

## Opinion No. 52-5487

February 7, 1952

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Mr. John F. Russell Legal Counsel Pecos Valley Artesian Conservancy District P. O. Box 513 Roswell, New Mexico

{\*202} This is in reply to your request of September 27, 1951, asking my opinion on two questions with regard to the Directors of an Artesian Conservancy District.

The first question was whether or not the Board of Directors had the authority to hire an engineer to survey lands within the district; to determine whether the owners of such lands are irrigating lands in excess of their legal water rights, such surveys to be used as evidence in an injunction suit against such owners.

{\*203} In order to answer this question we must examine several sections of the law with respect both to Artesian wells and to the Artesian Conservancy Districts. First, Section 77-1202 N.M.S.A. states:

"All artesian waters which have been declared to be public waters shall be under the supervision and control of the state engineer, as provided by this act, but where artesian conservancy districts have been duly organized pursuant to Ch. 97 of New Mexico Session Laws of 1931 (§§ 77-1301 through 77-1321) and acts amendatory thereof, such districts shall have concurrent power and authority with the state engineer to enforce the regulatory provisions, as herein provided, in so far as the waters to be conserved and controlled by the respective districts are affected."

Section 77-1206 defines waste of water which is suffering or permitting any artesian water to go into any previous stratum above the artesian strata or causing any artesian well to discharge unnecessarily upon the surface of the earth, unless the waters are placed to a beneficial use under supervision.

Section 77-1208 also defines waste of water on the surface and makes it a misdemeanor to permit such waste but the conservancy districts as well as the State Engineer are given authority to go in and abate such surface waste as a nuisance in a summary manner by plugging or fitting the wells with valves or controls to prevent waste.

Section 77-1301 sets out the purpose of the Artesian Conservancy District Act as being:

. . . "to provide for the organization of artesian conservancy districts to conserve, where necessary, the waters in any artesian basin or basins within the state, the boundaries of which have been scientifically determined by investigations, and where such waters

have been beneficially appropriated for private, public, domestic, commercial or irrigation purposes, or otherwise."

Keeping in mind the previous definitions given in the statute as to "waste" and this declaration of purpose it is apparent that the conservancy districts are organized for the basic purpose of preventing waste and for controlling the use of this artesian water.

Section 77-1317 N.M.S.A. states:

"The board of directors are hereby vested with full power and authority to do and perform every act and thing necessary to carry out, to all intents and purposes, the provisions of this act, purposes and objects for which the district is created, including the power to enter into contracts with, and engage all necessary agents and employees, and to fix their compensation . . ."

This section gives the Board of Directors adequate authority to employ an engineer to survey lands within the district.

Section 77-1318 requires that the Board of Directors from year to year outline a plan or program of water conservation and administration, and it states:

"The program to be carried out . . . shall be designed to accomplish the objects and purposes for which the district was created, and may include the plugging of all wells within the district found by tests to be materially leaking or wasting any waters included in the districts . . . The directors may . . . enter into any contracts or do or perform any act or thing necessary or advisable to carry out to all intents and purposes the objects and purposes for which the district was formed, and shall have the right of ingress and egress at all reasonable times to all wells within the district for the purpose of making leakage tests, and {204} otherwise determining that such wells are properly equipped and are being used so as to conserve the waters included in the conservancy district.

"All wells included in the district found to be leaking or wasting such waters, are hereby declared to be a public nuisance, and the directors of the district and those under their authority shall have the right, power and authority to go upon the lands upon which any such well is located to abate such nuisance by plugging or repairing any such well."

This last quoted portion should answer fully your question number two as to whether the district has the authority to hire personnel to check all wells within the district to determine whether such wells are leaking.

In further answer to your first question there is no specific spelled out authority in the Conservancy District's Board of Directors to make surveys and to take action against water users who are using water in excess of their legal water rights. It is my opinion, however, that such specific authority is unnecessary. As previously stated, Section 77-1301 sets out the purpose of the Act, the purpose for creating artesian conservancy districts, and Section 77-1318 requires the Board of Directors of such districts to carry

out a program which is "designed to accomplish the objects and purposes for which the district was created." This section empowers them to "do or perform any act or thing necessary or advisable to carry out to all intents and purposes the objects and purposes for which the district was formed."

It is my opinion that excessive use of water by any individual land owner would constitute a wasteful practice and would be in derogation of the best interests of the entire conservancy district. Such excessive use would be a proper subject for action by the Board of Directors to prevent waste and to conserve the waters within the basin.

I trust that this will answer your inquiry fully.