

ORIGINAL

Decision No. 66037

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 MIRIAM E. CONLIN, an individual, doing)
 business as CONLIN STRAWBERRY WATER)
 COMPANY, for a certificate of public)
 convenience and necessity to operate)
 a public utility water system and to)
 establish rates for a water service)
 in an unincorporated area known as)
 "Conlin Subdivisions" and "Strawberry)
 Subdivisions," approximately thirty-)
 one (31) miles east of the City of)
 Sonora, County of Tuolumne, State of)
 California.)

Application No. 44688

Hardin and Gorgas, by James R. Hardin, for applicant.
 Zeff, Halley & Price, by Francis W. Halley, for R. W.
 and Audrey E. Gillispie; G. W. King and Harold O.
Brixley; protestants.
Edmund S. Carey, for State Department of Public
 Health; and R. E. Hartley, for Tri-Dam Project;
 interested parties.
John D. Reader and H. H. Webster, for the Commission
 staff.

O P I N I O N

After due notice public hearings in this matter were held before Examiner Power on March 27 and 28, 1963, at Sonora. The matter was submitted subject to receipt of late-filed exhibits and is now ready for decision.

Applicant seeks a certificate of public convenience and necessity for the operation of a public utility water system in the unincorporated area known as the Conlin and Strawberry subdivisions located in mountainous terrain approximately 31 miles east of Sonora in Tuolumne County. These subdivisions and the general area have received water service for more than 60 years from a system constructed by applicant's predecessors in interest.

The water system is composed of combined gravity flow and pumping facilities with 155,000 gallons for storage capacity and a distribution system consisting almost wholly of galvanized pipe. The source of water supply originates in Herring Creek, a tributary of the south fork of the Stanislaus River in which applicant claims the right of diverting 150 miners inches.

The system serves approximately 220 users, of whom an estimated 25 are full-time residents. Users have been supplied on either a contract price of \$7.50 per year or on a free basis. Nineteen persons receive free water in accordance with a covenant for such free service contained in the original deeds under which title to their properties was first acquired.

The existing water system does not comply with the requirements of this Commission's General Order No. 103 respecting materials for construction or the pressures at which water is supplied to customers. The system is reported to be in run-down condition and, in the past, settling, filtering and chlorinating facilities have either not been used or have been improperly used. Waterlines are in need of repair, are subject to leaks and exposed to freezing weather. In certain instances in the past, water service has been subject to interruptions for extended periods of time. In this connection (as is usual in matters of this kind) the Commission staff, as a result of its investigation of applicant's operations and application for a certificate, has made a field investigation and has made certain recommendations respecting the improvement of the water system facilities and its operation. While the evidence clearly indicates need for the improvement and rehabilitation, the

evidence is equally clear that public convenience and necessity require and will require that applicant be granted a certificate for the areas presently served. The Commission finds the facts so to be.

The original cost of the remaining plant now in service is estimated to total \$47,207 as of September 30, 1962. The items included in such total amount are shown in the following tabulation:

TABLE NO. 1

Ac. No.	Account	Balance 12/31/61	Additions 1/1-9/30/62	Balance 9/30/62
<u>Nondepreciable Plant</u>				
306	Land	\$ 3,500.00		\$ 3,500.00
<u>Depreciable Plant</u>				
312	Collecting and Impounding Res.	1,255.80	\$ 599.50	1,855.30
316	Supply Mains	285.53		285.53
321	Structures and Improvements - Pumping Plant	553.47		553.47
324	Pumping Equipment	1,336.42		1,336.42
331	Structures and Improvements - Water Treatment Plant	691.47		691.47
332	Water Treatment Equipment	1,893.06		1,893.06
342	Reservoirs and Tanks	10,478.66		10,478.66
343	Trans. and Distr. Mains	24,148.65	590.64	24,739.27
345	Services	1,309.86	203.88	1,513.74
378	Tools, Shop and Garage Equip.	360.16		360.16
	Subtotal	42,313.06	1,394.02	43,707.08
	Total	\$45,813.06	\$1,394.02	\$47,207.08

This Commission's engineers have recommended an infiltration gallery be installed at the point of diversion on Herring Creek, the installation of a 25,000-gallon tank together with a booster pump to serve five water users, the installation of approximately 1,000 feet of 4-inch and 250 feet of 2-inch pipe to interconnect and circulate water through the system, to a total estimated expenditure of \$8,050.

