

ORIGINAL

Decision No. 29929

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of BENJAMIN WALTERS,)
 doing business under the firm name and style of)
 ISLAND TRANSPORTATION COMPANY, for certificate of) AMENDED
 public convenience and necessity to operate vessels,) APP. NO.
 etc.) 21076

In the Matter of the Joint Application of HENRY E.)
 HANSEN to sell and UNITED BOAT LINES, a corporation,)
 to purchase certain floating equipment, consisting)
 of boats, tugs, et al., and to exercise certain op-)
 erating rights in conjunction therewith, etc., and) AMENDED
 UNITED BOAT LINES, a corporation, to issue and de-) APP. NO.
 liver to applicant Hansen 300 shares of its capital) 21288
 stock in payment for said properties and to issue)
 and sell not over 50 additional shares thereof to)
 provide operating capital.)

In the Matter of the Application of HENRY E. HANSEN)
 to convey and transfer to BENJAMIN WALTERS, the) APP. NO.
 right to operate vessels as a common carrier of) 21305
 property on the inland waters of the State.)

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- Gwyn E. Baker and Harry M. Wade for Benjamin Walters
- Lafayette J. Smallpage for Henry E. Hansen and United Boat Lines
- F. W. Mielke; McCutchen, Olney, Mannon & Greene for The River Lines, interveners
- A. L. Whittle for Southern Pacific Company, Northwestern Pacific Railroad Company, Pacific Motor Transport Company, and Southern Pacific-Golden Gate Ferries, Ltd., interveners
- E. S. Graham for Petaluma and Santa Rosa Railroad Company
- Lafayette J. Smallpage for Lafayette J. Smallpage, Trustee, Henry E. Hansen, Laura A. Gerdes, Pearl L. Thomas, Ada Gormsen and Grace E. Vehmeyer
- Herbert D. Armstrong for Federal Reserve Bank of San Francisco and Pacific National Bank of San Francisco
- Chalmers G. Graham, C. G. Morse and Lafayette J. Smallpage for R. W. Seitz, Receiver of Freighters, Inc.

RILEY, Commissioner:

OPINION AND ORDER

The history and background of these proceedings are reviewed in Decision No. 29929, a preliminary opinion and order issued herein on July 7, 1937. Briefly, in 1934 six vessel operators, including

Benjamin Walters, were authorized to transfer their operative rights and properties to Freighters, Inc. (Decision No. 27592, App. No. 19728.) By its terms the order authorizing the transfer was not to be construed as a determination of the nature or extent of the rights to be transferred, nor was any new certificate issued to Freighters, Inc. This was because of the pendency of an investigation to determine the scope of the operative rights, largely prescriptive, of some sixty vessel operators, including the six predecessors of Freighters, Inc. (Cases Nos. 3824 and 4012.) Subsequently, on May 24, 1937, the Commission rendered its decision in such investigation. (Decision No. 29778; 40 C.R.C. 493.) The extent and scope of the various Walters' rights were explicitly defined in that decision.

In certain federal court proceedings, the properties and rights of Freighters, Inc. were sold at public auction to Henry E. Hansen, and the sale was confirmed by the court on June 7, 1937. By Application No. 21288 Hansen sought authority to transfer what he had thus acquired to United Boat Lines, a new corporation, but at the hearing amended his application, in so far as it involved the rights originally held by Walters, and sought authority to transfer only two of such prescriptive rights to the corporation. Hansen then filed a new application (App. No. 21305) seeking authority to transfer the balance of such rights to Walters. The granting of these applications will result in the new corporation acquiring the right to transport grain and mill stuff between Stockton and Petaluma, while Walters will acquire the balance of the so-called Walters' rights.

Certain interveners objected to the "splitting" of prescriptive rights, and by a preliminary order herein (Dec. No. 29929) the Commission authorized the transfer to the corporation of all

rights and properties acquired at the court sale with the exception of the so-called Walters' rights. ⁽²⁾ Action on the latter was deferred pending submission of Application No. 21305 (Hansen to transfer to Walters), and the question was submitted on concurrent briefs, which have now been filed.

The protesting interveners do not oppose the transfer of all of the rights in question to either United Boat Lines or Walters, but do object to the "splitting" or dividing of operative rights. They refer to a number of decisions involving stage and truck rights in which decisions the Commission, as a matter of policy, has regarded an operative right as indivisible, and has expressed the opinion that it does not look with favor upon efforts to "split" or divide an operative right by the transfer or lease of a portion thereof, particularly where the right is one granted by the Commission. We believe that this general rule is sound, and that there should be no deviation therefrom unless the facts of a particular case justify such deviation.

