

Decision No. 28175

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 the Board of Supervisors of KERN COUNTY
 for an order authorizing the construction
 of a crossing by the County of Kern over
 the tracks of the Southern Pacific Railroad
 in the vicinity of Mile Post BT-345.1.)
) Application
) No.16835

In the Matter of the Application of the
 Board of Supervisors of KERN COUNTY for
 an order authorizing the construction of a
 crossing by the County of Kern over the
 tracks of the Owenyo branch of the
 Southern Pacific Railroad Company, in the
 vicinity of Mile Post EM-451.8.)
) Application
) No.16837

W. K. Mc Ginn, Deputy District Attorney, for Applicant.

H. W. Hobbs, for Southern Pacific Company, Protestant.

BY THE COMMISSION -

OPINION

In Application No.16835, the Board of Supervisors of Kern County have petitioned the Railroad Commission for an order authorizing the construction of a highway crossing at grade over the tracks of the Southern Pacific Company in the vicinity of Buttonwillow and approximately located at Mile Post BT-345.1.

In Application No.16837, the Board of Supervisors of Kern County have petitioned the Railroad Commission for an order authorizing the construction of a highway crossing at grade across the tracks of the Owenyo Branch of the Southern Pacific Company at the station of Leliter, and approximately located at Mile Post EM-451.8.

A public hearing on the above entitled applications was conducted by Examiner Handford at Bakersfield, at which the

applications were consolidated for the receiving of evidence and for decision, were duly submitted and are now ready for decision.

Regarding Application No. 16835, the Asphalt branch of Southern Pacific Company in the vicinity of the proposed crossing is paralleled on the northerly side by a paved county road extending from Bakersfield to Buttonwillow and points west. A tract of land on the southerly side of the Railroad, formerly belonging to Miller and Lux, is being subdivided and portions have now been sold and are now being farmed by other individuals. To the north of the highway referred to a county road along the easterly side of Township 29 South Range 23 East, M.D.B. & M., has been graded and opened to travel for a number of years, this road at present terminating at its intersection with the paved highway parallel to the railroad. On the southerly side of the track a road has also been graded along the township line which connects with roads leading to Tupman and through the Elk Hills Oil Field to Taft. This road has not, however, been opened across the railroad right-of-way and it is this crossing which is involved in the present application.

Such travel as uses this road to the south of the railroad is now crossing the tracks at two private crossings in the vicinity. In order to reach these crossings, it is claimed that the public must trespass on privately owned land. It is stated that nineteen resident farmers would use the crossing, in addition to such general traffic as might use this route in traveling between Taft and points in the vicinity of Buttonwillow. Southern Pacific Company objects to the installation of this crossing, claiming that there is no public necessity for an additional grade crossing in the vicinity.

The carrier operates one mixed train each way three days

a week on this branch and extra train movements are practically negligible. There is no material obstruction to the view at the point of crossing, the chief hazard apparently being that immediately after crossing the track the proposed road would enter a paved high speed highway. In cases where the highway is heavily traveled, an unsatisfactory condition often results but in the present case neither the amount of travel on the highway nor the number of train movements on the railroad are sufficient to create any undue hazard.

After fully considering the evidence in this proceeding, we are of the opinion that if the existing private crossings in the vicinity can be closed and all travel having occasion to cross the tracks at this point be concentrated on the one crossing, such public crossing can very well be established at this point. The application will, therefore, be granted on condition that the County of Kern abandon, insofar as it has the power to do so, any right which it may have in the two private crossings and secure the consent of Miller and Lux to the closing of these crossings.

In Application No. 15237, the County of Kern has opened a road connecting with the State Highway, running from Mojave to Bishop and points north to afford access to a sparsely settled agricultural district lying to the east of the Owenyo branch. The road extends for several miles east of the railroad, connecting with another north and south road. The road has been graded on each side up to the right-of-way line and travel having occasion to cross the tracks uses a private crossing a few feet north of the site of the proposed crossing. There is also another crossing located some 500 or 600 feet to the north of the proposed crossing which will be closed in the event the new crossing is opened.

