

Opinion No. 19-2435

November 28, 1919

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Mr. L. A. Gillett, State Engineer, Santa Fe, N.M.

No Authority for Material Amendment Water Filing.

OPINION

In reply to your letter of the 18th instant, in regard to application for water right No. 293, known as the Arroyo Hondo project, and requesting an opinion from this office as to whether, in view of the fact that the part of the project used by Matias Nagel, Jr., and Ed. J. Eames consists of an independent diversion dam not part of the original project and in addition to the main canal as constructed under the original project, your office should require an amended filing by Nagel and Eames to cover the point of diversion and works as constructed, or whether the project may be considered as an amendment to the original filing, we beg to advise you as follows:

There are no provisions of law which permit of the amendment of an original filing, excepting section 5680, Code 1915, which provides only for an amendment in those cases where an application is defective in form or unsatisfactory as to feasibility or safety of plan, or as to the showing of ability of the applicant to carry the construction to completion, and the proposition mentioned in your letter does not fall within any of these cases.

Also it would appear as if the works as constructed by Nagel and Eames are a separate and distinct project from the original one authorized under application No. 293, in view of the diversion dam being an independent one and the canals different from the one contemplated in the original application.

For the two foregoing reasons, we are of the opinion that the works as constructed are an independent project, and that your office should require an amended filing thereof by the applicants.

We are returning to you herewith all of the papers enclosed with your letter of the date above mentioned.