

Decision No. 81550

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of (1) Pearl Friesen (dba Angwin
Water Company) for an Order Author-
izing the Transfer of Utility
Property and (2) the Silverado
Lakes Water Company (a California
corporation) for an Order Author-
izing the Issuance of Stock.

Application No. 53359
(Filed May 26, 1972)

Clifford W. Schulz, Attorney at Law, for MacDonald,
Nelson & Heck, Inc.-Murphy, Pulice, Associates,
Inc., and Silverado Lakes Water Company; and
James G. Richmond, Attorney at Law, for Pearl
Friesen; applicants.
William G. Fleckles, Attorney at Law, for Angwin
Chamber of Commerce; and Charles A. Holmes, for
the City of Napa; protestants.
Stephen W. Hackett, Attorney at Law, for the County
of Napa; and Robert H. Zeller, Attorney at Law,
for the City of St. Helena, interested parties.
William C. Bricca, Attorney at Law, J. J. Gibbons, and
J. E. Johnson, for the Commission staff.

O P I N I O N

Introduction

By this application, filed May 26, 1972, Pearl Friesen and Silverado Lakes Water Company (applicants) seek an order authorizing:

1. The transfer of the assets of the Angwin Water Company from her late husband, Dick R. Friesen, to Mrs. Friesen.

2. The transfer of the assets and certificate of public convenience and necessity of Angwin Water Company from Mrs. Friesen to the Silverado Lakes Water Company (Silverado Lakes), a corporation.

3. The issuance of 16,300 shares, or such other number of shares as may be authorized by the Commission, of \$10 par value capital stock of Silverado Lakes to Mrs. Friesen in exchange for the assets of the Angwin Water Company.

At one of the hearings held on the application, it was agreed by the parties and the examiner that the application also should be considered as requesting authority to transfer all of the shares of Silverado Lakes from Mrs. Friesen to MacDonald, Nelson & Heck, Inc.-Murphy, Pulice, Associates, Inc., a joint venture (the joint venture), as required by Section 854 of the Public Utilities Code as added by Statutes of 1971, Chapter 1373.

The Board of Supervisors of the county of Napa, by resolution, and the Angwin Chamber of Commerce (Chamber), by letter, requested a hearing on the proposed transfer. After due notice, four days of public hearing were held before Examiner Boneysteele, two at Angwin and two at the Commission's offices in San Francisco. The matter was submitted on November 6, 1972, subject to filing of a brief by Silverado Lakes, which brief has been received. The Commission also accepted comments on the brief by the Chamber and a response to the comments by Silverado Lakes.

Service Area

Angwin Water Company is a fictitious name under which Mrs. Friesen has continued the water utility operation of herself and her late husband. The utility serves the unincorporated community of Angwin and vicinity, located about eight miles northeast of the city of St. Helena, Napa County. There are presently 350 metered services and, in addition, approximately 100 unauthorized users who have connected their units to the metered service connections. These irregular connections, served contrary to the utility's filed tariff Rule No. 19, are known locally as "MUH's," the acronym standing for "multiple unit housing."

The main service area comprises approximately two square miles on the westerly slopes of Howell Mountain adjacent to, but not including, Pacific Union College. The utility also serves the 16-acre Champion tract, located about two miles southwest of the main service area, near the St. Helena Sanitarium. The Champion system is supplied from the Angwin system by a 2-inch transmission main.

Historical Background

The issues involved in this proceeding, which are somewhat more complicated than those encountered in most utility transfers, become clearer when considered in their historical context. For this reason, a more detailed review of the history of the system than otherwise could be justified will be included in this opinion.

Past decisions of the Commission concerning this utility, which were incorporated by reference into the record of this proceeding, indicate that the initial works of the system, consisting of springs and a pipeline within and adjacent to the White Cottage Ranch on Howell Mountain, were installed about 1870 by a Mr. Goetche and a Mr. Henne, who served water to neighbors until the great earthquake of 1906, when the springs failed. In 1911, some of these consumers made arrangements to obtain water from Pacific Union College.

Dick Friesen purchased the White Cottage Ranch in 1930 and continued the distribution of water to his neighbors. In 1931 he drilled a well and developed new springs to meet increased demands of additional customers. Over the years following he constructed six earth-fill dams to impound runoff water from the ranch, and in 1945 he drilled new wells, which since have been abandoned as nonproductive.

In 1948 Friesen acquired facilities owned by the college and used by it to supply water service to some 70 homes near its campus. In 1949 he completed the interconnection of the two Angwin systems.

