

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

E. H. SPAFFORD, et al.,
Complainants,
vs.

Case No. 858.

FRESNO CANAL AND IRRIGATION
COMPANY and KERMAN WATER
COMPANY,
Defendants.

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E. H. Spafford and G. H. Weitz for complainants.
Short & Sutherland, by W. A. Sutherland, for
Fresno Canal and Irrigation Company.
Richard C. Harrison, Jared How and L. L. Cory
for Kerman Water Company and Fresno Farms
Company, Intervenor.

WEBBLEN, Commissioner.

OPINION ON PETITION FOR REHEARING.

Kerman Water Company, one of the defendants herein,
has filed its petition for a rehearing on this Commission's
Decision No. 3266, made and filed on April 19, 1916. The Rail-
road Commission on May 26, 1916, made its order extending the
effective date of the order in Decision No. 3266 during the
pendency of the application for rehearing.

On October 13, 1916, a public hearing herein was held
in Fresno, at which time and place evidence and argument on the
question of rehearing were presented. It was stipulated that
in case the Railroad Commission should find that a rehearing
should be held, the evidence and argument thus presented should
be considered to be the evidence and argument which would have
been presented on the rehearing. This stipulation obviates the
necessity of a second hearing in case the Railroad Commission
should find that a rehearing should be held. I find that

petitioner, Kerman Water Company, was entitled to a rehearing.

The order in Decision No. 3266 directed defendants to deliver to the consumers of water on the so-called Bank Tract and other lands in Kerman, Fresno County, the water to which they are ratably entitled on certain water contracts issued by Fresno Canal and Irrigation Company. The order established certain restrictions and limitations on the defendants in the sale and delivery of water on these lands. Defendant Kerman Water Company was directed to adopt and file rules and regulations for the delivery of water.

The order was based on testimony showing that consumers of water on the Bank Tract were not securing the water to which they were entitled and that the water supplied by defendants was insufficient to irrigate the lands then under irrigation, together with the additional lands which have water rights but which have not as yet used water. Complainants expressed apprehension with reference to the water which was being conveyed by Kerman Water Company to irrigate certain rice lands of Fresno Farms Company (the owner of the entire capital stock of Kerman Water Company) located south of Kerman.

The testimony on the rehearing shows that the conditions attending the delivery of water by Kerman Water Company to complainants and others on the Bank Tract in 1916, subsequent to the hearing herein, were very much more satisfactory than the conditions prevailing in 1915, and that in 1916, Kerman Water Company received only a few casual complaints. Witnesses for Kerman Water Company testified that the improved conditions were due largely to the fact that in 1916 the company received from Fresno Canal and Irrigation Company considerably larger quantities of water than were received in 1915. These witnesses also testified that in 1916 considerable work was done by Kerman Water Company in cleaning out and relaying ditches on the Bank Tract.

The testimony on the rehearing further shows that, assuming the delivery by Fresno Canal and Irrigation Company to Kerman Water Company of the full amount of water specified in the various agreements between Fresno Canal and Irrigation Company on the one hand and Kerman Water Company and Fresno Farms Company and their predecessors on the other, there will be sufficient water, at least for a considerable time to come, for the supply to the lands of the Bank Tract and other lands affected, of the entire amount of water specified in the various water right contracts. Mr. I. Teilman, who has an intimate knowledge of the water conditions in Fresno County, testified that, in his opinion, the amount of water which the Fresno Canal and Irrigation Company has obligated itself to deliver under agreement of March 20, 1889, between Fresno Canal and Irrigation Company and the Bank of California, the agreement of June 7, 1897, between Fresno Canal and Irrigation Company and San Francisco and Fresno Land Company, and the agreement of September 15, 1908, between Fresno Canal and Irrigation Company and Fresno Farms Company, and the water rights issued under said agreements, will be sufficient to irrigate the entire 40,620 acres in the Bank Tract and other lands specified, provided that such irrigation is principally confined to deciduous fruit trees and vines. If a large part of the irrigation consists of the irrigation of alfalfa lands, the amount of water specified will not be sufficient.

