

Opinion No. 12-938

August 24, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Hon. James A. French, State Engineer, Santa Fe, N. M.

INSPECTION OF IRRIGATION WORKS BY STATE ENGINEER.

State Engineer must be paid estimated cost of inspection of irrigation works.

OPINION

{*90} I have received your letter of the 24th instant submitting correspondence between your office and Mr. W. C. Belden of Cliff, New Mexico, in which he and others make some complaint as to the construction of a dyke and reservoir on Duck Creek, now being built by the Gila Farm Company under the direction of Mr. Thomas Lyons, and he urges that you should make an examination of the construction on the ground that it may be dangerous to the lives and property of people below it.

It seems you have informed Mr. Belden, in substance, that it would be necessary under the law if he desired an investigation made that he should deposit the estimated cost of the examination, but {*91} Mr. Belden is unable to see why he should pay for an investigation caused by the work of Mr. Lyons, and urges that the law requires you to examine the work and that the owner shall pay for the same. In this position he appears entirely to ignore the provision to be found in Section 32 of Chapter 49 of the Laws of 1907 which provides that "Upon the request of any party, accompanied by the estimated cost of inspection, the territorial engineer shall cause any alleged unsafe works to be inspected." Your request for the deposit of the estimated cost of inspection was founded on this requirement, and it is my opinion that not only was your request a reasonable one, but it was one which it was your duty to make, especially in view of the fact that Mr. Belden gives no indication of the particulars as to which he is dissatisfied with the construction of the dam. He says, in substance, that you should examine the work and compel the owner to pay the cost. In other words, if his vague and indefinite statement that the construction is bad, should turn out to be without foundation in fact, he would thus throw a considerable burden of expense upon the owner of the dam. Certainly you must have something more definite before you would be justified in taking such a course. Moreover, if the complaint turns out to be well founded, then the money deposited by the complaining party would be refunded and the cost of inspection would be paid by the owner of the works. This is distinctly provided for in the same section above referred to. If Mr. Belden and his associates have not sufficient faith in the correctness of their complaint to deposit the small amount of \$ 125.00, with the expectation of its being returned if the dam is found of unsafe construction, you certainly cannot properly saddle the expense of the inspection upon the owner, nor could you properly pay for such inspection out of any public fund under your control. The statute

contemplates that the cost of such inspections shall not be borne by the public treasury, but where necessary the works themselves must pay for proper inspection; and to guard against unnecessary inspections, if outside parties make complaints they must show their faith by depositing the estimated cost of inspection. I can discover nothing wrong in the position which you have taken in your correspondence with Mr. Belden.

I return the papers herewith.