

1 In the Superior Court of Kern County, State of California.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

Farmers Canal Company, Pioneer Canal Company,
Buena Vista Canal Company, Kern Island Irrigating
Canal Company, James Canal Company, Anderson Canal
Company, Stine Canal Company, Plunkett Canal Company,
Meacham Canal Company, James & Dixon Canal Company,
Joice Canal Company, Kern River Canal and Irrigating
Company, and Central Canal Company,

(Plaintiffs)

-vs.-

J. R. Simmons, Henry Miller, Henry Miller as
surviving partner of the late firm of Miller & Lux,
Miller & Lux (a corporation), Bloomfield Land
Association (a corporation), George Krafts, Solomon
Jewett, Philo D. Jewett, H. H. Fish, George Daggett,
H. A. Blodgett, Celia Holtby, Celia Holtby as
administratrix of the estate of L. M. Holtby,
deceased, P. E. Stark, Lida Reed, Virginia Stark,
Frances Packard, Ella Stoner, May Stark, Wible
Orchard & Vineyard Company, Charles Kerr,
Wilmot Lowell, (Defendants), and William S. Tevis,
Balfour, Guthrie Investment Company, Kern County
Land Company, Kern County Canal and Water
Company, Lowell Land and Improvement Company,
(Defendants to the Cross Complaint of Miller & Lux.)

DECREE.

Joint Exhibit 15

This cause having been regularly tried before the Court
without a jury, Messrs E. J. McCutchen and P. W. Bennett
appearing as attorneys for the plaintiffs; Messrs. Houghton & Houghton
appearing as attorneys for the defendants Henry Miller,
Henry Miller as surviving partner of the late firm of Miller &
Lux, and for Miller & Lux, a corporation, substituted as defend-
ant instead of the two defendants named next before said Miller
& Lux; Mr. C. W. Willard appearing for the Balfour, Guthrie In-
vestment Company, Kern County Land Company, Lowell Land and Im-
provement Company and William S. Tevis, and Mr. J. W. P. Laird

COUNTY CLERK'S MEMO:
Legibility of writing, typing or
printing UNSATISFACTORY in
this document when received.
20

307

1 appearing for the Kern County Canal and Water Company, which
2 was substituted as defendant instead of the Bloomfield Land As-
3 sociation, George Krafts, J. R. Simmons, Celia Holtby, Celia
4 Holtby as administratrix of the estate of L. M. Holtby, deceased,
5 Frances Packard, P. E. Stark, Virginia Stark, May Stark, Ella
6 Stoner, H. A. Blodgett, Lida Reed, Solomon Jewett, H. H. Fish,
7 George Daggett and Wilmot Lowell, and Mr. J. C. Campbell appear-
8 ing for said Wible Orchard & Vineyard Company, Charles Kerr and
9 Philo D. Jewett, and the other parties to this action failing
10 to appear, and the Court, after hearing the evidence and the
11 argument of counsel, and having filed its decision in writing
12 upon the issues submitted; now therefore, IT IS ORDERED, AD-
13 JUDGED AND DECREED BY THE COURT: J

14 1. That said Meacham Canal Company take nothing by this action,
15 and that as to said plaintiff this action be dismissed.
16

17 2. That the plaintiff Farmers Canal Company is the owner of a
18 certain water ditch or canal known as the Farmers Canal, with
19 the lateral branches thereof, which said canal commences on the
20 South bank of Kern River, in Kern County, State of California,
21 subject to the rights, as hereinafter decreed, of the defendants
22 Wible Orchard & Vineyard Company, Charles Kerr, Philo D. Jewett
23 and Miller & Lux to have water conducted to their lands there-
24 by; that said Pioneer Canal Company is the owner of that certain
25 water ditch or canal known as the Pioneer Canal, with the lat-
26 eral branches thereof, which said canal commences on the North
27 bank of said Kern River; that said Buena Vista Canal Company is
28 the owner of that certain water ditch or canal known as the
29 Buena Vista Canal, with the lateral branches thereof, which
30 said canal commences on the South bank of said Kern River; that

