

**Opinion No. [29-02]**

November 9, 1929

**BY:** J. A. MILLER, Assistant Attorney General

**TO:** Hon. R. S. Conroy, County Agricultural Agent, Los Lunas, New Mexico.

ARROYOS -- Diverting of flood waters.

**OPINION**

In your letter of the 2nd inst. you request that we advise you "what the state laws provide relative to forbidding the stopping, damming and diverting of arroyos . . . what is the law governing the flow and control of flood arroyos?" and you say that since the heavy rains of this summer you have frequently been requested by farmers for such information.

From your reference to flood arroyos I understand your questions have nothing to do with acequias or irrigating canals but to the arroyos numerous in this state and which are dry most of the time although at times of heavy rains they may carry strong currents of water. As to such arroyos I am unable to point out any specific legislation in this state. Of course, we have statutes relative to the flooding of highways, the making of lagoons, etc., but these I do not understand to be the statutes in which you are interested.

These dry arroyos are natural water courses and any interference with a natural water course and any damage arising from the obstructing, changing the course of, or otherwise interfering with a natural water course will have to be governed by the general principles of law applicable thereto and without any specific legislation. Each case would have to be determined by the facts peculiar to that case and generally will be found to be a matter of private right and damage rather than one affecting the public. Any obstruction in a water course of whatever nature and by whomsoever caused, if unlawful in itself or placed there without authority, an actionable injury to one whose riparian rights are thereby interferred with or whose rights are thereby flooded.

In answer to your reference to the state engineer and your question as to his responsibility and authority, you are advised that although in words the statute provides that he shall have general supervision of the waters of the state and of the measurement, appropriation and distribution thereof, we are of the opinion that such authority and duty do not extend to damages arising out of the obstructing or damming of arroyos.

If the above does not fully answer your questions and bring out the information you sought, kindly write again giving specific cases and the evil complained of.