

Decision No. 28868

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
D. MOYERS for a certificate of public con-
venience and necessity to transport
passengers, baggage, and express between
Fresno and Gilroy, Merced and Wheel Inn,
Los Banos and Tracy, Fresno and The Pines,
Friant and New Damsite (Fresno County),
and Friant and Damsite (Madera County);
said certificate to be in lieu of all
prescriptive rights and certificates.

Application No. 20397

ERNEST WALLING,	for Applicant;
JAMES J. BROZ,	for Valley Motor Lines;
D. E. PECKINPAUGH,	for Bennetts Freight Lines;
R. S. MYERS,	for Pacific Motor Trucking Co.;
	and Pacific Motor Transport Co, Interested Parties.

BY THE COMMISSION:

OPINION AND ORDER

Applicant, D. MOYERS, possesses a certificate of public convenience and necessity, acquired by transfer under authority of Decision No. 25231 on Application No. 18423 decided October 3, 1932, for the transportation of passengers, baggage, and express by motor vehicle over the following routes:

- (1) Between Tracy and Fresno, via Los Banos and Mendota, using the main highway, with optional service to and from Kerman;
- (2) Between Merced and Wheel Inn, via the main highway through El Nido;
- (3) Between Gilroy and Los Banos, via the Pacheco Pass Highway.

These operative rights are subject to the restriction that in the transportation of express, no single package may be

accepted for transportation that exceeds one hundred pounds in weight, and all express is to be transported on passenger vehicles, except that the limitations as to package weight and vehicle of transportation do not apply to shipments transported for or through the agency of Railway Express Agency, Inc., and milk and cream and empty containers of such commodities when being transported to or from a rail junction point in connection with rail transportation thereof. Service on the route between Merced and Wheel Inn is permitted to be conducted seasonally during the period approximately May 15 to September 15 of each year.

By Decision No. 13522 on Application No. 10003 decided May 5, 1924, the Commission authorized the transfer to applicant of the prescriptive rights of George Teaford for the operation of a passenger stage between Fresno and The Pines, and Fresno and Central Camp, with optional service to and from Pinedale.

By this application the applicant seeks a certificate for the transportation of passengers, baggage, and express, in lieu of all existing certificated and prescriptive rights; also authority to transport express matter between Fresno and The Pines, and to consolidate his operations between those points with the operations between Fresno, Gilroy, and Tracy. Authority to abandon service to Central Camp is also sought. Extension of the certificate to Damsite and New Damsite was originally prayed for in the application but was waived at the hearing, and the application was amended to eliminate request for such authority. Public hearing of the application was held before Examiner Elder.

The applicant testified that the non-existence of the express right to The Pines is due to his failure to file tariffs for such service at the time he acquired the operation, but that

he has daily requests for the service. Consolidation of the operation to The Pines with that between Fresno, Tracy, and Gilroy will eliminate a transfer at Fresno, thus improving the service. Aside from this consolidation, the applicant contemplates no change in the operative rights or operation between Fresno, Tracy, Merced, and Gilroy. An in lieu certificate, it appears, will clarify applicant's rights and make uniform the rules and regulations over all applicant's routes. The abandonment of service to Central Camp should be authorized, as it appears that Sugar Pine Lumber Company, formerly located there, left in 1932, the place is now deserted, and there is no longer any demand for the service.

Other carriers in the territory involved having offered no protest, and it appearing that public convenience and necessity will be served thereby, the in lieu certificate should be granted.

D. MOYERS is hereby placed upon notice that "Operative Rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they

extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

O R D E R

A public hearing having been held in the above entitled proceeding, and the matter having been submitted, and the Commission now being fully informed thereon:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by D. Moyers of an automotive passenger stage, as defined by Section 2-1/4 of the Public Utilities Act, for the transportation of passengers, baggage, and express, as a single consolidated and unified operation, over and along the following routes:

(1) Between Tracy and Fresno, via Los Banos and Mendota, using the main highway, with optional service to and from Kerman;

(2) Between Merced and Wheel Inn, via the main highway through El Nido;

(3) Between Gilroy and Los Banos, via the Pacheco Pass Highway;

(4) Between Fresno and the Pines and all intermediate points, via the main highway through Friant, Pinedale, Belleview, O'Neals, Fine Gold, Adobe, North Fork, Wishon, Crane Valley Dam, The Forks, and The Falls, with optional service to and from Pinedale; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and it is hereby granted to D. Moyers, said rights and certificate to be in lieu of and not in addition to the operative rights heretofore acquired by D. Moyers by virtue of

Decision No. 25231 dated October 3, 1932, on Application No. 18423, and Decision No. 13522 dated May 5, 1924, on Application No. 10003, which said operative rights are hereby revoked and annulled; said certificate hereby granted to be subject, however, to the following conditions:

- (1) In the transportation of express, no single package weighing in excess of 100 pounds shall be accepted for transportation, excepting, however, shipments transported for or through the agency of Railway Express Agency, Inc., and milk and cream and empty containers therefor when being transported to or from a rail junction point in connection with rail transportation thereof; and all express shall be transported on passenger vehicles only;
- (2) Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof;
- (3) Applicant shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date hereof, and shall file in triplicate and concurrently make effective on not less than ten days' notice to the Railroad Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which in volume and effect, shall be identical with the rates and rules shown in the exhibit attached to the application in so far as they conform to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission;
- (4) Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five days' notice to the Railroad Commission and the public, time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission;
- (5) The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been obtained;
- (6) No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be

twenty (20) days from the date hereof.

Dated at San Francisco, California, this 8th day
of June, 1936.

W B Lewis

Leon Owhidoff

W J Carr

Arthur H. Hearn

Frank R. Revere

Commissioners.