

Opinion No. 52-5559

July 2, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. John H. Bliss State Engineer State of New Mexico Santa Fe, New Mexico

{*270} On June 13, 1952, you requested an opinion from this office as to whether or not the State Engineer can properly require the filing of proofs and the making of a formal, final engineering report, from the Bureau of Reclamation after reservation by it of water for reclamation projects, as in the case of other water rights.

Section 77-531 of the 1941 Compilation provides the method by which the Federal Government, through the Bureau of Reclamation may reserve the water for reclamation projects. The Section provides that when, after due notice of reservation, plans and information are filed in the Office of the State Engineer within a three year period of time, the water so reserved shall be retained in the name of the United States for the purposes of the project unless and until such reservation is formally released in writing by the Secretary of the Interior. The Section is silent as to whether or not, following such reservation {*271} of unappropriated water right, the Bureau shall follow any of the other sections of the water code pertaining to the filing of proofs of completion of works, application of water to beneficial use or obtaining of an eventual license to appropriate such retained waters.

You state in your letter that the difficulty with a number of projects is that after the reservation of water is made the Bureau of Reclamation may find that the project, for one reason or another, cannot be or will not be carried through to completion and the project is dropped.

I find that under Section 77-501 New Mexico Statutes, Annotated, 1941 Compilation, the State Engineer has the power to make rules and regulations necessary to administer the duties devolved upon his office. Reading your revised rules and regulations as of January 1, 1951, you have provided by rules and regulations as to the procedure to be followed by any of the owners of a water right when they first obtain this right as to the filing of proof, etc. Under the power that you have to make rules and regulations necessary to administer the duties devolved upon your office, it is my opinion that you have the power to make rules and regulations which may affect the Bureau of Reclamation, a department of the United States, when it has reserved unappropriated waters and that you may require it to file proofs of completion of works and meet any other requirements provided by your rules and regulations. I can see no reason why the Bureau of Reclamation should not be subject to reasonable rules and regulations promulgated by the State Engineer.

Trusting that this fully answers your inquiry, I remain,