

Decision No. 27722

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

TEHACHAPI CATTLE COMPANY, a corporation,  
MEDA E. HOUGHTON, as Administratrix of  
the estate of R.E. Houghton, deceased,  
and S.M. JASPER,

Complainants,

vs.

KERN ISLAND CANAL COMPANY, a corporation,

Defendant.

ORIGINAL

Case No. 2711.

In the Matter of the Investigation upon the  
Commission's own motion into the operations,  
service, practices, contracts, rules and  
regulations of ANDERSON CANAL, INC., BUENA  
VISTA CANAL, INC., CENTRAL CANAL COMPANY, EAST  
SIDE CANAL COMPANY, THE FARMERS CANAL COMPANY,  
GOOSE LAKE CANAL COMPANY, JAMES CANAL, INC.,  
JAMES & DIXON CANAL, INC., JOYCE CANAL, INC.,  
KERN ISLAND CANAL COMPANY, KERN RIVER CANAL  
AND IRRIGATING COMPANY, LERDO CANAL COMPANY,  
PIONEER CANAL, INC., PLUNKET CANAL, INC., STINE  
CANAL, INC., KERN COUNTY CANAL AND WATER COMPANY,  
KERN COUNTY LAND COMPANY.

Case No. 2755.

Athearn, Chandler & Farmer and Frank R. Devlin  
by Milton T. Farmer, for S.M. Jasper.

Houghton & Houghton, by Edward T. Houghton, for  
Tehachapi Cattle Company and the Estate of  
R.E. Houghton, deceased.

McCutchen, Olney, Mannon & Greene, by John T. Figott  
and Carl I. Wheat, for Kern Island Canal  
Company and for Anderson Canal, Inc., Buena  
Vista Canal, Inc., Central Canal Company, East  
Side Canal Company, The Farmers Canal Company,  
James Canal, Inc., James & Dixon Canal, Inc.,  
Joyce Canal, Inc., Kern Island Canal Company,  
Kern River Canal and Irrigating Company,  
Lerdo Canal Company, Pioneer Canal, Inc.,  
Plunket Canal, Inc., Stine Canal, Inc., Kern  
County Canal and Water Company, and Kern  
County Land Company.

Thomas W. McManus, for himself as a water user of the Stine Canal.  
F.A. Chamberlain, for the Farmers Protective Association, in his own behalf and for the Arroyo and Emery Ditches.  
C.S. Harkins, for the Castro interests.  
George B. Preston, for the South Fork Water Users.  
Alfred Siemon, for the East Side Water Users Association.  
Mrs. Bertha M. Rankin, for the East Side Water Users Association.  
J.E. Roberts, for the Beardsley Canal Water Users.  
Harris, Willey, Griffith & Harris, by Ronald B. Harris, for the Farmers Protective Association and for landowners taking water under the Buena Vista Canal, Inc., The Farmers Canal Company, Kern Island Canal Company, Kern River Canal and Irrigating Company, Stine Canal, Inc., and Castro Canal.  
Charles M. Sears, for consumers on the Arroyo Ditch.  
Hugh S. Jewett, in propria persona.  
J.J. Deuel and L.S. Wing, for California Farm Bureau Federation.  
A.M. Free, for Tehachapi Cattle Company.

CARR, COMMISSIONER:

OPINION AND ORDER

These two cases, after very protracted hearings, resulted in an order of date November 13, 1933 (39 C.R.C. 83). Service areas for the various utilities were fixed. It having been concluded that the Kern Island Company was serving land in the so-called Panhandle area without a certificate of public convenience and necessity having been secured, cessation of such service to the Panhandle was directed until a certificate should be obtained. The order also directed that there be no service outside the service areas fixed. In order, however, that water, if any, not needed in the service areas as determined might be put to use, it was provided that:

"This order shall not be deemed to prevent the several utilities from selling water in amounts and at times not required by their consumers within their respective areas of service as herein fixed."

The Kern Island Company and the Kern County Land Company

each applied to the Supreme Court of California for a writ of review of the order so made. A review was had and on November 28, 1934, the Court, in Kern County Land Company v. Railroad Commission, S.F. No. 15130, and in the related case, handed down its decision, in which, while upholding the general conclusions of the Commission, it was decided that the order was too broad as it affected land in the so-called Panhandle area and it was directed:

"That portion of the commission's order directing that Kern Island Canal Company cease and desist from furnishing or delivering water to the Panhandle area unless and until a certificate of public convenience and necessity authorizing an extension of this area shall first be obtained, should be annulled and the matter be remanded for further proceedings to the end that a finding be made as to what amount of water, if any, may be furnished to lands in the Panhandle area without prejudice to the rights of users in the old area, and until the further order of the commission; and that an order be made in conformity with the views herein expressed."