In 1955 Friesen filed Application No. 36736 by which he sought a certificate of public convenience and necessity for the Angwin system and requested, upon allegation of a limited water supply, that he not be required to serve additional customers. During the course of the hearings on the application, Case No. 5683 was opened by the Commission on its own motion when it became evident that Friesen had supplied water through one meter to a J. H. Champion, who, in turn, supplied a number of persons with water, for compensation, in the Champion tract located near the St. Helena Sanitarium.

The application and case were heard on a joint record and the resulting Decision No. 53765 dated September 18, 1956 granted Friesen a certificate for both the Angwin and Champion systems. Friesen was ordered to limit water service to individual applicants. No new or additional subdivisions or multiple unit housing connections (the MUH's) were to be served without a showing that an adequate water supply was available for both consumers then being served as well as for the additional connections requested.

Angwin Chamber of Commerce, in February of 1957, filed a complaint against Friesen, Case No. 5910, requesting that, because of inadequate water supply, Friesen be ordered not to furnish water to new or additional customers. In March of 1957 Friesen acquired title to the Champion system and on March 27 he asked that, with some modification, the Commission issue an order as requested in the complaint. In August of 1957 he filed a petition to reopen Application No. 36736 and Case No. 5683.

Hearings on all of these matters, together with a matter involving a contract with the college, were held on a consolidated record at Angwin on April 17 and 18, 1958. In Decision No. 57751 dated December 16, 1958 the Commission found that all of Friesen's water facilities, including six lakes, identified as Red, Newton, Granite, Whitehead, Orville (also known as Oroville), and Deer, had been dedicated to public utility service. It also found that Friesen's water supply had about reached its capacity to serve adequately his existing customers and ordered Friesen to limit service to active service connections as of April 5, 1958, plus a group of 15 potential customers.

The opinion portion of Decision No. 57751 concluded with the following significant admonition:

"It may also be pointed out that if the interests of the property holders in the community demand a more complete service than Friesen can furnish as a privately owned public utility, it may be necessary and desirable to form a district or other organization with more adequate financing to import water from other and more remote sources in greater quantities than can be obtained from Friesen's limited watershed."

On May 26, 1961 Friesen filed Application No. 43443 alleging that a contract with the college, whereby Friesen agreed to deliver annually a maximum of 20 acre-feet of water, had expired. Friesen further alleged that Deer Lake, Orville Lake, the watershed land tributary to Deer and Orville Lakes, and a pipeline from Deer Lake to a watercourse above Orville Lake, had only been used to provide water to the college. Friesen requested that the Commission determine that the properties described were no longer necessary or useful for his public utility duties and asked for authority to give the Deer Lake Reservoir, together with appurtenant water rights and a parcel of land surrounding it, to his daughter, Bettie Cooksley, for her "private nonutility purposes."

By Decision No. 62277 dated July 18, 1961, the Commission found that Deer Lake and Orville Lake were no longer necessary for the rendering of public utility service by Friesen and that the use and usefulness of those reservoirs in the performance of Friesen's duties to the public had ceased. The decision relieved Friesen of all further public utility obligations and liabilities insofar as water storage and delivery of water from the two reservoirs were concerned and authorized the transfer of Deer Lake, together with a parcel of land surrounding it, to Bettie Cooksley. Friesen was also authorized to assign to Bettie Cooksley, for diversion and storage in Deer Lake, an amount not in excess of 26.45 acre-feet per annum of the water of Angwin Creek, or a tributary thereof. Records of the Commission indicate that the deed evidencing the transfer was filed in 1961, pursuant to the order, and copies of the journal entries reflecting the transfer of the properties were submitted.

Decision No. 62277 did not discuss the possibility of using water from Deer and Orville Lakes to ameliorate the water supply situation for the Angwin system and to relax or lift the restriction against serving new customers.

The record in this application shows that Friesen died in Napa County on April 25, 1962, leaving to his wife, Pearl Friesen, his share of the White Cottage Ranch and the Angwin water system.

No further matters involving Angwin Water Company came before the Commission until the filing of this application. Mrs. Friesen, who is now an elderly woman, has moved to Milton-Freewater, Oregon, near Walla Walla, Washington. Mrs. Friesen continues to do the accounting and billing, but the physical operation of the system is conducted by her son-in-law, Tom Watson.