1 that said Kern Island Irrigating Canal Company is the owner of
2 that certain water ditch or canal known as the Kern Island Irri-
3 gating Canal, with the lateral branches thereof, which said
4 canal commences on the South bank of said Kern River; that said
5 James Canal Company is the owner of that certain water ditch or
6 canal known as the James Canal, with the lateral branches there-
7 of, which said canal commences on the South bank of said Kern
8 River; that said Anderson Canal Company is the owner of that
9 certain water ditch or canal known as the Anderson Canal, with
10 the lateral branches thereof, which said canal commences on
11 the South bank of said Kern River; that the said Stine Canal
12 Company is the owner of that certain water ditch or canal known
13 as the Stine canal, with the lateral branches thereof, which
14 said canal commences on the south bank of said Kern River; that
15 the said Plunkett Canal Company is the owner of that certain
16 water ditch or canal known as the Plunkett Canal, with the lat-
17 eral branches thereof, which said canal commenced on the South
18 bank of said Kern River; that the said James & Dixon Canal Com-
19 pany is the owner of that certain water ditch or canal known
20 as the James & Dixon Canal, with the lateral branches thereof,
21 which said canal commences on the North bank of said Kern River;
22 that the said Joice Canal Company is the owner of that certain
23 water ditch or canal known as the Joice Canal, with the lateral
24 branches thereof, which said canal commences on the North bank
25 of said Kern River; that the said Kern River Canal and Irrigat-
26 ing Company is the owner of that certain water ditch or canal
27 known as the Beardsley Canal, with the lateral branches thereof,
28 which said canal commences on the North bank of said Kern River;
29 that the said Central Canal Company is the owner of that certain
30 water ditch or canal known as the Calloway Canal, with the lat-

1 eral branches thereof, which said canal commences on the North
2 bank of said Kern River.

3

4 2. That said Farmers Canal Company is, and ever since the
5 20th day of April, 1873 (subject to the rights of other part-
6 ies hereto herein decreed to be prior rights) has been the own-
7 er and entitled to divert and appropriate from said Kern River,
8 by means of and through its said canal, one hundred and fifty
9 cubic feet per second of the waters of said river, and that
10 each of the defendants herein be and they are hereby forever
11 enjoined and prohibited from in any manner or by any means or
12 agency obstructing, hindering or interfering with the use and
13 enjoyment by said plaintiff of its rights aforesaid and herein
14 described and declared, except as in this decree particularly
15 stated.

16

17 3. That said Pioneer Canal Company is, and has been ever since
18 the first day of August, 1873 (subject to the rights of other
19 parties hereto herein declared to be prior rights) the owner of
20 and entitled to divert and appropriate from said Kern River, by
21 means of and through its said canal, one hundred and thirty
22 cubic feet per second of the waters of said river, and that each
23 of the defendants herein be and they are hereby forever enjoin-
24 ed and prohibited from in any manner or by any means or agency
25 obstructing, hindering or interfering with the use and enjoyment
26 by said plaintiff of its right aforesaid and herein described
27 and declared, except as in this decree particularly stated.

28

29 4. That the said Buena Vista Canal Company is, and has been
30 ever since the 15th. day of July, 1870 (subject to the rights

1 of other parties hereto herein declared to be prior rights)
2 the owner of and entitled to divert and appropriate from said
3 Kern River, by means of and through its said canal, eighty cubic
4 feet per second of the waters of said river, and that each of
5 the defendants herein be and they are hereby forever enjoined
6 and prohibited from in any manner or by any means or agency ob-
7 structing, ~~hindering~~, or interfering with the use and enjoyment
8 ~~of~~ said plaintiff of its said right aforesaid and herein de-
9 scribed and declared, except as in this decree particularly
10 stated.

11
12 5. That the said Kern Island Irrigating Canal Company is, and
13 has been, ever since the first day of January, 1870, the owner
14 of and entitled to divert and appropriate from said Kern River,
15 by means of and through its said canal, three hundred cubic
16 feet per second of the waters of said river, and that each of
17 the defendants be and they are hereby forever enjoined and pro-
18 hibited from in any manner or by any means or agency obstructing,
19 hindering or interfering with the use and enjoyment by said
20 plaintiff of its right aforesaid and herein described and de-
21 clared, and the said right of the said plaintiff is hereby de-
22 clared to be prior and paramount to the rights of any and all
23 the parties to this action.

24 Said Kern Island Irrigating Canal Company is also the own-
25 er of and entitled to divert and appropriate from said Kern
26 River, by means of and through its said canal, fifty-six cubic ^{feet}
27 per second of the waters of said river in addition to said
28 three hundred cubic feet per second last above mentioned, and
29 such right is subject to the rights of ^{the} other parties to this
30 action as herein decreed and established, and that each of the

S.S.
S.S.

