

**ORIGINAL**

Decision No. 74393

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of ERIC MacDONALD, an individual, )  
doing business as TONDO TRUCK, )  
to transfer operating rights to )  
JERRY O'CONNELL, an individual, )  
doing business as SHAMROCK TRUCK )  
LINES, and RUDDWAY DRAYAGE, INC., )  
a California corporation, and of )  
JERRY O'CONNELL, an individual, )  
doing business as SHAMROCK TRUCK )  
LINES, and RUDDWAY DRAYAGE, INC., )  
a California corporation, to )  
acquire such rights. )

Application No. 50287  
(Filed June 5, 1968)

O P I N I O N

Eric MacDonald, doing business as Tondo Trucking, (MacDonald) requests authority to sell and transfer and Jerry O'Connell, doing business as Shamrock Truck Lines, (O'Connell) and Ruddway Drayage, Inc. (Ruddway) request authority to purchase and acquire certain operating authority as a highway common carrier.

The operative right was granted by Decision No. 70941, dated July 12, 1966 in Application No. 48515 and authorizes the transportation of general commodities, with certain exceptions, between points within the San Francisco Bay Area. Also included as part of the transfer are corresponding interstate operative rights.

According to the agreement of sale MacDonald would transfer to Ruddway that portion of the certificate as set forth in Items 7, 8, 9 and 11 of Appendix A attached to Decision No. 70941 and to O'Connell that portion of the certificate as set forth in Items 1, 2, 3, 4, 5, 6, 10 and 11 of Appendix A attached to Decision No. 70941. Item 11 merely authorizes use of any and all routes between the points involved for operating convenience only.

The agreed consideration is as follows:

Ruddway \$8,000

\$4,000 in escrow upon execution of the agreement and payable on the closing date.

\$4,000 payable on the closing date.

O'Connell \$20,000

\$5,000 in escrow upon execution of the agreement and payable on the closing date.

\$5,000 payable on the closing date unless it is within six months from the date of the agreement, in which case payable six months from the date of the agreement.

\$5,000 payable six months after the second payment.

\$5,000 payable six months after the third payment.

It is alleged that the total of \$28,000 represents the approximate cost of the procurement of the certificate and other costs in keeping it continuously effective through the years.

Applicant buyers are presently engaged in the transportation of property pursuant to various authorities, both permitted and certificated, duly issued by this Commission. As of December 31, 1967, Ruddway indicated a net worth in the amount of \$42,802 and O'Connell indicated a net worth in the amount of \$274,118. O'Connell owns and operates 71 units of equipment and Ruddway 35 units of equipment.

It is alleged that MacDonald entered into the agreement with Ruddway and O'Connell because he now believes that he can offer his primary shippers a more individualized service under his permits than he could heretofore render under the certificate.

Pursuant to Rule 67 of the Commission's Rules of Practice and Procedure applicants request that they be relieved from listing and serving all highway common carriers serving in the area as

required by Rule 37. The application was listed on the Commission's Daily Calendar of June 7, 1968. A copy of the application was served upon the California Trucking Association and no protest has been received.

After consideration the Commission finds that the proposed transfers would not be adverse to the public interest and that the money, property or labor to be procured or paid for by the issue of evidence of indebtedness herein authorized is reasonably required for the purpose specified herein, and such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income. A public hearing is not necessary.

The authorization herein granted shall not be construed as a finding of the value of the rights herein authorized to be transferred.

Jerry O'Connell and Ruddway Drayage, Inc., are placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. On or before May 1, 1969, Eric MacDonald may sell and transfer, and Jerry O'Connell and Ruddway Drayage, Inc., may purchase and acquire, the operative rights referred to in the application.

2. Within thirty days after the consummation of the transfers herein authorized, applicant buyers shall notify the Commission, in writing, of that fact and within said period shall file with the Commission true copies of any bills of sale or other instruments of transfer which may be executed to effect said transfers.

3. Applicant buyers shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations herein to show that they have adopted or established, as their own, said rates and rules. The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings of each applicant buyer shall be concurrent with the consummation of each respective transfer herein authorized. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-A. Failure to comply with and observe the provisions of General Order No. 80-A may result in a cancellation of the operating authority granted by this decision.

4. Certificates of public convenience and necessity are granted to Jerry O'Connell, and Ruddway Drayage, Inc., authorizing them to operate as highway common carriers, as defined in Section 213 of the Public Utilities Code, between the points and over the routes particularly set forth in Appendices A and B attached hereto and made a part hereof.

5. Within thirty days after the effective date hereof, applicant buyers shall file a written acceptance of the certificates herein granted. Applicant buyers are placed on notice that, if they accept the certificates of public convenience and necessity herein

granted, they will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-D.

