

Opinion No. 43-4423

December 7, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. H. R. Rodgers, Commissioner of Public Lands, State Land Office, Santa Fe, New Mexico. Attention: Mr. George A. Graham

Re: Tucumcari Irrigation Project

OPINION

In your letter dated December 2, 1943, you request an opinion on numerous questions. However, after a conference and discussion of the matter between Mr. Wood, Mr. Graham and myself, you have decided to request an opinion only concerning your authority to execute and comply with the proposed agreement concerning future sales of lands within the Arch Hurley Conservancy District.

The State owns approximately 4,200 acres of land within this conservancy district. In my opinion you may not execute and comply with the proposed agreement without violating Section 10 of the enabling Act, for four principal reasons:

1. The Agreement fixes the appraised value of lands within the district, and the owner agrees not to sell the land at prices exceeding said appraised value, which may be less than the minimum value prescribed by the Enabling Act.
2. The owner of excess lands agrees to sell all of the excess lands in units of not more than 160 acres to single persons, and not more than 320 acres to married persons. The Enabling Act does not authorize sales upon the basis of matrimonial status.
3. The owner of excess lands agrees to appoint the Secretary of the Interior as agent and attorney for a ten year period to sell and transfer all of the excess lands. Under the Enabling Act, none but the Commissioner may sell State lands held in trust.
4. The Agreement provides that as to sales for a price in excess of the appraised value set forth in the Agreement, the land owner will pay one-half of the excess to the Government to be applied on the assessment charges.

I am returning herewith the enclosures received with your letter.

Trusting that the foregoing sufficiently answers your questions, I am

By C. C. McCULLOH,

First Asst. Atty. General