On July 26, 1971 Mrs. Friesen entered into an agreement to sell the 3,600 acres comprising the White Cottage Ranch, together with the Angwin Water Company, to the joint venture. Applicants met the problem of separating the water utility property from the remaining assets by establishing a corporation to accept the water utility facilities. Commission approval of the transfer of utility properties was made a condition of the escrow. Silverado Lakes Water Company was formed and Application No. 53359 filed. Prior to signing the agreement of sale, Mrs. Friesen reacquired the Deer Lake properties from Bettie Cooksley in exchange for a note and these properties are included in the sale to the joint venture.

Public Hearings

At the hearings applicants presented five witnesses; Angwin Chamber of Commerce, two; and the Commission staff, two. Statements were delivered by Assemblyman Dunlap, by the county counsel of the county of Napa, and the representatives of the cities of St. Helena and Napa. In addition, opening statements were made by counsel for applicants, the Chamber, and the Commission staff (staff).

The public officials expressed their concern that development of the watershed of the utility could have an effect on the water supplies of other communities. They all opposed any separation of the watershed lands from utility ownership. In addition, the city attorney of the city of Napa read a letter which stated that the city, by formal council action, opposed the application.

Nature of Parties

The joint venture is an undertaking of a general contractor and land developer, MacDonald, Nelson & Heck, Inc., and a firm of civil engineers, Murphy, Pulice, Associates, Inc., who have had experience in land development, and specifically in developing recreational-type subdivisions.

Silverado Lakes, as mentioned above, is a corporation organized to acquire Mrs. Friesen's water utility properties and accomplish their separation from the ranch. The officers of Silverado Lakes are officers in the firms comprising the joint venture.

The Chamber, despite its name, has no commercial members but functions as a community association and sponsors a volunteer fire department. Although it nominally represents about 330 families, at the time of the hearings the Chamber had 106 paid-up members.

Issues

Except for the city of Napa, which city presented no evidence, there appears to be no opposition to the transfer, per se. The concern of the staff and Chamber seems to be how the sale of the White Cottage Ranch would affect the water supply of the community of Angwin. Intertwined with this issue is the related issue as to what extent the land and water rights of the White Cottage Ranch have been dedicated to public utility water service.

It is the position of applicants that four of the ten reservoirs on White Cottage Ranch have been dedicated to public use and should be transferred to the new corporation. These reservoirs are Whithead, Red, Newton, and Granite. Applicants are also of the position that the watershed lands draining into these reservoirs should be retained by the White Cottage Ranch and that compatible nonutility operations should be permitted on the watershed land. The integrity of the lands would be guaranteed by including suitable restrictions reserving their condition to that of open space in its natural state, permitting horseback riding, hiking, and picnicking without prior approval of the State Department of Public Health and the Public Utilities Commission or any governmental agency having authority over the use of such lands.

The staff and Chamber recommend that all watershed lands and all lakes and ponds used or useful in providing water service be included with the water utility assets as a condition of approval of the transfer. This would require the transfer of a total of ten lakes, consisting of the four uncontroverted lakes (Whitehead, Red, Newton, and Granite), the two lakes found not to be required for utility purposes (Deer and Orville), and four additional lakes that have not been an issue in past proceedings (Cooksley, Doe, Fawn, and Henne).

Several minor issues are also involved. The staff seemed concerned that the agreement of sale provided that Mrs. Friesen was to take back a note in exchange for transferring the shares of stock to the corporation. The staff also recommended that all "irregular or MUH" connections be metered. Both staff and the joint venture agree that the restriction on new customers should be continued.

The staff was also concerned, on the basis of financial statements submitted with the application, that the buyers might not be financially capable of carrying out their plans.

The Chamber expressed concern that only the land comprising the dam sites is proposed to be transferred in fee and that the reservoir sites are only proposed to be granted as easements to overflow, to flood, and to cover the sites with backwaters created by the dams.

The Chamber also suggests that "if it is the intent of the prospective purchaser to utilize the watershed land for undefined recreational uses, the California Public Utilities Commission has no choice but to require an environmental impact study under Public Resources Code Section 21100."

Summary of Evidence

A witness for the joint venture, a registered civil engineer, testified that the entire watershed supplying the Angwin system comprises 518 acres, of which 420 lie within the White Cottage Ranch. The watershed directly tributary to the four uncontroverted lakes amounts to 208 acres of which 159 are within the boundaries of the ranch.

