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ARIZONA ATTORNEY GENERAL

GARY K. NELSON, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

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DEPARTMENT OF LAW OPINION NO. 68-8 (R-68)

REQUESTED BY: ROBERT JANTZEN, Director
Arizona Game and Fish Department

QUESTION: Can the Arizona Game and Fish Commission regulate the use of motors on public lakes in this state which are wholly within the boundaries of a National Forest?

ANSWER: Yes.

Jurisdiction of the Arizona Game and Fish Commission includes all wildlife, with exceptions not here applicable, found in this state. See A.R.S. § 17-102. Attorney General Opinion 66-19. "Wildlife" includes fish. A.R.S. § 17-101 (A) (17).

Among the statutory duties of the Commission set forth in A.R.S. § 17-231(A) are:

1. The establishment of hunting and fishing regulations, including regulations prescribing the manner and the methods of taking wildlife.
2. The establishment of appropriate policies and programs for the management, preservation and harvest of wildlife.
3. Enforcement of laws for the protection of wildlife."

Regulatory power over the taking, management and preservation of fish necessarily extends the jurisdiction of the Commission over the water that fish inhabit. 35 Am.Jur.2d Fish and Game, Sec. 43. Columbia River Fishermen's P.U. v.

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City of St. Helens, 87 P.2d 195 (Ore. 1939). This common law principle has been codified in Arizona by A.R.S. § 17-237 which authorizes the Commission to bring suit against any person, corporation or governmental agency which pollutes a body of water in the state in a manner injurious to wildlife.

Therefore, while certain lakes may lie wholly within the boundaries of a national forest, state regulation of their use is authorized by virtue of state ownership of wildlife including fish. Moreover, the United States has confirmed this jurisdiction with respect to national forest areas by the Multiple-Use-Sustained-Yield Act of 1960, 16 U.S.C. 528-531, which provides in pertinent part, that:

"Nothing herein shall be construed as affecting the jurisdiction or responsibilities of the several states with respect to wildlife and fish on the national forests." 16 U.S.C. 528

State jurisdiction over persons committing acts within a national forest is reserved by 16 U.S.C. 480, quoted in full:

"The jurisdiction, both civil and criminal, over persons within national forests shall not be affected or changed by reason of their existence, except so far as the punishment of offenses against the United States is concerned; the intent and meaning of this provision being that the State wherein any such national forest is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State."

It is stated that a prohibition on the use of motors is required since their use interferes with the adequate and orderly harvest of fish, contributes to the pollution of

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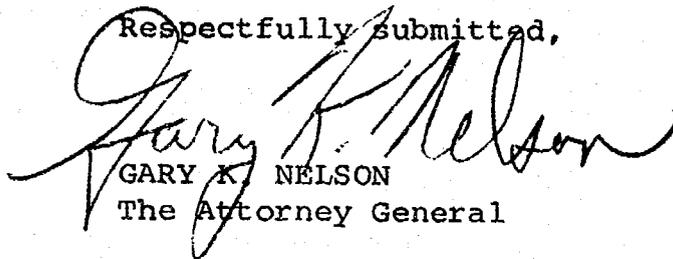
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water and affects aquatic life, thereby curtailing productivity of the lake. Each of these reasons is a sufficient ground to support Commission regulation of the use of motors, since each is directly relevant to matters within the Commission's jurisdiction.

Finally, though none of the lakes under discussion are considered navigable, such a determination would not alter the conclusions contained herein pertaining to state authority. Acknowledging that the Federal Government has reserved the right to regulate commerce and navigation on inland navigable waters, there is no necessary conflict between this right and the right of a state to regulate fisheries in the same waters. Anthony v. Veatch, 220 P.2d 493 (Ore. 1950) Therefore, the question of navigability does not affect the authority inherent in the State of Arizona, to regulate the use of motors on public lakes within its boundaries.

Respectfully submitted,



GARY K. NELSON
The Attorney General

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