

Decision No. \_\_\_\_\_

ORIGINAL

Decision No. 3266

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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E. N. SPAFFORD, et al.,

Complainants,

-vs-

CASE NO. 858

FRESNO CANAL & IRRIGATION  
COMPANY and KERMAN WATER  
COMPANY,

Defendants.

E. N. Spafford for complainants.  
Short & Sutherland by W. A.  
Sutherland for Fresno  
Canal & Irrigation Com-  
pany.  
L. L. Cory for Kerman Water  
Company.

BY THE COMMISSION:

O P I N I O N.

The issues raised by the pleadings are whether defendants are under original contract obligation to deliver one cubic foot of water upon each quarter section of complainant's lands in the vicinity of Kerman, in Fresno County; whether the amount and place of delivery has been changed by certain subsequent contracts; whether water has been improperly diverted from complainant's lands; and whether defendants, by failing to deliver to

complainants directly water in suitable rotation and amounts claimed have violated rule 9 of the rules established by the Commission in decision No. 1385 of March 28, 1914 relating to service of water by defendant, Fresno Canal and Irrigation Company, hereinafter referred to as the canal company; and whether defendants have permitted their canals and ditches to become choked with weeds and to spread weed seeds upon complainant's lands.

The complainants are nearly all owners of lands in a tract of 31,927 acres lying just north of Kerman commonly known as and hereinafter referred to as the bank tract. Water for irrigating said lands is supplied by defendant canal company under a series of 200 water right contracts issued by it March 20, 1889 to the Bank of California and located upon the lands and recorded. This was done under a contract of the same date between the same parties, providing for the construction by the canal company of a system of canals and ditches to convey water to each of the 200 quarter sections of land in the bank tract, then owned by the bank, in consideration for which the bank was to pay the canal company \$150,000, and the parties were to settle certain pending litigation and dismiss the cases. The system of canals and ditches was constructed to the quarter sections, the money paid, and the litigation settled, all as agreed. Complainants, whether owning lands within or beyond the bank tract, hold the same form of water contracts as the 200 water right contracts referred to.

The 200 water right contracts are identical in form and provide that the canal company, referred to as first party, will furnish from its main canal or a branch thereof "all the water that may be required not exceeding

at any time one cubic foot of water per second for the purpose of irrigating" the quarter section specifically described. The contract also provides among other things that the canal company will place a box or gate in the bank of its canal "at the most convenient point for the conveyance of the water to said land" as soon as the owner begins the construction of the ditch on his land; that said ditch may at the option of the company be a branch ditch of the company, under its control, to be used or enjoyed by it provided the "use will not interfere with the flow of water to said land"; that the owner will not permit the water to be used on any other land or permit it to run off to contiguous land or run to useless waste, and will construct ditches to carry the surplus water, if any, back into the company's canal or a branch thereof. The water is to form an appurtenance to the land "and the right thereto shall be transferable only with and run with said lands" and the canal company is bound by the contract to all subsequent owners of the land but to no other persons. The canal company is not to be responsible for deficiency of water by drought, insufficient water in the river or certain other causes. It is also agreed that the canal company may sell 1,000 water rights of one cubic foot each, and if the aggregate quantity of water in the canals/falls short of 1,000 cubic feet flowing per second, then each water right shall represent only one thousandth part of the aggregate quantity. It is further provided "that this agreement and the covenants therein contained \*\*\*\*\* run with and bind the land". The payment to the canal company is to be \$100. per year per quarter section, or 62½¢ per acre.

While each of the water right contracts provides for "all the water that may be required not exceeding

at any time one cubic foot per second for the purpose of irrigating" the land, the general contract between the canal company and the bank provides that the canal company will deliver 200 contracts in the form set forth in Exhibit "A" attached and made a part thereof, each for the sale of a "water right of one cubic foot of water per second", each contract "to be attached and made appurtenant to a separate quarter section of land to be described in the contract for sale thereof". We think the specific provisions of the several 200 contracts "for all the water that may be required not exceeding one cubic foot" must be considered controlling although they are referred to in the general contract as being for one cubic foot of water per second.