1 defendants herein be and they are hereby forever enjoined and
2 prohibited from in any manner or by any means or agency obstruct-
3 ing, hindering or interfering with the use and enjoyment by
4 said plaintiff of its said last named right, except as in this
5 decree particularly stated.

6
7 6. That said James Canal Company is, and has been ever since
8 the 15th. day of October, 1871, (subject to the rights of other
9 parties hereto herein declared to be prior rights) the owner of
10 and entitled to divert and appropriate from said Kern River, by
11 means of and through its said canal, one hundred and twenty
12 cubic feet per second of the waters of said river, and that
13 each of the defendants herein be and they are hereby forever
14 enjoined and prohibited from in any manner or by any means or
15 agency obstructing, hindering or interfering with the use and
16 enjoyment by said plaintiff of its right aforesaid and herein
17 described and declared, except as in this decree particularly
18 stated.

19
20 7. That said Anderson Canal Company (subject to the rights of
22 other parties hereto herein declared to be prior rights) is,
23 and ever since the 9th day of October, 1872, has been the owner
24 of and entitled to divert and appropriate from said Kern River,
25 by means of and through its said canal, twenty cubic feet per
26 second of the waters of said river, and is and has been, ever
27 since March, 1874, the owner of and entitled to divert and ap-
28 propriate from said Kern River, by means of and through its
29 said canal, ten additional cubic feet per second of the waters
30 of said river, making in all from said last mentioned date

1 thirty cubic feet per second of the waters of said river, and
2 that each of the defendants be and they are hereby forever en-
3 joined and prohibited from in any manner or by any means or
4 agency obstructing, hindering or interfering with the use and
5 enjoyment by said plaintiff of its right aforesaid and herein
6 described and declared, except as in this decree particularly
7 stated.

8
9 8. That said Stine Canal Company is and has been, ever since
10 the 15th. day of December, 1872, (subject to the rights of other
11 parties hereto herein declared to be prior rights) the owner of
12 and entitled to divert and appropriate from said Kern River, by
13 means of and through its said canal, one hundred and fifty cubic
14 feet per second of the waters of said river, and that each of
15 the defendants herein be and they are hereby forever enjoined
16 and prohibited from in any manner or by any means or agency
17 obstructing, hindering or interfering with the use and enjoyment
18 by said plaintiff of its right aforesaid and herein described
19 and declared, except as in this decree particularly stated.

20
21 9. That the said Plunkett Canal Company is and has been, ever
22 since the first day of June, 1873, (subject to the rights of
23 other parties hereto herein declared to be prior rights) the
24 owner of and entitled to divert and appropriate from said Kern
25 River, by means of and through its said canal, forty cubic feet
26 per second of the waters of said river, and that each of the
27 defendants herein be and they are hereby forever enjoined and
28 prohibited from in any manner or by any means or agency ob-
29 structing, hindering or interfering with the use and enjoyment
30 by said plaintiff of its right aforesaid and herein described

1 and declared, except as in this decree particularly stated.

2

3 10. That the said James & Dixon Canal Company is and has been,
4 ever since the first day of January, 1874 (subject to the rights
5 of other parties hereto herein declared to be prior rights) the
6 owner of and entitled to divert and appropriate from said Kern
7 River, by means of and through its said canal, forty cubic feet
8 per second of the waters of said river, and that each of the
9 defendants herein be and they are hereby forever enjoined and
10 prohibited from in any manner or by any means or agency ob-
11 structing, hindering or interfering with the use and enjoyment
12 by said plaintiff of its right aforesaid and herein described
13 and declared, except as in this decree particularly stated.

14

15 11. That the said Joice Canal Company is and has been, ever
16 since the 2d. day of June, 1873 (subject to the rights of other
17 parties hereto herein declared to be prior rights) the owner of
18 and entitled to divert from said Kern River, by means of and
19 through its said canal, forty cubic feet per second of the wat-
20 ers of said river, and that each of the defendants herein be
21 and they are hereby forever enjoined and prohibited from in any
22 manner or by any means or agency obstructing, hindering or in-
23 terfering with the use and enjoyment by said plaintiff of its
24 right aforesaid and herein described and declared, except as
25 in this decree particularly stated.