This witness further testified that the Angwin system usage averages about 1,700 cubic feet per month per metered service, which converts to about 172 acre-feet per year. The recorded rainfall averages about 35 inches per year, with a median of 33 inches and a minimum, recorded in 1923, of 13 inches. Allowing for seepage and evaporation, approximately 236 acre-feet of runoff will be required to supply the 172 acre-feet to the system. If about 29 inches or more rainfall is received, the 208 acres directly tributary to the four lakes will generate the runoff necessary to supply the water system.

In dry years it is necessary to draw on the remaining watershed. At the hearing applicants volunteered not to store water in Deer and Cooksley Lakes until Red, Whitehead, Granite, and Newton had been filled to capacity.

It was established that the total capacity licensed by the State Water Resources Control Board for the four lakes is 200 acre-feet. Since some of the usage of the system will take place during the rainy season, it will be necessary to store only 195 of the 236 acre-feet of runoff required. It has been the experience of the operator of the system, Mrs. Friesen's son-in-law, over the 20 years that he had operated the system, that, with the exception of Cooksley, the reservoirs were drawn down about one-half in the summer.

Under the ranch operation the watershed was used as part of a working dude ranch. Cattle and horses were pastured and the land was used for horseback riding. The so-called "irrigation and recreation" lakes, those other than the four used for utility purposes, were used for fishing and swimming, and camping was permitted beside Lake Orville.

The joint venture made several concessions at the hearing which apparently were designed to make the proposed transaction more acceptable to the protestants and the staff. They offered to pay cash, instead of giving a note for the stock of Silverado Lakes.

One of the witnesses for the joint venture, also a registered civil engineer, testified that the service problems at Angwin were due to low pressures and inadequately sized mains, rather than shortage of supply. He offered in behalf of the joint venture to invest \$100,000 in storage, pumping, and distribution facilities which he felt would alleviate service problems to a considerable degree. He also testified that installing meters on the multi-unit housing connections would increase flows in the pipes and "could be extremely detrimental to the system".

The joint venture does not propose to donate the \$100,000 as a contribution in aid of construction but rather as a capital investment to be included in the utility's rate base. Depreciation, return, and taxes associated with such an investment could result in an increased revenue requirement of \$3.00 or more per customer, per month.

The joint venture intends to provide a manager from Murphy, Pulice, Associates, Inc. and to retain Mrs. Friesen's son-in-law as operator of the system.

The intentions of the joint venture in purchasing the Friesen property are not apparent from the record. Originally at a public meeting at Angwin, representatives of the joint venture stated that they intended to subdivide the ranch into 200 parcels. At the hearing however, the joint venture stated that they had suspended such planning and were considering other uses, ranging from the planting of vineyards, to cluster developments, to large parcel development.

The staff presented two witnesses, a financial examiner and a registered professional engineer, who had collaborated on a joint report which was received as an exhibit.

The staff's engineering showing was directed to the contention that all ten lakes were "used and useful" in rendering public utility service. The staff did not object to continuation of the present uses of watershed lands, but did not explain how this could be accomplished should the watershed lands be transferred to Silverado Lakes.

The staff engineering witness also urged that all the irregular or multiple unit housing connections be metered to conform to the utility's filed tariffs.

The staff, in the financial portion of its report, and in the financial examiner's testimony, expressed concern as to the adequacy of the joint venture's finances. Although the staff questioned the method of valuation of certain assets, it did not, after the receipt of an updated balance sheet, oppose the transfer on a financial basis.

The Chamber presented a registered civil engineer who testified as to the extent of the watershed. His testimony generally paralleled that of the joint venture's civil engineering witnesses as to the area of the drainage basin of the lakes.

The Secretary of the Chamber testified as to the nature of his organization. He also reported that he had made a review of the tax bills for Mrs. Friesen's property and did not find the water utility to be separately stated from the other Friesen property.

Discussion of Issues and Evidence

It is clear from the evidence that only the four lakes, Red, Whitehead, Granite, and Newton, have been unequivocally dedicated to public utility operations. There is no convincing evidence that Deer Lake and Orville Lake have been rededicated to utility operations since their release by the Commission. Neither is there a convincing showing that the remaining four lakes, Cooksley, Doe, Fawn, or Henne, have ever been dedicated to public use. To the contrary, it appears from the testimony and from past decisions that the Friesens have, over the years, consistently avoided using these reservoirs for public utility purposes.

It is also clear that the four utility lakes are adequate, albeit by a narrow margin, to supply the existing water supply requirements of the utility's presently connected customers. The watershed tributary to the four lakes is adequate to provide the necessary runoff in all but dry years, years with a rainfall below 29 inches. In such years, water from the remaining watershed will become available for utility purposes.

