

ORIGINAL

Decision No. 36882

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Supplemental Petition of

KERMAN WATER COMPANY

Application No. 1565

For Modification of Decision No. 2216 to Permit the Cancellation of Indemnity Agreement.

BY THE COMMISSION:

FIRST SUPPLEMENTAL OPINION

Kerman Water Company asks permission to cancel the Indemnity Agreement of March 13, 1915 between Fresno Farms Company and applicant, a copy of which agreement is attached hereto as Exhibit A, and to which agreement reference will be made hereafter.

By Decision No. 2216, dated March 13, 1915, in Application No. 1565, the Commission authorized Fresno Farms Company to convey to Kerman Water Company its public utility properties. The authority was granted subject, among others, to the following condition:

"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."

The Kerman Water Company thereupon engaged in selling water for irrigation and domestic purposes and continued in that dual public utility business until on or about May 25, 1921. Up to that date the sale of water for irrigation constituted its major operations. On or about May 25, 1921, the irrigation water properties and business were conveyed and transferred to the Fresno Irrigation District. Since then Kerman Water Company has been engaged only in the domestic water business. On December 31, 1942 it had 113 active service connections, while on December 31, 1943 they were reported at 128. Its operating revenues for 1942 are reported at \$2,338.45 and for 1943 at \$2,494.13. Up until the time of the sale of applicant's irrigation properties, Fresno Farms Company annually made up the deficit sustained by applicant. Since 1921, except for two years, applicant reports small annual losses. On December 31, 1943, its accumulated deficit amounted to \$7,976.67. On that date it was indebted to the Wm. G. Kerckhoff Company in the amount of \$6,054.03.

The properties of Kerman Water Company have been under the management of Wm. G. Kerckhoff Company. Its management charges have contributed to applicant's losses. A statement attached to the supplemental petition shows that for the period, January 1, 1936 to November 30, 1943, Kerman Water

Company had a gross income of \$15,974.62. Its expenses before the Wm. G. Kerckhoff Company charges were \$8,445.46, leaving a net income of \$7,529.16. The Wm. G. Kerckhoff Company charges for the period are reported at \$8,973.26, leaving a net loss of \$1,444.10. While the Wm. G. Kerckhoff Company charges are not an issue at this time, they may become an issue in a rate proceeding.

As of December 31, 1943, Kerman Water Company reports assets and liabilities as follows:

Assets

Fixed Capital	\$10,473.82
Cash	415.83
Accounts Receivable	42.71
Deficit	<u>7,976.67</u>
Total Assets	<u>\$18,909.03</u>

Liabilities

Capital Stock	\$ 5,000.00
Due Wm. G. Kerckhoff Company	6,054.03
Reserve for Accrued Depreciation	<u>7,855.00</u>
Total Liabilities	<u>\$18,909.03</u>

Kerman Water Company has outstanding \$5,000 of capital stock. This was initially issued to Fresno Farms Company, which was in 1936 dissolved and liquidated. At that time all of the issued stock of Kerman Water Company became the property of Wm. G. Kerckhoff Company. We have no objection to the cancellation and termination of the Indemnifying Agreement attached hereto as Exhibit A, provided Kerman Water Company levies an assessment upon its stock in an amount equal to its accumulated deficit on December 31, 1943, and that such assessment is paid by the holder of the stock. Upon receipt

of the assessment money, Kerman Water Company should use so much thereof as may be necessary to pay its indebtedness due the Wm. G. Kerckhoff Company.

FIRST SUPPLEMENTAL ORDER

The Commission having considered the request of Kerman Water Company and it being of the opinion that this is not a matter on which a hearing is necessary and that applicant's request should be granted subject to the provisions of this First Supplemental Order, therefore,

IT IS HEREBY ORDERED that Kerman Water Company be, and it is hereby, authorized to cancel and terminate the Indemnifying Agreement between it and Fresno Farms Company (now dissolved), dated March 13, 1915, a copy of which is attached hereto as Exhibit A, provided Kerman Water Company levies and collects an assessment upon its outstanding stock in an amount equal to its accumulated deficit, which on December 31, 1943 was \$7,976.67, and has through the use of the moneys realized through the levying and collection of such assessment paid its indebtedness due the Wm. G. Kerckhoff Company.