26

27 12. That the said Kern River Canal and Irrigating Company
28 (subject to the rights of other parties hereto herein declared
29 to be prior rights) is and has been, ever since the 2d. day of
c30 December, 1873, the owner of and entitled to divert and appro-

1 priate from said Kern River, by means of and through its said
2 canal, sixty cubic feet per second of the waters of said river,
3 and is and has been, ever since the year 1882, the owner of and
4 entitled to divert and appropriate from said Kern River, by
5 means of and through its said canal, one hundred and fifteen
6 cubic feet per second additional of the waters of said river,
7 and is and has been, ever since the year 1891, the owner of and
8 entitled to divert and appropriate from said Kern River, by
9 means of and through its said canal, one hundred and twenty-
10 five cubic feet per second additional of the waters of said
11 river, making in all from said last mentioned date, three hun-
12 dred cubic feet per second of the waters of said river, and
13 that each of the defendants herein be and they are hereby for-
14 ever enjoined and prohibited from in any manner or by any means
15 or agency obstructing, hindering or interfering with the use
16 and enjoyment by said plaintiff of its right aforesaid and
17 herein described and declared, except as in this decree particu-
18 larly stated.

19
20 13. That the said Central Canal Company is and has been, ever
21 since the 4th day of May, 1875 (subject to the rights of other
22 parties hereto herein declared to be prior rights) the owner of
23 and entitled to divert and appropriate from said river, by means
24 of and through its said canal, eight hundred and fifty cubic
25 feet per second of the waters of said river, and that each of
26 the defendants herein be and they are hereby forever enjoined
27 and prohibited from in any manner or by any means or agency
28 obstructing, hindering or interfering with the use and enjoy-
29 ment by said plaintiff of its right aforesaid and herein de-
30 scribed and declared, except as in this decree particularly

1 stated.

2

3 14. That the right of each of said plaintiffs to divert and
4 appropriate said waters includes the right to use the same and
5 furnish the same to others to be used for domestic, agricultu-
6 ral, stock, mechanical and manufacturing purposes, but not to
7 suffer the same to be wasted, and that as between themselves,
8 when there is not sufficient water available for all of said
9 plaintiffs, the order of right and priority shall be as follows:

10 First. The right of Kern Island Irrigating Canal Company
11 to three hundred cubic feet per second;

12 Second. The right of Buena Vista Canal Company to eighty
15 cubic feet per second;

14 Third. The right of James Canal Company to one hundred
15 and twenty cubic feet per second;

16 Fourth. The right of Anderson Canal Company to its first
17 twenty cubic feet per second;

18 Fifth. The right of Stine Canal Company to one hundred
19 and fifty cubic feet per second;

20 Sixth. The right of Farmers Canal Company to one hundred
21 and ~~twenty-five~~ ^{fifty} cubic feet per second;

22 Seventh. The right of Plunkett Canal Company to forty
23 cubic feet per second;

24 Eighth; The right of Joice Canal Company to forty cubic
25 feet per second;

26 Ninth. The right of Pioneer Canal Company to one hundred
27 and thirty cubic feet per second;

28 Tenth. The right of Kern River Canal and Irrigating Com-
29 pany to its first sixty cubic feet per second;

30 Eleventh. The right of James & Dixon Canal Company to

1 forty cubic feet per second;

2 Twelfth. The right of Anderson Canal Company to its ad-
3 ditional ten cubic feet per second;

4 Thirteenth. The right of Central Canal Company to its
5 eight hundred and fifty cubic feet per second;

6 Fourteenth. The right of Kern River Canal and Irrigating
7 Company to its additional two hundred and forty cubic feet per
8 second;

9 Fifteenth. The right of Kern Island Irrigating Canal
10 Company to its additional fifty-six cubic feet per second.

11

12 15. That nothing in any part of this decree shall be taken
13 or construed to affect or impair any right which any party here-
14 to may have subordinate to the rights of plaintiffs to take
15 and receive water from any of the plaintiffs through any of
16 their said canals and under the rules and regulations of such
17 plaintiff unless it is expressly so declared herein.

18

19 16. That the defendant Wible Orchard & Vineyard Company is
20 the owner of and entitled to have and receive, of the waters
21 of Kern River, sufficient water for the irrigation of, and for
22 domestic use and the watering of stock on, lands in Kern Coun-
23 ty, State of California, described as the North half of the
24 North half, and the Southeast quarter of the Northwest quar-
25 ter of Section 14, containing two hundred acres, more or less,
26 all in Township 30 South, Range 27 East, Mount Diablo Base
27 and Meridian, to be taken or delivered from Panama Slough
28 at some point below where said Farmers Canal Company begins to
29 use said slough as a part of its canal, and to be delivered