Both the Canal and Land Companies applied for a rehearing, as did the Railroad Commission. The Commission, however, in its petition merely urged that the general provision in its order heretofore quoted accomplished in a practical way the end sought by the order of the Court. On December 28, 1934, both petitions for rehearings were denied, but the Court issued in connection with such denial an explanatory and interpretative statement as follows:

"In view of the petitions for modification of the order appended to the foregoing opinion, it is appropriate to state that it was not intended that the Commission might not make a general finding as to what water, if any, is available to the consumers in the Panhandle area which is not required by the consumers in the old area and the use of which would not prejudice the rights of the consumers in that area. Furthermore, it was intended that the Commission should retain a continuing jurisdiction over the matter and in connection therewith it would undoubtedly

have the power to formulate and enforce such rules and regulations governing water service as might be necessary for the protection of consumers of the Canal Company and to permit the sale and delivery of water by it to consumers in the Panhandle area when the same may be done without prejudice to the rights of consumers in the old area for present and prospective domestic and irrigation uses."

Following the order of the Supreme Court, the cases were set down for further hearing on January 24, 1935.

At the hearing the interested parties, including the Kern Island Canal Company and the Land Company, expressed a preference for a general rather than a specific finding respecting "what amount of water, if any, may be furnished the lands in the Panhandle area without prejudice to the rights of users in the old area." They also agreed that, in conjunction with such general finding, there should be modifications of the existing rules and regulations (34 C.R.C. 147) to cover and provide for the service to the Panhandle area of excess or unneeded waters. Certain other changes in the existing rules and regulations, believed desirable in the light of experience, were suggested.

At the request of the parties, a recess was had at which time those interested might consider the form and content of possible changes in the existing rules and regulations of the of the Kern Island Canal Company. When the hearing resumed, there was introduced in evidence a draft of proposed changes in the rules and regulations of the utility (attached hereto as Exhibit "A"), approved by all of the parties.<sup>(1)</sup>

1. Counsel for the Canal Company stated that the subdivisions marked "(e)" of Rule 5, providing under certain conditions for penalties, would not be enforced prior to May 1st and that the Company would make special effort to apprise all consumers of the existence and effect of this requirement intended largely to restrict the present general practice of filing applications for quantities of water far in excess of the amounts actually required or desired.

In the order of November 13, 1933, certain "A" lands were excluded from the exterior boundaries of the service area of Kern Island Canal Company. These were lands which, it was represented by the Company, had not received service for fifteen years. The Commission retained jurisdiction to correct any errors resulting in this connection. At the hearing it was shown that some of the "A" lands thus excluded from the Kern Island area had in fact received service within the period. There was no objection to these being restored to the service area.

I recommend the following form of findings and order as to the Kern Island Canal Company, the order as to the remaining utilities not having been affected by the decision of the Supreme Court.

FINDINGS AND ORDER AS TO KERN ISLAND CANAL COMPANY

Public hearings having been had and, in particular, a public hearing following the decision of, and receipt of remittitur from, the Supreme Court in Kern County Land Company v. Railroad Commission, S.F. 15130, and Kern Island Canal Company v. Railroad Commission, S.F. 15131, and the cases having been submitted for decision, it is hereby found as follows:

1. The findings contained in the opinion in Tehachapi Cattle Company, et al. v. Kern Island Canal Company, 39 C.R.C. 83, as they affect the Kern Island Canal Company, are hereby adopted.

2. In some years and at certain times in nearly every, if not all, years there are surplus or excess waters not needed or required by consumers in the service area fixed in the order in the case referred to in Finding 1 (sometimes called the old area), and which, without prejudice to the rights of consumers in such old area, may be sold and furnished to consumers in the Panhandle area or elsewhere without the old area, the amounts and occurrence of such surplus or excess waters varying

from year to year and from time to time within the year, among other things, according to precipitation, rate of run-off, weather conditions, and character of crops.

3. Amendments, as set forth in Exhibit "A" hereto attached, of the now existing rules and regulations of the Kern Island Canal Company will, in a practical way, regulate and control the sale and furnishing of surplus or excess waters, as and when such surplus or excess waters occur, to consumers in the Panhandle area, without prejudice to the rights of consumers in the old area.

