

Decision No. 38182

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
W. F. HAM for certificate of public
convenience and necessity to operate
a water system in Bijou Pines in
Eldorado County, California.

Application No. 26752

W. F. Ham, for Applicant.

ORIGINAL

CRAEMER, COMMISSIONER:

O P I N I O N

W. F. Ham asks the Railroad Commission for a certificate of public convenience and necessity to operate a public utility water system to serve consumers residing in the subdivision of Bijou Pines, located on the south shore of Lake Tahoe in Eldorado County. The applicant alleges that this subdivision consists of 254 lots to which water heretofore has been supplied free of charge for domestic use only, that he now has acquired the water system and installed a number of improvements which will permit the service of an adequate supply of water to all residents of the tract. For these and other reasons the Commission is requested to establish charges for all water delivered, upon the basis of \$15.00 per season for strictly household purposes, together with an additional charge of \$7.00 per season for water used for sprinkling and irrigation of lawns and flowers. A further charge also is requested to be established for additional houses on each lot.

Bijou Pines originally was subdivided in 1929 by W. S. Bliss. A water distribution system was installed consisting of 4,400 feet of 3½ inch O.D. casing and 4,200 feet of 2½ inch O.D. casing and 10 fire hydrants. At that time water was provided through a connection to the adjacent public utility water system

operated by Mr. Frank Globin at Al Tahoe. In 1932 service from this source was discontinued and a 6-inch well, 50 feet in depth, was drilled on the subdivision. The pump was operated by a gas engine and service was delivered through a pressure tank. About 1934 a 9-inch well was drilled to a depth of 63 feet, and the pump and gas engine were transferred to the new well. In 1945 this water system was acquired by Wm. F. Ham who installed new electrically-driven pumps on both wells, giving a present operating yield of 6,400 gallons per hour. The pressure tank has a capacity of 1,500 gallons and operates automatically at working pressures of 32 and 45 pounds per square inch. There are now 58 consumers being supplied with water. Applicant claims that the total value of the investment in the water system is \$10,000.

An appraisalment of the physical properties of this system was made by Clyde F. Norris, one of the Commission's hydraulic engineers, placing the estimated historical cost of the properties at \$8,292, and the corresponding depreciation annuity at \$173, both as of June 8, 1945.

This system originally was installed and operated by Mr. Bliss as a part of his real estate development business in this area. No records of operating costs, power and repair bills were kept by the realty firm. According to the record in this proceeding no charges ever have been made to the consumers for water.

During the course of the hearing held on June 11, a large number of the consumers protested against the granting of the certificate of public convenience and necessity to Mr. Ham or to any other person for the operation of this system. These consumers claimed that during negotiations for their individual lot purchases, all were promised free water service by the sales agents and that eventually they would be given a share in the complete consumer ownership of the water system itself to be operated as a mutual water company or any other form of cooperative organization. According to the evidence no charges were made by either Mr. Bliss or his representatives at any time for water service rendered. However,

none of the consumers were able to present any evidence, documentary or otherwise, supporting their claims to free water or to any interests whatsoever in ownership in whole or in part of any of the water production and distribution facilities supplying this tract. It is clear, however, that some of the literature published and distributed by lot sellers and sales agents in connection with the marketing of lots in Bijou Pines contained the statements that "an expensive system of pump and pipes can deliver water under pressure to each and every lot," and "free water under pressure." Unquestionably such statements were misleading.

A number of sales contracts and original deeds, together with standard blank forms thereof, were presented in evidence. However, in none of these written instruments was any provision made granting rights to free water service to any lot purchasers, although rights of way and easements specifically were reserved therein throughout the subdivision for water pipes and water facilities, including similar reservations for other utility underground installations.

W. F. Ham testified that he had acquired this water system from W. S. Bliss with the understanding that he was to install whatever improvements should be necessary to provide good service to all residents within the subdivision; that he has replaced the gas-driven pumps with modern electrically-operated equipment, repaired and drained the distribution system and placed it in first-class operating condition; that in addition thereto he has ordered for installation for next year a new storage tank and additional operating equipment at a cost estimated to be \$1,100.

Mr. Ham claims that he holds the record title to the waterworks, wells and pumping equipment, together with lands, rights of way and easements necessary for the operation thereof but that he cannot afford to continue the operation of this system unless the consumers are willing to pay a reasonable charge for the service rendered. In this connection it may be well to point out at this time that the record in this case does not show that the consumers have established any rights whatsoever to continued free water service from this system nor have any

such consumers shown ownership or title to any interests whatsoever in the water system. Should any such rights exist, determination thereof is beyond the jurisdiction of the Railroad Commission, being a matter wholly within the purview of the civil courts.

During the period intervening between the original hearing and the adjourned hearing on August 16, at the suggestion of this Commission the consumers held a meeting with Mr. Ham concerning the future operation of this waterworks. The testimony of Mr. Ham and these consumers indicates that it has generally been agreed among the consumers that opposition to the granting of this certificate requested by applicant be withdrawn and that Mr. Ham be authorized to operate the water system as a public utility under rules and regulations fixed by this Commission and at rates to be established for such service.