L. S.

L. S.

L. S.

L. S.

L. S.

or taken by said Wible Orchard and Vineyard Co. from said river through said Farmers Canal
 1 by the said Farmers Canal Company, and to be taken or delivered
 2 at said canal, or ditch of said defendant
 3 in heads of not less than five nor more than eight cubic feet
 4 per second, at the option of said defendant, at such times and
 5 for such periods as may be necessary, by the use of reasonable
 6 means and diligence, for the reasonable irrigation of said land,
 7 and no longer, and only while so used, and in the meantime to
 8 take or receive ^{and through} from said Farmers Canal so much of such water
 9 only as may be reasonably necessary for domestic use and for
 10 the watering of stock upon said land, and only while so used,
 11 or while necessary for said uses; the said water ~~to be appurte-~~
 12 ~~nant to said land, and~~ in no case to exceed the equivalent of
 13 a continuous flow of one ~~and one~~ ^{one} fourth cubic feet per sec-
 14 ond, and to be apportioned at the rate of one cubic foot per
 15 second for each one hundred and sixty acres thereof. Said
 16 right shall be at all times subject and subordinate to the right
 17 of the Kern Island Irrigating Canal Company to take, divert
 18 and appropriate from said river three hundred cubic feet per
 19 second of the waters thereof, and to the rights of Miller &
 20 Lux to have delivered, at the second point of measurement pro-
 21 vided for in the contract dated July 28, 1888, set forth at
 22 length in said findings, and known as the "Miller-Haggin con-
 23 tract," the full one-third, without diminution, of all water
 24 flowing in said river during the months of March, April, May,
 25 June, July and August of each year at the first point of mea-
 26 surement provided for in said contract in excess of the three
 27 hundred ~~ten~~ cubic feet per second thereof belonging to said
 28 Kern Island Irrigating Canal Company, and said right of said
 29 defendant is coequal with the right of its co-defendants Charles
 30 Kerr, Philo D. Jewett and Miller & Lux to water for use on
 lands along and near Panama Slough as herein decreed. But the

1 said right of said defendant is prior and paramount to all the
2 other rights to the waters of Kern River herein decreed and
3 established, and each and every of the parties to this action
4 is hereby forever enjoined from in any manner or by any means
5 or agency interfering with, hindering, obstructing or impair-
6 ing the right of said Wible Orchard & Vineyard Company to the
7 water of said river as herein decreed and described and accord-
8 ing to the priority herein decreed and established; and in the
9 event that the surplus, after the rights of said two parties
10 are supplied, is not sufficient to supply the water herein
11 decreed to said defendant and to its co-defendants Charles
12 Kerr, Philo D. Jewett and Miller & Lux for use on lands along
13 and near Panama Slough, then the share of said defendant there-
14 of is declared to be in the proportion of five to forty-two,
15 and that said defendant has no interest in or right to use said
16 Panama Slough above its junction with said Farmers Canal on
17 Section 25, Township 30 South, Range 27 East, nor any interest
18 in or right to said South Fork channel.

19
20 17. That the defendant Charles Kerr is the owner of and en-
21 titled to have and receive, of the waters of Kern River, suf-
22 ficient water for the irrigation of, and for domestic use and
23 the watering of stock on, the lands in Kern County, State of
24 California, described as the Southwest quarter of the Southwest
25 quarter, the Southwest quarter of the Northwest quarter, and
26 the North half of the Southwest quarter of Section 14, in Town-
27 ship 30 South, Range 27 East, Mount Diablo Base and Meridian,
28 containing one hundred and sixty acres, more or less, to be
29 taken or delivered from Panama Slough at some point below where
30 said Farmers Canal Company begins to use said slough as a part
31 of its canal, and to be delivered by the said Farmers Canal
32 Company, and to be taken or taken by said Charles Kerr from said
River through said Farmers Canal, and to be taken

1405

1134

319
L.S.

13
3913

L.S.

L.S.

L.S.

