

Opinion No. 20-2470

January 24, 1920

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Mr. L. A. Gillett, State Engineer, Capitol Building.

Extension of Time to Complete Irrigation Projects.

OPINION

Referring to our letter to you of the 23rd instant and to our conversation this morning in regard to the extension of time to complete the irrigation project of the Ranchos Orchard & Land Company, application No. 21, and also referring to letter written to your office by former Assistant Attorney General M. J. Helmick in connection with the application for an extension of time to complete the project of E. F. Shellaberger, which latter opinion seems to be in conflict with that contained in the letter of the writer dated the 23rd instant, we would advise you as follows:

Mr. Helmick held that the limitation of time for extensions to complete irrigation projects as provided for in section 5693, Code 1915, does not apply to the extensions provided for in section 5687, Code 1915, since the extensions authorized in the latter named section are mandatory, while those provided for in section 5693 are within the discretion of the State Engineer. The effect of the opinion of Mr. Helmick is that extensions may be granted for any length of time where work was prevented by the operation of law or other causes beyond the power of the applicant to control and that in addition a maximum extension of five years might be granted as provided for in section 5693.

In order to give the liberal construction in favor of extensions to complete irrigation projects we should be glad to be able to concur with the views expressed in Mr. Helmick's opinion, as we believe that this holding would be more conducive to fairness and justice to the applicant than would the stricter view taken in our opinion to you of the 23rd. It occurs to us, however, that there is sufficient uncertainty regarding the matter to make it somewhat dangerous to grant extensions under the holding in Mr. Helmick's letter, as the courts of the state might be inclined to take the same view as that expressed in the later opinion and if they did parties who had proceeded to invest large sums of money in irrigation projects dependent upon extensions granted in excess of the periods named in section 5693, Code 1915, Chapter 11, Laws 1915, and Chapter 26, Laws 1917, would, of course, be without remedy in urging the granting of the extensions as a defense to a proceeding instituted involving the rights under the granting of the application for appropriation.

While, therefore, we believe that the construction placed upon the statutes in question in the opinion of Mr. Helmick should be adopted, if possible, in order to be absolutely safe and to place applicants for extensions of time upon notice of the possibility of a different

view being taken by the courts, we would suggest that if, in your discretion, extensions of time for completion of irrigation projects are granted in excess of the periods named in the various statutes, that the attention of the applicants be called to the possibility of the extensions being held invalid by the courts.

We are returning to you herewith all of the papers left with us this morning, both in the Ranchos Orchard & Land Company application and the Edward E. Shellaberger application.