

Decision No. 33089

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of
BERTHA SHAFTER HAMILTON AND BANK
OF SAN RAFAEL, a corporation, for
an order authorizing and approving
the execution of an agreement.

Application No. 23345

Chickering & Gregory, by S. R. Duhring,
for Bertha Shafter Hamilton.

Freitas, Duffy & Keating, by Jerome Duffy,
for Bank of San Rafael.

BY THE COMMISSION:

O P I N I O N

Bertha Shafter Hamilton owns and operates the Inverness Water Works, a public utility supplying water in the Town of Inverness, a summer resort community located upon Tomales Bay and on the Point Reyes Peninsula in Marin County. In this proceeding said Bertha Shafter Hamilton has made application jointly with the Bank of San Rafael for the approval by the Railroad Commission of a contract bearing the date of October 1, 1939, which provides, among other things, for the quieting of title to the public utility water works properties and to certain lands, a matter which has been and now is in litigation between said parties.

A public hearing in this proceeding was held in the Town of Inverness.

Heretofore, and for a great many years last past, Julia Shafter Hamilton, mother of Bertha Shafter Hamilton, owned several

thousand acres of lands which included unsold lots in Inverness Sub-division and certain lands in acreage adjacent thereto. Shortly prior to her death Julia Shafter Hamilton, by deed of gift dated May 11, 1931, conveyed all her right, title and interest in and to said properties to her daughter, Bertha Shafter Hamilton. Under date of April 8, 1936, Bertha Shafter Hamilton executed a deed of trust to Wm. P. Murray and A. C. Latno, as trustees for Bank of San Rafael, to secure a loan of \$25,000. On default in payment of her obligations under the said deed of trust, the properties involved therein were sold and acquired by Bank of San Rafael on the 29th day of April, 1939. Thereupon and of even date with said sale, an action was filed in the Superior Court of California in the County of Marin by Bertha Shafter Hamilton against the Bank of San Rafael for declaratory and other relief upon the grounds, among other things, that no authority had been received from the Railroad Commission pursuant to Section 51 of the Public Utilities Act to encumber all or any portion of this property, a considerable and substantial part of which had been and still is dedicated to the public use through the operation of the Inverness Water Works. Whereupon the Bank of San Rafael filed a cross complaint seeking to quiet its title to the real property described in said deed of trust.

Thereafter, in an effort to compromise the differences between these litigants, the agreement attached to the application herein and marked Exhibit "A" was made and entered into as of the first day of October, 1939, primarily attempting to determine the respective rights of the above two parties to the end that a consent decree could be entered in the aforementioned case in the Superior Court of the County of Marin. By reason of the fact that the said agreement involves the title to certain properties and appurtenant rights and

interests of Inverness Water Works, a public utility, it is conceded by all parties concerned that approval of said agreement by the Railroad Commission must first be obtained before submission thereof to the Court. Both parties therefore join in this application for approval of the contract as proposed.

This agreement by its nature and scope contains a number of provisions which are entirely foreign to and without the jurisdiction of the Railroad Commission and for this reason the findings and action taken herein will be confined strictly to such matters as affect the public utility properties, rights, and interests of Inverness Water Works and its duties, obligations and ability to serve the public properly.

In general terms the agreement grants Bertha Shafter Hamilton the option to purchase, on or before the 31st day of December, 1940, all of the real properties not a part of Inverness Water Works, as such properties are described in the deed of trust, for the price of \$29,723.17, with interest, and also the further option to purchase, similarly, individual parcels or portions of said real property at certain fixed prices; the Bank further agrees to release to Bertha Shafter Hamilton any and all ownership and interest which "it may have or claims to have in and to said water system supplying water to the inhabitants of Inverness, Marin County, California, as said water system is set forth and described upon said map hereinabove referred to"⁽¹⁾; the Bank agrees to execute a deed to said Bertha

(1) This map is entitled "Map of Water Shed, Inverness, California. Surveyed for Bank of San Rafael, Dec. 1939, by W. J. Voohries, L.L.S. Sur. No. 792," designated as Exhibit "B" attached to the application herein.

