

ORIGINAL

Decision No. 62640

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

INVERNESS PUBLIC UTILITIES DISTRICT,)

Complainant,)

vs.)

Case No. 7019

INVERNESS WATER COMPANY, a corpo-)
ration, and LARRY H. MARKS, JR.,)

Defendants.)

E. Warren Maguire and Douglas J. Maloney,
for complainant;
Orrick, Dahlquist, Herrington & Sutcliffe,
by Robert A. Kellez, for defendant
Inverness Water Company; Wallace S.
Myers for defendant Larry H. Marks, Jr.;
W. B. Stradley, for the Commission staff.

OPINION AND ORDER

This complaint was filed November 21, 1960. Public hearing in the matter was held before Examiner F. Everett Emerson on April 25 and 26, 1961 at San Francisco. The matter was submitted on briefs filed June 28, 1961, and is now ready for decision.

The complaint is based on the complainant's contention that certain transfers of property by defendant Larry H. Marks, Jr., have been made in violation of Section 851 of the Public Utilities Code and of this Commission's Decision No. 59870, issued in Application No. 42024, by which Marks was authorized to sell his public utility water system and, further, that Marks' application contained misrepresentations of material facts.

Essentially, complainant charges Marks with having intentionally misled this Commission, respecting the transfer of utility property to defendant Inverness Water Company, and with having

retained for his own speculative business purposes certain parcels of land necessary or useful in the performance of the duties of providing public utility water service to the community of Inverness. Complainant seeks to have the Commission rescind the order which authorized the transfer of utility properties from Marks to Inverness Water Company and to issue an order directing the transfer of the land retained by Marks.

Defendants generally deny the charges of complainant, maintaining that the property retained by Marks is neither necessary nor useful to the public utility water system.

Defendant Marks purchased the assets of a public utility water system serving the Inverness area from Miss Bertha Hamilton, the transfer having been authorized by this Commission on November 3, 1958 by Decision No. 57552. These assets included a water-collecting, storage and distribution system and approximately 352 acres of land which form a portion of the over-all drainage area (watershed) for the system. Marks, after acquiring the utility water system, found the system to be in such a state of disrepair that substantial capital expenditures were needed if the system were adequately to serve the public. After operating the system for some months at a loss, Marks made an effort to sell it and approached representatives of Citizens Utilities Company, a Delaware corporation, for such purpose. Marks offered to sell to such corporation the entire water system including all of the land which he had obtained through the transfer of the Hamilton properties.

Citizens set up certain requirements which Marks had to fulfill before Citizens would undertake the purchase. Among these requirements were (1) that Marks was to transfer his public utility properties to a corporation, to be formed for the purpose, so that Citizens might purchase the stock of the corporation owning the

assets rather than purchase the assets directly, and (2) that Marks would retain substantial portions of the lands which Citizens felt were not necessary to the operation of the water system. As a result of these negotiations, Inverness Water Company, a California corporation, was formed on or about October 21, 1959. Marks and said corporation filed an application (No. 42024) with this Commission on March 9, 1960, seeking authority to transfer "all of the public utility water system owned and operated" by Marks to the corporation and for the corporation thereafter "to engage in the public utility water business formerly conducted" by Marks. The Commission issued its Decision No. 49870 in such matter, ex parte, on April 5, 1960. Authority to transfer was granted.

In the application concerning the transfer of the Hamilton properties to Marks, it was represented to the Commission that Marks was to become the sole owner. In the subsequent application of Marks to transfer the utility system to the corporation, Marks represented that he was conducting the public utility water business as a sole proprietorship. The evidence shows that neither of these representations was factual but that, to the contrary, Marks had an undisclosed partner in each instance.

In the latter application Marks represented that no deed, bill of sale, or contract, or agreement therefor had as yet been prepared nor had any assets been transferred. The evidence is clear that deeds disposing of assets of the utility had in fact been prepared, executed and recorded in October, 1959 and January, 1960, such dates being prior to the March 9, 1960, date of application.¹ No authority for the transfer of such utility properties having been obtained from this Commission, such transactions are, of course, void and of no legal effect. Defendants herein rely on such legal status as support for the veracity of the pleadings of the

¹ Exhibits Nos. 2, 3 and 4 in the instant proceeding are copies of such deeds.

application. It is clear that Marks and the corporation, represented by the same counsel in the transfer proceedings, have resorted to equivocation respecting the application and subterfuge respecting defense of their actions.

