

DEPARTMENT OF THE INTERIOR,

OFFICE OF THE SECRETARY.

FILE No. 955

Part 5

TERRITORIES

-oOo-

NEW MEXICO

-oOo-

INVESTIGATION OF LAND TRANSACTIONS.

-oOo-

General

April 11, 1907
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TERRITORY OF NEW MEXICO.

OFFICE OF THE ATTORNEY GENERAL.

SANTA FE.

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EDMUND C. ABBOTT,
ASSISTANT ATTORNEY GENERAL

April 10, 1907.

Filed by direction of Judge W.

Hon. H.J. Hagerman,

Raleigh Hotel,

Washington, D.C.

Sir:

In compliance with your request of last evening to furnish you with data showing in what respects suggestions made by Mr. Holcomb in his letter to the Secretary of the Interior of November 30th, 1906, have been already complied with, I beg to state the following:

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secretary of the interior of November 30th, 1906, have been already complied with, I beg to state the following:

The first objection made by Mr. Holcomb was that moneys derived from institutional lands granted under Act of Congress of June 21, 1898, were being used to defray the expenses of the United States Land Commission and for locating and selecting lands, and suggesting that the institutions which have contributed from such funds for this expense, be reimbursed. This irregularity was first called to my attention in December, 1905, and as I was a member of the United States Land Commission, I requested Hon. R.C.Gortner, Assistant Attorney General, to prepare an opinion as to the legality of such use of said moneys. He did not write an opinion for the Commission, but submitted to me a memorandum of the various laws, with his conclusions thereon, and on the 31st day of December, I prepared an opinion in accordance therewith instructing the Auditor of the Territory to not issue further warrants on said funds for such expenses, a copy of which opinion is hereto attached marked exhibit "A". Upon the convening of the legislature I prepared a bill and had the same introduced and it became law on the 21st day of March, 1907, which said bill provided a special levy of 75/100 of a mill on the dollar, the revenue derived therefrom to be used to reimburse the

several territorial institutions for moneys heretofore expended from the funds of said institutions, for the selection and location of territorial lands. The total amount to be reimbursed being about \$20,000. Said bill also provides an appropriation for the pay in the future for the location and selection of any further territorial lands. It was thought advisable for the legislature to make provision for future selection with the belief that congress would pass a law enabling the territory to select and locate lieu lands in any portion of the territory. A copy of said bill is hereto attached marked exhibit "B".

The second objection made by Mr. Holcomb in said report is that of charging prospective lessees the expense of location of said lands, and later reimbursing them by deducting said charge from the rents to be received. This had been, of course, discontinued from the time of your assuming office as Governor, and the law attached hereto as exhibit "B" would make such charge unnecessary.

The third objection is that the Agricultural College has practically invested its permanent fund by depositing the same with the Bank of Commerce at Albuquerque and receiving interest thereon, without the approval of the Secretary of the In-

copy of said bill is hereto attached marked exhibit "B".

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The third objection is that the Agricultural College has practically invested its permanent fund by depositing the same with the Bank of Commerce at Albuquerque and receiving interest thereon, without the approval of the Secretary of the Interior. Within the past few days I have received a letter from the President of the Board of Regents of said college asking me for an opinion as to whether this money could be used for the erection of a building, and if not whether it could be used in purchasing territorial bonds recently validated by act of Congress. I have not answered this communication but expect to do so within the next few days, and will state that in my opinion this particular fund for this particular institution cannot be used for the erection of buildings, and that a purchase of such territorial bonds would be such an investment of said funds as is contemplated by the congressional act, subject, however, to the approval of the Secretary of the Interior.

While Mr. Holcomb did not say in his report that he construed the expenditure of the permanent fund in the construction of permanent improvements to be against the intent of the Act of Congress of June 21, 1898, yet on page 10 of his said report he seems to question if said fund is available for the construction of permanent building and permanent equipment. In my opinion such fund is available for such purposes, except the permanent funds derived from the sale of lands of the Agricultural College and the University.