1 *at said land, or ditch of said defendant*
 or delivered [^] in heads of not less than five nor more than
 2 eight cubic feet per second, at the option of said defendant,
 3 at such times and for such periods as may be necessary, by the
 4 use of reasonable means and diligence, for the reasonable irri-
 5 gation of said land, and no longer, and only while so used,
 6 and in the meantime to have, take or receive from [^] *and through* said Farmers
 7 Canal so much of ~~xxxx~~ such water only as may be reasonably
 8 necessary for domestic use and for the watering of stock upon
 9 said land, and only while so used, or while necessary for said
 10 uses; the said water ~~to be appurtenant to said land,~~ and in no
 11 case to exceed the equivalent of a continuous flow of one
 12 cubic foot per second. The said right shall be at all times
 13 subject and subordinate to the right of the Kern Island Irri-
 14 gating Canal Company to take, divert and appropriate from
 15 said river three hundred cubic feet per second of the waters
 16 thereof, and to the rights of Miller & Lux to have delivered,
 17 at the second point of measurement provided for in the con-
 18 tract dated July 28, 1888, set forth at length in said find-
 19 ings, and known as the "Miller-Haggin contract", the full one-
 20 third, without diminution, of all the water flowing in said
 21 river during the months of March, April, May, June, July and
 22 August of each year, at the first point of measurement pro-
 23 vided for in said contract in excess of the three hundred
 24 cubic feet per second thereof belonging to said Kern Island
 25 Irrigating Canal Company, and said right of said defendant is
 26 co-equal with the right of his co-defendants Wible Orchard &
 27 Vineyard Company, Philo D. Jewett and Miller & Lux to water
 28 for use on lands along and near Panama Slough as herein de-
 29 creed. But the said right of said defendant is prior and
 30 paramount to all the other rights to the waters of Kern River

1 herein decreed and established, and each and every one of the
2 parties to this action is hereby forever enjoined from in any
3 manner, or by any means or agency, interfering with, hinder-
4 ing, obstructing or impairing the right of said Charles Kerr
5 to the water of said river as herein decreed and ~~established~~
6 according to the priority herein decreed and established; and,
7 in the event that the surplus, after the rights of said two
8 parties are supplied, is not sufficient to supply the water
9 herein decreed to said defendant and to his co-defendants,
10 Wible Orchard & Vineyard Company, Philo D. Jewett and Miller &
11 Lux, for use on lands along and near Panama Slough, then said
12 defendant's share thereof is declared to be in the proportion

13 of four to forty-two. *And that said defendant has no interest in, or right to use*
14 *said Panama Slough above its said junction with said Farmers Canal, nor any*
interest in or right to said South Fork Channel.

15 18. That the said defendant Philo D. Jewett is the owner of
16 and entitled to have and receive, of the waters of Kern River,
17 sufficient water for the irrigation of, and for domestic use
18 and the watering of stock on, the lands in Kern County, State
19 of California, described as the south half of the northeast
20 quarter, the southeast quarter of the southwest quarter, and
21 the whole of the southeast quarter of Section 14, in Township
22 30 South, Range 27 East, Mount Diablo Base and Meridian, con-
23 taining two hundred and eighty acres, more or less, to be tak-
24 en or delivered from Panama Slough at some point below where
25 said Farmers Canal Company begins to use said slough as a part
26 of its canal, and to be delivered by the said Farmers Canal
27 Company, *or taken by said Philo D. Jewett from said river through said Farmers Canal*
at said lands or ditch of said defendant and to be taken or delivered *in heads* of not less
28 than five nor more than eight cubic feet per second, at
29 the option of said defendant, at such times and for such pe-
30 riods as may be necessary, by the use of reasonable means and

S. S.

1 diligence, for the reasonable irrigation of said land, and no
2 longer, and only while so used, and in the meantime to have,
3 take or receive from, ^{and through} said Farmers Canal so much of such water
4 only as may be reasonably necessary for domestic use and for
5 the watering of stock upon said land, and only while so used,
6 or while necessary for said uses; the said ~~xxx~~ water ~~to be~~
7 ~~appurtenant to said land, and~~ in no case to exceed the equiva-
8 lent of a continuous flow of one and three-fourths cubic feet
9 per second, and to be apportioned at the rate of one cubic
10 foot per second for each one hundred and sixty acres thereof.
11 The said right shall be at all times subject and subordinate
12 to the right of the Kern Island Irrigating Canal Company to
13 take, divert and appropriate from said river three hundred
14 cubic feet per second of the waters thereof, and to the rights
15 of Miller & Lux to have delivered, at the second point of
16 measurement provided for in the contract dated July 23, 1888,
17 set forth at length in said findings, and known as the "Miller-
18 Haggin contract", the full one-third, without diminution, of
19 all the water flowing in said river during the months of March,
20 April, May, June, July and August of each year, at the first
21 point of measurement provided for in said contract, in excess
22 of the three hundred cubic feet per second thereof belonging
23 to said Kern Island Irrigating Canal Company, and said right
24 of said defendant is co-equal with the right of his co-defend-
25 ants Wible Orchard & Vineyard Company, Charles Kerr and Miller
26 & Lux to water for use on lands along and near Panama Slough
27 as herein decreed. But the said right of said defendant is
28 prior and paramount to all the other rights to the waters of
29 Kern River herein decreed and established, and each and every
30 one of the parties to this action is hereby forever enjoined

