

Opinion No. 60-184

October 7, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: S. E. Reynolds, Secretary New Mexico Interstate Stream Commission P.O. Box 1079 Santa Fe, New Mexico

QUESTION

QUESTIONS

1. May the Interstate Stream Commission use funds appropriated to it through Chapter 349, Laws of 1959, to acquire rights-of-way necessary for a salinity alleviation project and convey such rights-of-way to the United States?
2. May the Interstate Stream Commission acquire such rights-of-way and convey them to the United States under an agreement whereby the State of Texas or the Red Bluff Water Power Control District located in Texas would repay the costs of the rights-of-way to the Commission?
3. May the Interstate Stream Commission enter an agreement under which Texas or the Red Bluff District would advance funds to the Commission to be used to acquire such rights-of-way for conveyance to the United States?
4. May the Interstate Stream Commission condemn the needed rights-of-way for the project and thereafter convey such rights-of-way to the United States?

CONCLUSIONS

1. Yes.
2. Yes.
3. Yes, but see analysis.
4. Yes.

OPINION

{*580} ANALYSIS

In your letter requesting our opinion and in facts gleaned through mutual discussion since that date, it appears that the following summarizes the background for this opinion request. The States of New Mexico and Texas and the United States in 1948 and 1949

negotiated the Pecos River Compact which has been approved by the Legislatures of both states and the {581} United States. This Compact, among other things, provides as one of its purposes, that it shall facilitate the construction of works for the salvage and more efficient use of water of the Pecos River. The waters of that river have become increasingly more saline in quality, particularly as the same approach the common boundary between Texas and New Mexico. It thus has become necessary to take certain measures to improve the quality of the water so that the same may be more beneficial for irrigation purposes. Public Law 85333, adopted by the United States Congress, authorizes the Secretary of the Interior to take certain measures looking toward the alleviation of salinity conditions near Malaga Bend on the Pecos River in New Mexico. This law provides that the Secretary of the Interior shall not proceed with the construction of this project until he has assurance that New Mexico will acquire the necessary rights-of-way for the project and that the state or local agencies in the states will operate and maintain the project. Chapter 349 of the Laws of 1959 appropriates to the Interstate Stream Commission the sum of \$ 247,200 to be expended as needed during the 48th and 49th Fiscal Years for, among other things, the acquisition of rights-of-way for all necessary purposes and works for the alleviation of salinity pursuant to authorization to the Secretary of the Interior by Congress of the United States. You have advised that the Red Bluff Water Power Control District, a political subdivision of the State of Texas, will operate and maintain the proposed salinity control project and will probably be willing to pay a part or all the cost of such rights-of-way. However, in view of the statutory problems, both federal and state, it is desirable to have the above questions answered before negotiations looking toward final agreement between the States of New Mexico and Texas and the United States Department of the Interior may proceed. It should also be noted that the benefits of the project presently being discussed will largely accrue to the State of Texas although some measure of benefit will accrue to New Mexico and her water users.

In considering the above question I believe it necessary to refer to the statutory authorities and the Interstate Compact previously mentioned relating to the Pecos River. First of all it should be noted that Section 75-34-3, N.M.S.A., 1953 Compilation authorizes the Interstate Stream Commission "to investigate water supply, to develop, to conserve, to protect and to do any and all things necessary to protect, conserve and develop the waters and stream systems of this state, interstate or otherwise." This section gives extremely broad powers to the Commission to carry out programs designed to meet the purposes of developing, conserving or protecting the waters and streams systems of this state.

Further, attention is directed to pertinent portions of the Compact as approved by our Legislature on February 9, 1949. Specifically, I note portions of Article I as follows:

"The major purposes of this compact are . . . to promote interstate comity; . . . to facilitate the construction of works for

(a) The salvage of water,

(d) The more efficient use of water. . . ."

Again, Article IV, subparagraph (b) states:

"New Mexico and Texas shall cooperate with agencies of the United States to devise and effectuate means of alleviating the salinity conditions of the Pecos River."

Article IV, subparagraph (d) states in part:

". . . New Mexico and Texas will cooperate to obtain the construction of facilities that will be of joint benefit to the two states."

I merely set forth the above excerpts {^{*582}} from the compact to show the intent that the two states should jointly endeavor, through cooperative effort, to carry out programs for the more efficient conservation and use of the limited water supply of the Pecos.

Unless a compact between states violates the federal or state constitutions of the compacting parties, it becomes the law of the states who are parties thereto. **Dyer v. Sims**, 341 U.S. 22; 81 C.J.S. States, Sec. 10. I find nothing in this compact, either in the language or in the spirit therein which would do violence to our state constitution. Thus, it speaks as the intent of the Legislature that this state shall cooperate with the other compacting parties in carrying out the purposes previously expressed. It is this very basic concept of the law of interstate relations that serves as the basis for the answers to the questions you have raised.

Specifically, in answer to your first question I find that Chapter 349 of the Session Laws of 1959 appropriates to your Commission a sum of money for, among other things, the acquisition of rights-of-way to carry out programs for the alleviation of salinity conditions prevailing in the Pecos River authorized by the Congress of the United States to be carried out by the Secretary of the Interior. Part of this legislation was that New Mexico must provide the rights-of-way needed for carrying out the work proposed. It must be assumed that the Legislature knew the purpose and effect of the federal legislation and with such knowledge authorized your expending the sums necessary within available appropriations for the acquisition of the needed rights-of-way. Likewise I find no prohibition against your conveying such rights-of-way to the United States for the carrying out of its obligation under the authorized program.

In answer to your second question it is my opinion that you have authority to enter into an agreement with the State of Texas or its agency, looking toward the repayment to your commission of a part or all of the costs of such rights-of-way. Upon receipt of such repayment, however, under existing legislation the funds received must be deposited in the General Fund, as you have no authority to retain or expend the same.

In answer to your third question, I am of the opinion that you could accept funds from either the State of Texas or a subordinate agency or instrumentality thereof for the purpose of acquisition of rights-of-way, but such funds would be in the nature of

advance reimbursement, that is to say that such funds would have to be deposited in the general fund and the appropriated funds available to you actually used for the purchase. I recognize this seems rather cumbersome, if not incongruous, but it is largely only an accounting matter made necessary by the absence of authority for the commission to expend such advanced funds. While I am of the opinion that the State of Texas may acquire such rights-of-way as it may believe necessary through negotiations with the land owners concerned, it may perhaps be necessary for you to exercise the power of eminent domain given the commission under the authority found in Section 75-34-10, N.M.S.A., 1953 Compilation (P.S.) to acquire such rights-of-way in New Mexico. It is my conclusion that you have the power to enter into such an agreement, if believed desirable or necessary, to acquire title in your name and thereafter convey the same to the United States.

Your fourth question is answered by the preceding paragraph.

I trust this answers the several questions you have concerning this project but should further assistance be necessary, this office remains available.

By: Thomas O. Olson

First Assistant Attorney General