lodges and other facilities. As the owner of the land he may develop it in any reasonable fashion.

The real question is the construction of marinas. Presumably these marinas would extend out over the surface of the water.

By agreement between the Federal government and the State Park and Recreation Commission there is a Conchas Dam Recreation {*178} Area. See Section 4-9-21 (Note), N.M.S.A., 1953 Compilation.

The use of the Conchas Dam reservoir was the subject of lengthy litigation in the Case of **State v. Red River Valley Co.**, 51 N.M. 207, 182 P. 2d 421. The opinions (there were two requests for rehearings) occupy some seventy pages in the New Mexico Reports. In summary, the Court held that even though the waters in the Conchas Reservoir may flow over private land, they are public waters and that use of the waters

for recreation and fishing purposes are uses which usually pertain to public waters. The Court went on to note that when the land belongs to one party and the water to another, the right of fishery follows the ownership of the water.

Based on the Red River decision decreeing the waters of Conchas Reservoir to be public waters, we must conclude that in order to build marinas which extend into the water, approval must be obtained from the State Park and Recreation Commission. The principal is the same as if an individual wished to construct a building on public land.