S. S.

S. S.

1 from in any manner, or by any means or agency, interfering
2 with, hindering, obstructing or impairing the right of said
3 Philo D. Jewett to the water of said river as herein decreed
4 and described, and according to the priority herein decreed
5 and established; and, in the event that the surplus, after
6 the rights of said two parties are supplied, is not sufficient
7 to supply the water herein decreed to said defendant and to
8 his co-defendants Charles Kerr, Wible Orchard & Vineyard Com-
9 pany and Miller & Lux for use on lands along and near Panama
10 Slough, then said defendant's share thereof is declared to be

L.S.

11 in the proportion of seven to forty-four ~~two~~. *And that said de-*
12 *endant has no interest in, or right to use said Panama Slough above its*
said junction with said Farmers Canal, nor any interest in or right
to said South Fork Channel.

13 19. That the defendant Miller & Lux, a corporation, is the
14 owner of and entitled to have and receive, of the waters of
15 Kern River, sufficient water for the irrigation of, and for
16 domestic use and the watering of stock on lands in Kern Coun-
17 ty, State of California, described as the southeast quarter
18 and the east half of the southwest quarter of Section 22,
19 the southwest quarter of Section 23, and the whole of Section
20 26, all in Township 30 South, Range 27 East, Mount Diablo
21 Base and Meridian, and containing one thousand and forty
22 acres, more or less, to be taken or delivered from Panama
23 Slough at some point below where said Farmers Canal Company
24 begins to use said slough as a part of its canal, and to be
25 delivered by the said Farmers Canal Company, and to be taken
26 or delivered in heads of not less than five nor more than
27 eight cubic feet per second, at the option of said defendant,
28 at such times and for such periods as may be necessary, by
29 the use of reasonable means and diligence, for the reasonable
30 irrigation of said land, and no longer, and only while so used

L.S.

L.S.

L.S.

L.S.

and in the meantime to have, take or receive from ^{and through} said Farmers
Canal so much of such water only as may be reasonably necessary
for domestic use and for the watering of stock on said
land, and only while so used, or while necessary for said
uses; the said water ~~to be appurtenant to the said lands,~~ and
in no case to exceed the equivalent of a continuous flow of
six and one-half cubic feet per second, and to be apportioned
at the rate of one cubic foot per second for each one hundred
and sixty acres thereof. Said right shall be at all times
subject and subordinate to the right of the Kern Island Irrigating
Canal Company to take, divert and appropriate from said
river three hundred cubic feet per second of the waters thereof,
and to the rights of Miller & Lux to have delivered, at the second
point of measurement provided for in the contract dated July 28,
1888, set forth at length in said findings, and known as the
"Miller-Haggin contract", the full one-third, without diminution,
of all the water flowing in said river during the months of March,
April, May, June, July and August of each year, at the first point
of measurement provided for in said contract, in excess of the three
hundred cubic feet per second thereof belonging to said Kern Island
Irrigating Canal Company; ~~and~~ and said right of said defendant is
co-equal with the right of its co-defendants Charles Kerr, Philo D.
Jewett and Wible Orchard & Vineyard Company to water for use on
lands along and near Panama Slough as herein decreed. But the said
right of said defendant is prior and paramount to all the other
rights to the waters of Kern River herein decreed and established,
and each and every of the parties to this action is hereby forever
enjoined from in any manner, or by any means or agency, interfering
with, hindering,

1 obstructing or impairing the right of said Miller & Lux to
2 the water of said river as herein decreed and described and
3 according to the priority herein decreed and established; and
4 in the event that the surplus, after the rights of said two
5 parties are supplied, is not sufficient to supply the water
6 herein decreed to said defendant and to its co-defendants
7 Charles Kerr, Philo D. Jewett and Wible Orchard & Vineyard
8 Company for use on lands along and near Panama Slough, then
9 the share of said defendant thereof is declared to be in the

10 proportion of twenty-six to forty-~~four~~ *five*. *And that said defend-*
11 *ant has no interest in, or right to use, said Panama Slough above its said*
12 *junction with said Farmers Canal, nor any interest in or right to said South*
13 *Fort Channel.*