IT IS HEREBY FURTHER ORDERED that within thirty (30) days after the levying and collection of such assessment, Kerman Water Company shall file with the Railroad Commission a copy of the resolution of its Board of Directors levying such assessment and a statement showing the amount collected and the use made or to be made of the moneys realized through

the collection of such assessment.

IT IS HEREBY FURTHER ORDERED that the authority herein granted shall become effective upon the date hereof.

Dated at Los Angeles, California, this 15th day of February, 1944.

Richard R. Baker

Justus F. Green

Francis A. Havenner

Francis W. Green

Commissioners.

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EXHIBIT A

"KNOW ALL MEN BY THESE PRESENTS, that WHEREAS, the undersigned, Fresno Farms Company, a corporation organized and existing under the laws of the State of California, has heretofore filed with the Railroad Commission of the State of California its Application No. 1565, praying for authority to sell to the Kerman Water Company, a corporation organized and existing under the laws of the State of California, the domestic water system located at and in the unincorporated Town of Kerman, in Fresno County, California, and to enter into an Agreement with said Kerman Water Company, which said agreement has been executed and delivered to said Kerman Water Company, a copy of which agreement in its executed form is hereto attached, marked 'Exhibit A,' and made a part hereof, and

"WHEREAS, the Railroad Commission has entered or is about to enter an Order in said proceeding under said Application No. 1565, which order among other things requires or will require said Fresno Farms Company to covenant and agree with said Kerman Water Company, substantially to the effect and in the manner in this Indenture set forth.

"NOW, THEREFORE, in consideration of the premises and as supplementary to the said Agreement, marked 'Exhibit A,' the undersigned, Fresno Farms Company does hereby covenant to and with said Kerman Water Company, as follows, to-wit:

"That it will, and it hereby does covenant and agree to indemnify the said Kerman Water Company from any and all losses and deficiencies in revenue in connection with the doing of all of those things and the performance of all of those duties which it may or is required to do or perform by reason of the provisions of said Agreement above referred to, marked 'Exhibit A,' in relation to that certain agreement dated September 15, 1908, between the Fresno Canal and Irrigation Company, a corporation, and the undersigned, Fresno Farms Company (incorporated as 'Fresno Irrigated Farms Co.,') which said Agreement is recorded in the records of the County of Fresno, State of California, in Book 65 of Covenants, at page 1.

"That it will and hereby does covenant and agree to indemnify the said Kerman Water Company from any and all losses and deficiencies in revenue in connection with the maintenance and operation, extension or improvement of the said domestic water system, located at and in the unincorporated Town of Kerman, in Fresno County, California.

"That if said Kerman Water Company shall suffer any deficiency in revenue, or losses, against which it is by these presents indemnified, the undersigned, Fresno Farms Company, will pay to said Kerman Water Company the amount of such deficiencies or losses; that it will, and hereby does grant to said Kerman Water Company the right to use all of the ditches and canals owned by it, which are used in carrying and delivering water for irrigation purposes under said Agreement dated October 15, 1908, together with the right to use all such canals and ditches, not owned by it, but used by it for said purposes, insofar as the right to such use can be transferred by any covenant, agreement or assignment of said Fresno Farms Company.

"IN WITNESS WHEREOF, the said Fresno Farms Company, (incorporated as 'Fresno Irrigated Farms Co. '), has caused these presents to be executed by its duly authorized officers, and its seal to be affixed this 13th day of March, 1915.

FRESNO FARMS COMPANY

By: _____
President.

and _____
Secretary."