As above-mentioned, applicant's present charges for water consist of a basic flat rate of \$7.50 per year. In this proceeding

applicant has proposed a flat rate charge of \$72 per year for a single-family residential unit and \$100 per year for each commercial resort building. Comparable metered rates have also been proposed, although metering of the customers' services is not intended.

Testimony respecting the financial results of applicant's operations under the requested rates is summarized in the following tabulation:

TABLE NO. 2

Item	Estimated Year 1963		
	Staff		Company
	Pres. Rates	Prop. Rates	Prop. Rates
Operating Revenues	\$ 1,550	\$15,200	\$12,824
<u>Deductions</u>			
Maint. & Oper. Exp.	6,670	6,670	8,750
Depreciation	1,640	1,640	1,300
Taxes Other Than on Income	655	655	345
Income Taxes	-	1,510	535
Total Deductions	\$ 8,965	\$10,475	\$10,930
Net Revenue	\$ <u>(7,415)</u>	\$ 4,725	\$ 1,894
Avg. Depr. Rate Base	\$52,370	\$52,370	*
Rate of Return	Loss	9.0%	5.0% [#]

(Red Figure)

* Not developed by applicant.

[#] Stated in the application to be the approximate return.

The differences apparent in the foregoing table result primarily from the treatment accorded the so-called "free list" customers. In estimating revenues applicant excluded these customers from consideration, whereas the staff included the revenues from such customers on the basic premise that these customers should not be provided free service in perpetuity at the expense of all other customers since over the years they have received water service

which is equal to or greater in value than the price paid for their properties and that with the increasing value of the service to be made available after system improvements are installed, a continuance of this free water use practice would be inequitable. The Commission notes two errors in the estimated revenues and expense. With respect to revenues a proper inclusion of the revenues to be derived from the 19 free users would produce total revenues of \$14,400. With respect to expense, an inclusion of \$300 should be made in order to reflect the cost of insurance. The Commission finds the staff estimates, when so corrected, to be fair and reasonable for the purposes of this proceeding.

The Commission staff developed a rate base for the test year 1963 as shown in the following tabulation. Applicant had no comparable showing. The Commission finds the staff-derived rate base to be fair and reasonable.

TABLE NO. 3

Utility Plant 9/30/62	\$47,207	
Estimated 1962 budgeted addition	3,000	
Estimated 1963 staff recomm. improvements	8,050	
Estimated average 1963 additions	50	
Estimated Average 1963 Plant		\$58,307
Working Cash and Materials & Supplies		1,000
Depreciation Reserve 1/1/63	\$ (6,121)	
Half of 1963 Depr. Accrual	(820)	
Estimated Average 1963 Depr. Reserve		(6,941)
Estimated Average 1963 Rate Base		52,366
	Use	52,370

Red Figure

In addition to the evidence respecting revenues derivable from applicant's original proposal, the Commission staff, at the request of the examiner, prepared two summaries of earnings on the

assumption that summer season rates would be established. In the following table Case I omits staff suggested improvements while Case II includes them.

TABLE NO. 4

<u>Item</u>	<u>Case I</u>	<u>Case II</u>
Estimated Operating Revenue	\$12,680	\$13,340
<u>Deductions</u>		
Maint. & Operating Exp.	6,970	6,970
Depreciation	1,430	1,640
Taxes Not Based on Income	590	655
Income Taxes	810	670
Total Deductions	\$ 9,800	\$ 9,935
Net Revenue	\$ 2,880	\$ 3,405
Avg. Depr. Rate Base	\$44,320	\$52,370
Rate of Return	6½%	6½%

Case I, above, further assumes an annual rate of \$64.50 and a summer rate of \$47.50, while Case II assumes a \$68 annual rate and a \$50 summer rate.

In the light of testimony respecting the need for system improvements and, in particular, the testimony respecting the need for a more potable water, the Commission finds that the recommendations of its staff respecting system improvements are not only desirable but are necessary and that therefore the rates to be authorized herein should be predicated upon average depreciated rate base of \$52,370 as developed by the staff. The Commission is of the opinion that a rate of return not exceeding 6½ percent is fair and reasonable to this applicant and her customers. The rates to be authorized, therefore, will be those applicable to Case II in the above tabulation.

