

Decision No. 41675

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
BERTHA S. HAMILTON for authority to  
grant purchase option for Inverness  
Water Works.

Application No. 29320

O P I N I O N

By this application, Bertha S. Hamilton seeks authority to enter into a proposed option contract involving her public utility water system at Inverness, Marin County.

Applicant proposes to grant to Inverness Improvement Association, a nonprofit corporation, a 90-day option to purchase her water distribution system upon certain terms set forth in the option contract. The application sets forth that applicant is desirous of retiring from active business and that Inverness Improvement Association desires to investigate the value of applicant's water works and to consider the best means of raising capital to finance the purchase and improvement of the property, including the possibility of forming a water district.

It is stated that in the event the option is granted and thereafter exercised, an application will be filed seeking authority to convey and purchase the properties, and the Association or its assignee will then request authority to mortgage the properties in accordance with the terms of the option contract.

The option contract provides that upon exercise of the option, the optionee shall pay the owner \$1,000 a year for life, but for not more than twenty years. The first payment upon acceptance of the option shall be \$2,500, which shall cover the first two and

one-half years after acceptance. All subsequent payments are to be evidenced by notes of the corporation or district taking title, or by its assigns, and are to be secured by mortgage. The contract also provides for possible extension of the option for a period not exceeding sixty days.

As part consideration for the option, the optionee agrees to make all necessary legal and engineering investigation precedent to its decision as to the feasibility of operation of the system by a water district, and as further consideration agrees to pay the owner \$100 upon the signing of the option contract. The contract provides that it shall bind the parties and their heirs, successors or assigns.

It may well be that the proposed option contract is not an encumbrance of public utility property within the meaning of section 51(a) of the Public Utilities Act, which provides that no public utility shall transfer, mortgage, "or otherwise dispose of or encumber" utility properties without first obtaining Commission authorization. However, the parties have requested such authorization, probably in order to remove any possible doubt as to the validity of the option contract in view of that section of the statute. Under the circumstances, authorization will be granted, solely for the reason indicated and without passing upon the necessity therefor. Such authorization, however, is not to be construed as authorization for actual transfer of the properties. Should the option contract be executed and the option thereafter exercised, it will be necessary for the parties to join in an application for authority to transfer the utility properties. Such authorization cannot be granted upon the present application, for the possible ultimate purchaser and operator of the utility sys-

tem is not now known.

O R D E R

Application as above entitled having been made, it appearing that a public hearing is not required, and, for the reason indicated in the above opinion, IT IS ORDERED as follows:

1. Bertha S. Hamilton is hereby authorized to enter into an option contract in substantially the same form as the proposed option contract set forth in Exhibit "A" attached to the application herein.

2. Bertha S. Hamilton is hereby directed to file with the Commission a copy of such option contract as may be executed pursuant to the authorization herein granted within ten days after the execution thereof.

3. The authorization herein granted shall lapse unless exercised within thirty days after the effective date of this order.

4. This order shall become effective on the date hereof.

Dated, San Francisco, California, this 28<sup>th</sup> day of May, 1948.

R. Z. [Signature]

[Signature]

[Signature]  
Commissioners