

Decision No. 41453

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
THEODORE F. MARTIN for permission to
extend his public utility to serve
consumers residing in Pinewood Park,
Blocks "A" and "B" of Tahoe Terrace,
and certain other described consumers,
located near the South shore of Lake
Tahoe, El Dorado County, California.

Application No. 27719

McCUTCHEN, THOMAS, MATTHEW, GRIFFITHS & GREEN, by JOHN
WICKSON THOMAS, for Applicant.
MRS. CORA B. HARDING, for Miss Lora Patterson, interested
party.
C. W. PEARSON, representing Mabel Winter and other
protestants.
HENRY & BEDEAU, by SHERMAN C. WILKE, for Tahoe-Pinewoods
Association, and other protestants.
CHARLES R. GILMORE and H. J. WHITLOCK for Lakeside Park
Association, and other protestants.

O P I N I O N

By this application, Theodore F. Martin requests the Commission to grant him a certificate of public convenience and necessity to render a public utility water service throughout several residential subdivisions near the southern border of Lake Tahoe, El Dorado County. He also seeks authority to finance his utility undertaking by the issuance of a note for \$7,500 secured by a deed of trust covering the properties he expects to acquire. The instant application was filed on July 24, 1946. Martin was granted a certificate by Decision 38907 issued May 2, 1946 in Application 27233, to render water service in two subdivisions contiguous to the others covered by this application. Because of circumstances that will be explained presently, that decision has not become fully effective. The instant application must be viewed as a renewal of and an enlargement of that earlier application.

Hearings were first held on this application at Bijou, Lake Tahoe, on

August 22 and September 5, 1946. An amended application was filed on July 15, 1947, and a further hearing had thereon on September 18, 1947.

Subdivisions involved are known as Pinewood Heights, Triangle Tract, Pinewood Park, Pinewood Terraco, Tahoe Terrace, and Bartlett Tract No. 1. The last mentioned tract is situated on the Lincoln Highway on the California-Nevada state line. It is becoming primarily a business property development. The other tracts are residential subdivisions situated on higher ground southeasterly of the highway tract and the state highway. Together they comprise more than 100 acres divided into approximately 600 lots. A system of water distribution pipes is in place and about 85 residences or business places are now receiving water service or could be connected to the existing distribution systems.

All of the existing water production and distribution facilities which applicant Martin expects to acquire and devote to the utility water services for which he seeks a certificate are now owned in whole or in part by Louis Bartlett. When the Commission, by Decision 38907, granted Martin a certificate to serve the Pinewood Heights and Triangle Tracts, it was provided that he would obtain title from Bartlett to the distribution system installed therein and also title to a designated lot in the Pinewood Heights tract upon which a well was to be drilled by Bartlett. Martin was authorized, upon securing title to such properties, to incur an indebtedness to Bartlett in the amount of \$5,000 secured by a deed of trust on the conveyed properties. Those conveyances were not executed. The well drilled by Bartlett in the Pinewood Heights tract failed to produce any appreciable quantity of water. During the course of the hearings first held on the instant application, it was revealed that Bartlett then intended to obtain water for supplying the Pinewood Heights and Triangle Tracts covered by Decision 38097 from two sources, namely, a new well to be drilled in the Triangle Tract and from a spring known as the Lakeside Spring. The evidence indicated that Bartlett held title in common with others to the Lakeside Spring and to a pipeline leading therefrom and connecting with the distribution lines in place within each of the tracts here involved. As proposed in the amended application filed on July 15,

1947, applicant Martin now expects to acquire from Bartlett either a leasehold interest or title in fee to all of the interest which Bartlett claims to have in the Lakeside Spring and pipeline, together with the distribution facilities within the six subdivisions. In consideration for such conveyances by Bartlett, Martin will execute his note in the amount of \$7,500 and a deed of trust covering all of the properties and interest he will receive. The Commission is asked to approve his incurring such obligations, as well as to issue him a certificate to render utility service within all of the described tracts not covered by his previous application, No. 27233.

