

ORIGINAL

Decision No. 92267 SEr 10 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
MARIO A. MONTESANO, doing business)
as MONTE-SANO STONE CRAFT, to sell)
and transfer a certificate of)
public convenience and necessity)
authorizing the transportation of)
cement to GARRY BREM and GEORGE R.)
BREM, a partnership, doing business)
as BREM'S TRUCKING.)

Application No. 59485
(Filed February 29, 1980)

O P I N I O N

Applicant Mario A. Montesano (Montesano), doing business as Monte-Sano Stone Craft, by a certificate granted by Decision No. 92126 issued August 19, 1980 in Application No. 59432, is authorized to transport cement as a certificated cement carrier from any and all points of origin to any and all points in the following counties located in the State of California:

- | | | |
|--------------|------------|---------------|
| Alameda | Kings | San Francisco |
| Colusa | Madera | Santa Clara |
| Contra Costa | Merced | Solano |
| Fresno | Sacramento | Sonoma |
| Kern | | |

Applicants Garry Brem and George R. Brem (Brem), a partnership doing business as Brem's Trucking, operate as a radial highway common carrier, a dump truck carrier, and an agricultural carrier under authority of this Commission found under File No. T-64609.

On or about January 1, 1980, Montesano and Brem entered into an agreement, a copy of which is attached to the application as Exhibit A, whereby Brem agreed to purchase a portion of Montesano's certificate of public convenience and necessity, hereinabove identified, which authorizes transportation of cement from any and all points of origin to any and all points in the following counties located in the State of California:

Alameda	San Francisco
Colusa	Santa Clara
Contra Costa	Solano
Sacramento	Sonoma

at and for the purchase price of \$8,000, \$1,000 of which has been paid as a deposit on said purchase price and \$7,000 of which shall be paid within 30 days after the order of this Commission is administratively final.

Brem submits that they are in a financial position to purchase the portion of Montesano's certificate above-described and to conduct operations thereunder. Exhibit B attached to the application is a profit and loss statement for the nine months ended September 30, 1979, and a balance sheet as of September 30, 1979, which shows a profit of \$30,036 for the nine months ended September 30, 1979, and assets of \$111,001, liabilities of \$16,576, and a net worth of \$94,425 as of September 30, 1979. Attached to the application as Exhibit C is a list of the motor vehicle equipment which Brem presently operates pursuant to their existing authority. Brem will purchase additional equipment if it is necessary to conduct the proposed operation. Brem stands ready, willing, and able to conduct and perpetuate the service provided the public in the following counties:

Alameda	San Francisco
Colusa	Santa Clara
Contra Costa	Solano
Sacramento	Sonoma

At all times subsequent to the issuance of Resolution No. 18055 dated August 28, 1979, Montesano has conducted substantial operations in and for the transportation of cement to and between various points in the State of California. Montesano desires to cease and terminate the transportation of cement in the following counties:

Alameda	San Francisco
Colusa	Santa Clara
Contra Costa	Solano
Sacramento	Sonoma

Applicants herein request permission from this Commission pursuant to Section 851 of the Public Utilities Code for Montesano to sell and Brem to purchase the portion of Montesano's certificate of public convenience and necessity authorizing the transportation of cement from any and all points of origin to any and all points within such counties. Approval of this application will prevent the creation of any transportation gap in this particular field and continue to make available to the public an efficient and responsive service such as that heretofore provided by Montesano. Applicants submit that it would not be adverse to the public interest that the sale as proposed be approved by the Commission.

Applicants allege that the transfer and sale will have no effect upon the environment.

If the application is approved Brem will adopt, amend, or reissue the tariffs of Montesano and otherwise file and publish the necessary rates for the transportation of cement to the subject counties.

Inasmuch as this application is verified by applicants and the applicants allege that the transfer proposed herein will not adversely affect competitive carriers, applicants request that the authority requested herein be granted ex parte. The application was

served upon California Trucking Association, eight competing carriers, and eight cement manufacturing companies. Notice of the filing of the application was published in the Commission's Daily Calendar on March 3, 1980. No protests have been filed with the Commission.

