

Decision No. 37896

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of W. B. Tench, of Mentone, California, for an Order confirming the transfer of the MENTONE DOMESTIC WATER COMPANY, a public utility, located at Mentone, California, from W. J. Tench and Florence E. Tench, his wife, to W. B. Tench applicant herein, and for such other and further relief as is necessary.

Application No. 25495

H. O. Harrawood, for applicant.
Percy A. Smith, for The Federal Land Bank of Berkeley and Federal Farm Mortgage Corporation, Interveners.
Martin J. Coughlin, for J. T. Head and Ava Head, Interveners.

BY THE COMMISSION:

O P I N I O N

The Mentone Domestic Water Company, formerly owned by W. J. Tench, has for many years rendered a domestic and irrigation water service to residents of Mentone Townsite, adjoining the City of Redlands in San Bernardino County. The question of the public utility status of the system has not heretofore been presented to this Commission, nor have its properties been defined.

W. J. Tench died in 1942, having from time to time during the preceding years encumbered various portions of the system as well as an 80-acre tract of land and other property owned by him located some two miles east of Mentone. Two months before his death, Tench quitclaimed his interest in the assets of the company to his son, W. B. Tench, the applicant in this proceeding, who, so the record shows, has operated the system since 1928. The son asks us to declare that

the Mentone Company is, and has been since 1905, a public utility, to define its assets, to set aside all previous unauthorized transfers and encumbrances of the property since it became a public utility, and, finally, to confirm the conveyance made to him by his father in 1942.

The Federal Land Bank of Berkeley, The Federal Farm Mortgage Corporation and Joe T. and Ava Head have intervened to challenge our right to accord the sought relief. They allege that the father borrowed \$9,000 from the two government agencies in 1933 and gave as security two deeds of trust covering the 80-acre tract, including a well, pump and pipe line located on the property, some mutual water company stock, and a valuable decreed water right. Following default, the Heads purchased that property at a trustee's sale in September, 1942. Interveners also state that the Kirk Estate holds a mortgage on the water system, not including the decreed water right, and that the water right is separately pledged with one Sophie Chamberlain as security for a debt on which a balance of more than \$1,000 is due. Litigation is pending with regard to title and possession of portions of the property here under consideration.

The pleadings present an unusual situation. Applicant asks, on the one hand, that we declare void all transfers or encumbrances previously made without the authorization required by Section 51(a) of the Public Utilities Act. On the other hand, he asks us to approve the conveyance under which he himself claims title.

On such a pleading as this, we cannot assume jurisdiction solely for the purpose of validating some transfers and invalidating others, particularly where title to portions of the property transferred is in dispute before the courts. Applicant's request for nullification of previous transfers and for approval of the conveyance under which he claims title will accordingly be denied.

However, there is also before us the question of public utility status. It is appropriate for us to determine that question and to declare just what properties have been devoted to the public use and are essential to the continuance

of utility service. Whoever may be the owner of such properties must, of course, hold them subject to the servitude existing in favor of the public.

Considerable evidence was developed at the hearing relative to the origin and growth of the Tench properties. Detailed discussion of the evidence concerning the non-utility properties would serve no useful purpose. It is clear, however, that the 80-acre tract, Well No. 2⁽¹⁾, its pump and connected pipe line, as well as the water and pipe line company stock owned by W. J. Tench to provide irrigation water for the tract, never were impressed with a public servitude. We are, therefore, not concerned with any transfers of such property. (Public Utilities Act, Section 51(a).)

It is likewise clear from the evidence that no controversy exists between the parties of record as to the utility status of Well No. 1 and its connected works in Mentone Townsite. W. J. Tench struck water in that well in 1900, and thereafter developed a storage and distribution system. Twenty-nine consumers were served by 1929, when the well was deepened to 307 feet. At the time of the hearing the system had 100 patrons. Well No. 1 has maintained a production record of from 80 to 120 inches, more than adequate to care for present or anticipated future needs. The evidence shows that applicant has had charge of the system's operation since 1928. We accordingly find that Well No. 1, its pump and connected storage and distribution system in Mentone have been dedicated to the public service at least since 1905. Applicant has asked that we designate the plots of ground necessary to operate Well No. 1 and to maintain the pipe lines radiating therefrom. A ten-foot strip outside the toe of slope of the reservoir embankment and a ten-foot right of way for any pipe lines on the Mentone lots are considered adequate for such purposes.

(1) - Well No. 2 was put down in 1929 at the lowest elevation of the tract, and had no direct connection with Well No. 1 in Mentone. Aside from a sale of 286 inches to the Crafton Water Company in 1931, there were no recorded sales to the public from Well No. 2 prior to the closing of the loans. The well proved costly and unsatisfactory and pumping was discontinued in October, 1942.

