

Decision No. 59208**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
DICK R. FRIESEN for a certificate of
public convenience and necessity and
for the establishment of rates for
water service to Angwin and vicinity
in Napa County.

Application No. 36736
(Further Hearing)

Investigation on the Commission's own
motion into the status, operations,
practices, contracts, rules, charges
and service of DICK R. FRIESEN and of
J. H. CHAMPION in the furnishing of
water in or near the community of
Angwin, Napa County, California.

Case No. 5683
(Further Hearing)

ANGWIN CHAMBER OF COMMERCE,

Complainant,

VS.

Case No. 5910
(Further Hearing)

DICK R. FRIESEN,

Defendant.

In the Matter of the Application of
PACIFIC UNION COLLEGE ASSOCIATION
for an order authorizing it to carry
out the terms and conditions of a
contract dated February 20, 1957, with
Dick R. Friesen for accommodation
storage of water for a limited period
of time.

Application No. 38853
(Further Hearing)

(Appearances) ^{1/}

Frank Loughran, for Betty Cooksley, petitioner in
all four proceedings.

Scott Elder, for Dick R. Friesen, applicant in
Applications Nos. 36736 and 38853, respondent
in Case No. 5683, and defendant in Case No. 5910.

Edward G. Fraser, Jr., for the Commission staff.

OPINION AND ORDER DENYING
PETITION FOR MODIFICATION OF
DECISION NO. 57751 AS TO DEER LAKE,
DENYING PETITION FOR REHEARING, AND
EXTENDING DATES FOR COMPLIANCE.

In its Decision No. 57751 dated December 16, 1958, in the
above-entitled matters, the Commission determined, among other things,
that during the time Dick R. Friesen has been rendering public utility
1/ At the rehearing on September 11, 1959.

service all of his water facilities have been dedicated to that service and that all six reservoirs forming his principal source of water supply, including one named Deer Lake, have been impressed with the stamp of public utility status and public use. The order in the said decision required Friesen to record such water facilities, including Deer Lake, on his books of account substantially in accordance with an appraisal contained in Exhibit No. 12 introduced in evidence by the Commission staff at the hearing on Application No. 36736 on June 9, 1955.

In response to a petition filed by counsel for Friesen, by its order dated December 31, 1958, the Commission extended the effective date of the said Decision No. 57751 to January 30, 1959. A petition for rehearing and reconsideration of Decision No. 57751 was filed with the Commission on January 20, 1959, by counsel for Dick R. Friesen and for Pacific Union College Association. Such petition having been filed 10 days before the effective date of the order, and the petition not having been either granted or denied before the effective date, nor as of the present date, the order in Decision No. 57751 now stands suspended.

On February 11, 1959, Betty (sometimes spelled Bette or Bettie) Cooksley filed with the Commission a petition for permission to intervene and for an order setting aside Decision No. 57751 and reopening the proceedings insofar as they relate to Deer Lake. In her sworn petition, Betty Cooksley stated that she has been the owner of Deer Lake since 1951; that she had no knowledge of, and at no time consented to, the use of its waters for any public purpose; and that they have not in fact been so used. She stated that she was not a party to any of the above-entitled proceedings and had no notice thereof, and alleged that the Commission's finding that the

waters of that lake were dedicated to the public use by Dick R. Friesen places a burden on her property and deprives her of property without due process.

On June 23, 1959, the Commission ordered the above-entitled proceedings to be reopened for the limited purpose of inquiring into the circumstances of the acquisition of Deer Lake by said Betty Cooksley and her knowledge of the use of the waters of said lake before and after the date of such acquisition.

After due notice to all interested parties of record in the four proceedings, a further hearing was held before Examiner E. Ronald Foster at Angwin on September 11, 1959. Following the introduction of further evidence, both oral and documentary, by Betty Cooksley on her own behalf, the matters were again submitted for decision insofar as they relate to Deer Lake, subject to the later filing of an exhibit which was received by the Commission on September 28, 1959.

Betty Cooksley testified that she is the daughter of Dick R. Friesen and that in 1951, prior to her marriage on August 24, 1952, her parents had verbally given her the property consisting of certain land surrounding and including Deer Lake but that the preparation of the actual instrument conveying the property was not completed until 1955, due to delays in making the necessary surveys and clearing the title thereto.

Exhibit No. 50 is a photostat of a document dated November 14, 1955 and recorded on November 16, 1955, at page 570 of volume 495 of the official records of Napa County, wherein Dick R. Friesen and Pearl Friesen, his wife, parties of the first part, and Fred B. Cooksley, party of the second part, husband of Bettie Cooksley, party of the third part, purport to grant to said

Bettie Cooksley, as her own separate property and estate, certain real property lying in Napa County and described therein as consisting of portions of Section 25, Township 9 North, Range 6 West, Mount Diablo Base and Meridian. No consideration or value is specified in the said document and Mrs. Cooksley testified that she gave no consideration or value for the said property. Late-filed Exhibit No. 51 is a delineation of the boundaries of the property described in Exhibit No. 50 and shows Deer Lake as being contained within such boundaries.

Mrs. Cooksley further testified that at the time that she was verbally given the property by her parents in 1951, she knew of the existence of a commitment made by Friesen, her father, to store water for irrigation purposes for Pacific Union College, at least a part of which was to be stored in Deer Lake. At that time there was a dam which had been constructed by Friesen to create the lake, which dam proved to be unsatisfactory and a somewhat higher dam located a little further downstream was built by the Cooksleys in later years, according to this witness.

