

Decision No. 20480

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
DELTA TUG CO., an unincorporated  
association, for permit to operate  
vessels for the transportation of  
freight for compensation between  
points on the inland waters of the  
State of California.

ORIGINAL

Application No. 20480

Rufus H. Kimball, for applicant.  
McCutcheon, Olney, Mannon & Greene, by F. W. Mielke,  
for The River Lines.  
Gwyn H. Baker, for Erickson Navigation Co.  
A. L. Whittle, for Southern Pacific Company, North-  
western Pacific Railroad Company, and Petaluma  
and Santa Rosa Railroad Company, protestants.  
H. S. Graham, for Petaluma and Santa Rosa Railroad  
Company, protestant.

BY THE COMMISSION:

SECOND SUPPLEMENTAL  
OPINION

By supplemental applications filed in the above entitled proceeding William Q. Wright and L. M. Dervin, doing business as Delta Tug Company, seek an order from the Commission amending the "for-hire vessel" permit heretofore granted them by Decisions Nos. 29963 and 30014<sup>1</sup> so as to authorize them (1) to operate the "for-hire vessels" described in said decisions for the transportation of (a) certain additional commodities, and (b) certain commodities from and to points not now covered by said permit; and (2) to serve Sperry Flour Company and Taylor Milling Company.<sup>2</sup>

<sup>1</sup> By Decisions Nos. 29963 and 30014 in this proceeding applicants were granted a permit authorizing them to operate "Barge No. 1," "Barge No. 3" and the motor boat "Yolo" as for-hire vessels for the transportation of grain, grain products, fertilizer and certain other commodities between various points for Golden Eagle Milling Company, E. Salz and Son and Frankheimer Bros.

<sup>2</sup> Applicant no longer desires to serve E. Salz and Son and Frankheimer Bros. Thus the number of shippers to be served will remain the same.

Applicants also seek authority to increase certain of their existing rates and to make changes involving both increases and reductions, on one day's notice to the Commission and the public. The additional commodities proposed to be transported, the additional points between which applicants propose to operate, the rates to be charged for such additional transportation, and the proposed changes in existing rates are specified in the supplemental applications.<sup>3</sup>

Public hearings were had at San Francisco before Examiner E. S. Williams.

In justification of the proposed increases in existing rates, applicants alleged that the present rates were insufficient to permit a profitable operation; that the proposed rates were reasonable; and that such rates were satisfactory to the shippers which were affected by said increases. While it was stated that the rates proposed to be charged for the additional service were compensatory, they expressed their willingness to accept such other rates as the Commission might find reasonable and proper.

In support of the proposed enlargement of their for-hire vessel permit, applicants represented that the additional service proposed to be rendered will be private in nature, will be performed under contract exclusively with three shippers, Golden Eagle Milling Company, Sperry Flour Company and Taylor Milling Company, and that such operations will conform in other respects to the provisions of their existing permit and of the For-Hire Vessel Act.

Evidence of the nature of the contractual arrangements under which the proposed service would be performed was presented by witnesses representing the three shippers proposed to be served.

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Two applications were filed. One merely sought authority to serve two shippers in addition to those applicant was already authorized to serve, which authority was also sought by the other and more comprehensive application.

George Rose, sales manager, Golden Eagle Milling Company, testified that his company would enter into a five year contract with applicants by which it would agree to tender to applicants for transportation all of its property moving by water from, to and between points in the San Joaquin and Sacramento deltas and from Petaluma to Stockton, and would agree to pay to applicants for such transportation the rates proposed in the application, or such other rates as the Commission might prescribe, provided such rates are no higher than the lowest common carrier rate for the same transportation.

N. R. Moon, assistant general traffic manager, Sperry Flour Company, stated that his company would enter into a contract with applicants to transport, during a period of not less than six months, a minimum of 300 tons of mill feed from South Vallejo to the Taylor Milling Company at Stockton, said contract to contain a provision for the automatic extension of the agreement on a month to month basis following the expiration of the initial period.

