

Decision No. 62277**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 DICK R. FRIESEN, doing business as)
 Angwin Water Works, for an order)
 determining that utility use of)
 certain properties has terminated,)
 and authorizing the transfer of)
 certain property.)

Application No. 43443
 (Filed May 26, 1961)

OPINION AND ORDER

In this application Dick R. Friesen, doing business as Angwin Water Works, requests an order of this Commission determining that the use and usefulness of certain water storage and supply facilities for public utility purposes have terminated, that said facilities are free from any public utility obligation and authorizing the transfer of portions of the said facilities.

Applicant is engaged as a public utility in furnishing domestic water service in the unincorporated town of Angwin, and vicinity, in Napa County.

By Decision No. 54852, dated April 16, 1957, in Application No. 38853, applicant was authorized to carry out the terms and conditions of a contract with Pacific Union College Association^{1/} whereby Friesen agreed to deliver annually to College for its irrigation needs up to a maximum of 20 acre-feet of runoff water from Angwin Creek drainage area stored in reservoirs owned by Friesen, which contract expired on February 10, 1959 and has not been renewed or replaced.

^{1/} Sometimes herein called "College".

The instant application states that College has constructed facilities of its own to impound, store and transmit water for its irrigation needs; has been granted authority by the State Water Rights Board to appropriate water for such purpose; has discontinued taking any water from applicant for irrigation purposes; and its need for any irrigation water from applicant has permanently terminated. Attached to the application as page 2 of Exhibit A is a copy of assignment to applicant by College of all its interest in Application 8512, Permit 4760, License 5064 to appropriate the water from which the said 20 acre-feet of water was to be furnished it by applicant. Page 3 of Exhibit A is a copy of a letter dated March 30, 1961 from the State Water Rights Board to Friesen stating that the records have been changed to show him as the sole owner of Application 8512, License 5064.

The application further states that the following property and facilities are not connected with and are entirely separate from applicant's domestic water system, and have been used for no utility purpose other than to provide water for irrigation purposes to College:

- (a) Deer Lake reservoir, impounding dam and the right to appropriate, divert and store water there;
- (b) Oroville (also known as Orville) Lake, impounding dam and the right to appropriate, divert and store water there;
- (c) Watershed land tributary to Deer Lake and Oroville Lake;
- (d) A pipeline extending from Deer Lake to a water course above Oroville Lake.

Note: It is of record that the pipeline heretofore used to deliver the irrigation water from Oroville Lake to the place of use was owned by College.

Friesen requests that the Commission determine that the properties described hereinabove are no longer necessary or useful in the performance of applicant's public utility duties. He also asks for authority to convey by way of gift to his daughter, Bettie Cooksley, for her private nonutility purposes, the said Deer Lake Reservoir, together with appurtenant water rights and a parcel of land surrounding it, the parcel being described in a proposed form of deed attached to the application herein as Exhibit B. While the proposed deed does not mention Deer Lake, it is of record that it lies within the boundaries of the said parcel.^{2/}

For an understanding of what water rights may be appurtenant to Deer Lake, reference is made to a previous decision by the Commission pertaining to this matter. The following are quotations and a condensation of the tabulation which appear on pages 11 and 12 of Decision No. 57751, dated December 16, 1958 in Application No. 36736, et al.:

"There follows a tabulation of the appropriations covered by the three above-described applications, permits and licenses, showing the detailed amounts at each point of diversion as last authorized by the State agencies and the totals related to the capacities of the several storage reservoirs, identified by the names of the Lakes and showing when they were constructed:"

^{2/} This description of the parcel is identical with that contained in Exhibit No. 50, as delineated in Exhibit No. 51, both referred to in Decision No. 59208, dated October 27, 1959, in Application No. 36736, et al., concerning applicant, to which reference is hereby made.

ITEM	DIVERSION OR STORAGE POINTS			TOTAL
	Oroville:	"Domestic" Lakes:	Deer:	
Name of Lake	: 1	: 2, 3, 4 and 6	: 5	
Point Number Ø	: 1929-33	: 1936 to 1947	: 1936:	
Constructed #				
Capacity, Acre-Feet*				
"Domestic" Res.	--	200	--	200
"Agr. & Rec." Res.	34.45	--	43	77.45
Total	34.45	200	43	277.45
<u>Diversion, Acre-Feet</u>				
(a) Appl. 8512, Lic. 5064	21	78	2.45	101.45
(b) Appl. 8801, Lic. 5063	--	122	14	136
(c) Appl. 11275	10	20	10	40
Total	31	220	26.45	277.45

Ø Numbers relate to diversion points designated in applications to appropriate water.

