

Opinion No. 37-1749

September 3, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. Thomas M. McClure State Engineer Santa Fe, New Mexico

{*154} Your letter of September 2nd requests advice as to whether the Forest Service is vested with authority for the filing of reservations for unappropriated water under Section 151-152 of the 1929 Compilation.

I have read citations of authority submitted by Mr. Frank C. Pooler, {*155} Regional Forester, in his communication to you of August 25th.

The Agricultural Appropriation Act, approved June 29th, 1937, as quoted by Mr. Pooler, apparently implies that the Forest Service does have such right. It will be noted that the Act itself directs the Secretary of Agriculture to protect, administer, and improve national forests and to conserve water.

Going back to the Forest Administration Act of June 4, 1897, we find provision that the national forest shall be established to improve and protect the forest within the boundaries thereof, or for the purpose of securing favorable conditions of water flows.

It is not clear just what this language means, but it would be my belief, in view of prior administrative construction, that the Forest Service would be entitled to file reservations under our water law.

I think there can be no question insofar as the Agricultural Appropriation Act is concerned and perhaps also insofar as the Act of May 27th, 1930, is concerned.

The only doubt would perhaps be a doubt as to priority date, and, as above stated, I believe the old Act of 1897, in view of prior administrative rulings, would be sufficient to permit you to accept such filings.