As to the matter of handling the funds that are derived from said grant, by the Territorial Penitentiary, it is well known that acting upon Mr. Holcomb's verbal suggestion when he was here, an investigation was commenced which went into the affairs of the Penitentiary thoroughly and resulted in the repayment of about \$4700 by the Ex-Superintendent of the Penitentiary. All the objections to the management of said institution that were made by Mr. Holcomb applied to a time prior to your removal of the Superintendent of the Penitentiary shortly after your assuming the office of Governor and the appointment of a new superintendent-

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On page 17 of Mr. Holcomb's report he has taken up the matter of the act of the legislative assembly of March 13, 1905, which provides that the sum of \$2500 is appropriated from the funds derived from Water Reservoir Income Fund and Permanent Fund, and the Improvement of the Rio Grande Income and Permanent Fund, and the further sum of ten per cent of the net moneys which may hereafter be placed to the credit of the aforesaid funds to be used for the benefit of the Elephant Butte Water Users Association of New Mexico. The Commissioner of Public Lands asked for an opinion from my office as to whether said chapter was in conflict with the act of Congress of June 21, 1898. I rendered such an opinion July 18, 1906, a copy of which is attached hereto marked exhibit "C", holding

that said chapter was not in conflict with the act of Congress, and in which opinion I suggested to the Commissioner of Public Lands that the matter be referred to the Secretary of the Interior with the request that he indicate whether in his opinion said chapter was in accordance with the said act of Congress of June 21, 1898. On September 27, Hon. Frank L. Campbell, Assistant Attorney General rendered an opinion to the Secretary of the Interior, which said opinion was approved on Sept. 27, 1906 by Hon. Thos. Ryan, Acting Secretary, in which it was held that said Chapter 57 was not in conflict with the said act of Congress, a copy of which opinion is hereto attached marked exhibit "D". Notwithstanding the technical legality of said act of the legislative assembly, the legislation contained therein is wrong in principle in that it applies only to the Elephant Butte Water Users Association, and upon my suggestion Mr. Cameron, a member of the Council of the 37th legislative assembly introduced a bill to repeal said chapter, but we were unable to get it passed by the legislature, A copy of said bill is hereto attached marked exhibit "E".

The next objection raised by Mr. Holcomb is as to the expense of the Irrigation Engineer and the Irrigation Commission, This has been remedied by recent

the technical legality of said act of the legislative assembly, the legislation contained therein is wrong in principle in that it applies only to the Elephant Butte Water Users Association, and upon my suggestion Mr. Cameron, a member of the Council of the 37th Legislative Assembly introduced a bill to repeal said chapter, but we were unable to get it passed by the legislature, A copy of said bill is hereto attached marked exhibit "G".

The next objection raised by Mr. Holcomb is as to the expense of the Irrigation Engineer and the Irrigation Commission, This has been remedied by recent legislation. A special appropriation out of territorial funds to be raised by a levy on all the taxable property of the territory is made for the payment of the Territorial Engineer and the Board of Control, and no further drafts will be made upon institutional funds in that direction.

As to the receipts from the sale of timber lands by the University being used as an income fund, there is a matter of some doubt in my mind whether this is an improper use of said moneys. My attention has never been called to it except as I see it in Mr. Holcomb's report. He takes the position that such moneys should be covered into the permanent fund. This is a matter that should be carefully considered by myself, and I shall perhaps report it to the Department of the

Interior for instructions from that Department also.

As to the investment of moneys derived from the proceeds of sale of public lands under section 4 of said Act of 1898 and moneys derived from the proceeds of lands granted to the Territory for the erection of public buildings under Section 2 of said Act of 1898, and referred to on pages 20 and 21 of Mr. Holcomb's report, I have no knowledge other than contained in said report. I am inclined, however to agree with Mr. Holcomb that a deposit of these moneys with the territorial treasurer and a receipt of three per cent interest thereon is not a satisfactory investment, and suggest that upon your return to the Territory a better investment be sought and the same be submitted to the Secretary of the Interior for his approval.

Respectfully submitted,



of lands granted to the Territory for the erection of public buildings under Section 2 of said Act of 1898, and referred to on pages 20 and 21 of Mr. Holcomb's report, I have no knowledge other than contained in said report. I am inclined, however to agree with Mr. Holcomb that a deposit of these moneys with the territorial treasurer and a receipt of three per cent interest thereon is not a satisfactory investment, and suggest that upon your return to the Territory a better investment be sought and the same be submitted to the Secretary of the Interior for his approval.

Respectfully submitted,



M. C. Quinn
Attorney General.

Five Exhibits
A, B, C, D and E
Enclosed.