The record is not clear whether Mrs. Cooksley was aware of the public utility nature of the service involved in the storage of water in Deer Lake and its subsequent delivery by Friesen to the College. She professed to have no knowledge of the manner in which water stored therein might be released from Deer Lake for delivery to the College or to Friesen's "domestic" lakes. She now lives in North Sacramento but during the last few years she and her children have spent the summers with her parents at their White Cottage Ranch and she visits them on alternate week ends during the rest of the year. To her knowledge, the only use which has been made of the water impounded in Deer Lake is for the irrigation of the natural and

planted meadows below it, where livestock belonging to Friesen and perhaps to others of "the family" are pastured. The water is released to the extent available and in the manner and amount determined by Friesen, over which she exercises little or no supervision.

Under cross-examination, Mrs. Cooksley was unable to point to any appropriative right to store water in Deer Lake which she had applied for or acquired, other than her assumption that such rights are appurtenant to the land. The record is silent as to any specific transfer from Friesen to Cooksley of any of the appropriative rights, permits or licenses to collect water in Deer Lake at the diversion point created by the dam which creates the lake, which were discussed at some length in Decision No. 57751.

The Commission has heretofore found in its Decision No. 57751 that Friesen has been operating as a public water utility since about 1932 and he has tacitly admitted that he became a public utility in 1947. He filed Application No. 36736 for a certificate of public convenience and necessity on February 16, 1955. Following partial hearings thereon, held on June 9 and 29, 1955, the Commission instituted its investigation on its own motion, Case No. 5683, on September 27, 1955. The Commission's investigation was heard on a joint record with Friesen's application on November 1, 1955, when the two matters were submitted for decision. It may be pointed out that all of the dates mentioned in this paragraph are prior to November 14, 1955, the date of the document (Exhibit No. 50), evidencing the intended transfer of certain lands surrounding Deer Lake from Friesen to Cooksley.

The Commission's determinations, as set forth in Decision No. 57751, as to the function of Deer Lake and its relation to other

lakes, all of which have been found used and useful to Friesen in performing his public water utility service, remain uncontroverted.

Section 851 of the Public Utilities Code provides that no public utility may dispose of any part of its property necessary or useful in the performance of its duties to the public, without first having secured from the Commission an order authorizing it to do so; and that every such disposition made otherwise than in accordance with the order of the Commission authorizing it is void. No such authority has been granted.

The Commission hereby affirms the findings and conclusions contained in the opinion preceding the order based thereon in its Decision No. 57751. In particular, we find that the said Deer Lake and the water which may be impounded therein from time to time have been and will be needed in the future to enable Friesen to render adequate public utility service of water for both irrigation and domestic purposes. We therefore hereby find and conclude that the purported transfer of the property upon which Deer Lake and the dam forming it are located, from Dick R. Friesen to Betty Cooksley, his daughter, not having been authorized by this Commission as required by the first paragraph of Section 851 of the Public Utilities Code, is necessarily void. We further find and conclude that such transfer does not come within the purview of the second paragraph of said Section 851; therefore,

IT IS ORDERED that the petition of Betty Cooksley for modification of Decision No. 57751, insofar as it relates to Deer Lake, is denied.

Dick R. Friesen and Pacific Union College Association having filed a petition for rehearing and reconsideration of Decision No. 57751, and the Commission having considered said petition and each and every allegation therein, and being of the opinion that no good cause for granting a rehearing has been made to appear; therefore,

IT IS ORDERED that the petition for rehearing and reconsideration of Decision No. 57751 be, and the same is, hereby denied. Such petition having been filed ten days prior to the effective date of said decision, thereby suspending the effectiveness of the order therein, it becomes necessary to advance the dates for compliance with certain portions of said order; therefore,

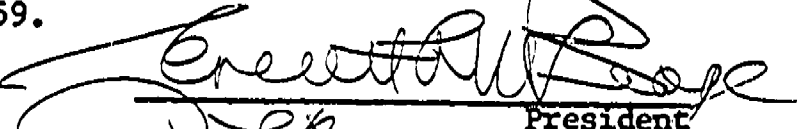
IT IS FURTHER ORDERED that the several ordering paragraphs of Decision No. 57751 are hereby revised as follows:

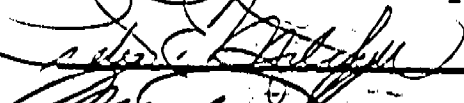
- a. In paragraph 2: on line 1 strike the date of "February 1, 1959" and substitute therefor the date of "November 1, 1959" and on line 2 strike the date of "February 1, 1961" and substitute therefor the date of "November 1, 1961".
- b. In paragraph 3: on each of the lines 1 and 6 strike the date of "March 1, 1959" and substitute the date of "December 1, 1959" and on line 9 strike the date of "March 10, 1959" and substitute the date of "December 10, 1959".
- c. In paragraph 4: on line 8 strike the year "1961" and substitute therefor the year "1962".
- d. In paragraph 5: on lines 3 and 4 strike the phrase reading "within ninety days after the effective date of this order" and substitute therefor the phrase "on or before December 31, 1959".

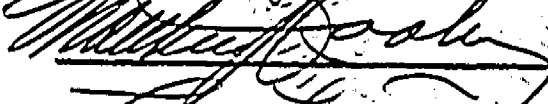
In all other respects said Decision No. 57751 shall remain in full force and effect.

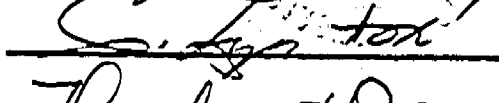
The effective date of this order shall be ten days after the date hereof.

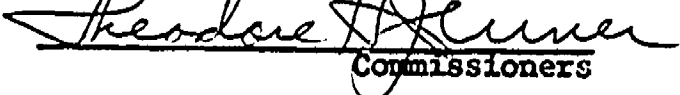
Dated at San Francisco, California, this 21th day of October, 1959.



President








Commissioners