

Opinion No. [30-115]

June 28, 1930

BY: E. C. WARFEL, Assistant Attorney General

TO: Mr. W. A. Williams, R. F. D. Tesuque, Santa Fe, New Mexico.

WATER -- Acequias obstructing, duty of mayordomo.

OPINION

Referring to our conversation in the office here the other evening I would state that I have looked up the matter of penalties for interference with the community ditch and find that it is contained in Section 151-465 of the Code of 1929 and find in substance this, that if any person shall contrary to the order of the mayordomo or commissioners cut, break, stop up, or otherwise interfere with any community ditch or take or use water from the same contrary to such orders shall be guilty of a misdemeanor and on conviction shall be fined in a sum not less than \$ 10.00 nor more than \$ 50.00 and if he does not pay the fine then he may be confined in the county jail for a period not less than five nor more than thirty days and it is the duty of the mayordomo or other person in charge of the ditch to file the complaint and if he does not do so then he is guilty of a misdemeanor and shall be fined in the sum of not less than \$ 25.00 nor more than \$ 50.00, or be imprisoned in the county jail for not less than ten nor more than thirty days.

As I said to you the other day here the commissioners have no authority to change these penalties or to provide others. As to your suggestion with reference to the changing of the course of the ditch and making the two systems all one I find that that would be an impossibility, whatever we might personally think about it, for the reason that section 151-402 of the Code of 1929 provides that the course of ditches or acequias established prior to July 20, 1851 shall not be disturbed and as both of these ditches are much older than that we are prohibited from making any change.

As to the division of the water among the ditches, I have made some rough estimates myself as to the amounts going into the different ditches and from this it would appear that the different ditches have a capacity that would carry only the proportionate share of the water of the stream that would belong to the land under each ditch running all the time. However, so far as I am personally concerned, I am willing to have a competent engineer employed and have him measure the intake at each ditch and thus have it determined for a certainty and to the satisfaction of all concerned. Of course, in any event if in our ditch at any time we have more water than is needed, I shall be glad to let it pass on down into your ditch. I had to talk with the State Engineer about the matter yesterday afternoon and I think by agreement we could get him to furnish a man to do this measuring if the commissioners of both the other ditches would agree to abide by his decision and desire to go to the expense of having it done.

Trusting this may give you the information desired, I am