DEPARTMENT OF THE INTERIOR
RECEIVED
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1904
OFFICE OF LANDS

Attorney General of the
Territory of New Mexico,
Santa Fe, New Mexico.
April 10, 1907.

Letter addressed to Hon.
H. J. Hagerman, Raleigh Hotel,
Washington, D.C., August 10,
1907, reporting as to com-
pliance with suggestions made
by Mr. Halcomb in his letter
of November 30, 1906, to the
Secretary of the Interior
relative to institutional
lands granted the Territory
and the management of funds
derived from public lands.

File

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(Copy)

December 31st, 1906.

Hon. W. G. Sargent,
Territorial Auditor,
Santa Fe, N. M.

Dear Sir:-

Some time ago I submitted to Hon. R. C. Gortner, Assistant Attorney General, the question of whether the Governor of New Mexico, the Surveyor General and the Attorney General were entitled to receive the compensation of \$500. a year payable out of the following incomes under the Session Laws of 1905:

"Each member of the United States Land Commission created by Act of Congress approved June 21, 1898, to make selections of indemnity and other lands granted to the Territory by said Act shall receive as compensation for his services the sum of five hundred dollars per annum, payable monthly x x x and all such expenses shall be paid out of the funds derived from the leasing and sale of public lands upon vouchers and warrants drawn in the manner now provided for the payment of other territorial accounts."

This law is similar to that of 1903 and from said funds the members of said commission have been since the year 1903, drawing as their pay the sum of \$500 per annum payable monthly out of said funds. It is held by Mr. Gortner that while the Legislature is authorized to appoint such Commission and is fully authorized to provide for the pay thereof, it was not authorized to provide such pay out of the funds derived from the Leasing and sale of public lands, in which opinion I concur. You are therefore advised that you should not draw further warrants upon this fund in payment of said salaries, and that you cannot draw any

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Respectfully submitted,

(Signed) W. C. Reid,

Attorney General.

(Copy)

T E R R I T O R Y O F N E W M E X I C O .

Office of the Secretary,

C E R T I F I C A T E O F C O M P A R I S O N .

I, J. W. Reynolds, Secretary of the Territory of New Mexico, do hereby certify that there was filed for record in this office at five o'clock P. M. on the Twenty-first day of March, A.D. 1907.

C O U N C I L B I L L N U M B E R 115.

AN ACT TO REFUND TO TERRITORIAL INSTITUTIONS MONEYS USED FOR EXPENSES IN SELECTION AND LOCATION OF PUBLIC LANDS, AND PROVIDING FOR THE PAYMENT OF FUTURE EXPENSES IN THE SELECTION AND LOCATION OF PUBLIC LANDS.

and also, that I have compared the following copy of the same, with the original thereof now on file, and declare it to be a correct transcript therefrom and of the whole thereof.

Given under my hand and the Great Seal of the Territory of New Mexico, at the City of Santa Fe, the Capital, on this 27th day of March, A. D. 1907.

(SEAL)

(Signed) J. W. Reynolds,
Secretary of New Mexico.

COUNCIL BILL NO. 115.

(Introduced by Mr. Murray)

AN ACT TO REFUND TO TERRITORIAL INSTITUTIONS MONEYS USED FOR EXPENSES IN SELECTION AND LOCATION OF PUBLIC LANDS, AND PROVIDING FOR THE PAYMENT OF FUTURE EXPENSES IN THE SELECTION AND LOCATION OF PUBLIC LANDS.

WHEREAS under Act of Congress of June 21st, 1898 numerous public institutions of the Territory of New Mexico were granted large tracts of land; and,

WHEREAS, since the year 1902 the payment of all expenses for the location and selection of said lands for the several institutions has under a legislative act been made out of the revenues derived from said lands; and,

WHEREAS, the Attorney General of the Territory has recently held that said revenues could not, under the said Act of Congress, be used for said purposes;

NOW THEREFORE, Be it enacted by the 37th Legislative Assembly of the Territory of New Mexico:

Section 1. That a special levy of seventy-five one-hundredths of one mill on the dollar be levied on the taxable property of the Territory to reimburse the several territorial institutions for moneys heretofore expended belonging to such institutions for the selection and location of territorial lands, as follows:-

Blind Asylum.	.	.	.	.	.	.	.	\$1530.87
Military Institute	.	.	.	.	.	.	.	1482.74
Normal School, Silver City	.	.	.	.	.	.	.	1554.11
Miners' Hospital	.	.	.	.	.	.	.	1513.73
Reform School.	.	.	.	.	.	.	.	1546.62

FOR THE PAYMENT OF FUTURE EXPENSES IN THE SELECTION AND LOCATION
OF PUBLIC LANDS.