In this proceeding numerous customers have objected to the magnitude of the increase requested in order to produce a reasonable return to this utility system. The majority of these customers are summertime water users or vacationers occupying their premises during the summer months and occasionally on week ends during the balance of the year. They point to the fact that they use less water than the year-round resident and because of such situation feel that they should pay lesser rates for the short periods in which they occupy their summer homes. It should be apparent to them, however, that the water system must be so constructed and maintained that the total demands of all customers may be met. The physical system may not be expanded during periods of high demand and contracted during periods when little water is used, nor can year-round maintenance and repairs be foregone if the system is to continue to serve all of its customers--summer as well as year-round customers.

It has been settled law for half a century or more that contracts respecting delivery of utility water must yield to the police power of the states. (See Law v. Railroad Commission, 184 Cal. 737 and Union Dry Goods Co. v. Georgia Public Service, 248 U. S. 372, 63 L.ed. 309.) As this is a public utility service the "free list" must be discontinued and applicant must assess and collect her filed rates from all customers without discrimination. If the property rights of the 19 heretofore free users are taken or damaged, it is a matter for direct negotiation between the parties or, that failing, for the courts.

In summary, the Commission finds that:

1. Public convenience and necessity require the provision of public utility water service in the community of Strawberry, Tuolumne County.

2. Applicant is the owner of a water system now installed in Strawberry, capable of rendering water service therein.

3. Applicant has the financial ability to undertake water service at Strawberry.

4. The estimates of operating revenues, expenses, including taxes and depreciation, and the rate bases as submitted by the staff for the year 1963 and as adjusted herein reasonably represent the results of applicant's operations for the purpose of this proceeding.

5. The service improvements recommended by the staff are necessary to the supplying of reasonably adequate service to the public who will use this system.

6. The rates attached to the following order are fair and reasonable for this system and to the extent that increases in rates and charges to the public result therefrom such increases are justified.

7. It is reasonable to require applicant to collect rates from all persons to whom water service is rendered by her.

8. A composite depreciation rate of 3 percent is reasonable for this system.

9. Applicant should be allowed to extend her system outside of her certificated area as established herein only upon further authorization of this Commission. ✓
✓
✓

The Commission concludes that:

1. A certificate of public convenience and necessity should be granted to this applicant to operate a public utility water system in an area of Tuolumne County, described as follows:

A portion of Sections 16, 17, 20 and 21, Township 4N, Range 18E, Mt. Diablo Base and Meridian; being all that portion of segregated Tract No. 39 lying northwesterly of the course of the South Fork of the Stanislaus River and all of segregated Tract No. 40 as said segregated tracts are shown on the corrected survey map of Dupree R. Averill accepted by the General Land Office of the United States Department of the Interior on March 2, 1932.

2. Applicant should be authorized to file the rates attached to the following order.

3. Applicant should be required to install improvements to the water system as recommended by the staff.

The certificate herein granted shall be subject to the following provision of law:

The Commission shall have no power to authorize the capitalization of this certificate of public convenience and necessity or the right to own, operate, or enjoy such certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State as the consideration for the issuance of such certificate of public convenience and necessity or right.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Miriam E. Conlin authorizing her to operate a public

utility water system for the distribution and sale of water within the area described in conclusion No. 1 in the foregoing opinion. ✓

2. After the effective date of this order and not less than five days prior to the date service is first furnished to the public under the authority herein granted, applicant, Miriam E. Conlin, doing business as Conlin Strawberry Water Company, shall file the schedules of rates attached to this order as Appendix A, rules governing service to customers, a tariff service area map, and copies of printed forms normally used in connection with customers' services. Such filing shall be in conformity with General Order No. 96-A, and the tariff sheets, if acceptable to this Commission, shall become effective upon the fifth day after having been filed for service on and after October 1, 1963.

3. Within sixty days after the effective date of this order, applicant shall file with the Commission four copies of a comprehensive map, drawn to an indicated scale of not more than 400 feet to the inch, delineating by appropriate markings the various tracts of land and territory served; the principal water production, storage and distribution facilities; and the location of the various water system properties of applicant.

4. Beginning with the year 1963, applicant shall determine depreciation expense by multiplying the depreciable utility plant by a rate of 3.0 percent. This rate shall be used until review

indicates it should be revised. Applicant shall review the depreciation rate using the straight-line remaining life method when substantial changes in utility plant composition occur and at intervals of not more than five years, and shall revise the above rate in conformance with such reviews. Results of these reviews shall be submitted to this Commission.

5. Or or before January 1, 1964, applicant shall institute a program for the periodic testing of water quality and shall report to the Commission, in writing, within ten days thereafter that such program has been instituted, together with the details thereof.