6. Applicant buyers shall maintain their accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of their operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

7. The certificate of public convenience and necessity granted to Jerry O'Connell in paragraph 4 of this order shall supersede that portion of the certificate of public convenience and necessity granted by Decision No. 70941 and described in Appendix A of said decision for Routes Nos. 1, 2, 3, 4, 5, 6 and 10 set forth in said appendix, which portion of the certificate is revoked concurrently with the effective date of the tariff filings required of Jerry O'Connell by paragraph 3 hereof.

8. The certificate of public convenience and necessity granted to Ruddway Drayage, Inc., in paragraph 4 of this order shall supersede that portion of the certificate of public convenience and necessity granted by Decision No. 70941 and described in Appendix A of said decision for Routes Nos. 7, 8 and 9 set forth in said appendix, which portion of the certificate is revoked concurrently with the effective date of the tariff filings required of Ruddway Drayage, Inc., by paragraph 3 hereof.

9. To the extent that any duplication of operative rights will exist as a result of the authority herein granted, such operative rights may not be separated to permit Ruddway Drayage, Inc., to sell

or transfer one certificate authority and retain another certificate authority to perform the same service.

10. Applicant Jerry O'Connell may issue an evidence of indebtedness in the amount of not exceeding \$15,000 for the purpose specified in this proceeding.

11. Applicants are authorized to deviate from the requirements of Rule 37 of the Commission's Rules of Practice and Procedure.

The authority herein granted to issue an evidence of indebtedness will become effective when Jerry O'Connell has paid the minimum fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$25. In other respects the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 16<sup>th</sup> day of JULY, 1968.

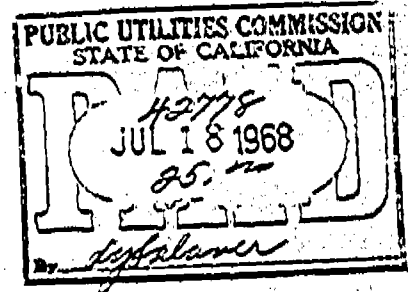
*William Synnott*  
President

*William W. Bennett*

*Augusta*

*Paul P. Morrison*  
Commissioners

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



Jerry O'Connell, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities between all points on and within five miles of the following routes:

1. State Highway 1 between San Francisco and Pacifica, inclusive;
2. U.S. Highways 101 and 101 By-Pass between San Francisco and San Jose, inclusive;
3. State Highway 9 between Oakland and Saratoga, inclusive;
4. State Highway 17 between Oakland and Los Gatos, inclusive;
5. Unnumbered highway between Saratoga and Los Gatos, inclusive;
6. U. S. Highway 40 between San Francisco and San Pablo, inclusive;
7. Between all points and places within 10 miles of San Jose, via all routes;
8. Via any and all routes between said points for operating convenience only.

Through routes and rates may be established between any and all points specified in subparagraphs 1 through 7 above.

Issued by California Public Utilities Commission.

Decision No. 74393, Application No. 50287.

Jerry O'Connell shall not transport any shipments of:

1. Used household goods and personal effects not packed in accordance with the crated property requirements set forth in Item No. 5 of Minimum Rate Tariff No. 4-B.
2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.
3. Livestock, viz.: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, live poultry, mules, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine.
4. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
5. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semi-trailers, or a combination of such highway vehicles.
6. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
7. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
8. Logs
9. Fresh fruits and vegetables (not cold pack nor frozen).
10. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
11. Portland or similar cements transported on vehicles loaded substantially to capacity, either alone or in combination with lime or powdered limestone.

End of Appendix A

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Ruddway Drayage, Inc., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities between all points on and within five miles of the following routes:

1. U.S. Highway 50 between San Francisco and Dublin, inclusive;
2. State Highway 24 between Oakland and Concord, inclusive;
3. State Highway 21 between Walnut Creek and Warm Springs, inclusive;
4. Via any and all routes between said points for operating convenience only.

Through routes and rates may be established between any and all points specified in subparagraphs 1 through 3 above.

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Decision No. 74393, Application No. 50287.

Ruddway Drayage, Inc. shall not transport any shipments of:

1. Used household goods and personal effects not packed in accordance with the crated property requirements set forth in Item No. 5 of Minimum Rate Tariff No. 4-B.
2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.
3. Livestock, viz.: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, live poultry, mules, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine.
4. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
5. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semi-trailers, or a combination of such highway vehicles.
6. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
7. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
8. Logs.
9. Fresh fruits and vegetables (not cold pack nor frozen).
10. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
11. Portland or similar cements transported on vehicles loaded substantially to capacity, either alone or in combination with lime or powdered limestone.

End of Appendix B

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