Based upon the foregoing findings and those in the opinion preceding this order,

IT IS HEREBY ORDERED:

1. That amendments to the rules and regulations of Kern Island Canal Company as set forth in Exhibit "A" attached hereto be and they are hereby approved and said rules and regulations as so amended shall be the rules and regulations of said utility until and unless modified by order of the Railroad Commission.

2. That Kern Island Canal Company cease and desist from furnishing or delivering water to the Panhandle area unless and until a certificate of public convenience and necessity authorizing an extension to this area shall first be obtained from the Railroad Commission, but this inhibition shall not be deemed to prevent Kern Island Canal Company furnishing and delivering to such area, to the extent and as permitted by its said rules and regulations, surplus and excess waters not required by consumers of the old area.

3. That the following described "A" lands having been included in said category through error be eliminated from the "A" lands and be restored to the area of service:

All of	Section 13, T. 31 S., R. 27 E., M.D.B. & M.
W $\frac{1}{2}$ of NE $\frac{1}{4}$	Section 17, T. 30 S., R. 28 E., M.D.B. & M.
E $\frac{1}{2}$ of NE $\frac{1}{4}$	Section 20, T. 30 S., R. 28 E., M.D.B. & M.
E $\frac{1}{2}$	Section 21, T. 30 S., R. 28 E., M.D.B. & M.

4. That jurisdiction be retained herein to make such other and further orders from time to time as may be appropriate.

The effective date of this order shall be twenty (20) days from the date of this order.

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 4<sup>th</sup> day  
of February, 1935.

Leon Wheeler

W. J. Con  
Walter H. Harris  
COMMISSIONERS.

Commissioners Harris and Devlin feel themselves dis-  
qualified and therefore have not participated in this decision.

EXHIBIT "A"

EXHIBIT "A"

NEW RULE #1

CLASSIFICATION OF SERVICE AREA

The service area is classified as follows:

Old Area.

(a) The old area to consist of all the lands indicated as heretofore served by this Canal Company on the Map Exhibit 1 on file in Cases Nos. 2711 and 2755 before the Railroad Commission:

- (1) Excluding therefrom the so-called Panhandle area, as indicated on said map, the said area lying west of the easterly line of Section 18, Township 32 South, Range 27 East; and
- (2) Also excluding the lands designated on said map as A and C, except as may be subsequently authorized by the Commission.

Panhandle Area.

(b) The said Panhandle area as shown on said map.

## RULE 5

To be amended to read as follows:

### APPLICATIONS FOR WATER

Not later than February 1st of each year consumers shall make application in writing for water for the ensuing season, from March 1st to March 1st, on the forms approved by the Railroad Commission and to be furnished by the Company (referred to as Primary Applications). These applications shall be filed in the office of the Company in Bakersfield and shall state:

#### AS TO LANDS WITHIN THE OLD AREA

- (a) Name and address of landowner and tenant, if any.
- (b) Description of land to be irrigated.
- (c) Number of net acres of each crop to be irrigated.
- (d) The number of irrigations desired for each such crop, the acre feet for each such irrigation, the approximate dates for each such irrigation, and the "head" desired for each irrigation.
- (e) The application may be amended at any time during the year by giving written notice to the Company at least ten (10) days before the commencement of the rotation on which the modification is to go into effect. If such notice be not so given and water applied for is proffered but not accepted by the consumer, such water so proffered but not accepted shall be considered as used under Rule 19 and shall be paid for at one-fourth the regular rate.

Separate applications will be required for the lands in each section in the old area, and water delivered under any old area application shall be used only on the section specified in the application; provided, however, by written consent of the Company, water applied for for one section may be used on lands in the same ownership in an adjoining section; provided, further, that the total quantity of water used on any section shall not exceed the quantities set out in Rule 6.

The Company shall file with the Railroad Commission a notice of such exchange and a brief statement of the reasons therefor within ten days after such exchange and a copy of such notification shall be kept on file in the office of the Company and shall be open to public inspection.

Rule 5 - Cont'd.

AS TO LANDS WITHIN THE PANHANDLE AREA

- (a) Name and address of landowner and tenant, if any.
- (b) Description of land to be irrigated.
- (c) Number of net acres of each crop to be irrigated.
- (d) The number of acre feet desired and the month or months in which service is desired.
- (e) The application may be amended by giving written notice to the Company during the month prior to that mentioned in the application. If such notice be not so given and the water proffered but not accepted, the amount of water so proffered and not accepted shall be deemed as used under Rule 19 and shall be paid for at one-fourth the regular rate.