6. Applicant shall measure the water diverted into her system from Herring Creek in each of the months of August and September of the years 1964, 1965, 1966 and 1967 and report the results of such measurements to the Commission on or before October 15 of each of said years.

7. Applicant shall not extend service outside of the area herein certificated without further authorization of this Commission.

8. On or before November 1, 1963, applicant shall have installed an infiltration gallery at the point of diversion on Herring Creek. Applicant shall inform the Commission, in writing, within ten days thereafter, of the completion of this gallery.

9. On or before December 1, 1963, applicant shall have installed a tank of not less than 25,000-gallon capacity, together with a booster pump, in the eastern section of the service area. Approximately 1,000 feet of 4-inch pipe and 250 feet of 2-inch pipe shall be installed to connect the services in this area to the new tank. Applicant shall inform the Commission, in writing, within

ten days thereafter, of the completion of this installation, together with any pertinent details thereof.

10. Applicant shall acquire the land parcels or areas on which the pumps, tanks, and related water facilities are located and any easements or permits where water mains are or will be located, otherwise than in streets dedicated to public use, including the right-of-way for the 10-inch transmission line from the diversion point on Herring Creek. Within sixty days after the effective date of this order, applicant shall file with the Commission a letter describing each such parcel, easement, permit or right-of-way. Land owned by applicant, used for public utility purposes, shall be shown on the comprehensive map ordered to be filed by paragraph 3 above, with dimensions or areas indicated thereon.

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

Dated at San Francisco, California, this 17th day of SEPTEMBER, 1963.

William L. Bennett
President

John L. ...

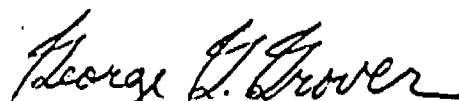
Everett W. ...

George L. Grover

Frederick B. Hollohoff
Commissioner

CONCURRING OPINION OF COMMISSIONER GROVER

I have joined in the Commission's decision, but since the opinion does not set forth the details of the arrangements for delivery of free water, I desire to add a brief statement on that issue. This is not a case in which a party has deeded water-producing properties to a utility and reserved water rights for his own use. (Depending upon the particular circumstances, such a transaction might not involve utility service.) Rather the deed which is in evidence in this case involved a sale of land by the utility's predecessors to a potential utility customer, with a promise by the utility to make available free water from its main for domestic purposes. The undertaking by the utility clearly relates to utility service within the jurisdiction of this Commission, and the Commission's decision properly undertakes to fix rates for such service. Our decision does not conflict with the holding in Allen v. Railroad Commission, 179 Cal. 68.


George G. Grover
Commissioner

APPENDIX A
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Schedule No. 1A

ANNUAL GENERAL METERED SERVICE

APPLICABILITY

Applicable to all metered water service furnished on an annual basis.

TERRITORY

Strawberry and vicinity, located approximately 31 miles east of Sonora, Tuolumne County.

RATES

Monthly Quantity Rates:	<u>Per Meter Per Month</u>
First 600 cu.ft. or less	\$ 5.50
Next 1,400 cu.ft., per 100 cu.ft.50
Next 3,000 cu.ft., per 100 cu.ft.25
Over 5,000 cu.ft., per 100 cu.ft.15

Annual Minimum Charge:	<u>Per Meter Per Year</u>
For 5/8 x 3/4-inch meter	\$ 66.00
For 3/4-inch meter	84.00
For 1-inch meter	120.00
For 1 1/2-inch meter	180.00
For 2-inch meter	250.00
For 3-inch meter	350.00
For 4-inch meter	500.00

The Annual Minimum Charge will entitle the customer to the quantity of water each month which one twelfth of the annual minimum charge will purchase at the Monthly Quantity Rates.

(Continued)

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Schedule No. 1A

ANNUAL GENERAL METERED SERVICE
(Continued)

SPECIAL CONDITIONS

1. The annual minimum charge applies to service during the 12-month period commencing January 1 and is due in advance. If a permanent resident of the area has been a customer of the utility for at least 12 months, he may elect, at the beginning of the calendar year, to pay prorated minimum charges in advance at intervals of less than one year (monthly, bimonthly or quarterly) in accordance with the utility's established billing periods for water used in excess of the monthly allowance under the annual minimum charge. When meters are read bimonthly or quarterly, the charge will be computed by doubling or tripling, respectively, the number of cubic feet to which each block rate is applicable on a monthly basis.