Defendants admit an original obligation upon the canal company to deliver water upon each quarter section, but claim it was modified by subsequent agreements dated June 7, 1897 and September 15, 1908, by which after September 1, 1897 the canal company was to deliver the water at certain points on its main canals and be relieved from the operation of the laterals and the distribution of the water; and by which agreements the time and terms of annual payments were also modified. Since said date defendants have been acting upon this theory. None of the complainants or holders of the individual water right contracts are parties to these agreements. Each is between the canal company and the then owner of the unsold lands in the bank tract. Clearly the rights of complainants under their water right contracts with the canal company could not be modified by contracts between the canal company and third parties. This is recognized by the canal company and the subsequent owners of the bank tract in the two agreements of June 7, 1897 and September 15, 1908. In the first of these the San Francisco and Fresno Land Company is successor in interest to the bank. It guarantees that for ten years the terms and conditions of the agreement shall apply to and bind all of the land

in the bank tract, expressly including that which had been sold and of which it was not then the owner. Under the agreement of September 15, 1908, the Fresno Irrigated Farms Company (hereinafter referred to as the farms company) which had succeeded to the interest of the bank, agrees that so far as can be done it will obtain the consent and approval of other land owners in the bank tract to the agreement, but whether successful or not it warrants that it or its successors will accept and receive the water at the places provided, on the main canals of the canal company, and will convey it to the lands entitled thereto, and that the canal company shall be relieved of <sup>such</sup> obligation under the 200 water right contracts and that it will take all steps necessary to comply with the said contracts on behalf of the canal company.

Both modifying contracts expressly provide that all the individual water rights including the 200, shall "remain in full force and effect, each as a separate and independent agreement."

Under the modifying contracts the canal company is to furnish water through six of its main canals specified, which are to be retained and operated by it, and the other party is to operate the rest of the system in the bank tract and in 2386.77 acres of adjoining lands added to the irrigated area by the contract of September 15, 1908, <sup>now in force,</sup> which provides water for it at the same ratio.

Under the contract of June 7, 1897, the canal company reserved the right to convey through the six canals excess water for 34 quarter sections of contiguous lands, after the bank tract had been supplied under the contract. It also provided that five water rights of Collins Bros. were to come under the contract and be treated as though owned by the land company. Under the present contract

the  
/canal company is to maintain the six canals as previously agreed and will furnish to the farms company "all the water that may be demanded not exceeding 214 7/8 cubic feet of water per second"; 15 feet to be delivered at the point where the flume ditch intersects the ditch on the east line of section 12; 160 feet at the intersection of the Herndon Canal with the east line of section 11, township 13 south, and range 16 east, 25 feet at the junction of the Thompson and Houghton Canals and 14 7/8 feet provided for the 2386.77 acres of new land also to be delivered at the junction of the Thompson and Houghton Canals; the farms company to receive the water at said points and conduct it upon the lands through the ditches already constructed or which might thereafter be constructed; "but it is expressly agreed that all 214 7/8 cubic feet of water or any part thereof may be used upon all said lands or any part thereof."

The farms company agrees to pay a lump sum equivalent to 50¢ per acre, but the canal company is to collect from the land owners 62½¢ per acre annually until it has collected the full amount to be paid by the farms company, after which the balance collected shall be paid over to the farms company.

Pursuant to agreement the farms company organized defendant, Kerman Water Company, for the purpose of separating its public utility activities from its land business and assigned to it the modifying contract of September 15, 1908. Kerman Water Company now operates the lateral canals and ditches, and distributes water to the users. For this service it receives 12½¢ an acre, being the difference between the 62½¢ per acre which the land owners agree to pay and 50¢ per acre which the farms company pays in bulk to the canal company. The canal company bills and collects the rate of 62½¢ per acre and credits the amount to the farms company upon its obligation to pay the lump sum equivalent to 50¢ per acre.