There is no evidence that the watershed was ever used exclusively for public utility purposes. The record indicates that, also to the contrary, it has been continuously used for general ranch purposes. There does not appear to be any basis now to require that fee title of the land be conveyed to the utility. (Del Mar Water, Light, & Power Co. v Eshleman (1914) 167 Cal 666, 679-680; Allen v R. R. Comm. (1918) 179 Cal 68, 89.) All that is reasonably required is that the watershed be kept available for its historic purpose to provide runoff to the reservoirs. It is the usual case for water utilities not to own the watershed lands providing their supply. Indeed that is the case at Angwin at the present time; 49 acres of the watershed tributary of the four utility reservoirs lie outside of the White Cottage Ranch. The fact that Napa County sent one tax bill for all of Friesens' taxable properties does not, as urged by the Chamber, indicate to us any intent by the Friesens to dedicate the entire White Cottage Ranch, or even just the watershed, exclusively to public utility water service.

We are persuaded that applicants' proposal that the watershed be protected by suitable deed restrictions is reasonable, and we will not require conveyance of the watershed lands, in fee, to Silverado Lakes. Nor will we accept the condition that the proposed covenant running with the land be subject to modification with the approval of the Commission, the Department of Public Health, or any other governmental agency. The use of the lands as a watershed should be secure and should not, from time to time, be the subject of proceedings before various governmental bodies, to the consternation of the customers of the utility.

The purpose of the joint venture in granting the reservoir sites as overflow and flood easements instead of fee appears to be so that these sites can be included to satisfy open space requirements of local planning agencies. All that we are concerned with is that their use for public utility purposes is protected. So long as an easement furnishes that requirement, we will not require fee ownership, when no corresponding benefit of fee ownership has been shown.

We do not share the concern of the staff over the joint venture's finances. Although Murphy, Pulice, Associates, Inc. did not present a particularly impressive balance sheet, its unvalued assets, the talents of its principals, were amply demonstrated by their performance at the hearing. The updated balance sheet for MacDonald, Nelson & Heck, Inc. indicated a reasonably adequate financial condition. We think that the staff's concern was the reaction of gimlet-eyed financial examiners, accustomed to the prosaic original cost concepts typical of utility valuation, to a more free wheeling "fair market" valuation aimed at impressing lending officers of financial institutions. We agree with the Chamber that, despite the optimistic assumptions displayed in their financial statements, the participants in the joint venture have the financial resources to acquire control of and operate the water system.

We see no particular advantage for the consideration paid by the joint venture to Mrs. Friesen for the stock in Silverado Lakes to be in cash. Indeed, if the consideration should be in the form of a note, and the joint venture not succeed with its undertaking in the Angwin area, under the note and pledge agreement securing the purchase, the water utility would come back to Mrs. Friesen and her family, who would be, in that event, the best qualified persons to operate it. We will not require cash consideration for the stock as a condition of transfer.

The proposal that the joint venture invest \$100,000 in utility plant appears advantageous. Improvement of the system is obviously required and it is doubtful whether the resources of the present owner, or her probable successors in ownership, would ever be sufficient to permit the financing of such improvements.

The order which follows will authorize the issuance of stock to acquire the system and include an authority to issue an additional \$100,000 of common stock for cash. The order will be conditioned on the \$100,000 being placed in an interest-bearing bank or savings and loan account and used for capital expenditures.

The Commission is not impressed by the contention of the joint venture that the utility not be required to meter the multiple unit housing connections. These connections are a violation of Section C of Angwin Water Company's filed Rule No. 18, Separate Premises, Multiple Units and Resale of Water. The testimony of the joint venture's witness to the contrary, the existence of a class of service such as this unauthorized MUH service is not good water works practice. It would be well for the new utility to start off on the right foot, and the additional revenue obtained from minimum meter charges should be sufficient to pay for the meters in a reasonable time.

Prudence dictates that the present restriction against new customers be continued, except for separate metering of present irregular multi-unit housing customers, at least for the immediate future. Silverado Lakes should be reminded, however, that they are undertaking to serve, not just the existing customers, but the entire dedicated service area of the utility, as shown on Original Tariff Sheet No. 33-W, as filed by Angwin Water Company on February 26, 1957.

If the future should prove the opinion of the joint venture to be correct that the problems of the Angwin system stem from low pressures and inadequate mains, the Commission may modify or lift the restriction against serving new customers within the service area. In that event, construction of new storage facilities may be required.

