

ORIGINAL

Decision No. 21879

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

J.K. Moffitt, Clinton L. Walker
and Helen H. Brown,

Complainants,

vs.

Case No. 2722.

William J.G. Lambert, A.K. Detwiler,
Carl E. Fr. Sternlov, The Detwiler
Corporation, (a corporation), Lake
Tahoe Lands, Inc., (a corporation),
Tahoe Parks Co., (a corporation),
First Doe, Second Doe, Third Doe,
Fourth Doe and Fifth Doe, First Doe
Corporation, Second Doe Corporation,
Third Doe Corporation, Fourth Doe
Corporation, and Fifth Doe Corpora-
tion.

Defendants.

Crrick, Palmer & Dahlquist, by Hillyer Brown,
for Complainants.

Huston, Huston & Huston, by A.C. Huston, Sr.,
for the Bank of Italy, A.K. Detwiler and
The Detwiler Corporation, Defendants.

William J.G. Lambert, Defendant, in propria
persona.

WHITSELL, COMMISSIONER:

O P I N I O N

This is a complaint filed by J.K. Moffitt, et al.,
against William J.G. Lambert, The Detwiler Corporation, a cor-
poration, et al., alleged to be the owners and operators of a
water system supplying service for domestic purposes to a cer-
tain district located along the shore of Lake Tahoe approx-
imately one mile south of The Tavern in Placer County.

The complainants allege that at times during the summer season they have not been supplied with water to the full amount of their requirements and that, although there are no storage facilities on the system and the spring is inadequate to serve present consumers, the company intends to extend its pipe lines to serve new and additional territory. It is furthermore alleged that the rate of \$50.00 per season is excessive and unreasonably high.

The answer of The Detwiler Corporation is a general denial of all the essential allegations set forth in the complaint.

A public hearing in the above entitled matter was held at San Francisco.

The water supply for the system is obtained from the natural flow of a spring located on the hillside on a part of a certain tract of land formerly owned or controlled by W.J.G. Lambert and A.K. Detwiler. Water is delivered by gravity through approximately 8,000 feet of 3 $\frac{1}{2}$ -inch O.D. casing to fourteen consumers. The rate charged is \$50.00 per consumer per year, a charge originally fixed apparently by Mr. Lambert himself and never filed with or approved by the Railroad Commission.

The testimony shows that in 1906 William J.G. Lambert and A.K. Detwiler each owned an undivided half interest in a tract of land containing 640 acres in Section 13, T. 15 N., R. 16 E., M.D.B.M., in Placer County, situated on the shore of the lake about a mile from The Tavern, and that the water system was installed by Mr. Lambert in 1908 and operated by him until July 26, 1927, at which time he sold his one-half interest to Mr. Detwiler. Thereafter, Detwiler caused a trust to be created whereby the Bank of Italy as trustee holds the legal title to

this tract of land including the water system, the beneficial interest therein being in A.K. Detwiler. It is clear therefore that in so far as the present legal ownership is concerned, the responsible party defendant for the purposes of this proceeding is the Bank of Italy which is now in control of and operating the properties through its own representative. This responsibility is conceded by counsel for the Bank of Italy.

Mr. Lambert testified that he did not believe he was operating as a public utility in the distribution of water to his consumers. Counsel for defendants stated that in their opinion this service had not been dedicated to the public use. In this connection, however, evidence shows that water has been delivered to all consumers requesting service from the pipe line since 1908, that charges for this service have been made to each consumer at the rate of \$50.00 each per season and that there has never been any refusal on the part of the owners or operators of this system to supply anyone applying for water service. There can be no question therefore that this water service from its inception has been dedicated to the public use and that the operations have at all times thereafter been public utility in character and that the system is under the jurisdiction of this Commission. It follows therefore that the fact that various transfers of this land and water system, including that to the Bank of Italy, have been made without receiving the necessary authority from the Railroad Commission results in the placing of a cloud upon the title to the property. It is suggested therefore that the holder of the present legal title make application to the Railroad Commission for approval of the transfers above referred to for the purpose of clearing the title.

There was no definite evidence submitted showing the

daily flow of the spring used as the present source of water supply. There has been installed, however, since the date of the filing of this complaint, a small storage tank which should result in giving a more continuous and reliable service to the present consumers. However, the evidence shows that the dependable supply of water which may be obtained from the existing spring is not adequate to serve any material number of additional consumers without seriously interfering with the demands of the present water users. It further appears that it is the intention of the present owners to supply a newly subdivided area with water from the present spring source, in which case undoubtedly there will be insufficient water for any of the water users. It is clear that no substantial number of new consumers should be placed upon this system unless an additional water supply is obtained and for this reason there will be contained in this Order a requirement that no further water users be given service from the present system and from the existing spring source without written approval of this Commission.

No records have ever been kept of either the actual cost of installing this water system or of the maintenance or operating costs. Mr. Lambert testified that, by reason of delivery being entirely by gravity, the annual operating cost amounted to very little. Under the rates charged, it appears that the average annual income amounted to \$500., which did not include two houses, one of which belonged to Mr. Lambert and the other to Mr. Detwiler. A reasonable schedule of rates for this service should be filed with this Commission by defendant, said rates to be effective for all service to be rendered hereafter.

The following form of Order is submitted.

O R D E R

IT IS HEREBY ORDERED:

1. That the Bank of Italy, a corporation, file with this Commission, within thirty (30) days from the date of this Order, a schedule of rates to be charged for the water service rendered to its consumers through the water system heretofore installed by William J.G. Lambert and A.K. Detwiler and distributing water from a spring located on or near Section 13, T. 15 N., R. 15 E., M.D.B.M., in Placer County.
2. That within thirty (30) days from the date of this Order the Bank of Italy, a corporation, shall file with this Commission rules and regulations governing relations with its consumers served by the water system referred to in Paragraph 1. above, said rules and regulations to become effective upon their acceptance for filing by this Commission.
3. That the Bank of Italy, a corporation, shall not serve from the spring supplying the system as referred to in Paragraph 1. above, any consumers in addition to those consumers served during the present season of 1929 without written authority from this Commission, or until an additional and adequate water supply is obtained for such purposes.

For all other purposes, the effective date of this Order shall be twenty (20) days from and after the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day
of December, 1929.

John D. L. [Signature]
[Signature]
[Signature]
[Signature]

Commissioners.