Kerman Water Company is protected in its operations by guarantee contained in contract with the farms company under which it receives its 12 $\frac{1}{2}$ ¢ per acre for the service rendered and is guaranteed against loss in operation of the system. The relation of defendant, Kerman Water Company, to the canal company, to the farms company and to the owners of lands in the bank tract is further shown in Decision No. 2216 of March 3, 1915, upon application by the farms company and Kerman Water Company for authority to the latter company to acquire the public utility property and business of the farms company, and issue stock in payment therefor. (Vol. 6, Opinions and Orders Railroad Commission of California, p. 354.) The record in that matter was introduced in evidence at the hearing of the present case.

The testimony showed that the loss of water in transmission through the laterals and ditches of the system, after leaving the main canals, is generally about 50%; but is about 75% in one of the large canals. In its contracts with complainants the canal company does not expressly contract against such losses. On this point the contracts provide that the canal company, (described as the party of the first part)

"shall not be responsible for deficiency of water caused by drought, insufficient water in the river, hostile diversion or obstruction, forcible entry, temporary damage by flood, or other accident, but that the party of the first part shall use and employ all due diligence, at all times, in restoring and protecting the flow of water in its canals and ditches."

By contracting to furnish the water on the land, and not excepting such losses in the contract, the canal company assumes the burden of the losses in transmission. The

complainants on the other hand, by their contracts assumed the duty to avoid waste of water. The contracts provide that users

"will not use or permit the water to be used on any other land except the land above described, or permit the water to run off on any contiguous land, or permit the water to spread out in low places on such land, or in any way run to useless waste, and will construct ditches to convey the surplus water, if any there be, back into the canal of said company, or a branch thereof."

Prior to the purchase by the farms company and the contract of September 15, 1908, there had been sold about 6,000 acres of land from the bank tract. The farms company subdivided about 26,000 acres remaining. Of these lands about 12,000 acres have been sold, leaving some 14,000 acres now owned by it in the bank tract. It does not appear how much of the 2386.77 acres added to the area by the contract of September 15, 1908 with the farms company has been sold.

The canal company brings water from Kings River, a distance of about 30 miles, and delivers it in its main canals at three points in the bank tract for distribution through the system by Kerman Water Company. It attempts to maintain delivery at these points of a total of 253  $\frac{7}{8}$  cubic feet of water per second, being 200 second feet for the bank tract, 14  $\frac{7}{8}$  second feet added by the contract of September 15, 1908 with the farms company, five second feet for the water rights of Collins Bros. and 34 second feet excess water which it reserved the right to deliver to 34 quarter sections of contiguous land, both of the latter covered by the contract of June 7, 1897. It takes the position that its obligation under the contract is performed by the delivery of this amount of water at these points, or a correspondingly smaller amount in the event of deficiency due to no fault of its own. It showed



delivery of water at these points between March 1, 1915 and September 20, 1915 with practically daily readings, a summary of the deliveries according to each party from its records being as shown below:

In terms of average flow in second feet.

1915 Month	a Kings River	a Fresno Canal	a Share of Kerman Water Co.	a of Delivered to Kerman Water Co.	b Delivered to Kerman Water Co.
March	1324	784	174	133	
April	3768	1198	255	275	282c
May	6941	1196	255	266	266
June	11510	1198	255	253	235
July	3980	1176	253	269	242
Aug.	553	417	105	134	129
Sept. 1-20	316	234	59	67	68d

- a. Records of Fresno Canal and Irrigation Co.
- b. Testimony of Miller- former Supt. Kerman Water Co.
- c. April 19th to end of month only.
- d. September 1st to 15th only.

Complainants offered testimony to the effect that the amount of water delivered upon the lands under water rights would not exceed as an average for the season .434 of a second foot per quarter section. This estimate assumes a loss of 50% in transmission. During a portion of the time the supply available was admittedly insufficient to meet all demand.

The acreage actually irrigated in the bank tract, other than the small area irrigated by the farms company, was shown by defendants from their records of July, 1915 to be:

	<u>Acres</u>
Alfalfa	3704
Deciduous fruit	906
Grapes.	1031
Corn	116*
Total	<u>5757½</u>

The contention of complainants that an inadequate water supply had been received and that it amounted to less

than one second foot per quarter section was supported by a number of witnesses. Definite measurement of amounts delivered has not been made by defendants. The only points where fairly accurate measurements and records have been made are at the three points where water is delivered to Kerman Water Company by the canal company. The various witnesses, however, clearly established the fact that a few consumers have received satisfactory irrigation service practically throughout the entire season; while others have been unable, even after repeated request, to obtain any quantity of water sufficient for practical use.