If the improvement of the distribution system does not permit the connection of new customers, the community of Angwin will be faced with the alternatives that we mentioned in 1958 in our Decision No. 57751, and either accept the fact that no further growth is possible or form some type of organization to import water into the community. Unfortunately, sources of water that might have been contracted for in 1958, through operation of the California Water Plan, may well be unavailable at the present.

The Environment

Since submission of this application on November 6, 1972, there have been substantial developments in the environmental field. Pursuant to amendments to the California Environmental Quality Act of 1970, (CEQA) effective December 5, 1972, (A.B. 889; Ch 1154, Stats. 1972, Pub. Res. Code Secs. 21082, 21083), the Secretary of the Resources Agency adopted "Guidelines for Implementation of the California Environmental Quality Act of 1970" (Guidelines). The Commission then, on April 3, 1973, by Decision No. 81237 in Case No. 9452, adopted Rule 17.1, Special Procedure for Implementation of the California Environmental Quality Act of 1970. (Preparation and Submission of Environmental Impact Reports.) The consideration of the environmental question on this case must be considered within the framework of CEQA, the Guidelines, and Rule 17.1.

According to CEQA, Environmental Impact Reports (EIR's) are required for projects that may have a significant effect on the environment.^{1/} The Guidelines define a project to include an action, resulting in physical impact on the environment, that involves the issuance of a lease permit, license, certificate, or other entitlement for use by one or more public agencies.^{2/}

The transfer being considered in this proceeding in itself can be considered, with reasonable certainty, to be a project that will not have a significant effect on the environment. According to Section 15060 of the Guidelines, no EIR is required.

^{1/} Public Resources Code Sec. 21100.

^{2/} California Administrative Code Sec. 15037.

The Commission recognizes that the acquisition of White Cottage Ranch by the joint venture presages a change in the land use of the ranch. The Commission is not, however, an agency which controls zoning or land use planning. This jurisdiction rests with the local planning commissions and boards of supervisors, and no environmental issue is raised until a specific proposal for change in land use is brought before such a body. When that event transpires, the local agency becomes the lead agency as defined in the Guidelines.^{3/}

The construction of additional facilities to alleviate service deficiencies, as proposed by the joint venture, does not require the authorization of the Commission. No action by this Commission that could be considered to be a "project" as defined by Guidelines Section 15037 is involved. Should any local permit or authority be required, the issuance of such permit could be considered to be a "project" and the local agency granting such authority would become the "lead agency" in preparing an EIR for the project.

The Commission must, however, according to Sections 21000 and 21001 of the Public Resources Code, consider all environmental aspects of the whole transaction, including construction of the contemplated improvements. After careful consideration of the situation, we are of the opinion that the proposed construction will assist in providing the people of Angwin with clean water and will not be repugnant to the letter and spirit of CEQA.

^{3/} Section 15030.

Findings

1. The reservoirs known as Red, Whitehead, Granite, and Newton have been unequivocally dedicated to public utility use.

2. The reservoirs known as Deer and Orville, previously found not to be necessary for public utility use, have not been rededicated to such use.

3. The reservoirs known as Cooksley, Doe, Fawn, and Henne are not now nor have they ever been dedicated to public utility use.

4. The four dedicated reservoirs are adequate to provide storage of water to meet the existing requirements of the utility's present customers.

5. The watershed tributary to the four reservoirs is adequate to provide the runoff necessary to supply the existing water supply requirements of present customers in all years with a rainfall of 29 inches and above.

6. In a year having precipitation below 29 inches, runoff from the remaining watershed tributary to the ten lakes considered herein will be required.

7. The watershed used to supply the Angwin Water Company system has never been dedicated exclusively to public utility water supply purposes.

8. Use of the watershed for historically compatible nonutility use is not adverse to the public interest.

9. Improvement of the transmission and distribution system is required to bring the operation up to reasonable operating standards.

10. All water users, including so-called multiple unit housing connections, should be metered.

11. The restriction against service of new or additional customers, other than those presently served (including MUH's) at the effective date of this decision, should be continued until modified or rescinded by order of the Commission.

12. The transfer of the assets of the Angwin Water Company to the Silverado Lakes Water Company, according to the terms and conditions of this order, is not adverse to the public interest.

13. The issuance by Silverado Lakes Water Company of 16,300 shares of stock, for the purpose of acquiring, and 10,000 shares for improving the water utility facilities of Angwin Water Company, is not adverse to the public interest.