Findings of Fact

1. The proposed transfer will not be adverse to the public interest.
2. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusions of Law

1. A public hearing is not necessary.
2. The proposed transfer should be authorized as provided in the order which follows.

The order which follows will provide in the event the transfer is completed for the revocation of the certificate presently held by Montesano and the issuance of in lieu certificates in Appendix form to Brem and Montesano reflecting the transfer from Montesano to Brem of authority to transport cement from any and all points of origin to any and all points in the counties of:

Alameda	San Francisco
Colusa	Santa Clara
Contra Costa	Solano
Sacramento	Sonoma

Brem and Montesano 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 holders a full

or partial monopoly of a class of business. 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. Mario A. Montesano (Montesano), doing business as Monte-Sano Stone Craft, may sell and transfer the operative rights referred to in the application to Garry Brem and George R. Brem (Brem), a partnership doing business as Brem's Trucking. This authorization shall expire if not exercised by December 31, 1980, or within such additional time as may be authorized by the Commission.
2. Within thirty days after the transfer Brem shall file with the Commission written acceptance of the certificate and shall file with the Commission a true copy of the bill of sale or other instrument of transfer.
3. Brem and Montesano shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that they have adopted or established, as their own, the rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of this order on not less than five days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the transfer. The tariff filings shall comply with the Commission's General Order No. 117-Series. Failure to comply with the provisions of the General Order No. 117-Series may result in cancellation of the operating authority granted by this decision.

4. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, certificates of public convenience and necessity are granted to Garry Brem and George R. Brem, a partnership doing business as Brem's Trucking, and to Mario Montesano, doing business as Monte-Sano Stone Craft, authorizing them to operate as cement carriers as defined in Section 214.1 of the Public Utilities Code, between the points set forth in Appendices A and B, respectively, of this decision.

5. The certificate of public convenience and necessity granted to Montesano by Decision No. 92126 issued August 19, 1980 in Application No. 59432, filed February 4, 1980, is revoked effective concurrently with the effective date of the transfer.

6. Brem and Montesano are placed on notice that if they accept the certificates they will be required, among other things, to comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

7. Brem and Montesano 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 April 30 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.

8. Brem and Montesano shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If they elect not to transport collect on delivery shipments, they will make the appropriate tariff filings as required by the General Order.

The effective date of this order shall be thirty days after the date hercof.

Dated SEP 16 1980, at San Francisco, California.

John E. Bryan
President
Richard A. Stevenson
Robert W. Kiville
Richard J. Pedraza
Donald M. Kiville
Commissioners

Garry Brem and George R. Brem, co-partners, doing business as Brems's Trucking, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to conduct operations as a cement carrier as defined in Section 214.1 of the Public Utilities Code from any and all points of origin to any and all points of destination in the following counties subject to the restriction shown below:

Alameda
Colusa
Contra Costa
Sacramento

San Francisco
Santa Clara
Solano
Sonoma

RESTRICTION:

This certificate of public convenience and necessity shall lapse and terminate if not exercised for a period of one year.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision 92267, Application 59485.

MARIO A. MONTESANO
(an individual)
doing business as
MONTE-SANO STONE CRAFT

Mario A. Montesano, an individual, doing business as Monte-Sano Stone Craft, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to conduct operations as a cement carrier as defined in Section 214.1 of the Public Utilities Code from any and all points of origin to all points of destination in the following counties subject to the restrictions shown below:

Fresno
Kern
Kings
Madera
Merced

RESTRICTION:

1. This certificate of public convenience and necessity shall lapse and terminate if not exercised for a period of one year.
2. Whenever Mario A. Montesano, doing business as Monte-Sano Stone Craft, engages other carriers for the transportation of property of Mario A. Montesano or Monte-Sano Stone Craft or customers or suppliers of said individual or company, Mario A. Montesano shall not pay such other carriers rates and charges less than the rates and charges published in the tariff of Mario A. Montesano, an individual, on file with the Commission.

(END OF APPENDIX B)

Issued by California Public Utilities Commission.

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