E. N. Spafford testified that he has five acres in alfalfa, and during 1915 had water twice only and received a total equal to .22 cubic feet per second per 160 acres for 150 days, being about one fifth the amount claimed by him under his contract.

G. H. Weitz testified that he receives two second feet of water for his 40 acres, for 60 hours at each run, and intimated that he was not seriously inconvenienced by shortage of supply.

R. M. Barstow testified that he was unable to obtain sufficient supply and discontinued use on 50 of his 160 acres after April, 1915 and that with the entire supply it required sixteen days to irrigate the remainder.

Other consumers testified to every gradation of service conditions, from total inability to obtain any appreciable supply of water, to entire satisfaction with the amounts received.

It is clearly established by complainant's witnesses, including C. A. Miller, formerly superintendent of the Kerman Water Company's ditch system, that the methods used have not resulted in equality of service. The Kerman Water Company measured

water in an approximate way at a few points on the system, and instructed its ditch tenders to deliver approximately the same amount at these points at all times. On some laterals there has been an endeavor to organize users and to provide definite rotation schedules, with but little success. Even at the few points where an attempt is made by the company to regulate the supply, the methods of measurement are shown by the testimony to have been mere approximations. With any shortage in supply there has been no real effort to see that distribution was prorated according to demand even at these points. It has been the practice to turn water for a number of users into a common ditch leaving the users to distribute it among themselves. On some such ditches the results are fairly satisfactory; but usually the user nearest the head of the ditch receives far the best service. Provision will be made in the rules for such cases.

It was shown that users below a large tract known as the Empire Vineyard experienced unusual difficulty in procuring water owing to the very large amounts used on the vineyard, and lack of control. The canal company's engineer stated that it planned to place locks on all turn-outs in the Empire Vineyard and have them under control of the company.

Great difficulty, it is alleged, has been experienced by the Kerman Water Company due to diurnal variation of flow at the points where water is received from the canal company. This, according to the testimony of defendants, is caused by evaporation in the main canals, but there is doubt whether this is the principal cause. The testimony shows that there is tendency to turn water back into the main canals, from branches and individual turnouts at night, rather than care for a continuous flow. This is a practice that can be minimized by proper operating methods.

Complaint of breakage of canals and lateral ditches was shown by the testimony to have been due in part to the assumption of obligation by the Kerman Water Company or its predecessors to provide water for lands at too great an elevation, to lack of system in water delivery, and to the unauthorized act of consumers returning water to the laterals. All these causes can be corrected by the establishment and rigid observance of reasonable and proper rules.

Admittedly the irrigators in this community, as in many others, are themselves largely responsible for the conditions complained of. While it is the duty of water utilities to adopt and practice suitable methods for adequate and equitable water service, it is practically impossible to operate successfully, unless irrigators will co-operate. It was shown that some irrigators on the bank tract let water run at will all night, or for many hours during the day; that it is permitted to run off the irrigators land, and that it is found running to waste upon highways some distance from canals and ditches. Strange as it may seem, many of the irrigators seem unable to realize that the individual, by wasting water, injures his neighbor and himself. The thoughtless answer is that the individual irrigator has the right to do as he will with the water while it is running on his land or while it is his turn to use it in the usual rotation. As already shown herein, the contract holders expressly agreed in each instance not to waste water. The honorable and faithful discharge of this obligation against waste will improve conditions.

The Commission will require water utilities to correct unsatisfactory conditions insofar as they can do so, but failure of irrigators to comply with the rules promulgated will tend in case of future complaints to exonerate utilities, in part.

The canal company has caused several criminal prosecutions, for unauthorized taking of water, but finding juries of the vicinity will not convict, has naturally

lost interest in attempting to stop the practice. Co-operation in this matter as in all other matters affecting the interests of users and utilities, is essential to the highest development of the service.