In the present proceedings, however, we are confronted with an unusual situation which has given rise to much litigation for a number of years. The scope of the various prescriptive rights had not been determined until the recent decision in the general operative right investigation. In proceedings before this Commission and before the courts Walters has contended that he has been wrongfully deprived of possession of these rights in connection with the formation and activities of Freighters, Inc. The present applications were filed as part of a proposal to conclude a settlement of litigation pending before the federal court. We believe that these controversies, costly alike to the parties and to the public, should be ended.

(2) Such transfer has been consummated, and copies of the various instruments of conveyance were filed on July 31, 1937, pursuant to Decision No. 29929.

If the general rule as to "splitting" of operative rights is applicable to the facts of the present case, which is open to some question, the peculiar circumstances which have occurred since Walters was authorized to transfer his rights to Freighters, Inc. warrant an exception to that rule, and this decision is not to be taken as a precedent in any other proceeding in which authority to divide an operative right may be sought. The fundamental objection of the protesting interveners is to a possible duplication of rights or an expansion of operations beyond the rights as defined in the general operative right decision. Neither result will flow from the granting of these applications to transfer. Only two of the Walters' rights will be transferred to United Boat Lines, both being for an "on call" service, as follows:

1. Grain in lots of not less than 80,000 pounds between Stockton and Petaluma.
2. Mill stuff in lots of not less than 80,000 pounds between Stockton and Petaluma.

United Boat Lines did not acquire the right to perform such service by Decision No. 29929, the preliminary order herein, nor will Walters acquire such rights by the present decision.

Good cause appearing, IT IS ORDERED as follows:

FIRST: In Amended Application No. 21288 Henry E. Hansen may transfer to United Boat Lines, a corporation, prior to September 15, 1937, the following operative rights:

"On call" service for the transportation of:

1. Grain in lots of not less than 80,000 pounds between Stockton and Petaluma.
2. Mill stuff in lots of not less than 80,000 pounds between Stockton and Petaluma,

provided, that within 30 days after the above transfer United Boat Lines shall file with the Commission a true copy of the instrument of

conveyance under which it acquires the above rights.

SECOND: In Application No. 21305 Henry E. Hansen may transfer to Benjamin Walters, prior to September 15, 1937, the following operative rights:

"On call" service for the transportation of:

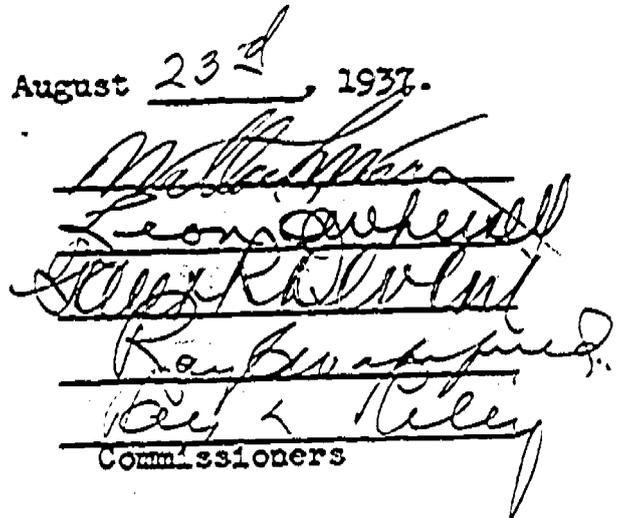
1. Fuel oil in bulk from Oleum, Pittsburg, Martinez, and Port Costa to Stockton, Sacramento, San Joaquin River and tributaries, Mokelumne River and tributaries, Old River and tributaries, and Sacramento River below Sacramento and tributaries, and from Oleum to Pittsburg, Wapa and Rodeo.
2. Property between Delta points, and between Delta points on the one hand and Stockton, Sacramento and San Francisco Bay Terminals other than South San Francisco on the other hand.
3. Grain in lots of not less than 80,000 pounds between Delta points on the one hand and Port Costs and South Vallejo on the other hand.
4. Mill stuff in lots of not less than 80,000 pounds between Delta points and Stockton on the one hand and Port Costa and South Vallejo on the other hand; and between Lower Sacramento River points and San Joaquin River points on the one hand and Petaluma on the other hand.
5. Coal, flour, grain, mill stuff, hay, straw, lumber, rice, tanbark and vegetables, each in lots of not less than 20,000 pounds, and bags in any quantity between Stockton and San Francisco Bay Terminals other than South San Francisco,

provided, that within 30 days after the above transfer Benjamin Walters shall file with the Commission a true copy of the instrument of conveyance under which he acquires the above rights.

This order shall be effective immediately.

The foregoing opinion and order are approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated, San Francisco, California, August 23^d, 1937.


Commissioners