On or about June 30, 1960, Marks and his wife signed a deed and bill of sale² conveying to the corporation "all lands, ***, water plant, ***, and all other assets and properties, real and personal, wheresoever located, owned, used or held for use in the operation of the water system ***" (Emphasis supplied). In the actual property transfer, Marks retained for his own use a total of about 189 acres of land. Sometime subsequent to Marks' transfer of the properties to Inverness Water Company, the stock of such corporation was acquired by Citizens Utilities Company and Citizens presently controls the operation of Inverness.

The evidence shows that the lands constituting the watershed which contributes water to Inverness have a total area of about 500 acres.³ Of these watershed lands, approximately 352 acres were the lands of Hamilton transferred to Marks. The so-called Hamilton lands, as well as the entire watershed, may be described as consisting primarily of deep ravines which are covered with heavy growths of underbrush and trees, in most places traversible by humans only with considerable difficulty. At least three known springs lie within the watershed area, the major spring lying outside of the so-called Hamilton lands. Some of the ravines have water-collecting

2 A copy of this "deed and bill of sale" is Exhibit No. 6 in this proceeding. Through carelessness, inattention or inadvertence, not all of the deeds necessary to complete this transaction were prepared, executed and delivered, nor were the errors discovered until the instant proceeding was under way. Copies of the proper documents, as recorded on July 14, 1961, were received by the Commission on July 20, 1961, and are hereby received into this record as Exhibit No. 8 thereof.

3 "Watershed" is here used in the sense of "drainage area" rather than in the limited significance attached to the term by local reference to the lands transferred from Hamilton to Marks.

facilities at their lower ends and the year-round flow of the streams therein, in part, makes up the source of water supply for the public utility operations. The lands retained by Marks (estimated as being approximately 189 acres) may generally be said to be contiguous irregularly shaped strips of land along and to either side of the ridges on the Hamilton lands. The retained lands are believed to be suitable for homesites. No known springs are located in these retained strip areas, nor does engineering testimony indicate the probability of there being such.⁴ Complainant contends that any disturbance of such areas will affect the quality of the watershed and reduce the water supply. Defendants contend that the retained areas are neither necessary to nor desirable for water system operations.

The delineation of a precise boundary between those lands which are useful and necessary to the operations of the public utility water operations at Inverness and those lands which are not, is not only difficult but a practical impossibility. In the light of the engineering evidence, however, the Commission finds that the boundary lines which purport to so separate necessary from unnecessary lands, shown on Exhibit No. 1 in this proceeding as encompassing the lands retained by Marks, reasonably accomplish such purpose. The Commission concludes, that such lands are not necessary or useful to the operations of the public utility water operations at Inverness.

⁴ In passing, it may be noted that this record does not disclose how, if at all, such possible homesites may, in the future, be provided with water service.

The basic questions to be decided in this proceeding are two:

1. Were the misrepresentations of Marks sufficient to mislead the Commission to the extent that any orders issued in reliance on his representations should be rescinded?

Marks, according to his own testimony, fully informed his attorney, relied completely upon his attorney's advice and affixed his signature to all papers which the attorney prepared for him.⁵ Marks may not have received the best advice but no damage has been done and on the contrary the public utility patrons have, in the final analysis, benefited greatly. In the light of the evidence with respect to this question, the Commission concludes that no useful purpose would now be served by reopening prior application proceedings for the purposes of either rescinding or in any way modifying this Commission's orders therein.

2. Are those portions of the watershed properties obtained by Marks from Hamilton but not transferred to the corporate Inverness Water Company necessary or useful to the performance of public utility duties, within the meaning of Section 851 of the Public Utilities Code?

This is the principal issue in this case. As hereinabove set forth, the Commission finds that the lands in dispute are not necessary or useful for public utility purposes. Such being the finding, the complaint must fail.

In view of the evidence and the foregoing findings, the Commission concludes that the relief sought by the complaint herein should be denied. Therefore,

⁵ The attorney referred to is not Marks' counsel in the instant proceeding.

IT IS ORDERED that the complaint in Case No. 7019 be and it is hereby dismissed.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 3rd day of October, 1961.

S. J. Fox President

George H. Tröver

Fredrick B. Holbrook

Commissioners

Everett C. McKeage
Commissioner ~~Peter E. Mitchell~~, being necessarily absent, did not participate in the disposition of this proceeding.