[KeyCite Yellow Flag - Negative Treatment](https://1.next.westlaw.com/Link/RelatedInformation/Flag?documentGuid=I31fe1ffa568411d9bf30d7fdf51b6bd4&transitionType=Document&originationContext=docHeaderFlag&Rank=0&ppcid=67952ca45e654b9d98a3225b44ceeff7&contextData=(sc.DocLink))KeyCite Yellow Flag - Negative Treatment

  Distinguished by [Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency,](https://www.westlaw.com/Document/I31fe1ffa568411d9bf30d7fdf51b6bd4/View/FullText.html?navigationPath=RelatedInfo%2Fv4%2Fkeycite%2Fnav%2F%3Fguid%3DI31fe1ffa568411d9bf30d7fdf51b6bd4%26ss%3D1895003366%26ds%3D1999045185%26origDocGuid%3DI06cc6f60faeb11d9b386b232635db992&listSource=RelatedInfo&list=NegativeCitingReferences&rank=0&ppcid=67952ca45e654b9d98a3225b44ceeff7&originationContext=docHeader&transitionType=NegativeTreatment&contextData=%28sc.DocLink%29&VR=3.0&RS=cblt1.0) D.Nev., January 15, 1999

107 Cal. 214

Supreme Court of California.

PEOPLE ex rel. RICKS WATER CO.

v.

ELK RIVER MILL & LUMBER CO.

(No. 15,720.)[1](#co_footnote_B00111895003366_1)

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May 2, 1895.

**Synopsis**

Department 2. Appeal from superior court, Humboldt county; G. W. Hunter, Judge.

Action by the people of the state of California, upon the relation of the Ricks Water Company, against the Elk River Mill & Lumber Company, to abate a nuisance. From a judgment for plaintiff, defendant appeals. Affirmed.

West Headnotes (2)

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| **[1]** | [**Water Law**](http://www.westlaw.com/Browse/Home/KeyNumber/405/View.html?docGuid=I06cc6f60faeb11d9b386b232635db992&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))Display Key Number Topics[Sewage and refuse matter](http://www.westlaw.com/Browse/Home/KeyNumber/405k1358/View.html?docGuid=I06cc6f60faeb11d9b386b232635db992&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) |
|  | Where there are lower riparian owners, one has no right to pollute the waters of a stream by maintaining a cow stable and hog pen on its banks, but must keep his stock a reasonable distance therefrom.  [2 Cases that cite this headnote](http://www.westlaw.com/Link/RelatedInformation/DocHeadnoteLink?docGuid=I06cc6f60faeb11d9b386b232635db992&headnoteId=189500336650120100222032840&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=CitingReferences&contextData=(sc.DocLink)) |

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| **[2]** | [**Water Law**](http://www.westlaw.com/Browse/Home/KeyNumber/405/View.html?docGuid=I06cc6f60faeb11d9b386b232635db992&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))Display Key Number Topics[Pollution or deposits](http://www.westlaw.com/Browse/Home/KeyNumber/405k1450.3/View.html?docGuid=I06cc6f60faeb11d9b386b232635db992&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) |
|  | A complaint for nuisance, charging defendant with polluting the waters of a river with offensive matter from “a sawmill, outhouses, stables, and other fixtures which usually accompany a sawmill,” will embrace a finding that the cause of pollution was a hog pen and the manure pile of a stable maintained in connection with the sawmill.  [9 Cases that cite this headnote](http://www.westlaw.com/Link/RelatedInformation/DocHeadnoteLink?docGuid=I06cc6f60faeb11d9b386b232635db992&headnoteId=189500336650220100222032840&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=CitingReferences&contextData=(sc.DocLink)) |