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WHEREAS, the Attorney General of the Territory has recently held that said revenues could not, under the said Act of Congress, be used for said purposes;

NOW THEREFORE, Be it enacted by the 37th Legislative Assembly of the Territory of New Mexico:

Section 1. That a special levy of seventy-five one-hundredths of one mill on the dollar be levied on the taxable property of the Territory to reimburse the several territorial institutions for moneys heretofore expended belonging to such institutions for the selection and location of territorial lands, as follows:-

Blind Asylum.	\$1530.87
Military Institute	1482.74
Normal School, Silver City	1554.11
Miners' Hospital	1513.73
Reform School.	1546.50
Normal School, Las Vegas	1488.63
School of Mines	732.61
Deaf and Dumb Asylum	755.34
Agricultural College	2425.29
Improvement Rio Grande.	1781.89
Insane Asylum	743.76

Common School Income Fund	\$ 372.03
Penitentiary	1292.58
Water Reservoirs	784.76
University Income Fund	1252.55
Public Buildings at the Capital	715.03

Sec. 2. There is hereby appropriated out of the territorial salary fund for the 58th, 59th and 60th fiscal years for the purpose of defraying the expense of selecting and locating further territorial lands under said act of June 21st, 1898, the following amounts:

To each member of the United States Land Commission, Five Hundred (\$500.00) dollars per year, payable monthly.....	\$1500.00
For the per diem and expenses of locating engineer to be employed from time to time by said U. S. Land Commission, as needed.....	1200.00
For contingent expenses for office of said U.S. Land Commission.....	150.00

Sec. 3. The Auditor of the Territory is hereby authorized and required to charge the amounts of moneys heretofore expended for the maintenance of the Board of Public Lands during the 54th and 55th Fiscal Years against each of the several territorial institutions, according to the percentage and amount which should be borne by each institution the same to be determined by the Territorial Auditor and the Commissioner of Public Lands.

Sec. 4. All acts and parts of acts in conflict herewith are hereby repealed and this act shall be in full force and effect from and after its passage.

Chas. A. Spiess.
President of the Council.

W. E. Martin.
Chief Clerk of the Council.

Roman L. Baca
Speaker, House of Representatives.

Frank Staplin.
Chief Clerk, House of Representatives.

Approved this 21st Day of March, A. D. 1907.

H. J. Hagerman.
Governor of the Territory of New Mexico.

FILED IN OFFICE OF
SECRETARY OF NEW MEXICO
MAR. 21? 1907. 5:00 P.M.

J. W. Reynolds,
Secretary.

Comp'd L.D.L. To o.

(Copy)

July 18, 1906.

Hon. A. A. Keen,

Commissioner of Public Lands,

Santa Fe, New Mex.

Dear Sir:-

I have your favor, in which you ask me to furnish an opinion in reference to Chapter 57, of the laws of 1905, as to whether said Chapter is in any manner in violation of, or in conflict with the act of Congress, approved June 21st, 1898, making certain grants of land to the Territory of New Mexico.

Section one of said Chapter, is as follows:

The sum of two thousand five hundred dollars (\$2500.00) or so much thereof as may be necessary, is hereby appropriated from any net moneys now or hereafter in the water reservoir income fund, water reservoir permanent fund, improvement Rio Grande permanent fund and improvement Rio Grande income fund, or from whatever fund or funds in which the net proceeds of the leasing and sale of lands granted to the Territory of New Mexico for the establishment of permanent water reservoirs for irrigation purposes, and for the improvement of the Rio Grande in New Mexico and the increasing of the surface flow of the water in the bed of said river, and the income therefrom, shall be carried and the further sum of ten per centum, or so much thereof as may be necessary, of any net moneys which may hereafter be placed to the credit of the aforesaid funds or any or either of them, from the sources above mentioned, to be paid in the manner hereinafter provided to the Elephant Butte Water Users' Association of New Mexico after its incorporation under the laws of the Territory of New Mexico, to be used in printing, publishing, and circulating all matter necessary to the full explanation of what is to be done by the reclamation service of the United States to the owners of land to be irrigated from the waters of said reservoir, and river and what is to be done by them to secure the United States for its expenditures to be made in the construction of said dam and reservoir; in preparing and making all necessary deeds, mortgages and other instruments in writing required in the pledge of such lands; in doing all acts and things necessary to ascertain and determine the areas and perfect the title of the lands to be pledged to the United States for the building and construction of said dam and reservoir, mentioned in the title and preamble of this act; in paying all necessary expenses and costs of incor-

