

Opinion No. 54-6036

October 25, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. John R. Erickson State Engineer P. O. Box 1079 Santa Fe, New Mexico

RE: Opinion concerning Section **77-302, N.M.S.A., 1941**

OPINION

{*504} In answer to your letter of October 8, 1954, my opinion is as follows:

You have requested an opinion as to whether a petition by a majority of the water users in a certain district for the removal of the water master would be mandatory. Section 77-302, N.M.S.A., 1941 reads:

"State Engineer shall upon written application of a majority of the water users of any district in this state, appoint a water {*505} master for such district in the state, who may, for cause, be removed by the state engineer, and **shall be removed upon a petition of a majority of the water users** of said district. The water master shall have immediate charge of the apportionment of waters in his district under the general supervision of the state engineer, and he shall so appropriate, regulate and control the waters of the district as will prevent waste. **The state engineer may, if in his opinion the public safety or interests of water users in any district in the state require it, appoint such water master for temporary or permanent service in such district, in the absence of the application above provided for in this article.**" (Emphasis added.)

Note that it is mandatory upon the State Engineer to appoint a water master upon written application of a majority of the water users. Said water master may be removed for cause and, in the event that a water master is appointed upon a petition of the water users, it is mandatory upon the State Engineer to remove said water master on a petition of the majority of the water users.

However, the legislature provided for an additional method of appointing a water master, i.e., when in the opinion of the State Engineer, the public safety or interests of water users require the appointment of a water master, there is no provision as to how a water master may be removed when he is appointed on the State Engineer's own motion. It seems to be clear that the legislature contemplated instances where it would be necessary for the appointment of a water master, but, where a majority of the water users do not see fit to petition the State Engineer for such appointment, it might well be that a water master would need to be appointed to protect the public interest or to protect the interest of a minority group of water users. This provision of the statute, in such an event, would be meaningless if a majority of the water users should petition the State Engineer for the water master's removal, and if the statute were interpreted to

mean that such petition was mandatory upon the State Engineer. In order to give the entire act meaning, it would be necessary to interpret it in such a way that the State Engineer could remove a water master that he had appointed (without a petition of the majority of the water users) for cause, or if in the opinion of the State Engineer, the public safety or interests of water users in the district no longer require the services of a water master. It should be pointed out, however, that although the water master may be removed only at the discretion of the State Engineer, he should not abuse his discretion, and a petition of a majority of the water users would be some evidence that the interest of water users in the district would no longer be served by a water master.

CONCLUSION: A water master appointed by the State Engineer in the absence of a petition by the majority of the water users may be removed by the State Engineer, only for cause or in the event that it is the State Engineer's opinion that the public safety or interests of the water users in any district no longer require the services of a water master.

By: Charles D. Harris

Spe. Assist. Atty. General