2. The opening bill for metered service, except upon conversion from flat rate service, shall be the established annual minimum charge for the service. Where initial service is established after the first day of any year, the portion of such annual charge applicable to the current year shall be determined by multiplying the annual charge by one three-hundred-sixty-fifth ($1/365$) of the number of days remaining in the calendar year. The balance of the payment of the initial annual charge shall be credited against the charges for the succeeding annual period. If service is not continued for at least one year after the date of initial service, no refund of the initial annual charges shall be due the customer.

Schedule No. 2A

ANNUAL GENERAL FLAT RATE SERVICE

APPLICABILITY

Applicable to all flat rate water service furnished on an annual basis.

TERRITORY

Strawberry and vicinity, located approximately 31 miles east of Sonora, Tuolumne County.

RATES

	<u>Per Service Connection Per Year</u>
1. For a single-family residential unit, including premises	\$ 68.00
For each additional single-family residential unit on the same premises and served from the same service connection	60.00
2. For commercial or main resort buildings	100.00
For each additional residential unit on the same premises and served from the same service connection	24.00
3. For each swimming pool	24.00

SPECIAL CONDITIONS

1. The above flat rates apply to service connections not larger than one inch in diameter.

(Continued)

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Schedule No. 2A

ANNUAL GENERAL FLAT RATE SERVICE

SPECIAL CONDITIONS (Continued)

2. For service covered by the above classifications, if the utility or the customer so elects, a meter shall be installed and service provided under Schedule No. 1A, Annual General Metered Service, effective as of the first day of the following calendar month. Where the flat rate charge for a period has been paid in advance, refund of the prorated difference between such flat rate payment and the minimum meter charge for the same period shall be made on or before that day.

3. The annual flat rate charge applies to service during the 12-month period commencing January 1 and is due in advance. If a permanent resident of the area has been a customer of the utility for at least 12 months, he may elect, at the beginning of the calendar year to pay prorated flat rate charges in advance at intervals of less than one year (monthly, bimonthly or quarterly) in accordance with the utility's established billing periods.

4. The opening bill for flat rate service shall be the established annual flat rate charge for the service. Where initial service is established after the first day of any year, the portion of such annual charge applicable to the current year shall be determined by multiplying the annual charge by one three-hundred-sixty-fifth ($1/365$) of the number of days remaining in the calendar year. The balance of the payment of the initial annual charge shall be credited against the charges for the succeeding annual period. If service is not continued for at least one year after the date of initial service, no refund of the initial annual charges shall be due the customer.

Schedule No. 2RS

SEASONAL RESIDENTIAL FLAT RATE SERVICE

APPLICABILITY

Applicable to all flat rate residential water service furnished on a seasonal basis.

TERRITORY

Strawberry and vicinity, located approximately 31 miles east of Sonora, Tuolumne County.

RATES

	<u>Per Service Connection</u> <u>Per Season</u>	
	<u>:Summer Season:</u>	<u>:Winter Season:</u>
	<u>:May 1 through:</u>	<u>:Nov. 1 through:</u>
	<u>: October 31 :</u>	<u>: April 30 :</u>
For a single-family residential unit, including premises	\$ 50.00	\$ 50.00
For each additional single-family residential unit on the same premises and served from the same service connection.	40.00	40.00

SPECIAL CONDITIONS

1. The above residential flat rates apply to service connections not larger than one inch in diameter.

2. For service covered by the above classifications, if the utility or the customer so elects, a meter shall be installed and service provided under Schedule No. 1A, Annual General Metered Service, effective as of the first day of the following calendar month. Where the flat rate charge for a period has been paid in advance, refund of the prorated difference between such flat rate payment and the minimum meter charge for the same period shall be made on or before that day.

(Continued)

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Schedule No. 2RS

SEASONAL RESIDENTIAL FLAT RATE SERVICE

SPECIAL CONDITIONS (Continued)

3. The opening bill for flat rate service shall be the established seasonal flat rate charge for the service. Where initial service is established after the first day of any year, the portion of such seasonal charge applicable to the current year shall be determined by multiplying the seasonal charge by one one-hundred-eightieth ($1/180$) of the number of days remaining in the season. The balance of the payment of the initial seasonal charge shall be credited against the charges for the succeeding seasonal period. If service is not continued for at least six months after the date of initial service, no refund of the initial seasonal charges shall be due the customer.

4. The seasonal flat rate charge is payable in advance on or before the initial day of the season.

5. Service may be taken under this schedule for either or both seasons.