(Copy)
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and in paying the costs and expenses necessary or incidentals to the accomplishment of the objects and purposes of said association relating to the procuring of the construction of said dam and reservoir and the improvement of the Rio Grande in New Mexico and increasing the surface flow of the water in the bed of the said river."

Section 6 of the said act of June 21, 1898, among other things, grants to the Territory of New Mexico, of non mineral, and unoccupied land, for the establishment of a permanent water reservoir for irrigation purposes, 500,000 acres; for the improvement of the Rio Grande in New Mexico, and the increase of the surface flow of the water in the bed of said river, 100,000 acres.

It is plain that the revenue derived from the use or sale of the aforesaid lands may be used under the direction of the Legislature of New Mexico, for either building a permanent reservoir or aiding in the construction of same, or for the improvement of the Rio Grande in New Mexico and the increase of the surface flow in the bed of the said river. The Legislature, by enacting said Chapter 57, of the laws of 1905, has stated that one of the uses that the revenue derived from said land, shall be put to, is to aid in the construction, indirectly, of the Elephant Butte Water Users' Association, the construction of which is now contemplated by the United States Government. If the United States Government, under its reclamation act, contemplates the construction of the said reservoir, and after completion, make a donation of it to the Water Users' Association, I would not think that the use of the funds derived from the sale of said lands could be made as contemplated in said Chapter 57, but the United States will not construct said reservoir and donate the same to the Water Users. The office of the United States in connection wi

and in paying the costs and expenses necessary or incidentals to the accomplishment of the objects and purposes of said association relating to the procuring of the construction of said dam and reservoir and the improvement of the Rio Grande in New Mexico and increasing the surface flow of the water in the bed of the said river."

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Hon. A. A. K. 3.

Reservoir is the supplying the necessary means for the construction of the same. The people who will receive the water will eventually pay the entire expense of such reservoir. The people do in fact build the reservoir. The Government loans the money without interest. I am therefore of the opinion that in so far as the Legislative act in question relates to the proceeds derived from the income or sale of lands granted for the purpose of establishing permanent water reservoirs, that said act is not beyond the intent of said act of Congress of June 21, 1898.

As to whether the legislature had power to direct the use of moneys derived from the sale of lands granted for the improvement of the Rio Grande in New Mexico and the increase of the surface flow of the water in the bed of said river, to the purposes set out in said chapter 57, is a matter of considerable doubt in my mind. It is doubtful for the reason that I am not advised as to how the Rio Grande is to be improved, and in what manner the increase of the surface flow of the water in the bed of said river was intended to be accomplished. If these objects may be accomplished by the construction of the Elephant Butte Reservoir, on said river, then I believe that this use of said funds is within the contemplation of said act of June 21, 1898.

I think the entire matter should be referred to the Secretary of the Interior, with a request that he indicate to you whether, in his opinion Chapter 57 of the laws of 1905 is or is not in accordance with the said act of Congress of June 21, 1898. I believe it is a matter for the General Government, through the office of the Secretary of the Interior, to determine.

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Respectfully submitted,

(Sd) W. C. Field

Attorney General.

3174-1906.

(copy)

(Copy)

G. B. G.

September 27, 1906.

The Secretary of the Interior.