The farms company grew 100 acres of rice as an experiment during the season of 1915, on its lands south of Kerman. As a result it is considering doubling its acreage in rice for 1916. During part of the irrigating season prior to September the farms company used three feet of water from the system on its rice field. After about the first of September it pumped water for its rice. Rice culture requires several times the water necessary for growing other crops.

Complainants urge that this water was unlawfully diverted by defendants from complainant's lands in violation of the contracts, at a time when their crops were suffering for want of water, and that future diversions of equal or greater amounts will prove very disastrous to their interests. The farms company urges that it is entitled under its several water right contracts to far more water than it uses because very little of the water appurtenant to its 14,000 acres of unsold lands has been actually used thereof, as nearly all of its land is uncultivated. It has been permitting nearly all its water to be turned down to complainants and other users holding similar contracts. In practice water for quarter sections mostly owned by the farms company has been delivered to irrigators with small holdings therein. The farms company has freely permitted such course by the present utility. It followed the same course before it organized defendant Kerman Water Company.

Under the contract between the canal company and the farms company, of September 15, 1908, it is expressly pro-

vided that all 214 7/8 cubic feet of water may be used upon all or any part of the lands in the bank tract, and the contiguous 2386.77 acres. Under this contract the farms company is expressly authorized to use its water upon its lands where it wishes, but under Chapter 80, Statutes of 1913, the Commission has power to limit the supply of water to consumers or lands previously supplied.

The lands under consideration were sold by the farms company while it was in control of the water situation, with the general assurance that sufficient water would be furnished by it. It was its duty to carry out the obligation so assumed. The water appurtenant to the unsold lands of the farms company had not been put to a beneficial use upon its lands prior to 1915, except in a few instances where small amounts had been used. The order will limit the service of water to lands served prior to 1915, and to those which may hereafter be expressly authorized.

In practice the excess water, which the canal company by contract of June 7, 1897 reserved the privilege of delivering through the canals it controls to the 34 quarter sections contiguous to the bank tract, has been delivered undivided, with the water for the bank tract, the Collins water, and the 14 7/8 feet for the 2386.77 acres. All the water so delivered has been distributed in common. Under the contract this excess water is to be so delivered that it will not interfere with delivery of water to the bank tract. No showing was made of any necessity for delivering this excess water through the Korman system.

As to the noxious weeds complained of, it was shown that the sand burs and cockle burs are indigenous to the vicinity; while seeds of Bermuda grass and Johnson grass have been

brought in by the water, winds and birds. They thrive and re-seed by neglect of defendants and ranchers of the vicinity. There was testimony that the ditches have not been cleaned for seven years, and testimony that they have been cleaned at least annually, and some of them much oftener. Photographs showed some of the ditches in a disgraceful condition of neglect. The Commission has no jurisdiction over the ranchers. We hope, however, they will heartily co-operate with the utilities to effectively fight the common enemy. Rules on the subject for the utilities will be provided.

Neither the defendants nor the users have any storage facilities. The waters of the winter and the flood periods are permitted to run to waste, while sufficient water cannot be obtained when most urgently needed to supply even the usual limited irrigation season. Many users on the bank tract have been obliged to sink wells and install pumps in an effort to save their crops or to extend their irrigated areas. Installation of storage facilities by the utilities would tend to relieve the situation and extend their area of service.

Kerman Water Company expended upon the system in maintenance and operation during 1914 the sum of \$9996.09 and received from the farms company for its service the sum of \$3941. The deficit was made up by the farms company under its contract with the Kerman Water Company. The farms company pays the water tax of 62 $\frac{1}{2}$ ¢ per acre upon all of its 14,000 acres of land.

Defendants, in an effort to show what amount of water would be "sufficient to irrigate" lands in the bank tract, showed the experience of the University of California on its Kearney Farm of about 6500 acres near the bank tract. Testimony was submitted by both sides relating to height of water table and nature of soils on both tracts. The testimony, however, was not sufficiently definite or detailed to afford much aid.

