

Opinion No. 20-2470

January 23, 1920

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Mr. L. A. Gillett, State Engineer, Capitol Building.

We have your letter of the 10th instant, inclosing papers in connection with the application of the Ranchos Orchard and Land Company, for an additional extension of time within which to complete their irrigation project covered by Application No. 21 in your office.

We note that the project was approved November 30, 1906, and that November 30, 1910 was fixed as the date for completion of construction work and application of water to a beneficial use; that five extensions of time have been granted to the applicant, extending the time to complete construction work to December 31, 1919, and to apply water to a beneficial use to December 31, 1921; that applicant, on December 29, 1919, filed an application requesting an additional extension to complete the work and to apply the water to a beneficial use.

Section 5687 and Section 5693, Code 1915, provide that extensions not to exceed five years may be granted to persons constructing irrigation projects. Chapter 11, Laws 1915, amended this Section by authorizing the State Engineer to grant additional extensions, of not to exceed three years from January 1, 1915. Chapter 95, Laws 1917, further amends Section 5693 by inserting certain words in the said Section, but not changing the period for which the State Engineer is authorized to extend the time within which to complete projects.

Section 5687 authorizes the granting of extension for completion of work prevented by operation of law or other causes beyond the power of the applicant to control; this Section was a part of Chapter 149, Laws 1907; Section 5693 limits the extensions that may be granted to a period of five years, and is part of Chapter 43, Laws 1913, this Section, being a later enactment, controls Section 5687, and would seem to prohibit the granting of an extension for a period longer than the said term of five years. Chapter 11, Laws 1915 permits the extension up to January 1, 1918. Chapter 26, Laws 1917, permits extensions to January 1, 1920.

We do not understand upon what authority the applicant was granted until January 31, 1921 to apply the water in its project to a beneficial use, nor do we find statutory authority for the extension of time to complete the project and apply water to a beneficial use to the dates requested by the applicant.

We are returning to you herewith the papers submitted with your letter of January 10.