Southern Pacific Company did not oppose the granting of the application, but requested that if the crossing were granted, applicant bear the expense of relocating its passenger track and freight shed, claiming that the construction of a road across this passing track might hamper the railroad in its operations.

From examination of its witness, however, it appears highly improbable that Southern Pacific Company will be inconvenienced to any material degree by the opening of this road. All vehicular travel that will use the crossing now crosses the tracks at practically the same point and since it appears that both the private crossing now in use and the public crossing a short distance to the north can be closed, it appears reasonable to permit the opening of the new crossing without burdening the County with the expense of relocating a slightly used passing track at an expense of approximately \$3,000. The application will, therefore, be granted.

O R D E R

Public hearings having been held on the above entitled applications, the matters having been consolidated for the receiving of evidence and for decision, the matters having been duly submitted and the Commission being now fully advised,

IT IS HEREBY ORDERED that the Board of Supervisors of the County of Kern, State of California, is hereby authorized to construct a county road at grade across the track of Southern Pacific Company at the location more particularly described in Application No. 16835 and as shown by the maps attached thereto, subject to the following conditions and not otherwise:

- 1- The above crossing shall be identified as Crossing No. BT-345.1 .
- 2- The entire expense of constructing the crossing shall be borne by applicant. The cost of maintenance of that portion 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.
- 3- The crossing shall be constructed of a width of 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 six (6) percent; shall be constructed equal or superior to type shown as Standard No. 2 in our General Order No. 72; shall be protected by a Standard Crossing sign, as specified in our General Order No. 75; and shall in every way be made suitable for the passage thereon of vehicles and other road traffic.

4- Prior to the beginning of the actual construction of the crossing herein authorized, the County of Kern shall file with this Commission a certified copy of an appropriate ordinance or resolution duly and regularly passed, abandoning any rights which the county may have in the two private crossings, located east and west of the crossing herein authorized and shall also file with the Commission the consent of the landowners for whose benefit said crossings are maintained to the closing of said crossings. Upon the completion of the crossing herein authorized and upon its being opened to public use and travel, said private crossings shall be effectively closed to public use.

5- Applicant shall, within thirty (30) days thereafter, notify this Commission, in writing, of the completion of the installation of said crossing and of its compliance with the conditions hereof.

6- The authorization herein granted shall lapse and become void if not exercised within one (1) year from the date hereof unless further time is granted by subsequent order.

7- 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, public convenience and necessity demand such action.

IT IS HEREBY FURTHER ORDERED that the Board of Supervisors of the County of Kern, State of California, is hereby authorized to construct a county road at grade across the tracks of Southern Pacific Company at the location more particularly described in the application, No. 16237, and as shown by the map attached thereto, subject to the following conditions and not otherwise:

1- The above crossing shall be identified as a portion of Crossing No. RAM-451.6.

2- The entire expense of constructing the crossing shall be borne by applicant. The cost of maintenance of that portion 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.

3- The crossings shall be constructed of a width of not less than twenty-four (24) feet with grades of approach not greater than four (4) percent; shall be constructed equal or superior to type shown as Standard No. 2 in our General Order No. 72; shall be protected by a Standard No. 1 Crossing sign as specified in our General Order No. 75, and shall in every way be made suitable for the passage thereon of vehicles and other road traffic.

4- The existing private crossing located one hundred (100) feet north from said Crossing No. BAK-451.6, shall be abandoned and effectively closed.

5- Prior to the beginning of actual construction of the crossings herein authorized, the County of Kern shall file with this Commission a certified copy of an appropriate ordinance or resolution, duly and regularly passed, instituting all necessary steps to legally abandon and effectively close the existing public grade crossing location approximately one thousand four hundred (1400) feet north of the crossing herein authorized and identified as Crossing No. BAK-451.8. Upon the completion of the crossing herein authorized and upon its being opened to public use and travel, said Crossing No. BAK-451.8 shall be legally abandoned and effectively closed to public use and travel.

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

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

Dated at San Francisco, California, this 13th day of December, 1930.

C. J. Lewis
Edmund D. ...
Leon ...
John S. ...
M. J. ...
COMMISSIONERS.