## RULE 8

To be amended to read as follows:

### METHOD OF DELIVERY

Water will be delivered by rotation, beginning at the head. Deliveries under new rotation schedules will begin on March 1st of each year and the number and times of each rotation and the delivery to each user thereunder shall be tentatively determined by the Chief Engineer of the Company from applications filed and the water supply considered by him to be probably available, and a schedule thereof shall be prepared and made available for inspection at the office of the Company. Schedules will be so arranged that rotation periods for lands in the old area shall be thirty (30) days as nearly as may be. Any consumer not able to take water in his regular turn on any run may receive water upon the completion of such rotation provided no undue loss of water is involved and there is no interference with deliveries to other irrigators.

The minimum "irrigation head" applicable to service of each applicant will be five (5) cubic feet per second for 24 hours. Heads applied for may be altered by the Company when necessary to the extent necessary so that the irrigation of tracts may be accomplished without delivery for fractional days. Where delivery is made covering a tract or tracts less than fifteen (15) acres in extent, heads of less than five (5) cubic feet per second (but not less than one (1) cubic foot per second) may be used by previous arrangement with the Company, subject to above provision against delivery by fractional days.

The use of water in the Panhandle area, as provided in Rule 10, shall not be limited by regulations for rotations but may be continuous until applications are filled, provided all primary and supplementary applications in the old area are being supplied without proration.

RULE 9

To be amended to read as follows:

EXCHANGE OF WATER

Exchange of water between irrigators in the same area, and during the same rotation period, will be permitted with the approval of the Company upon reasonable notice, provided that such exchange will not unreasonably interfere with other deliveries or cause any undue loss of water.

Water may be exchanged between irrigators in the old area and irrigators in the Penhandle area, except during periods of prostration, provided such exchange will not unreasonably interfere with other deliveries or cause any undue loss of water.

The Company shall file with the Railroad Commission a notice of such exchange and a brief statement of the reasons therefor within ten days after such exchange and a copy of such notification shall be kept on file in the office of the Company and shall be open to public inspection.

## RULE 10

To be amended to read as follows:

### SHORTAGE OR SURPLUS OF WATER

In times of water shortage the old area shall be first served to the extent of the limitations defined in Rule 6 before service to the Panhandle area.

When a shortage of water threatens to prevent the supplying of the estimated requirements of consumers in the old area during any run of water or during the remainder of the irrigation season, the Company will so prorate the entire available supply, serving to each consumer in the old area in the established sequence, but by so reducing the length of time of runs or the amount of water during the full length of run as will provide total deliveries of water to each consumer in the proportion of each consumer's demand to the aggregate of all consumers' demands. Due notice will be given each consumer when such deviation is necessary.

If there is water remaining after the fulfillment of the requirements of the old area under primary and supplementary applications, the Panhandle area may then receive water to the extent of the limitations defined in Rule 6 for acreage limited to two irrigations.

Any land owner in the old area whose supply has been diminished by prorating may, on supplementary application at a later date when the water available is in excess of the demand, receive any water of which he was deprived during the period of shortage, and such application shall be superior to secondary applications under Rule 12. Delivery under proration shall not be less than two (2) second feet for 24 hours (four (4) acre feet) for any one irrigation unless the original demand was for less than that amount.

RULE 12

To be amended to read as follows:

SECONDARY APPLICATIONS

Secondary application may be made at any time for water which may be available in excess of the requirements or demands for lands in the old and Panhandle areas under primary and supplementary applications filed as provided for in Rules 5 and 10. Service under secondary applications is not to be required less than five (5) days after the date of application. Such secondary applications shall be made in the forms provided for in Rule 5 and be subject to the same limitation as to amounts as provided for in Rule 6. Water will be delivered thereunder in such manner as will not interfere with regularly scheduled deliveries under primary or supplementary applications or result in undue loss of water. Secondary applications in the old area shall have priority over secondary applications in the Panhandle area.

In case the total demand under secondary applications exceeds in amount the water available therefor, the supply shall be prorated so far as is reasonably possible giving such priority to the old area.

It is the intent of this Rule that all the water to which the Canal Company shall be entitled will be made available to consumers thereunder when there is a reasonable demand therefor.