14. The acquisition of control of the Silverado Lakes Water Company by the joint venture of MacDonald, Nelson & Heck, Inc.- Murphy, Pulice, Associates, Inc. is not adverse to the public interest.

15. The retention by the joint venture of the watershed lands, and of all lakes and reservoirs except the four found to be dedicated to public use, is not, if protected by suitable deed restrictions and covenants running with the land, adverse to the public use. The deed restrictions and covenants should preserve the quantity and quality of water presently available for public utility use and reserve the land in its natural state of open space for use for grazing, horse-back riding, hiking, and picnicking.

16. A legal description of the watershed lands, all dam sites, and all reservoir sites, both utility and nonutility, should be filed with the Commission.

17. A report of the deficiencies of the water system and of plans to correct the deficiencies should be filed with the Commission within six months after assumption of control by the joint venture.

18. The joint venture has the financial resources and technical ability to acquire control of and to operate the water system.

19. The money, property, or labor to be procured or paid for by the issue of securities authorized by this decision is reasonably required for the purposes specified in the decision and such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

20. We are reasonably certain that the transfer of the water utility properties as authorized herein will not have a significant effect on the environment.

21. The Commission is not the lead agency to authorize construction of water utility facilities to serve the existing certificated area.

22. The construction of water facilities to improve service, as described herein, will assist in providing the people of Angwin with clean water and will not be repugnant to the letter and spirit of the California Environmental Quality Act of 1970.

23. No Environmental Impact Report is required.

Conclusions

On the basis of the foregoing findings the Commission concludes that the application should be granted as provided by the following order.

The authorization herein granted shall not be construed as a finding of the value of the rights and properties herein authorized to be transferred nor as indicative of the amounts to be included in proceedings for the determination of just and reasonable rates.

O R D E R

IT IS ORDERED that:

1. The transfer of the interest of Dick Friesen in the water system known as Angwin Water Company to Pearl Friesen, pursuant to the order and decree of distribution of the Superior Court of the State of California, in and for the county of Napa, CC No. 12865 dated March 14, 1969, is hereby authorized.

2. On or after the effective date of this order, and on or before June 30, 1974, Pearl Friesen may sell and transfer to Silverado Lakes Water Company, and the latter may purchase and acquire, the public utility water system referred to herein, substantially in accordance with the terms of the transfer agreement, as amended, Exhibits 9 and 10 in this proceeding, and as the agreement may be further amended to comply with the conditions of this order.

3. Silverado Lakes Water Company shall file, within ten days after the date of the transfer to it, a notice of adoption of the presently filed rates and rules of Angwin Water Company, in accordance with the procedure prescribed by General Order No. 96-A. No increases in presently filed rates shall be made unless authorized by this Commission.

4. On or before the date of transfer to Silverado Lakes Water Company of the utility properties herein authorized, applicant Pearl Friesen shall deliver to Silverado Lakes Water Company, and the latter shall receive and preserve all records, accounts, vouchers, memoranda, and other papers pertaining to the acquisition, construction, and operation of the properties herein authorized to be transferred.

5. On or before the end of the third month after date of the actual transfer to Silverado Lakes Water Company authorized by this decision, Pearl Friesen shall file with the Commission, in the form the Commission has prescribed for Class D water companies, an annual report relating to the operations of the Angwin Water Company for the period commencing with the first day of the current year to and including the effective date of transfer.

6. Within ten days after the date of transfer, applicants jointly shall file in this proceeding (a) a written statement showing the date of transfer and the date upon which Silverado Lakes Water Company assumed operation of the water system herein authorized to be transferred, and (b) a true copy of each agreement, contract, deed, or instrument of transfer of the water system and operating rights.

7. Silverado Lakes Water Company may, for the purposes set forth in the foregoing opinion, issue not exceeding 26,300 shares of its \$10 par value common stock.

8. The cost of the water utility plant being acquired by Silverado Lakes Water Company shall be temporarily charged to Ac. 100.8, Water Plant Purchased. Within six months of the date of the acquisition Silverado Lakes Water Company shall file with the Commission for approval proposed journal entries to clear this account, as provided in the Uniform System of Accounts for Class D Water Companies.

9. On or before the date of actual transfer to Silverado Lakes Water Company, Pearl Friesen shall refund all deposits, if any, which her public utility water customers are entitled to have refunded. Any unrefunded deposits of public utility water customers shall become the obligation for refund of Silverado Lakes Water Company.