When the hearing was held in Application 27233, resulting in Decision 38907 permitting Martin to serve the Pinewood Heights and the Triangle tracts, no protests were received to the granting of that application. Those two areas were subdivided by Bartlett himself, and the representation made as to the source of the water to be supplied in those tracts, as above indicated, was that water would be obtained from a well located in the Pinewood Heights tract. At each of the hearings on the instant application, many parties appeared to protest the granting of the amended application.

Not all of the protests to the application are rested upon a common ground. For the purposes of this opinion it will suffice to summarize the facts underlying two of the principal grounds upon which the application was opposed. Most of the protestants are now supplied with water without charge from the Lakeside Spring. These persons appear to assert some contractual right to the continuation of that service. Certain others assert title to an interest in common with Bartlett in both the spring rights and in the transmission and distribution pipe facilities. They challenged the right of Bartlett as a co-owner with them to cause such facilities to be devoted to a public utility use. We will discuss the facts only to the extent necessary to explain the positions taken by these two classes of protestants.

It appears that all of the real estate here involved formerly belonged to Louis Bartlett and John H. Kimball. Upon subdivision of parts of this property,

they inserted a provision in the contracts made with the purchasers of lots that water would be made available through the medium of a mutual corporation which would be organized for that purpose. Bartlett and Kimball partitioned their interests in 1938. Thereafter, contracts of sale made by Bartlett of his property contained a similar provision respecting the supplying of water by a mutual organization. Although such provisions were not uniform, those contained in contracts for the sale of lots in Pinewood Terrace, Tahoe Terrace, and Pinewood Park tracts were substantially to the same effect. The provision in Pinewood Terrace contracts reads as follows:

"This contract gives purchaser a right to a connection with the water system in Pinewood Terrace Subdivision on joining Pinewood Park Association, Inc., a mutual non-profit corporation for the distribution of water and other purposes. No charge to be made for water, but all users to pay their pro rata share of expense of maintaining the system, estimated at \$10.00 a year for each dwelling."

The provisions contained in contracts for the sale of lots in Bartlett No. 1 Subdivision did not differ materially from that above quoted except to provide that the use of water should be for domestic purposes only. Some of the lot purchasers in the Pinewood Park Subdivision were required to pay \$50.00 additional for the right to make a connection to the water distribution system. There is no indication that those who have been receiving water derived from Lakeside Spring sources and transported through the pipeline and distribution facilities constructed by Bartlett and Kimball have ever made any payments to cover the annual cost of maintaining and operating the system. In February 1945 Mr. Bartlett caused to be organized a mutual corporation under the name of Pinewood Park Association, Inc., and he testified that he then presented a plan to the purchasers of lots whereby this corporation could be utilized by them for the management of the water distribution facilities. The property owners appear to have been unreceptive to that proposal. However, some of them have subsequently caused the organization of the Tahoe-Pinewoods Association, a non-profit corporation which they expect to utilize for the protection of the rights asserted by those whose contracts of purchase provide for the use of water from the Lakeside Spring.

The ground upon which certain other parties protest the granting of the application is of a different nature. At least five of these parties claim either an ownership interest in the Lakeside Spring water rights, or claim a special contract right to be supplied with water from this source. Mr. Bartlett does not assert full ownership of the Lakeside Spring nor of all the transmission line and distribution line facilities. He claims full ownership only of the distribution lines lying within Triangle Tract, Pinewood Heights, Pinewood Terrace, and the 2" highway line extending to Bartlett Subdivision No. 1. As this Commission does not possess authority to determine the extent of Bartlett's interest in such properties, it will not be necessary for us here to analyze the basis of the claims upon which the parties assert a part ownership therein beyond the extent required to explain the general nature of the arrangement which has been made between Bartlett and applicant Martin for the use of such properties in rendering public utility water service.