Shafter Hamilton conveying its interests and title in and to those two certain tank sites delineated upon said Vochries Map, Exhibit "B"; the Bank agrees to grant to said Bertha Shafter Hamilton an easement or easements ten feet in width for existing transmission pipe lines from the presently existing intake facilities in what is called "First Valley," as such pipe lines are shown on said Vochries Map, Exhibit "B"; the Bank agrees to grant to Bertha Shafter Hamilton an easement for the right to use the four dam sites and one well which are now in use as part of the Inverness Water Works system "as the same are set forth on said map hereinabove described" (said map being the Vochries Map, Exhibit "B"), and also an easement of ingress and egress along the pipe line as set forth on said map (Exhibit "B") for the purpose of servicing, maintaining and repairing the said water system "as said water system appears on said hereinabove described map." For the development of additional water, the Bank further agrees to grant to Bertha Shafter Hamilton "an easement for the right to use of all water rights and streams embraced within that portion of said real property set forth on said map hereinabove described and containing 352.1 acres of land, insofar as said water rights and streams are necessary for the supply of water by Inverness Water Works to the inhabitants of Inverness, Marin County, California."

By stipulation of counsel for both applicants herein, the records of all prior formal matters before this Commission involving Inverness Water Works were agreed to be considered a part of the record in the instant proceeding in so far as necessary and proper. A review of the above records indicates that for a number of years last past there has existed a very serious lack of water on the Inverness system. The available facilities did not produce sufficient

water to meet adequately summer and early fall demands. Until the drilling of the well under orders from this Commission the entire water supply for Inverness Water Works was obtained by diversion from surface streams and from springs located in the hills and canyons lying back of the townsite. As a result of this condition, the Commission by formal order directed the utility to obtain additional water through the installation of diversion facilities and pipe lines in Second Valley and through the drilling of wells, together with the suggestion that increased storage should be provided as soon as possible. These directions were made to take care of the system demands as then existing. Since that time there has been a considerable increase in consumers which was to some extent met with the drilling of one well. The tying-in of the Second Valley water supply was never accomplished.

In view of the fact that the proposed contract contemplates the sale of a considerable acreage of lands in this vicinity for home sites and other similar uses, there can be no question that all available water will have to be developed, stored, and conserved in order to provide for future demands.

Mr. Wm. P. Murray, President of the Bank of San Rafael, stated in his testimony that it was the intention of the said Bank to disclaim any and all interest in or to the Inverness Water Works properties used in supplying water to the inhabitants of Inverness in Marin County, and that it was the desire of the Bank to provide such additional water rights and other facilities as may reasonably be required for the operation, both at the present time and in the future, of said Inverness Water Works in order to permit the sale and distribution of water to those lands under option to Bertha Shafter Hamilton.

There being some question raised during the course of the hear-

ing as to the sufficiency of the description of the property and rights to water to cover all of the water works property involved, an amended application was subsequently filed, which modified the original agreement and clarified some of the uncertain terms and conditions contained therein. Provision was also made for rights of way for the installation and operation, when and if required, of pipe lines from the existing mains to Second Valley water sources.

Under the circumstances it is apparent that the application should be granted as it will eliminate long and costly litigation in determining the respective rights of the two parties. The following form of Order is recommended.

O R D E R

Application having been filed with the Railroad Commission as entitled above, a public hearing having been held thereon, the matter having been submitted and the Commission now being fully advised in the premises,

IT IS HEREBY ORDERED that Bertha Shafter Hamilton be and she is hereby authorized to enter into an agreement with the Bank of San Rafael, a corporation, for the quieting of title to the public utility water works property and to certain lands, under substantially the same terms and conditions as set forth in the form of agreement marked Exhibit "A" dated October 1, 1939, attached to the application, and as modified and set forth in an amended application herein.

IT IS HEREBY FURTHER ORDERED that Bertha Shafter Hamilton file with this Commission two copies of said agreement as finally consummated.

The authority herein granted shall become effective on the date hereof.

Dated at San Francisco, California, this 14th day
of May, 1940.

Ray L. Cline
Frank R. Swann
Roger A. ...
H. B. ...

Commissioners.