10. After ten days from notification of the Commission of the transfer of the above-described water utility properties to Silverado Lakes Water Company, the joint venture of MacDonald, Nelson & Heck, Inc.-Murphy, Pulice, Associates, Inc. may acquire the stock and assume control of Silverado Lakes Water Company.

11. Within ten days after the actual date of acquisition of stock and assumption of control, in accordance with paragraph 10, the joint venture shall so notify the Commission.

12. Within six months of the date of actual transfer to it, Silverado Lakes Water Company shall file a legal description of (a) all watershed lands supplying the water system, separately identifying that portion of the watershed not within the present White Cottage Ranch, (b) all dam sites, both utility and nonutility, and (c) all related reservoir sites, both utility and nonutility.

13. Within thirty days after acquisition of control by the joint venture, Silverado Lakes Water Company shall undertake an investigation to determine what improvements should be made to the water system and shall file with the Commission, within nine months after the acquisition of control, a report of the results of the investigation and specific proposals for correction of service deficiencies.

14. Upon completion of the improvements and correction of service deficiencies, but in no event later than two years after acquisition of control by the joint venture, Silverado Lakes Water Company shall file two copies of the water system map required by paragraph I.10.a. of General Order No. 103.

15. Upon compliance with paragraphs 4, 5, 6, and 9 of this order, Pearl Friesen shall stand relieved of all further public utility obligations in connection with the operation of the public utility properties and operating rights herein authorized to be transferred.

16. Silverado Lakes Water Company shall limit the service of water in the future to those premises being served with water from the Angwin Water Company system, including multiple unit housing connections, as of the date of signing of this order. This restriction shall continue until further order of the Commission.

17. Silverado Lakes Water Company shall, within thirty days of the transfer, file with the Commission a list of names and addresses of customers, including multiple unit housing customers, being served as of the date of the signing of this order.

18. Within six months of the date of actual transfer to it, Silverado Lakes Water Company shall install meters on all services now identified as multiple unit housing connections and within ten days of completion thereof file a report of such completion with the Commission.

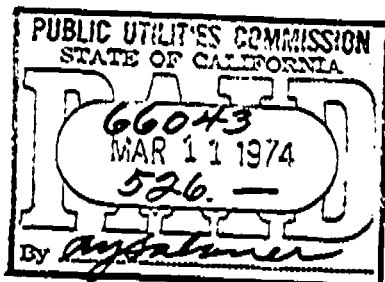
19. Silverado Lakes Water Company shall file with the Commission the reports required by General Order No. 24-B, which order, insofar as applicable, is made a part of this order.

The authority granted by paragraph 7 of this order to issue stock shall become effective twenty days after the Silverado Lakes Water Company has paid the fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$526. The effective date of the remaining paragraphs of this order shall be established by supplemental order after:

1. Applicants have submitted to the Commission evidence that appropriate conditions and covenants running with the land, satisfactory to the Commission, have been included in the instruments of transfer of White Cottage Ranch (a) to protect the quantity and quality of water generated from all the watershed lands within White Cottage Ranch and to reserve the land in its natural state of open space for use for grazing, horseback riding, hiking, and picnicking, (b) to provide that no use shall be made of the nonutility lakes which would contaminate, defile, or otherwise pollute the water supply of the Silverado Lakes Water Company, and (c) no water shall be diverted to storage in Cooksley, Deer, Doe, and Fawn Lakes until Granite, Newton, Whitehead, and Red Lakes have been filled to capacity.
2. The joint venture and Silverado Lakes Water Company have submitted a copy of an agreement, acceptable to the Commission, which provides that the joint venture shall, within six months after acquisition of control, pay to the Silverado Lakes Water Company, in exchange for 10,000 shares of the common stock authorized by this decision, the sum of \$100,000; such money to be deposited in a separate interest-bearing account in a bank or savings and loan association in California. These funds, together with the interest thereon, net of any income taxes attributable thereto, shall be used only for the purpose of paying for capital expenditures

to accomplish the correction of deficiencies and service improvements indicated by the report filed in compliance with Ordering Paragraph 13 above. No amounts in this fund shall be disbursed to pay salaries, fees, or expenses to the joint venture or any stockholder, owner, officer, or employee of the joint venture.

Dated at San Francisco, California, this 3rd day of JULY, 1973.



Vernon L. Sturgeon
President
William L. Lamm
J. P. Johnson
W. H. M. M.
W. H. M. M.
Commissioners