

## **Opinion No. 78-13**

June 26, 1978

**OPINION OF:** Toney Anaya, Attorney General

**BY:** Richard A. Simms, Assistant Attorney General

**TO:** S. L. Reynolds State Engineer Bataan Memorial Building Santa Fe, New Mexico  
87503

### **ORGANIZATION OF CONSERVANCY DISTRICTS; EXTENSION OF CONSERVANCY DISTRICTS; JURISDICTION OF CONSERVANCY COURTS; PURPOSES OF CONSERVANCY DISTRICTS**

Extension of the La Plata Conservancy District to include Farmington and Aztec is precluded by the Conservancy Act. Extension involves the procedure require in the formation of a conservancy district together with consent of the conservancy judge. Since the land in question cannot be drained, flooded or irrigated as an integral part of the conservancy district and is more than 2 miles from such land, inclusion would violate N.M.S.A. § 75-28-5(K). An extension to create a larger tax base, a purpose not included under N.M.S.A. § 75-28-4 would not be allowed under N.M.S.A. § 75-28-5(E)(3).

### **QUESTIONS**

Would Section 75-28-5(K), N.M.S.A. (1975 P.S.) or any other provision of the conservancy district laws preclude the extension of the boundaries of the La Plata Conservancy District to include Farmington and Aztec?

### **CONCLUSIONS**

Yes.

### **ANALYSIS**

The La Plata Conservancy District is duly organized under the Conservancy Act of New Mexico, Sections 75-28-1 through 75-28-67, N.M.S.A. 1953 Comp. which provides for the organization of such districts and defines their purposes and powers.

Section 75-28-5(I), N.M.S.A. 1953 Comp. (1975 P.S.) provides that "the same procedure as specified for the organization of a district may be followed" to extend the boundaries of an existing district, "(p)rovided, however, approval and consent" for a proposed extension shall first be obtained from the conservancy court.

Section 75-28-5(K), N.M.S.A. 1953 Comp. (1975 P.S.) provides that:

"[n]o land shall be included or proposed to be included in any such district which is so situated that it cannot reasonably be drained, flooded or irrigated as an integral part thereof by or from any stream or waters to be controlled thereby, and is more than two (2) miles distant from any lands above described."

## OPINION

Nearly all of the land within the limits of Farmington, Aztec, and the surrounding area proposed to be included within the boundaries of the La Plata Conservancy District is located more than two miles from district land that would be drained, irrigated, or protected from flooding by district or Animas-La Plata Project facilities.

The Regional Solicitor for the Upper Colorado Region of the United States Bureau of Reclamation has stated that the essential purpose of the proposed enlargement is to increase the district's capacity to meet its repayment obligation to the United States for costs associated with the Bureau's construction of the Animas-La Plata Project. It is not contemplated that the proposal would entail an extension or enlargement of the services or protection the district is organized to provide, i.e., "providing and maintaining flood protection, river control, drainage, water storage for supplemental irrigation needs, (and) constructing and maintaining distribution systems for irrigation. . . ." Section 75-28-2, N.M.S.A. 1953 Comp. None of the lands proposed to be included would be drained, irrigated, or protected from flooding by the district's works.

In Section 75-28-5(E)(3), N.M.S.A. 1953 Comp. (1975 P.S.) it is stated that a district's lands "need not be contiguous (p)rovided (they) be so situated that the organization as a single district . . . is calculated to promote one or more of the purposes enumerated in Section 75-28-4. . . ." In Section 75-28-4, N.M.S.A. 1953 Comp. the conservancy court is vested with the jurisdiction to establish or enlarge conservancy districts for any of the following purposes:

- "(a) Preventing floods;
- (b) Regulating stream channels by changing, widening or deepening the same;
- (c) Regulating the flow of streams;
- (d) Diverting, controlling, or in whole or in part eliminating water-courses;
- (e) Reclaiming, draining, or filling wet and overflowed lands;
- (f) Of providing for irrigation where it may be needed and otherwise benefitting and developing agricultural lands or lands susceptible of irrigation or agricultural development;
- (g) Protecting public and private property from inundation."

It is not contemplated that the proposed extension would facilitate one of the enumerated purposes; instead, the intent of the proposed enlargement is to create a larger tax base while leaving unchanged the originally designed district and project facilities.

The Conservancy Act specifically provides for the inclusion of lands that will not be directly benefitted by the establishment or enlargement of a district. Section 75-28-5(K). It has been held that a district may be established or enlarged if some of the lands to be included will receive only incidental benefits. **In Re Arch Hurley Conservancy Dist.**, 52 N.M. 34, 191 P.2d 338 (1948); **Cater v. Sunshine Valley Conservancy Dist.**, 33 N.M. 583, 274 P. 52 (1928). The lands to be incidentally benefitted, however, must not lie more than two miles from the lands to be irrigated, drained, or protected from flooding as an integral part of the district. Section 75-28-5(K), N.M.S.A. 1953 Comp. (1975 P.S.). These lands do.

Accordingly, the proposed enlargement of the La Plata Conservancy District to include Farmington, Aztec, and a surrounding area would constitute an impermissible departure from Sections 75-28-2, 75-28-5 (K), 75-28-5(E)(3) and 75-28-4. Notwithstanding the fact that part of the plan for development of the Animas-La Plata Project is to provide municipal and industrial water to the area proposed to be included, the Conservancy Act has not been amended to authorize the establishment or enlargement of a district for the purposes of providing municipal or industrial water. As noted in **Cater, supra**, "if (an) attempt were made to use the powers conferred by the Conservancy Act to accomplish a purpose not within the purview of the act. . ., the courts would doubtless prevent it." 33 N.M. at 587.

#### **ATTORNEY GENERAL**

Toney Anaya, Attorney General