We will next consider the main controversial point in this proceeding, namely, the status of the so-called decreed water right, claimed by the bank to be one of the chief items of security for its loan, and by applicant as an asset of the system.

Along with the Mentone lots purchased by the Tenches in 1888 went a prior right to an unascertained quantity of water which, until 1930, was delivered by the City of Redlands and its predecessors through a 4-inch pipe line running along the east side of the Tench orange grove. On February 15, 1922, the rights of the various owners of this so-called prior right water were apportioned by a consent decree entered in the Superior Court for San Bernardino County (Nelson v. Mentone Groves Co., No. 19388). Pursuant to that decree W. J. and Florence Tench received a non-appurtenant right to the continuous flow of 2.13 miner's inches of water daily under a 4-inch head. In March, 1930, the City of Redlands, having acquired what was known as the McIntosh system, installed a meter just outside the reservoir in the pipe line leading out into the Tench distribution system, and thereafter delivered the decree water through this meter under pressure, thus enabling Tench to reach consumers located north of the reservoir who formerly could not be served without the additional pressure, due to parity in elevation. This water is also regularly used to cool the pump engines, after which it passes through the reservoir to consumers on the lower part of the system. During approximately two months in winter the decree water forms the exclusive supply for the entire system, thus reducing pumping costs. It may also serve as standby.

The controversy between the parties of record over the water right results from the fact that when W. J. Tench applied for his loans on the 80-acre tract in 1933, he signed a supplemental statement to the bank to the effect that he had 64 inches per month of "decreed water right" which he used in addition to the water acquired from ownership of the mutual water company stock. The evidence shows, however, that aside from possibly two occasions some twenty years ago, and then only by means of an exchange arrangement, the decree water never was used

on the 80 acres.⁽²⁾ On this record, therefore, we hold that the decreed water right has been impressed with a public servitude from at least 1930, and has since formed an important source of supply for the efficient functioning of the system.

To sum up, we have before us an applicant, in possession and control of a water system, who since 1928 has operated and managed the property and who now claims to be the owner. We have already found what portions of the property have been dedicated to public use, and that whoever is the owner will be burdened with the attached servitude. Since applicant is in possession and claims to be the owner, we will direct him to file a schedule of rates and to continue to operate the service for the benefit of his consumers.

O R D E R

Application having been filed as entitled above, a public hearing having been held thereon, the matter having been submitted, and it having been found that the Mentone Domestic Water Company is a public utility, the properties of which include a well, known as Well No. 1; together with its connected pumping plant, storage and pipe line distribution system and necessary rights of way, located in the Townsite of Mentone, San Bernardino County, California, and a decreed right to the continuous flow of 2.13 miner's inches of water daily under a 4-inch head, and it also having been found that W. B. Tench, applicant herein, has since 1928 controlled, operated and managed said water system, the Commission being now fully advised in the premises, and good cause appearing,

IT IS HEREBY ORDERED that W. B. Tench be and he is hereby directed to continue to operate the public utility water properties and system comprising the

(2) Overdrafts of decree water by the Mentone system, however, were replenished from time to time after 1933, when the loans were closed, by deliveries from Well No. 2 to the City of Redlands through an extension constructed in the pipe line leading from the well to a connection with Redlands Highline No. 2, running along the west line of the 80-acre tract.

Mentone Domestic Water Company, located in the Townsite of Mentone, San Bernardino County, California, and is further directed to make the following filings within thirty (30) days after the effective date of this Order:

1. To file four copies of rates for water service furnished, which rates shall not be higher, in any particular, than the applicable rates now in effect.
2. To file four sets of rules and regulations applicable to water service in Mentone, San Bernardino County, each set of which shall contain a map or sketch, drawn to an indicated scale, upon a sheet approximately 8 1/2 x 11 inches in size, delineating thereupon in distinctive markings the boundaries of the present service area and the location thereof with reference to the surrounding territory, it being understood, however, that the filing of such a sketch shall not be considered as a conclusive determination of the area dedicated.
3. To file four copies of a comprehensive map, drawn to an indicated scale of not less than twenty feet to the inch, delineating the area served and its location with reference to the source of supply and surrounding territory. Such map shall show the source and the date thereof and include data sufficient to determine clearly the location of the various properties comprising the service area.

This Order shall become effective on the twentieth day after the date hereof.

Dated at San Francisco, California, this 15th day of May, 1945.

David Rudman
Justus J. Coe
Richard L. Baker
Francis W. ...
David S. ...
 Commissioners.