Additional construction to create present storage capacities may have been done in later years.

* As shown in Exhibits Nos. 33 and 40, A-36736, et al.

(a) Exhibit No. 38, A-36736, et al.

(b) Exhibit No. 43, A-36736, et al.

(c) Exhibit No. 36, A-36736, et al.

"The record does not explain the apparent discrepancies in the foregoing tabulation between the reservoir capacities and the total diversions at three of the points."

From the foregoing tabulation it may be noted that Friesen's rights to appropriate, divert and store water in Deer Lake, amount to a total of 26.45 acre-feet of water, even though the storage capacity of the reservoir is greater. Therefore, in order that applicant's rights to water for his domestic system may not be infringed, it appears that any assignment of rights pertaining to Deer Lake should be limited to 26.45 acre-feet.

It appears, and the Commission so finds, that the reservoirs known as Deer Lake and Oroville Lake are no longer necessary for the rendering of public utility service by applicant and that the use and usefulness of the said reservoirs and their related facilities in the performance of applicant's duties to the public have ceased and terminated. We further find that it will not be adverse to the public interest to grant applicant's requests to be relieved of further

public utility obligation in connection with the said properties and for authority to transfer Deer Lake reservoir and the parcel of land surrounding it; provided, however, that applicant shall not be authorized to assign any right to the use of water of Angwin Creek, or a tributary thereof, for diversion and storage in said Deer Lake in any amount in excess of 26.45 acre-feet per annum.

The action taken herein shall not be construed to be a finding of the value of the properties herein authorized to be relieved of public utility status or those properties authorized to be transferred.

The Commission having considered the requests of applicant and being of the opinion that they should be granted and that a public hearing is not necessary; therefore,

IT IS ORDERED that:

1. Dick R. Friesen, doing business as Angwin Water Works, be and he is hereby relieved of all further public utility obligations and liabilities in connection with his public utility water service insofar as water storage and delivery of water from the two reservoirs known as Deer Lake and Oroville Lake are concerned, the said reservoirs being no longer necessary or useful in the performance of public service heretofore rendered.

2. After the effective date of this order and on or before December 31, 1961:

- a. Dick R. Friesen is authorized to transfer to his daughter, Bettie Cooksley, for her private non-utility purposes, Deer Lake reservoir, impounding dam and related facilities, together with the parcel of land surrounding it, the location and boundary of which parcel are described in the form of the proposed deed attached as Exhibit B to the application herein.
- b. Dick R. Friesen is authorized to assign to his daughter, Bettie Cooksley, for diversion and

storage in said Deer Lake an amount not in excess of 26.45 acre-feet per annum of the water of Angwin Creek, or a tributary thereof, the right, title and interest to the use of which water he may possess by virtue of applications, permits or licenses on file with the State Water Rights Board.

3. If either or both of the authorizations granted by the preceding paragraph 2 are exercised:

- a. Within thirty days thereafter, Dick R. Friesen shall file with this Commission a certified copy of the deed, notice of assignment or other instrument of conveyance as executed.
- b. Within sixty days thereafter, Dick R. Friesen shall file with this Commission a copy of the journal entries used to reflect in his balance sheet accounts the elimination of the items of utility property hereinabove found to be no longer necessary or useful in the performance of public utility service.

IT IS FURTHER ORDERED that Dick R. Friesen be and he hereby is relieved from further compliance with the requirements of ordering paragraphs 3 and 4 of this Commission's Decision No. 57751 dated December 16, 1958, pertaining to the installation and maintenance of certain reservoir gauges and the recording and filing of the gauge readings, as said decision was revised by Decision No. 59208 dated October 27, 1959, as further revised by Order Extending Time dated January 12, 1960, and as modified by Decision No. 59882 dated April 5, 1960, insofar as such requirements relate to Oroville and Deer Lakes only.

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

Dated at San Francisco, California, this 15th day of July, 1961.

[Signature]
President

[Signature]
Secretary

[Signature]
George T. Trover

[Signature]
Commissioners