

ORIGINAL

Decision Co. 17913.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of
 the County of Merced for authorization
 permitting the construction of a high-
 way crossing at grade over the tracks
 of the Southern Pacific Railroad, on
 the Clark and Dutch Corner Road Change,
 No. 557.

Application No. 12,748.

John Outcalt, for the County of Merced.
 Henry W. Hobbs, for Southern Pacific Company.

BY THE COMMISSION:

O P I N I O N

In this application the County of Merced requests authority to construct a road at grade across a track of Southern Pacific Company at a point about midway between Newman and Gustine. The crossing sought was granted ex parte in Commission's decision No. 16,963, dated June 19, 1926, but the County of Merced objected to two of the conditions in the order and requested that it be modified to eliminate the objectional features or that a public hearing be held in the matter. A public hearing was held at Merced on November 30, 1926, before Examiner Austin, at which time Southern Pacific Company appeared and opposed the opening of the crossing except under conditions similar to those imposed in the original order.

The two conditions of the original decision to which the County objected, read as follows:

"(3) The existing crossing located approximately 1268 feet southerly from the crossing herein authorized shall be legally abandoned and effectively closed to public use and travel.

(4) The existing private crossing located approximately one-quarter of a mile northerly from the crossing herein authorized shall be protected by farm gates and shall be kept closed at all times except when in actual use by the private interests entitled to use said private crossing."

Middle Road, which extends in a north and south direction along the east line of Section 31, T. 7 S., R. 9 E., crosses the railroad tracks at an angle of about seventeen degrees at a point 1268 feet south of the crossing applied for in this proceeding. This grade crossing of Middle Road, which the original decision proposed to close, is the one referred to in Condition (3) above. Middle Road intersects Clark and Dutch Corners Road at the northeast corner of Section 31. This intersection is about 1800' north of the grade crossing of said Middle Road with the railroad. Clark and Dutch Corners Road follows along the north side of Section 32 to the northwest corner thereof, where it makes a right-angle turn to the north and is in effect a continuation of Middle Road.

At one time the Clark and Dutch Corners Road and the Middle Road formed a part of the main highway route through the west side of the San Joaquin Valley, but with the opening of a new paved highway parallel to and adjacent to the westerly side of the railroad right-of-way, their use as a through highway ceased and they now serve local needs only. In the territory lying to the east of the Middle Road and its northerly prolongation there are some fifteen ranches tributary to the east and west leg of the Clark and Dutch Corners Road. In addition, there are some ten employees of the Standard Oil Company and their families who reside at a pumping station of that company, located on the Clark and Dutch Corners Road about two miles east of the Middle Road. All of these people do much of their

trading at Newman, which is situated on the railroad about two miles north of the crossing sought in this application. It is now their practice in going to and from town to use the Clark and Dutch Corners Road to its intersection with the Middle Road and thence north one-half mile to another east and west road which crosses the track and by which they gain access to the paved highway into Newman. South-bound traffic turns south at the intersection and travels along Middle Road across the track at the acute angled crossing into the highway. The County proposes to extend the east and west portion of the Clark and Dutch Corners Road westerly across Middle Road, thence southwesterly along the bank of an irrigation ditch some six hundred feet to the railroad right-of-way, thence across the track at the crossing sought to a more direct connection to the paved highway.

As hereinbefore stated, the proposed crossing would be 1,268 feet from the existing crossing of Middle Road. As it would shorten the distance to the paved highway it would probably attract all travel from the existing road with the possible exception that drivers of stock might prefer to use the old crossing rather than to move their herds along the heavily traveled paved highway. The new crossing would offer a far safer means of crossing the track than that afforded by the Middle Road, which, due to its acute angle and steep approaches is a comparatively dangerous grade crossing and one which in the interests of public safety could be abolished if the proposed crossing is opened.

Agitation for this road change did not, however, originate in a desire to eliminate a dangerous grade crossing, but through the wish of the employees of the oil station and the nearby farmers to have access to the paved highway and thereby to be enabled to substitute one-half mile of pavement for approximately a similar distance of graveled road in their route to or from Newman. There would be no appreciable saving in distance, as the length of the

two routes is approximately the same, but some rather extravagant claims as to saving in time that could be effected appear in the record taken in this proceeding.

