

Opinion No. 14-1362

October 9, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Hon. James A. French, State Engineer, Santa Fe, New Mexico.

ARROYO HONDO PROJECT.

As to granting of extension of time for completion of irrigation works on the Arroyo Hondo, Santa Fe county.

OPINION

{*222} I have before me your letter of the 6th inst., asking for an opinion as to the legal rights to the water of the Arroyo Hondo. In that letter, you say that from the record it will be seen that the Receiver for the Santa Fe Irrigation & Improvement Co. has an application on file for an extension of the time in which to complete the works that were partly constructed by that company; that the New Mexico Penitentiary filed an application, No. 734, for a permit to appropriate the waters, claiming that the rights of the Santa Fe Irrigation & Improvement Co. had lapsed, which application was duly approved, since no protest was filed, and the company refused to make such {*223} a showing to the State Engineer as to justify him in allowing an extension. I find from the record, that an application was made by the said Receiver for such an extension in February, 1913, which application was rejected in April, 1913, because no showing had been made as to the ability of the applicant to proceed with the work. I assume that this is one of the requirements of your office where applications for extensions are made, and it would seem to be a reasonable one.

The Receiver filed with you a copy of the order by which he was appointed, and I do not find in that order that he, as Receiver, was authorized to proceed with the construction, but his application for an extension of time might be justifiable as an effort on his part to preserve the principal parts of the assets of the company, but some showing should have been made by him before you could be called upon, indefinitely, to tie up the possible development of this irrigation proposition. If the court had authorized him to proceed and to issue Receiver's certificates, which would be a lien upon the property, and if he could have shown you that he could get money on those certificates, that might have met your requirements, and perhaps, would have made it your duty to give the desired extension.

No showing of that kind was made, however, and the question now comes up again, upon a recent application by the Receiver for such an extension, but examination of what is submitted does not disclose anything definite as to the probability of a resumption and completion of the work. He states, in substance, that he can have the

co-operation of the present stockholders, but he does not indicate what sort of co-operation he will get, or who the bond-holders are, or what they are willing to do.

It appears to me, that consistently with your previous rejection of the Receiver's application, you would be compelled to reject this application, even if the matters were not complicated in any way by the approved application of the Penitentiary people.

My recommendation is that you should reject this application of the Receiver upon the same ground upon which you rejected the former like application, and upon the further ground that another application for the same water has been made on behalf of the Penitentiary, and has been approved. This will give the Receiver opportunity to take an appeal and get the matter into the courts, where the questions will be passed upon. I do not think it desirable that I should consider the question as to whether the Penitentiary can make such an application, or that you should revise your former action in having approved such an application. It seems to me that it would be better to let your approval stand until it may be judicially settled.