La Verne Osa Hunter, representing Taylor Milling Company, testified that her company would enter into an exclusive contract with applicants, agreeing to tender to applicants all of its shipments weighing 50,000 pounds or more, moving during a period of one year between San Francisco and Oakland on the one hand and Stockton on the other. She further testified that her company was willing to pay the rates proposed by applicants, or such other rates as the Commission might find proper.

The River Lines, Southern Pacific Company, Northwestern Pacific Railroad Company, and Petaluma and Santa Rosa Railroad Company protested the granting of the application. They contended that applicants had failed to show the proposed operation would be that of a private or for-hire vessel carrier. While they argued that the

nature of the contemplated contractual relations between two of the shippers and applicants indicated that the proposed service is essentially that of a common carrier for which a certificate of public convenience and necessity is required, they failed to show what features of the contractual relationship might support such a contention.

Protestants further contended that the rates proposed to be charged by applicants on shipments of grain products and related articles would, if allowed to become effective, disrupt the stabilized rate structure prescribed by the Commission for common carriers in Decision No. 26406, dated October 9, 1933, in Case No. 3617 (The River Lines vs. Rio Vista Lighterage Company) and in Decision No. 30640, as amended, in Part "F" of Case No. 4088 and Case No. 4118. They urged that in the event the application should be granted that rates be prescribed for such service no lower than those prescribed by the Commission in the cases cited or now applicable by common carriers for like transportation.

With respect to the first contention, it is apparent from the evidence that applicants propose to transport property for but three shippers under written contracts specifying the commodities to be transported, the particular points between which the transportation will be performed, the rates to be charged and the period of time the contracts are to be in force. From these facts, it is clear that applicants have every intention of operating as a private carrier and that if the proposed plan be followed, the operation will be that of a private carrier.

The second question to be determined is the propriety of the rates proposed for the additional service sought to be rendered. Aside from the statement that the proposed rates were compensatory, no evidence was offered to justify their adoption. On the other hand

It is clear that if they are allowed to become effective they will disrupt the rate structure heretofore established. In view of this circumstance and of the absence of evidence from which the Commission might determine the reasonableness of the rates proposed, the permit will provide rates on grain and grain products no lower than the just, reasonable and non-discriminatory minimum rates for transportation by radial highway common and highway contract carriers established in Decision No. 30640, dated February 14, 1938, as amended, in Case No. 4088, Part "F", supra, and on other commodities no lower than the lowest lawful common carrier rates for the same transportation.

After consideration of all the facts of record, we are of the opinion and find that a permit should issue to applicants to perform the transportation service sought in the supplemental applications in lieu of the permit heretofore granted.

#### O R D E R

This matter having been duly heard and submitted,

IT IS HEREBY ORDERED that permit be and it is hereby issued to applicants William Q. Wright and L. M. Dervin, doing business as Delta Tug Company, to operate "Barge No. 1," "Barge No. 3" and the motor boat "Yolo" as for-hire vessels for the transportation of the commodities and between the points set forth in Appendix "A" hereof, for Golden Eagle Milling Company, Sperry Flour Company and Taylor Milling Company, in lieu of the permit heretofore granted in Decisions Nos. 29963 and 30014 in this proceeding, subject to the following conditions:

1. Applicants shall file with the Commission in duplicate and make effective within a period of not to exceed twenty (20) days from the date hereof on not less than two (2) days' notice to the

Commission and the parties affected, an amendment to its tariff now on file with the Commission containing rates which, in volume and effect, shall be identical with the rates set forth in the applications modified to provide rates on grain and grain products no lower than the just, reasonable and non-discriminatory minimum rates for transportation by radial highway common and highway contract carriers established in Decision No. 30640, dated February 14, 1938, as amended, in Case No. 4088, Part "F", and on other commodities rates no lower than those which are applicable for the transportation of the same commodities from and to the same points by common carriers, or rates and rules satisfactory to the Railroad Commission;

2. Applicants shall not operate any for-hire vessel or vessels other than those covered by this permit unless and until a description of said vessel or vessels shall have been filed with the Commission and said permit amended to authorize such operation.

