**Opinion No. 14-1283**

July 25, 1914

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Honorable Robert P. Ervien, Commissioner of Public Lands, Santa Fe, New Mexico.

**WATER.**

Lands irrigated by means of wells and pumps not subject to the restriction by congress of being sold at not less than $ 25.00 per acre.

**OPINION**

*{*143}* Referring to the question which you, Mr. St. John and Mr. Bickford discussed with me some time ago as to the meaning of some language to be found in Section 10 of the Enabling Act which provided for the admission of Arizona and New Mexico into the Union, I am satisfied that we can get no assistance from text books, adjudicated cases or from any other like sources. I have had a letter from an Assistant Attorney General of Arizona on the subject, written in the absence of the Attorney General himself, in which he expressed the same opinion which I have, although he says that that office has never had occasion to construe the language under consideration. He says also that he had consulted with Mr. John P. Orme, President of the Water Users' Association under the Roosevelt Reclamation Project, and he expressed substantially the same opinion.

The language referred to is as follows:

"And no lands which are or shall be susceptible of irrigation under any projects now or hereafter completed or adopted by the United States under legislation for the reclamation of lands, or under any other project for the reclamation of lands, shall be sold at less than twenty-five dollars per acre."

The question which you submitted was as to whether the words "any other project for the reclamation of lands," would include a proposition for the reclamation of lands by means of wells and pumping water therefrom. In the first place we must consider that the earlier part of the language quoted refers to projects by the United States under legislation for the reclamation of lands, and this being followed by "under any other project," I am strongly of opinion that such other project must be one of the same kind as the projects by the United States under legislation for the reclamation of lands in accordance with the well known rule of construction, commonly spoken of as the rule of ejusdem generis, which is that although ordinarily *{*144}* general terms are to be given their natural and full signification, yet where they follow specific words of a like nature they take their meaning from the latter and are presumed to embrace things or persons of the kind designated by them.

This naturally brings us then to a consideration of what projects have been completed or adopted by the United States under legislation for the reclamation of lands, and an examination of the acts of congress do not show the slightest indication that there has been any mention of anything even approaching a pumping proposition for the reclamation of lands. The Act of Congress of June 17, 1902, 32 Statutes at Large, 388, commonly known as the Reclamation Act, in its second section indicates the general scope of such projects. That section authorizes and directs the Secretary of the Interior "to make examinations and surveys for, and to locate and construct, as herein provided, irrigation works for the storage, diversion and development of waters, including artesian wells." I believe that in all of the acts of congress on this and kindred subjects there is no other mention of wells of any kind, nor is there anything else in that act, nor in any of the other acts, about even artesian wells. The word "project" is used repeatedly in that and other acts of congress, but in no place that I can find is there any indication that it applies to anything except such irrigation projects as those which have been adopted by the United States like the Roosevelt Dam in Arizona, the Elephant Butte Dam and Rio Hondo Project in New Mexico, and others of the same class in other places, which are all of a kind requiring the construction of dams and reservoirs for the storage of water from natural streams. This is indicated in at least one of the acts of congress, approved February 21, 1911, which provides that when, in carrying out the provisions of the reclamation law "storage or carrying capacity" may be provided in excess of the requirements of the lands "to be irrigated under any project," the Secretary of the Interior is authorized "to contract for the impounding, storage and carriage of water to an extent not exceeding such excess capacity, with irrigation systems" operating under the Carey Act and with individuals, corporations and irrigation districts organized for irrigation purposes. Similar language about impounding, storing or carrying water is used three or four times in the same act, and in one place there is reference to "reservoirs, canals or ditches." In another act of congress, approved April 16, 1906, reference is made to the development of power necessary for the irrigation of lands "under any project undertaken under the said reclamation act," and the Secretary of the Interior is authorized to lease surplus power or power privileges, clearly contemplating power to be produced by the water of the streams upon which the project is established, and in that act special reference is made to the "Rio Grande project in Texas and New Mexico," indicating that that is the kind of project contemplated by the legislation of congress.

I reach the conclusion that the development of water and its application to land by means of wells and pumps cannot properly be considered as a "project for the reclamation of lands" such as are indicated by the legislation of congress, and, therefore, that land belonging to the State, which may perhaps be irrigable from wells *{*145}* with the use of pumps, is not subject to the restriction of being sold at not less than twenty-five dollars per acre, as shown in the language quoted near the beginning of this letter.