Martin does not now possess any property of his own which could be devoted to his proposed utility service. If he is granted the requested certificate, he will obtain from Bartlett a fee title to the well site and parts of the distribution pipe system. He will also obtain a ten year lease, with right of renewal, to such undivided interest as Bartlett may possess in the remaining properties, consisting of the Lakeside Spring water, the transmission pipe system, and the distribution systems within Pinewood Park and Tahoe Terrace. The well which has been drilled on the Triangle Tract has been initially tested to yield between 50,000 and 60,000 gallons daily. The total capacity of the Lakeside Spring is estimated to be not more than 40,000 gallons daily. Of this total volume produced from the Spring, a one-half interest is claimed by Lakeside Park Association under a grant made by Bartlett and Kimball before their interests were divided. Subsequently, by grants made either by Bartlett or Kimball from their respective one-quarter interests, at least three other persons now assert entitlement to some of that water. Much of the record made in this proceeding is devoted to such adverse claims. Although they cannot be adjudicated by this Commission, it must be con-

cluded that the Bartlett interest therein which he now proposes to lease to Martin would not make available for utility use a substantial amount of water when compared with the quantity that his well on the Triangle Tract may be expected to develop. In addition, the leasehold rights which Martin will acquire in the water rights and pipeline facilities will place him in the position of a co-tenant with others claiming adverse interests therein, thus creating a serious doubt as to his ability, or even his right, to utilize that property in the public utility service with any degree of certainty or permanency.

It is the Commission's conclusion, therefore, that each of the principal grounds upon which protests have been made to Martin's application preclude the Commission from finding that public convenience and necessity require that he be issued a certificate to render the water service to the extent proposed. In each of the subdivisions for which a certificate is sought, excepting the Triangle and Pinewood Heights tracts already certificated, many purchasers of property have been accorded some sort of a right to the continued use of water through the medium of a corporation the affairs of which they themselves may administer on a mutual basis. As this Commission has no power to foreclose the exercise of such rights, and a corporation has been organized for the express purpose of exercising them, the issuance of a certificate for the use of the same properties in a public utility service would be in conflict with their private operation by those who may elect to join the mutual corporation. Furthermore, even though it developed that purchasers of property within said tracts should fail to exercise the rights given them by their contracts of purchase by expressing their willingness to become the beneficiaries of a public utility service, this Commission could not appropriately find that applicant Martin will be in a position legally to devote those properties to public utility use without arrangements first made with other owners in common of the same property.

It is the considered opinion of the Commission that public convenience and necessity justify the confirmation of the certificate first granted to Martin covering the Triangle and Pinewood Heights tracts in Application 27233. The

properties therein that will be devoted to public use are owned entirely by Bartlett and will be deeded to Martin, and none of the purchasers of lots therein have been accorded any rights in the use of water from Lakeside Spring. We are also justified in authorizing him to execute a deed of trust on such properties to secure his note to Bartlett in an amount not exceeding \$5,000, as heretofore authorized. However, inasmuch as that note and deed of trust were not executed in accordance with the original decision, and the authority sought in the instant application is for the execution of the note of larger amount and a deed of trust to cover additional properties, Martin should file an amendment to Application 27233, seeking authority to incur an indebtedness of not to exceed \$5,000 to be secured by a deed of trust covering only the water properties situated in the Triangle and Pinewood Heights tracts which Bartlett now proposes to convey to him, and should submit therewith copies of the proposed note and deed of trust.

The Commission finds that the evidence presented in this application, as amended, does not justify the granting of a certificate of public convenience and necessity to render a utility water service within any of the areas covered by this application for an extension of the service area authorized by Decision 38907 in Application 27233.

O R D E R

Public hearings having been held upon the above entitled application of Theodore F. Martin for authority to render a public utility water service, the matter submitted, and the Commission having considered the application,

IT IS HEREBY ORDERED that said application of Theodore F. Martin be and hereby is denied.

This order shall become effective twenty (20) days from the date hereof.

Dated at San Francisco, California, this 13th day of

April, 1948.

G. Z. Dintman

Justin Z. Greene

Frank Lange

Harold Kule

Samuel Potter

Commissioners