14 20. This decree is not to be construed as defining or deter-
15 mining the rights of any of the parties in or to the waters
16 of Kern River which the owners of the Castro Ditch or canal
17 and the McCord Canal ^{or any other canal not herein mentioned} are entitled to divert, ^{thereby} and the rights
18 of any party hereto as owner of an interest in said Castro
19 ditch or McCord Canal ^{or other canal not herein mentioned} and the waters which the owners thereof
20 claim the right to divert ^{thereby} shall be in nowise affected by any
21 provisions of this decree, and nothing contained in this de-
22 cree shall be construed to fix or define the rights of Miller
23 & Lux as successors of certain of the parties of the first
24 part named in the said "Miller-Haggin Contract" to the waters
25 of Kern River, nor to fix or define the obligations of the
26 plaintiffs under said contract.

27 21. Nothing in this decree is to be construed as determin-
28 ing the respective rights of the parties of the second part to
29 said "Miller-Haggin contract", as between each other, to the sur-
30 plus of the waters of Kern River over and above the amounts
necessary to supply the quantity due to the Kern Island Irrigat-

1 ing Canal Company under said contract and necessary to supply
2 the parties of the first part under said contract and necessary
3 to supply those of the parties of the second part to said con-
4 tract who are hereby decreed to have the right to specific quan-
5 tities of water from said Kern River; and as to said surplus
6 it is hereby decreed that the rights of the parties of the sec-
7 ond part to said "Miller-Haggin contract" thereto are as deter-
8 mined by the provisions of said contract. It is further de-
9 creed that the rights of the parties of the first part to the
10 said "Miller-Haggin contract" to have delivered at the second
11 point of measurement provided for in said contract the full
12 one-third, without diminution, of all water flowing in said
13 river during the months of March, April, May, June, July and
14 August of each year at the first point of measurement provided
15 for in said contract in excess of the three hundred cubic feet
16 per second thereof belonging to the Kern Island Irrigating Ca-
17 nal Company is prior and paramount to the rights of the plaint-
18 iffs herein decreed to the specific quantities of water to
19 which they are declared to be entitled, except the right of
20 said Kern Island Irrigating Canal Company to said three hundred
21 cubic feet per second.

22
23 22. That so long as the said Farmers Canal Company shall
24 continue to deliver to the said Wible Orchard & Vineyard Compa-
25 ny, Charles Kerr, Philo D. Jewett and Miller & Lux the amount
26 of water of Kern River herein decreed to be due to said defend-
27 ants respectively, the said Farmers Canal Company shall have
28 exclusive management and control of the said Farmers Canal for
29 the purpose of carrying said water to the said defendants and
30 to other persons and lands entitled to receive water therefrom;

20

1 but if said Farmers Canal Company shall at any time fail or
2 refuse to deliver the water to which the said defendants are
3 entitled, or either of them respectively, to them at their said
4 lands respectively, then in that event the said defendants or
5 either of them have the right to use and control the said Far-
6 mers Canal so far as may be necessary to enable them to divert
7 the water to which they are hereby declared to be entitled from
8 Kem River through the headgate of said canal and conduct the
9 same to their respective tracts of land or places of diversion
10 from said canal. Said defendants each, respectively,
11 shall make the dam and headgate or other works
12 by which to divert the water to which he
13 is entitled, from said Slough or Canal
14 and said ^{Farmers Canal} Company shall deliver said water
15 at said headgate without charge, and
16 shall not be under obligation to deliver
17 ~~such water to such defendant~~
18 ~~at any other place.~~
19 None of the parties have any rights to the waters of
20 Kem River other than as herein decreed, declared
21 or reserved.

22 Done in open court this 6th day of Au-
23 gust 1900.

24 Lucien Shaw
25 Judge

26
27 21
28
29
30

No. 1951.

Dunk Co. Page 364

SUPERIOR COURT OF KERN COUNTY,
STATE OF CALIFORNIA

FARMERS CANAL COMPANY, et al.:

Plaintiffs,

-vs.-

J. R. SIMMONS, et al.,

Defendants.

DECREE.

-----X-----

Filed Aug 6, 1922

A. L. Miller

Clerk

By Deane Smith

Deputy Clerk

COUNTY CLERK'S MEMO:
Legibility of writing, typing or
printing UNSATISFACTORY in
this document when received.
20

23

328

1144

1415

5922



THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE.

ATTEST: AUG - 7 1996
TERRY McNALLY Clerk of the Superior Court of the State of California, in and for the County of Kern.

By *Terry McNally* DEPUTY