3. This permit, or any amendment or supplement thereto, shall not be sold, assigned, leased, transferred or otherwise be disposed of unless the written consent of the Railroad Commission to such sale, assignment, lease, transfer or disposition shall have first been obtained.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 13<sup>th</sup> day of

June, 1938.

Walter W. Moore  
Leon G. White  
Frank R. Newell  
Robert W. Wabford  
Ray H. Riley  
Commissioners.

APPENDIX "A"

<u>Commodity</u>	<u>From</u>	<u>To</u>
Agricultural Implements, viz.: Tractors, Ploughs, Harrows, Harvesters, Corn Shellers.	Stockton	San Joaquin Delta Sacramento Delta
Bags and Bagging	San Francisco Bay Terminals Sacramento Stockton	San Joaquin Delta Sacramento Delta
	San Francisco Bay Terminals	Stockton Sacramento
Grain, Grain Products and related articles as described in Item No. 20 of Appendix "A" of C.R.C. Decision No. 30640, as amended in Case No. 4088 Part "F" and Case No. 4118.	San Francisco Bay Terminals	Vallejo Stockton
	Petaluma	Vallejo San Joaquin Delta Sacramento Delta Stockton
	South Vallejo Port Costa	San Francisco Bay Terminals Stockton
	South Vallejo	Petaluma Port Costa
	Port Costa	South Vallejo
	Stockton	San Francisco Bay Terminals Petaluma South Vallejo Port Costa San Joaquin Delta Sacramento Delta
	San Joaquin Delta Sacramento Delta	San Francisco Bay Terminals Petaluma South Vallejo Port Costa Sacramento Stockton

<u>Commodity</u>	<u>From</u>	<u>To</u>
Fertilizer	San Francisco Bay Terminals	Vallejo San Joaquin Delta Sacramento Delta Stockton Sacramento
	Petaluma	Vallejo San Joaquin Delta Sacramento Delta Stockton
	South Vallejo	San Francisco Bay Terminals Petaluma Stockton
	Stockton	San Francisco Petaluma San Joaquin Delta Sacramento Delta
Hay and Straw	Stockton	San Joaquin Delta
	San Joaquin Delta	San Francisco Bay Terminals Petaluma Sacramento Stockton
	Sacramento Delta	San Francisco Bay Terminals Petaluma Sacramento Stockton

The term "San Francisco Bay Terminals" when used in this appendix refers to the following:

**San Francisco, California**

All wharves, docks and piers within the City of San Francisco on the mainland San Francisco Bay side from the Presidio on the north to the San Francisco-San Mateo County line on the south.

**Oakland, California**

All wharves, docks and piers located in Oakland between the Key Route mole and the Western Pacific mole; and on the Oakland side of the Oakland Estuary between the Western Pacific mole and the Fruitvale Avenue Bridge.



Alameda, California

All wharves, docks and piers within the city limits of Alameda on the Alameda side of the Oakland Estuary, between the Southern Pacific mole and the Fruitvale Avenue Bridge.

Berkeley Municipal Wharf.

Richmond, California

All wharves and docks located within the city limits of Richmond from Point San Pablo to the Inner Harbor, both inclusive.

The term "San Joaquin Delta" when used in this appendix refers to the following:

All landings on navigable waters tributary to the San Joaquin River below Stockton, as hereinafter described, and above Antioch but not including landings on Georgiana Slough and landings on Three Mile Slough.

The term "Sacramento Delta" when used in this appendix refers to the following:

All landings on navigable waters in the territory west of the Sacramento River having outlet into the Sacramento River above Collinsville, also landings on Georgiana Slough and landings on Three Mile Slough located between the Sacramento River and Seven Mile Slough.