Rule 9 of the rules provided for defendant canal

company and its water users by the Commission's decision No. 1385 referred to at the beginning, relates to delivery of water by rotation, commencing at the farther end of the laterals, and to its use without waste and continuously day and night after delivery until irrigation is complete; when delivery is to be stopped. It is apparent from what has been said that the rule has been violated in letter and in spirit in the delivery and use of water upon the bank tract by the users and the utility. Said rule and the rules promulgated herein, we expect to be scrupulously complied with hereafter.

#### O R D E R.

A PUBLIC HEARING HAVING BEEN HELD on the amended complaint in the above entitled case, and the Commission being now fully advised in the premises, does hereby make the following findings of fact:

a. That defendants prior to the date of filing the amended complaint herein had failed to deliver to many of its consumers, including several of complainants, the water to which they were ratably entitled under their contracts at the places specified therein.

b. Defendants had failed to keep portions of their canals and ditches in proper condition for the conveyance and delivery of water.

c. Defendants have violated Rule 9 of "information, rules and regulations for Fresno Canal & Irrigation Company and its water users" established by the Commission, effective April 1, 1914 by supplemental order in decision No. 1385, Case No. 397, in that they failed to deliver water in rotation as in said rule provided.

Basing its order on the foregoing findings of fact and on the further findings contained in the opinion which precedes



this order.

IT IS HEREBY ORDERED AS FOLLOWS:

1. Defendants are hereby ordered to hereafter supply irrigation water in the amounts to which lands are ratably entitled as expressed in the opinion herein, delivered only to tracts of 160 acres or less in extent which were being irrigated in whole or in part prior to the irrigation season of 1915, and to such tracts as may hereafter be expressly authorized by the Commission in writing to receive irrigation water. The areas to be so supplied are included in the lands in said bank tract, the said 2386.77 acres contiguous thereto, and the lands to which the five Collins water rights are made appurtenant, all being more fully described in said contracts of March 20, 1889, June 7, 1897 and September 15, 1908; but not including the 34 quarter sections for which defendant canal company reserved the right in said contract of June 7, 1897 to convey excess water through its canals.

2. Defendants shall not hereafter supply or deliver irrigation water for or upon any of the lands referred to in paragraph 1 hereof which were not irrigated prior to the irrigation season of 1915, unless hereafter expressly authorized by the Commission in writing.

3. The 34 second feet of water referred to in paragraph 1 of this order shall not be delivered through the canals and ditches located upon the lands referred to in above paragraph one, at times or in a manner which will interfere with delivery of water at said lands, nor until said lands have been supplied with the amounts provided in the contracts described in the foregoing opinion.

4. Defendants are hereby ordered to place and maintain their canals and appurtenances in proper condition for the conveyance and delivery of water to the lands of irrigators and to keep them free as far as practicable from noxious weeds and vegetation;

and to provide and properly instruct a sufficient number of capable employes to deliver said water upon the lands of irrigators, in proper proportion and rotation, to see that said water is so delivered, and to keep such records that it may be determined month by month whether it is being so delivered.

5. General rules for Kerman Water Company and its water users as set forth in Exhibit A attached hereto and made part hereof shall be established by Kerman Water Company, effective April, 1916.

Dated at San Francisco, California, this 19<sup>th</sup>  
day of April, 1916.

Max Thelen  
H. D. Howard  
Stan R. Decker  
Commissioners.

~~Decision No.~~

E. N. Spafford et al. vs. Fresno Canal &  
Irrigation Co. et al.

Exhibit A.

KERMAN WATER COMPANY.

RULES AND REGULATIONS.

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RULE 1. - The Kerman Water Company will operate and maintain all canals and laterals and structures along the banks of the same to the extent that it may be necessary in the delivery of water to privately owned and operated ditches. Its obligation in this regard will be assumed at and below the points where water is delivered to it for distribution by the Fresno Canal and Irrigation Company. The Company will provide for measurement either periodically or continuously at a sufficient number of points to assure itself and its consumers of the delivery at the land of consumers of a sufficient quantity of water to satisfy the provisions of contracts in force between consumers and Kerman Water Company or Fresno Canal and Irrigation Company.