In the event that the entire 40,620 acres should hereafter require water for irrigation, it would be necessary for Fresno Canal and Irrigation Company to supply water in excess of the $253\frac{7}{8}$ cubic feet per second which Fresno Canal and Irrigation Company tries to deliver to Kerman Water Company at the eastern boundary of the Bank Tract. This necessity would arise from the fact that the owners of the 6269.69 acres, approximately, of

the Bank Tract which were sold prior to the agreement of June 7, 1897, are entitled, unless their rights have been waived, to the entire water required by them to irrigate their lands, not to exceed one cubic foot per second for each 160 acres, delivered at each 160 acre parcel and not at the eastern boundary of the Bank Tract. In other words, it seems clear that under its contracts it is the duty of Fresno Canal and Irrigation Company, with reference to such lands, to suffer the loss from evaporation and seepage, or otherwise, to each 160 acre parcel. This matter, however, is not important at the present time for the reason that the total amount of water which is now being delivered by Fresno Canal and Irrigation Company to Kerman Water Company for distribution on the Bank Tract and the other lands referred to in said agreements is in excess of the contract requirements for the delivery of water for the lands now being irrigated.

With reference to the irrigation by Fresno Farms Company of rice lands south of Kerman, the testimony shows that 60 acres were irrigated in 1915 and 100 acres in 1916, and that a larger acreage will hereafter be planted. For the irrigation of these lands, Fresno Farms Company installed pumps. The testimony of Jacob Mansar, a director of Fresno Farms Company, shows that under normal conditions, Fresno Farms Company will irrigate its rice lands by means of water thus pumped and not by means of the gravity water secured by it from Fresno Canal and Irrigation Company.

Counsel for Fresno Farms Company and Kerman Water Company stated the position of these companies to be that they will not deliver and use water on the rice lands of Fresno Farms Company if such delivery results in depriving any water right holder on the Bank Tract and adjacent lands described in said agreements of any water to which they are entitled under their respective water right contracts. This position, coupled with

the service given by Kerman Water Company during the year 1916; I regard as a satisfactory solution of this problem.

Counsel for Kerman Water Company expressed apprehension lest, under one of the rules prescribed by the Railroad Commission in said Decision No. 3266, to be adopted by Kerman Water Company, the company might presently be compelled to assume the burden of operating and maintaining six main canals of Fresno Canal and Irrigation Company on the Bank Tract, which obligation, under the various agreements herein referred to, in the opinion of Kerman Water Company vests in Fresno Canal and Irrigation Company. It was not the intention of the Railroad Commission in said Decision No. 3266 to enlarge or alter the respective obligations of Fresno Canal and Irrigation Company and Kerman Water Company with reference to said canals.

Kerman Water Company, after consultation with the Railroad Commission's hydraulic department, will file rules and regulations to govern the distribution of water by it.

I submit the following form of order:

ORDER ON PETITION FOR REHEARING.

KERMAN WATER COMPANY having filed its petition for rehearing herein and a public hearing having been held and the Railroad Commission being fully advised,

IT IS HEREBY ORDERED that the order heretofore made and filed in Decision No. 3266 herein be and the same is hereby modified to read as follows:

1. Fresno Canal and Irrigation Company and Kerman Water Company, defendants herein, are each hereby directed to deliver to all persons entitled thereto the full amount of water specified in the various agreements and water right contracts referred to in the opinion which precedes this order.

2. Defendants are hereby directed to place and maintain their canals and ditches in proper condition for the

conveyance and delivery of water in accordance with their respective obligations and to keep them as free as practicable from noxious weeds and vegetation and to provide and properly instruct a sufficient number of capable employees to deliver said water, in proportion and rotation, to see that said water is so delivered and to keep such records that it may determine, month by month, whether the water is being ^{so} delivered.

3. Kerman Water Company shall, within 30 days from the date of this order, file with the Railroad Commission, for consideration by the Commission, and filing if approved, rules and regulations for the distribution and sale of water by said company.

The relief to which Kerman Water Company is entitled under this petition for rehearing herein having been granted in the preceding portions of this order,

IT IS HEREBY FURTHER ORDERED that said petition for rehearing be and the same is hereby dismissed.

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 21st day of October, 1916.

Max Thelen
H. J. Ireland
Alvin G. Foster
Edwin O. Edgerton
Frank R. Hulbert

Commissioners.