

## Opinion No. 15-1571

July 2, 1915

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. J. David Jaramillo, Cerro, New Mexico.

**Fences across an acequia which obstruct the passage of the mayordomo in the discharge of his duties.**

### OPINION

{\*150} Your letter of the 25th of June was received here on the 29th, but I have not been able sooner to find time to answer it. As I understand your letter you desire advice for the benefit of the mayordomo of a community acequia, the acequia being a very long one, it being a part of the duty of the mayordomo to travel back and forth along that acequia sometimes more than once a day, some of the owners of land having, by building fences across the acequia, obstructed the passage of the mayordomo in the discharge of his duties, leaving no gates on or near the bordo of the acequia. You say that the mayordomo, on account of the distances traveled, must go on horseback, and naturally he ought to be able to travel along the bank of the acequia. As I understand, it is a part of the duty of the mayordomo to inspect and examine the condition of the acequia in all its parts at frequent intervals so as to keep himself informed as to the necessity of repairs or changes in the course of the acequia. In order to do this effectively he ought to be able to travel along close to the acequia throughout its whole length.

My opinion is that when a community acequia is constructed the ownership of the community, as a whole, is not restricted to the bed of the acequia in which the water runs, but that it also has a property right in sufficient land on each side to construct the necessary bordo, with space sufficient for the acequia officers and users of the acequia to pass along freely up and down the acequia. It is true that plants of any description growing on the banks of the acequia, belong to the owners of the land through which the acequias run, but this is only by virtue of special regulation by statute which was first adopted on January 7, 1852, and is to be found in the Compiled Laws of 1897 in Section 17. In a condemnation proceeding which I instituted some years ago to condemn land for a large acequia below the Pueblo of Isleta, we took a strip of land fifty feet in width for that acequia, which, as I recollect, gave us fifteen {\*151} feet of land on each side of the bed of the acequia. The individual land owners have no right to encroach upon the land necessary for the use of the acequia on each side of it any more than they have upon the bed of the acequia itself, and as a strict matter of law I believe they might be required, if they desired to fence the lands, to put a fence along each side of the acequia and sufficiently far away from it to give room for travel back and forth in connection with any work upon the acequia.

From what you write, however, I understand that if they would put gates in their fences close to the acequia so that the mayordomo and other persons having a lawful right there, could pass through without serious obstruction, that would be sufficient. It seems to me that this is a matter which ought to be amicably arranged among the owners of lands irrigated from the acequia without the necessity of any litigation which would be annoying, expensive and productive of bad feeling among the parties to it.