Sir:-

By your informal reference I am asked for opinion whether Chapter 57, New Mexico Laws of 1905, is in violation of or in conflict with the act of June 21, 1898 (30 Stat., 414); or more precisely stated, in view of the correspondence submitted with the reference, it would seem opinion is desired whether so much of the territorial law in question as seeks to appropriate the sum of \$2500 out of the net moneys received on account of the reservoir fund and the Rio Grande Improvement fund, and the further sum of ten per centum, or so much thereof as may be necessary, of the net moneys placed to the credit of said funds to be paid to the Elephant Butte Water Users Association for certain purposes, is in conflict with that provision of section 10 of the act of June 21, 1898, supra, which directs that all moneys received on account of sales and leases of lands granted to the Territory of New Mexico by section 6 of the same act for the establishment of permanent reservoirs for irrigation purposes, and for the improvement of the Rio Grande river, "shall be placed to the credit of separate funds created for the respective purposes named in this act, and shall be used only as the legislative assembly of said Territory may direct, and only for the use of the institutions or purposes for which the respective g of lands are made. . . . and all investments made or securities

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I do not find inconsistency in these acts. The act of June 21, 1898, provided for the leasing and sale of these lands and for the ultimate application of the proceeds arising therefrom in furtherance of the purposes for which the respective grants

of land were made, and "only as the legislative assembly of said Territory may direct." Such legislative assembly is therefore made the trustee of these funds, and its discretion is not limited, except that the funds may be applied "only for the use of the institutions or purposes" for which the grants were made.

The territorial law in question recites that the money thereby appropriated is --

to be used in printing, publishing and circulating all matter necessary to the full explanation of what is to be done by the reclamation service of the United States to the owners of land to be irrigated from the waters of said reservoir and river and what is to be done by them to secure the United States for its expenditures to be made in the construction of said dam and reservoir; in preparing and making all necessary deeds, mortgages and other instruments in writing required in the pledge of such lands, in doing all acts and things necessary to ascertain and determine the areas and perfect titles of the lands to be pledged to the United States for the building and construction of said dam and reservoir, mentioned in the title and preamble of this act; in paying all necessary expenses and costs of incorporation; and in paying the costs and expenses necessary or incidental to the accomplishment of the objects and purposes of said association relating to the procuring of the construction of said dam and reservoir and improvement of the Rio Grande in New Mexico and increasing the surface flow of the waters in the bed of the said river

These uses are not inconsistent with the main purpose of Congress, that proceeds arising from the sale or leasing of these lands shall be applied only in furtherance of the end for which the grants respectively were made. I advise you that the territorial law under consideration is not in conflict with the act of June 21, 1898, that the expenditures thereby contemplated are neither "investments" nor "securities" within the meaning of the last named act, and that the approval of the Secretary of the Interior is not necessary to give validity thereto.

Very respectfully,

(Signed) Frank L. Campbell,

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Very respectfully,

(Signed) Frank L. Campbell,

Assistant Attorney-General.

Approved: September 27, 1906.

Thos Ryan,

Acting Secretary.

COUNCIL BILL NO. 20.

Introduced by Mr. Cameron, January 31, 1907; read first time by title and under suspension of the rules read second time in full, ordered translated and printed and referred to Committee on Irrigation.

AN ACT

To repeal Chapter 57 of the Laws of the 36th Legislative Assembly of the Territory of New Mexico, the title of which is "An Act entitled an act to aid in establishing a permanent water reservoir for irrigation purposes at or near the Elephant Butte, New Mexico, and for the improvement of the Rio Grande in New Mexico, and the increasing of the surface flow of the water in the bed of said river." Approved March 13, 1905.

1 *Be it Enacted by the Legislative Assembly of the Territory of New Mexico,*

2 Section 1. That Chapter 57 of the Laws of the Thirty-sixth Legisla
3 Assembly of the Territory of New Mexico, approved March 13, 1905,
4 the same being entitled "An act entitled an act to aid in establishing a per
5 manent water reservoir for irrigation purposes at or near the Elephant
6 Butte, New Mexico, and for the improvement of the Rio Grande in New

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1 Mexico and the increasing of the surface flow of the water in the bed of
2 said river," be and the same hereby is in all parts thereof repealed.

3 Sec. 2. This act shall take effect and be in force from and after its
4 passage.

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April 11 1907.

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Attorney General,
Department of Justice.

Sir:

I transmit herewith letter dated April 4, 1907, from
W. H. H. Llewellyn, U. S. Attorney from New Mexico, enclosing
an affidavit made by E. C. Abbott, in connection with an inves-
tigation by a special committee of the House of Representatives
of New Mexico, in the matter of the sale of certain timbered
lands to the Pennsylvania Development Company, the report of
which, I am advised is now under consideration in your Department.

Very respectfully,

James D. Mansfield
Secretary

EPH.