

Opinion No. 42-4182

November 13, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Thomas M. McClure State Engineer Santa Fe, New Mexico

{*274} I am in receipt of your letter of November 10, 1942, and the enclosed deeds by which the State of New Mexico purchased certain real estate in connection with Conchas Dam from the Magnolia Petroleum Company, and also copies of the leases executed by the State of New Mexico to the Magnolia Petroleum Company. In your letter you ask what rights were acquired by the State of New Mexico under these deeds and also what right the State has to lease this property for grazing purposes.

I have examined the deeds in question with care. From my examination it appears that while the deeds purport to convey a title in fee simple, they contain so many reservations that insofar as the question herein involved is concerned, they may be treated as easements granting only the following rights:

(a) The right to impound water in connection with the Conchas Dam. (b) The right to use the land for recreational purposes. (c) The right to prevent the grantors from so using this land as to pollute the water of the reservoir, it being provided, however, that use for farming or grazing purposes and for watering cattle shall not be considered as pollution.

I am therefore of the opinion that full grazing rights down to the edge of the impounded waters of the dam known as "Conchas Dam" is now vested in the Magnolia Petroleum Company, subject only to the right of the State of New Mexico to use this land for recreational purposes. For this reason, as the matter now stands, the State of New Mexico has no rights in this land with respect to its use for grazing purposes, and hence a grazing lease by it would convey no rights and for all practical purposes would be a nullity. The only possible right which the State could convey by a grazing lease would be its right to use the land for recreational purposes so that in the event of a conflict between the use of the land for grazing and recreational purposes, {*275} the grazing right would prevail in the event a lease such as you have submitted to me were in existence. However, under the form of lease before me, such lease may be terminated on thirty (30) days notice if the State wishes to use the land for recreational purposes. Thus, even with respect to this possible conflict, a lessee would gain very little, if anything, of value under the form of lease previously used.

You will please find enclosed the two deeds and grazing leases heretofore mentioned.

By ROBERT W. WARD,

Asst. Atty. General