**Attorneys and Law Firms**

**\*\*487** **\*215** F. A. Cutler and S. M. Buck, for appellant.

**\*217** J. F. Puter, Barclay Henley, J. N. Gillett, and Atty. Gen. Hart, for respondent.

**Opinion**

**\*218** TEMPLE, J.

This appeal is by the defendant from the judgment and upon the judgment roll. The action was brought on relation of the Ricks Water Company to abate certain structures as nuisances. Among other things, it was charged that the defendant had constructed and was maintaining on the banks of the south fork of Elk river ‘a large sawmill, and also a cookhouse, outhouses, barn, and stables, and other fixtures which usually accompany a sawmill.’ It was averred ‘that said defendant has caused and permitted, and does cause and permit, all sewage, offal, waste, and fetid matter from said sawmill, cookhouse, and stables to be drained and deposited in the waters of said stream, and continues to do so, thereby contaminating, polluting, and rendering the same unwholesome, and unfit for culinary and other general domestic purposes, and offensive to the senses.’ As to most of the structures mentioned, the court found that they did not constitute nuisances, but it was found as follows: ‘That on the banks of said stream, just above the mill dam, defendant had erected a large stable, in which it houses from twenty-five to thirty head of cows; that the droppings from these cattle are deposited upon the banks of said stream, and near thereto, where the land gradually slopes to the same; that there now exists at said point a pile of manure **\*219** about seventy feet in length, eight feet deep, and sixteen to eighteen feet in width, and which has been accumulating there for years; that the defendant allows and permits this large pile of manure to lie there and rot on the bank of said stream, and the drainage therefrom flows directly into the waters of said stream, and pollutes the same, and renders the waters thereof offensive to the senses and unwholesome and unfit for domestic uses; that defendant also maintains near said stream a corral or pen, in which it keeps abut twenty-five hogs; that the said stream forms one side of said pen, and the urine and droppings and filth from said hogs find their way into said stream, thereby polluting the waters thereof, and rendering the same offensive to the senses and unwholesome and unfit for domestic uses.’ And as matter of law it was found that the hog pen and manure pile constitute nuisances, and defendant was enjoined from maintaining them. From this part of the decree defendant appeals, and his first point is that this finding is not within the issues. The hog pen and manure pile are not mentioned in the complaint, and it is not found that they are such fixtures as usually accompany a sawmill. The complaint, however, speaks of outhouses and stables, and I think the findings sufficiently show that the cow stable and hog pen are maintained in connection with the mill plant; and, notwithstanding appellant's criticism, that the manure pile is caused by the cow stable. Beyond this, the complaint seems to be that the court did not suppress the stable itself, rather than the use of it, which renders it a nuisance. I do not think there was any error here of which the defendant can complain.

2. The court found that Elk river is not a navigable stream. It is contended that it follows from that fact that fouling its waters cannot constitute a public nuisance. But it is found that ‘the waters of Elk river at and below the defendant's dam were, and have been, and now are, used by a considerable number of persons, who reside along the banks of said stream below the defendant's **\*220** mill and dam.’ This constitutes such a public use as would make a pollution of the water by any unreasonable use a public nuisance. We may leave out of view, therefore, the claims of the Ricks Water Company and the inhabitants of the city of Eureka altogether. While, as to lower riparian owners, the defendant is entitled to a reasonable use of the water, he has no right to pollute the stream by putting such matter directly into it. The decision does not go to the extent that appellant apprehends. It does not determine that one may not depasture stock upon the lands comprising the watershed drained by the river, because they would necessarily pollute the water, nor that he cannot maintain stables and hog pens upon the land, but only that they must not be in, or directly upon, the banks of the stream. It holds that this is an unreasonable use of such streams by a riparian owner as against lower riparian owners. But if stock, not confined upon the river banks, following their natural instincts, cause such pollution, it would be a different matter. So, if the hog pen and the cow stable were at a reasonable distance from the river, the fact that the winter rains washed some impurities into the stream would be something of which lower riparian proprietors could not complain. The acts enjoined are equivalent to actually putting the polluting material directly into the water. If the conformation **\*\*488** of defendant's land is such that he cannot carry on a dairy without putting such filth directly into the water, then he must find some other use for the land. This seems to be the effect of the rule laid down in [](https://1.next.westlaw.com/Link/RelatedInformation/Flag?documentGuid=Ie53235effae811d9b386b232635db992&transitionType=InlineKeyCiteFlags&originationContext=docHeaderFlag&Rank=0&ppcid=67952ca45e654b9d98a3225b44ceeff7&contextData=(sc.DocLink))[People v. Gold Run Ditch & Mining Co., 66 Cal. 138, 4 Pac. 1152.](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1884004834&pubNum=660&originatingDoc=I06cc6f60faeb11d9b386b232635db992&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) The judgment is affirmed.

We concur: McFARLAND, J.; HENSHAW, J.

**All Citations**

107 Cal. 214, 40 P. 486

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| **Footnotes** | |
| [1](#co_fnRef_B00111895003366_ID0EDG_1) | Rehearing denied. |

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