

Opinion No. 58-119

June 9, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Mr. Levon Lee, Acting Director, Department of Game and Fish, Santa Fe, New Mexico

QUESTION

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Is the State Game Commission authorized under Section 53-1-8 of the New Mexico Statutes Annotated 1954 Compilation to close any public stream or lake or portion thereof to fishing, when such action is not for the purpose of protecting a recently stocked water or to protect spawning waters, or to prevent undue depletion of the fish in such waters?

CONCLUSION

No.

OPINION

ANALYSIS

The three purposes for which a public stream or lake or portion thereof, may be closed to fishing are set forth in Section 53-1-8, N.M.S.A., 1953 Comp. These purposes are when it is necessary to protect recently stocked water, to protect spawning waters, or to prevent undue depletion of fish. The statute authorizes closing for no other or additional purpose or purposes, insofar as its express terms are concerned.

Now, there exists a rule of statutory construction to the effect that the expression of one or more items excludes all others, and while such is not an absolute rule of law and is of limited application, **Wilson v. Rowan Drilling Co.**, 55 N.M. 81, 227 P. 2d 365, we nonetheless believe the rule is applicable here. There is nothing, to our knowledge, which indicates any reason for our holding differently. Nor do we find anything in Section 53-1-11 or in Sections 53-2-6 and 9, N.M.S.A., 1953 Comp., to the contrary.

Unless the order closing Conchas Dam outlet to fishing, attached to your request letter, was for one of the purposes above described, the same should be set aside, as it is illegal.