

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of Fresno Farms Company to sell and Kerman Water Company to purchase the domestic water system located at the town of Kerman, Fresno County, and such other of the rights of the former company as may be of the nature of a public utility; and of Kerman Water Company to issue stock.

ORIGINAL

Application No. 1565.

Thomas C. Job, for applicant.

DEVLIN, Commissioner.

O P I N I O N

Fresno Farms Company is engaged in the development, improvement and sale of approximately 25,300 acres of land in Fresno County, about fifteen miles northwest of the city of Fresno, and upon which is located the unincorporated town of Kerman. Fresno Farms Company, hereinafter called the "Farms Company" was incorporated under the name of "Fresno Irrigated Farms Company", and since such incorporation its name has been changed to "Fresno Farms Company". Fresno Irrigated Farms Company succeeded to the interests of the San Francisco and Fresno Land Company which, in turn, was a successor in interest of the Bank of California to certain lands and water rights in Fresno County.

The Farms Company has sold and conveyed 7,000 acres of land of the aforesaid 25,300 acres and has sold under contract 3,300 acres additional. Of the remaining 15,000 acres, the Farms Company owns a portion in fee and the balance is held under a contract to purchase.

The Farms Company also owns 498 town lots and certain other subdivisions of real estate and buildings in the town of Kerman. It alleges that the value of its lands together with the equity in the lands which it has contracted to purchase, may be conservatively estimated at \$965,000. It alleges further that it has ex-

pended approximately \$200,000 in developing these tracts.

The Farms Company sells water for domestic purposes in the unincorporated town of Kerman, which has a population of approximately 350 or 400 persons.

The Farms Company also owns and controls certain ditches and laterals used for the conveyance and delivery of water for irrigation purposes. Under a contract with the Fresno Canal and Irrigation Company, which distributes water from Kings River, the Farms Company undertakes to distribute water for irrigation purposes to persons who have settled upon its lands.

The Farms Company acquired water rights for these lands, according to the testimony in this case, from predecessors ~~in interest~~ which had paid approximately \$150,000 for these water rights. The Farms Company now assists the Fresno Canal and Irrigation Company in the distribution of water under the terms of an agreement filed in connection with this application as Exhibit "A", the term of the contract being the life of the Farms Company. Under the terms of this agreement the Farms Company is obligated to pay the Fresno Canal and Irrigation Company, hereinafter called the "Canal Company" annually upon 200 of said water rights, the sum of \$16,000, and upon $14\frac{7}{8}$ of said water rights, the sum of \$1,193.35. These sums must be paid whether or not the water is taken under the water right agreements.

The Canal Company's rate for this water service is $62\frac{1}{2}$ cents per acre per year to the water user, but an allowance of $12\frac{1}{2}$ cents per acre per year is made to the Farms Company, making the direct charge against the Farms Company 50 cents per acre per year. Under the arrangement between the Canal Company and the Farms Company, the Canal Company bills the irrigation users direct at the rate of $62\frac{1}{2}$ cents per acre. The amount collected from these water users at this rate is applied as a credit upon the sum annually due

from the Farms Company to the Canal Company in the sum of \$17,193.35. It is intended by this arrangement that the Farms Company shall undertake to assure the full payment to the Canal Company annually for all the lands entitled to water, and for this undertaking and for the services rendered by the Farms Company in assisting in the delivery of the water through its own ditches and laterals, the Canal Company apportions 12½ cents per acre to the Farms Company.

The contract covering this arrangement was executed September 15, 1908 by and between Fresno Canal and Irrigation Company and Fresno Irrigated Farms Company which embraces a contract entered into June 7, 1897 between the Fresno Canal and Irrigation Company and the San Francisco and Fresno Land Company.

Fresno Farms Company now desires to confine its operations exclusively to land development and sale, and for that reason proposes to separate its water business from its land business. The petition admits that Fresno Farms Company is a public utility insofar as it serves the people of the town of Kerman with water, but raises the question for decision by this Commission whether the irrigation business as conducted by Fresno Farms Company makes it a public utility in the distribution and sale of water. I find that the irrigation business as conducted by Fresno Farms Company is such as to make Fresno Farms Company a public utility.

Fresno Farms Company petitions further, in case it should be declared a public utility both as to the sale and distribution of domestic water and irrigation water, that it be granted authority to sell its domestic water system in the town of Kerman, and that it be permitted to assign its contract for the distribution and sale of irrigation water to Kerman Water Company, a newly organized corporation, created for the special purpose of taking over the public utility water business of Fresno Farms Company.

In addition, Kerman Water Company requests authority from this Commission to acquire the domestic and irrigation water systems and business of Fresno Farms Company and to issue to Fresno Farms Company in payment therefor, 45 shares of its capital stock of the par value of \$100 per share, or a total par value of \$4,500. It is alleged that the property used for serving domestic water to the inhabitants of the town of Kerman cost \$6,265.84, but that this property has depreciated somewhat in value.

Fresno Farms Company offers to guarantee Kerman Water Company against any deficiency of revenues which might impair the efficiency of its service to the public. The need of this guarantee arises from the fact that Fresno Farms Company's operations during the past year in the distribution and sale of irrigation water resulted in a deficit of approximately \$9,000.

It has been the practice of this Commission to authorize land companies to divest themselves of their public utility attributes by turning over their water systems to other corporations. In this case Fresno Farms Company expresses its readiness, after taking over the stock of Kerman Water Company, to make such guarantees as may be necessary.