RULE 2 - When sufficient water is available to supply for the land being irrigated water at the rate of one cubic foot per second per 160 acres, at the property of each and every consumer, rotation need not be resorted to, unless requested by one of the consumers located on a lateral incapable of carrying the full amount desired.

RULE 3 - When there is any shortage of supply, water will be delivered by rotation. Along larger branch canals and laterals a supply of water proportioned to the total acreage irrigated, allowing for the determined distributary seepage loss, will be run continuously. Rotation, when resorted to, will provide the

same interval and length of period for equal acreages whether located along the line of the canal or at the extremities of minor laterals. As the supply available decreases, the company will reduce mileage of canal kept wet continuously, and will endeavor to run as nearly full heads in each ditch operated as is possible, rotating between consumers on the ditch, and after all consumers on one ditch have been served, shifting entire supply to other ditches. The endeavor will be to provide a run of water with as full a head as the user can conveniently handle, and shortening the length of each run as the supply available falls off. The endeavor will be to provide water at least once per month.

RULE 4 - The Company will notify consumers through its ditch-tenders, by mail or by posting notices at convenient and pre-arranged places, as far in advance of a rotation period as possible, of the time when each consumer is to begin and cease using water. Such notification shall not be less than three days before the beginning of use, except in case of emergency.

RULE 5 - Records of delivery will be balanced up monthly and consumers who have not received a ratable supply in any one period, will be entitled to have that supply made good during the following period, provided such consumer has not failed to use the water when made available. The deficiency in one irrigation season due to fault of the company, will be made up in the following season, if the consumer desires.

RULE 6 - Individual users on a community lateral are expected to make use of water as provided in the schedules prepared by the Company. Should they fail to do so, the Company will take control for the protection of any complaining consumer on the lateral: unless consumers have previously agreed to schedule. Water must be used continuously throughout the rotation period of use, unless the consumer should not need water for the full period; in which event he must promptly notify the ditch-tender or some other official of the company in charge, to have delivery stopped.

RULE 7 - Consumers are required by law to prevent waste of water. Detection of unwarranted waste through carelessness or improper preparation of land will warrant the Company in refusing to render service.

RULE 8 - By previous arrangement, one irrigator in a rotation series may exchange with another, or use during a period may be waived and the amount of water due may be delivered in a future period, should no other consumers be damaged thereby.

RULE 9 - All structures on the canals and laterals operated by the Kerman Water Company are to be controlled exclusively by the Company's employees. All breaks in banks and damages to Company property are to be promptly repaired by the Company to the end that water waste may be prevented. Ditch-tenders will be fully instructed in regard to all changes to be made in the flow of water. Authority to alter flashboards or gates may be granted to irrigators in writing and in specific instances only. Persons guilty of trespassing on the premises of this Company will be dealt with according to law.

RULE 10 - Complaints should be lodged at the office of the Company in Kerman as soon as possible after the occurrence of which complaint is made. If there is failure to reach a satisfactory agreement in any matter, the consumer or the company may appeal to the California Railroad Commission.

RULE 11 - The Unit of measurement of water will be the second foot, it being one cubic foot of flow passing any point in one second of time. Gaging stations, weirs and other practicable devices will be used for continuous records of flow at all essential points and reported to the Railroad Commission. Consumers who receive water below such points will be informed in regard to such measurements upon application. Amounts of water delivered at lands of consumers may be

determined by measurement at a distance, correcting for periodically determined transmission losses. Where possible, check measurements will be made at individual land holdings.

RULE 12 - The ditch-tenders of the Company will be instructed by their superiors and it will be their endeavor to visit each point on the system where water is running, at least once daily. Their duty is to obey their instructions, and only within pre-arranged limits can they allow deviation therefrom. Ditch-tenders are under orders to report any interference by unauthorized persons with the operation of the ditch system, and all waste and misuse of water delivered.

RULE 13 - The Company will endeavor to keep the canals, laterals, banks and rights of way free from injurious vegetation, and will to that end co-operate with owners of land adjacent to the Company rights of way.