Instead of desiring the abolishment of the hazardous crossing of Middle Road, it appears that there is considerable objection to its being closed as provided in the original Decision No. 16,963 in this proceeding. On the other hand, there does not appear to be sufficient public necessity to justify the opening of an additional grade crossing in this vicinity, one crossing (either that of Middle Road or the one applied for) being ample to care for all traffic seeking outlet over the track from the Clark and Dutch Corners Road. While some persons might be slightly inconvenienced by the closing of the Middle Road crossing, others would be benefited by the opening of the new one. Conditions do not justify the Commission in authorizing an additional crossing and, therefore, this application should only be granted on condition that the existing Middle Road crossing be closed. Since the proposed crossing would unquestionably be superior to the old one from the standpoint of public safety and, in the opinion of the Commission, would also be superior in public convenience, we believe this proposal to be a proper one. If the pressure of public convenience be sufficient, the crossing can be opened. If not, the authority herein granted can lapse, as it did in a former proceeding for a crossing at this same point which the Commission granted in 1922 (App. No. 7901 Dec. No. 10,861).

It may be noted here that there is also a private crossing in the vicinity of the crossing sought, the necessity for which has long since disappeared. This private crossing is on a private lane used by an owner of property situated west of the railroad in the days when the main road was on the east side of the track. With

the opening of the new paved highway along the west side of the railroad there is now no occasion for even the person for whose benefit it was installed to use the crossing and it should be abolished.

After public hearing we are convinced there is no reason for any material modification of the order heretofore entered in this proceeding and the following order will authorize the crossing under the original conditions, except that we now believe the private crossing above referred to should be abolished instead of equipped with gates as provided in the former order.

O R D E R

Public hearing having been held on the above entitled application, the Commission being apprised of the facts, the matter being under submission and ready for decision, therefore

IT IS HEREBY ORDERED, that permission and authority be and it is hereby granted to the Board of Supervisors of the County of Merced, State of California, to construct a public road at grade across the tracks of the Southern Pacific Company as follows:

Commencing at a point on the East line of the Southern Pacific Railroad Company's right-of-way, said point bearing S. 72° 17' W., 92.0 feet from a point that is S. 33° 57' W., 378.0 feet from a point that is S. 61° 01' W., 82.7 feet from a point that is 36.5 feet South of point of intersection of the west line of Middle Road with the North line of Section 32, Township 7 South, Range 9 East, M.D.B. & M., the last named point being 20 feet West of the Northeast corner of the West 1/2 of the Northwest 1/4 of said Section 32, thence from the hereinabove described point of beginning N. 17° 43' W., 30 feet, thence S. 72° 17' W., 100 feet, thence S. 17° 43' E. along the Southwesterly line of said Railroad Company's right-of-way, 60 feet, thence N. 72° 17' E., 100 feet, thence N. 17° 43' W., 30 feet to place of beginning, containing .137 acres of land;

and as shown by the map attached to the application, said crossing to be constructed subject to the following conditions, namely:

(1) The entire expense of constructing the crossing shall be borne by applicant. The cost of maintenance of said crossing up to lines two (2) feet outside of the outside rails shall be borne by applicant. The maintenance of that portion of the crossing between lines two (2) feet outside of the outside rails shall be borne by Southern Pacific Company. No portion of the cost herein assessed to applicant for the construction or maintenance of said crossing shall be assessed by applicant, in any manner whatsoever, to the operative property of Southern Pacific Company.

(2) The crossing shall be constructed of a width not less than twenty-four (24) feet and at an angle of ninety (90) degrees to the railroad and with grades of approach not greater than two (2) per cent; shall be constructed substantially in accordance with Standard No. 2 as specified in General Order No. 72 of this Commission; shall be protected by suitable crossing signs and shall in every way be made safe for the passage thereon of vehicles and other road traffic.

(3) The existing crossing located approximately 1,268 feet southerly from the crossing herein authorized shall be legally abandoned and effectively closed to public use and travel if and when the crossing authorized is opened to travel.

(4) The existing private crossing, located approximately one-quarter of a mile northerly from the crossing herein authorized, shall be abolished and effectively closed.

(5) Applicant shall, within thirty (30) days thereafter, notify this Commission, in writing, of the completion of the installation of said crossing.

(6) If said crossing shall not have been installed within one year from the date of this order, the authorization herein granted shall then lapse and become void, unless further time is

granted by subsequent order.

The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The authority herein granted shall become effective on the date hereof.

Dated at San Francisco, California, this 18th day of January, 1927.

Emundson

Alsevier

Leon White

John D. Lewis

Commissioners.