Objection was expressed by several consumers over the request in the application for the establishment of additional charge of \$7.00 per season where water is used for the sprinkling of lawns and flowers, and for the fixing of another and special charge for each house in excess of one served on a single lot. In view of these objections applicant requested a modification of his original prayer for the establishment of such additional charges and asked that in lieu thereof, the Railroad Commission establish a single seasonal charge of approximately \$22.00 covering the service to each lot, thereby eliminating controversies arising now and which may occur in the future over said additional charges. From the evidence presented it also appears advisable that a metered rate be established for certain classes of consumers who will demand exceptionally large volumes of water, or if necessary to prevent the careless use or deliberate waste of water.

In view of the general agreement among the consumers and applicant, it appears that there no longer exists any serious objection against the granting of the certificate to Mr. Ham. Accordingly, in the following Order a schedule of rates will be established which will cover as nearly as practicable the special problems existing on this tract. The rate structure will provide fair and

reasonable charges for service and compares very favorably with the charges made by similar utilities operating along the shores of Lake Tahoe where water is supplied by pumping from wells as distinguished from gravity supplies from springs or flowing streams.

Certain consumers demanded that service be provided on this system not only during the regular summer season but throughout the entire year. It appears from the record, however, that not over two consumers reside or will require water service during the winter season. The testimony indicates that in general throughout the Lake Tahoe area the season during which water normally is required is from the first of June until the latter part of September. However, Mr. Ham has agreed to provide water service to all residents of Bijou Pines when weather conditions permit during the period May to October, both inclusive, and that furthermore he will provide tap service for all water users in the tract at the pumphouse where water will be available to all throughout the winter. It is apparent that it would not be proper to require applicant to maintain continuous water service through the winter season for the sole benefit of a few water users. Such continuous service could not reasonably be demanded by the consumers unless they are ready and willing to pay a considerably increased charge over the rates established in the following Order.

The certificate of public convenience and necessity issued herein is subject to the following provisions of law:

That 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.

The following form of Order is recommended.

O R D E R

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

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity requires, and will require, the operation of a public utility water system by Wm. F. Ham in that certain subdivided tract known as Bijou Pines, lying between Al Tahoe and Bijou on the south shore of Lake Tahoe in Eldorado County, California, comprising some 40 acres and more particularly delineated on a map of Bijou Pines filed as Exhibit No. 1 in this proceeding and which map is hereby made a part of this Order by reference.

IT IS HEREBY ORDERED as follows:

1. That a certificate of public convenience and necessity be and it is hereby granted to Wm. F. Ham to operate a public utility for the distribution and sale of water within the territory hereinbefore described.
2. That Wm. F. Ham is hereby authorized and directed to file in quadruplicate with this Commission, within thirty (30) days from the date of this Order, in conformity with the Commission's General Order No. 96, the following schedule of rates to be charged for all water service rendered to his customers, effective for the season of 1945 and thereafter, which schedule of rates is hereby found to be just and reasonable for the service to be rendered.

Schedule No. 1

GENERAL FLAT RATES

Applicability:

Applicable to all unmeasured water service.

Territory:

In the subdivision of Bijou Pines, Eldorado County.

Rates:

Annual Seasonal Flat Rates:

Residential use, payable on or before May 1
of each year \$20.00

Service season from May 1 to October 31.

Schedule No. 2

GENERAL METER RATES

Applicability:

Applicable to all water service furnished through meters.

Territory:

In the subdivision of Bijou Pines, Eldorado County.

Rates:

Annual Seasonal Charge:

Payable on or before May 1 of each year, entitling the consumer to 700 cubic feet of water each month for the period from May 1 to October 31 \$20.00

Water used in excess of 700 cubic feet in each month is payable under the following Monthly Quantity Rates:

Monthly Quantity Rates:

First	700 cubic feet, included in annual seasonal charge.	
Next	1,300 cubic feet, per 100 cubic feet	\$0.25
Next	2,000 cubic feet, per 100 cubic feet20
Over	4,000 cubic feet, per 100 cubic feet175

A meter may be installed on any service at the option of either the consumer or the utility.

3. That Wm. F. Ham, within thirty (30) days after the effective date of this Order, shall file four sets of rules and regulations governing relations with his consumers, each set of which shall contain a suitable map or sketch, drawn to an indicated scale of about 8 1/2 x 11 inches in size, indicating thereon the service area and the location thereof with reference to the surrounding territory. Such filing shall not be construed as a determination or establishment, in whole or in part, of the dedicated area of service.
4. That Wm. F. Ham, within sixty (60) days after the effective date of this Order, shall file four copies of a comprehensive map or sketch, drawn to an indicated scale of not less than 400 feet to the inch, delineating correctly thereon, by appropriate markings, the various tracts of land in the territory served. Such map should be reasonably accurate, show the source and date thereof, and include sufficient data to determine clearly and definitely the location of the various properties comprising the entire area of service. Such filing shall not be construed as a determination or establishment, in whole or in part, of the dedicated area of service.

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 filed as the
Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28th day of
August, 1945:

Harold Anderson
Justin J. Casper
Richard K. Baker
Ernest H. Howell
Commissioners.