The Kerman Water Company was incorporated on February 23, 1915, with an authorized capital stock of 100 shares of the par value of \$100 each. It has issued one share to each of the following subscribers:

H. P. Baumgaertner
Henry Kressman
H. H. Kerckhoff
Anne Murray
J. E. Faulkner.

The Farms Company has submitted as Exhibit "F", a form of deed by which it proposes to transfer the water properties used in serving the town of Kerman to Kerman Water Company. These properties consist of a ten inch well, 79 feet deep, pump, tank, pipes, etc.

A copy of the proposed contract has been submitted as Exhibit "G", under the terms of which the Farms Company conveys to the Kerman Water Company all of the rights of the Farms Company under the contract of the Farms Company with the Fresno Canal and Irrigation Company, heretofore referred to as Exhibit "A", providing, as hereinbefore recited, for the distribution and sale of water for irrigation purposes.

The irrigation and domestic water business hereinbefore described are carried on for the benefit particularly of the Farms Company to create a market for its lands and to make them productive under development. Accordingly I believe it is only proper that the Farms Company should undertake to guarantee the Kerman Water Company against any deficiency arising from its service of water. It should also be provided that any obligations for the service of water now binding upon the Farms Company should be accepted by the Kerman Water Company. It is the intention at a subsequent date to form mutual water companies which will undertake the distribution and sale of the water as now conducted for irrigation purposes by the Farms Company.

Accordingly I recommend that the application be granted and submit the following form of order:

ORDER

Fresno Farms Company having applied to this Commission for authority to sell its domestic water system located at the town of Kerman, Fresno County, and to assign and convey its rights and obligations for the delivery and service of water for irrigation purposes to Kerman Water Company, and Kerman Water Company having applied to this Commission for authority to issue to Fresno Farms Company 45 shares of its capital stock of the par value of \$100 per share,

And a hearing having been held and it appearing to this Commission that public convenience will be served by the conveyance and transfer of the domestic and irrigation water properties, rights

and obligations as aforesaid,

And it appearing further that the purposes for which Kerman Water Company proposes to issue said stock are not in whole or in part reasonably chargeable to operating expenses or to income,

IT IS HEREBY ORDERED that Fresno Farms Company be granted authority and it is hereby granted authority to convey to Kerman Water Company a certain tract of real estate and the domestic water system in said town of Kerman, substantially in the form of the deed of conveyance filed in connection with the application herein as Exhibit "F".

IT IS FURTHER ORDERED that Fresno Farms Company be granted authority and it is hereby granted authority to convey to Kerman Water Company the properties described in said form of deed marked Exhibit "F".

IT IS FURTHER ORDERED that Fresno Farms Company be granted authority and it is hereby granted authority to convey to Kerman Water Company, in the form as set forth in Exhibit "G" filed in connection with the application herein, all of its rights under its contract with Fresno Canal and Irrigation Company, dated September 15, 1908, and filed in connection with the application herein as Exhibit "A".

IT IS FURTHER ORDERED that Kerman Water Company be granted authority and it is hereby granted authority to issue 50 shares of its capital stock of the par value of \$100 per share in payment for said properties and said assignment of rights, the stock to be issued as follows: 45 shares to Fresno Farms Company, and one share each to -

H. P. Baumgaertner
Henry Kressman
H. E. Kerckhoff
Anne Murray
J. E. Faulkner.

The authority herein granted, both as to the transfer of the water properties and as to the issue of stock, are granted upon the following conditions and not otherwise:

(1) Fresno Farms Company and Kerman Water Company shall file with this Commission an agreement in proper form under the terms of which Fresno Farms Company shall guarantee Kerman Water Company against any loss through the operation of its irrigation water business or through the exercise of the rights to be assigned to it by Fresno Farms Company and now exercised by Fresno Farms Company under its contract with Fresno Canal and Irrigation Company, to which reference has heretofore been made, and marked Exhibit "A"; or through the operation of its domestic water business in the town of Kerman, and said contract to provide for the use by Kerman Water Company of such canals, ditches, laterals or other facilities owned or controlled by Fresno Farms Company which may be necessary to Kerman Water Company in the distribution and sale of irrigation water.

(2) The properties and rights hereinbefore referred to shall be transferred by Fresno Farms Company free of debt.

(3) The authority herein granted is granted upon the condition that Kerman Water Company shall accept and carry out all of the obligations for the service of water, both domestic and irrigation, now binding upon Fresno Farms Company.

(4) The authority herein granted shall not be binding upon this Commission or other tribunal as a finding by this Commission upon the rates or service in connection with the sale and distribution of water by Fresno Canal and Irrigation Company, Fresno Farms Company or Kerman Water Company, nor shall it be binding as a finding by this Commission of value of any of the properties of Fresno Canal and Irrigation Company, Fresno Farms Company or Kerman Water Company, this Commission reserving the right to inquire into and pass upon the rates and service of said Fresno Canal and Irrigation Company, Fresno Farms Company and Kerman Water Company and to investigate into and pass upon the value of their properties.

(5) The authority herein granted shall apply to such properties and rights as shall have been transferred and to such stock as shall have been issued on or before December 31, 1915.

(6) Within thirty days after the transfer herein/^{authorized}shall have been made and the stock shall have been issued, Fresno Farms Company and Kerman Water Company shall report such fact to this Commission.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 13th day of March, 1915.

Max Thelen
H. D. Howard
Chas. G. Gordon

Samuel R. Parker

Commissioners.