

IN THE MATTER OF APPLICATION NO.
13339 IN NAME OF FRANK HARRINGTON TO
APPROPRIATE WASTE WATER FROM THE WELLS
SEWER SYSTEM FOR IRRIGATION PURPOSES,
ELKO COUNTY, NEVADA.

RULING

Application No. 13339 was filed March 28, 1950 by Frank Harrington to appropriate 2.0 c.f.s. of waste water from the Wells Sewer System for irrigation purposes on 200 acres of land located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ NW $\frac{1}{4}$ Section 24, T. 38 N., R. 61 E. The proposed point of diversion is within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 25, T. 38 N., R. 61 E. Protests to the granting of a permit under this application were filed as follows:

June 28, 1950 by City of Wells; Bailey and Dudley;
and Metropolis Grazing Association.

June 29, 1950 by Hattie A. Downey.

The basis of the protest by the City of Wells is as follows:

1. That said water is waste water from the sewer system of the City of Wells, and not subject to appropriation by any person.
2. That water is not the product of a natural stream system and not subject to appropriation.

The protest of Bailey and Dudley contains in addition to the grounds set forth by the City of Wells that the water is already used by protestant on their properties; that the sewer outlet is on their properties, and they have the right to the use of the same subject to the will of the City of Wells.

The protest of the Metropolis Grazing Association contains the same grounds as in the City of Wells protest, and as an addition-

al ground of protest states that the water flows into the Humboldt River and Adjudicated Stream system.

The protest of Mrs. Hattie A. Downey contains in substance the same two grounds set forth in the City of Wells' protest and includes the additional grounds that said protestant, through arrangement with the City of Wells, has had the use of said waters for more than 20 years last past, and is entitled to continue to use said waters.

On August 28, 1950 a field investigation was made on this application by Edmund Muth, Special Deputy. Applicant and all protestants were present in person, or represented by counsel. The report of said investigation is as follows:

"The City of Wells sewer system outlet is on property belonging to Mrs. Hattie A. Downey. From the end of the pipe the sewage flows in open ditches on Mrs. Downey's property until it empties into the river channel at the point shown on the map filed in support of Application 13339. Some use for irrigation is claimed on the Downey property, although the principal use appears to be made on property adjoining Mrs. Downey's which is now owned by Glenn C. Dudley. This use is made before the sewage empties into the river channel. About 1/4 to 1/2 c.f.s. of water was flowing from the sewer at the time of the investigation.

There are decreed water rights from the Humboldt River above the point of diversion applied for under Application 13339 and below the point where the sewage enters the river. There also appears to be some contributing spring areas within this stretch of river. It would be impossible to determine the amount of sewage water reaching Mr. Harrington's proposed diversion. About 0.10 c.f.s. (estimated) of water was at the proposed diversion point.

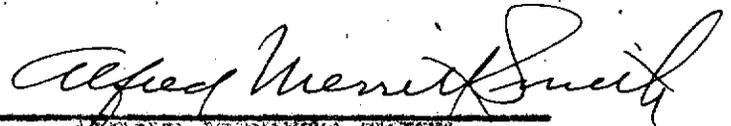
The Humboldt River Channel in this area shows evidence of carrying considerable water at times. An earthen dike across the channel would be detrimental to the stream system and should not be allowed under any circumstances.

The application, in my opinion, should be denied since it would require constant regulation and control and place an unfair tax burden on other water users."

RULING

In accordance with the recommendations set forth in the report of the field investigation, the protests to the granting of a permit under Application No. 13339 are sustained and said application will be denied on the grounds that the granting thereof would be detrimental to public welfare insofar as a dam placed across the Humboldt River would impede proper regulation of the waters of the Humboldt River.

Respectfully submitted,



ALFRED MERRITT SMITH
State Engineer

Dated this 14th day of September, 1950.