

Opinion No. 14-1171

March 16, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Messrs. Telesforo Lucero, Esperidion Abeytia and Juan P. Muniz, Commissioners of East Puerto de Luna Community Ditch, Puerto de Luna, New Mexico.

WATER.

Failure to use water rightfully appropriated does not cause a loss of such property right.

OPINION

{*29} I have just received your letter of the 14th inst., in which you state that your ditch was in use for twenty consecutive years and then its use was discontinued up to 1911, when it was rebuilt and the water turned to beneficial use on the same lands formerly irrigated by the same ditch, and you ask my opinion as to whether the ditch still holds a valid right to the water or whether it is necessary to apply for a water right.

On this statement of facts, I am not entirely clear whether there might not be some ground for dispute or controversy, as you do not tell me when the use of the ditch was discontinued, so that I can know how long it was out of use up to 1911. I would also like to know whether, during that interval, the lands were irrigated from any other ditch. If the ditch was abandoned for so long a time as to indicate an intention, on the part of its owners, permanently to discontinue its use and in consequence of that condition other persons had appropriated the same water to beneficial use on other land, there would be a dispute as to the right to the water, the result of which I would not like to attempt to predict.

As a general proposition, I do not believe that mere failure to {*30} use water which has been rightfully appropriated and used will cause a loss of such a property right. A man who has the right to irrigate his land is not compelled to use it continuously, and his failure to irrigate his land, even for a number of years, would not alone cause him to lose his water right, and this general doctrine would be applicable to a number of persons as well as to a single one.