

Decision No. 24436.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of  
The People of the State of California  
on relation of the Department of Public  
Works, Division of Highways, for an  
order authorizing the construction of  
a State highway subway under the tracks  
of the Western Pacific Railroad 1 3/4  
miles east of Doyle, Lassen County.

Application No. 15751.

ORIGINAL

Frank B. Durkee, for Applicant.  
Grover C. Julian, for Board of Supervisors of  
Lassen County.  
C. W. Dooling, for The Western Pacific Railroad  
Company.

BY THE COMMISSION:

OPINION

In this application, which was filed on June 26, 1929,  
The People of the State of California, on relation of the  
Department of Public Works, Division of Highways, requested  
to construct a subway under the tracks of The Western  
Pacific Railroad Company, in the vicinity of Doyle, Lassen  
County. The authority sought was granted by the Commission  
in Decision No. 21365, dated July 8, 1929, and the subway  
is now being constructed.

This decision provided that the cost of construction  
of the subway would be apportioned by the  
Commission by subsequent order and further provision was made  
in the decision entered into between the interested  
parties as to the cost of construction and maintenance of

*CORRECTION*

# CORRECTION

THIS DOCUMENT  
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TO ASSURE LEGIBILITY

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BY THE COMMISSION:

O P I N I O N

In this application, which was filed on June 26, 1929, the People of the State of California, on relation of the Department of Public Works, Division of Highways, requested authority to construct a subway under the tracks of The Western Pacific Railroad Company, in the vicinity of Doyle, Lassen County. The authority sought was granted by the Commission in its Decision No. 21365, dated July 8, 1929, and the subway was later constructed.

This decision provided that the cost of construction and maintenance of the subway would be apportioned by the Commission by a subsequent order and further provision was made that a copy of any agreement entered into between the interested parties relating to the cost of construction and maintenance of

the subway should be filed with the Commission. It appearing that the parties were unable to reach an agreement as to the division of cost, the Commission reopened the matter on December 11, 1931, for further consideration, and a public hearing was held at San Francisco by Examiner Johnson on January 5, 1932. At this hearing evidence relating to the division of cost was taken and the matter was submitted and is now ready for decision.

The grade separation under consideration is located on the State Highway between Susanville, Lassen County, and the Nevada State Line, where a connection with a highway in the State of Nevada is made to provide a route between Susanville and Reno. Prior to the construction of this highway, the county road, which follows the contour of the hills on the westerly side of Long Valley between Constantia and Doyle, was maintained as a State Highway route and carried the travel between Susanville and Reno. The main line track of The Western Pacific Railroad Company was located approximately parallel to this road and the route of the county road crossed and recrossed the tracks seven times between Constantia and Doyle, a distance of nine miles. The new highway was constructed straight across the valley between these two points and it crosses the track but once, and that through the subway involved in this proceeding.

While it was necessary to retain the old county road between Constantia and Doyle in order to provide access to several ranches, the use of the road is now entirely local and travel over it probably does not exceed 10 or 15 vehicles per day. At the time negotiations between the railroad and the Department of Public Works relating to the grade separation were undertaken it appeared feasible to reconstruct portions

of the road in such a manner as to eliminate all of the grade crossings between these two points, with the exception of one at Doyle which was to be reconstructed at a more satisfactory location.

The railroad company accordingly agreed that it would grant an easement for the highway across its right of way and pay fifty (50) per cent of the cost of the grade separation, under the following conditions:

1. That the present county road between Constantia and Doyle be legally abandoned upon completion of the state highway, thus eliminating the grade crossings of the railroad by the present county road. It was understood, however, that a new public grade crossing be substituted for the existing grade crossing at Doyle.
2. That there be included in the cost of the grade separation the filling of the entire portions of the railroad trestle back of the abutments of the subway.
3. That if a cattle pass through the railroad embankment was required in addition to the highway subway, the railroad would not be obligated to pay any part of the cost of such subway.

Subsequent to the filing of the application, Lassen County has relocated the crossing at Doyle under authority granted by the Commission in Decision No. 21365 in Application No. 15477, and has relocated portions of the county road south of the subway in such a manner as to eliminate three grade crossings from the county road route between Constantia and Doyle. Two of these crossings have been legally abandoned and vacated, but it is claimed by the Board of Supervisors that the third crossing, which is located at a point one mile south of the subway, serves several local residences and is used by school children in reaching the Doyle school and cannot be closed.

At the hearing estimates of cost of the changes in the county road that would be necessary in order to eliminate the remaining crossings were presented and it appears that the cost of eliminating these crossings is not at present justified. It therefore develops that the apportionment of the cost of the grade separation is to be based on the work now accomplished.

The work of constructing the subway was performed in part by the Department of Public Works under contract and in part by the railroad company. The cost of the work was as follows:

Work performed by the Department of Public Works . . . . .	\$21,674.31
Work performed by The Western Pacific Railroad Company . . . . .	<u>11,304.86</u>
Total Cost of Subway . . . . .	\$32,979.17

It is the contention of the railroad company that the changes in the county road are entirely independent of the subway construction and that these changes could have been made and the crossings eliminated regardless of the subway. The Department of Public Works, on the other hand, claims that the construction of the new highway between Constantia and Doyle and the building of the subway have relieved the railroad company of all through traffic crossing its tracks at grade, and that, while it has not been physically possible to close all of the crossings, the railroad has received substantial benefit. When the limited use to which the remaining grade crossings are put is taken into consideration, we are of the opinion that there is considerable merit in the position taken by the Department of Public Works.

If this project were considered on the basis of a new highway crossing the railroad at separated grades, it would be consistent with the past practice of the Commission to assess the carrier approximately twenty-five (25) per cent of the cost

of the grade separation. Where existing crossings have been eliminated, it has been the practice to assess the carrier fifty (50) per cent of the cost. At the time this project was initiated The Western Pacific Railroad Company proposed that, if the grade crossings of the county road could be closed, it would be willing to bear fifty (50) per cent of the cost of the subway. Using its own measure of the benefit derived, it would, therefore, appear that it considered the elimination of these crossings to be worth the difference between twenty-five per cent and fifty per cent of the cost of the grade separation. Two of the crossings have been closed, another moved to a more satisfactory location, and the remaining crossings relieved of at least ninety per cent of the travel. Under these circumstances it appears reasonable that the railroad bear one-half of the difference between twenty-five per cent and fifty per cent, or thirty-seven and one-half per cent.

An order will, therefore, be entered apportioning the cost of this grade separation on this basis.

#### FIRST SUPPLEMENTAL ORDER

The above entitled application having been reopened for further consideration, a public hearing having been held, the matter being submitted and ready for decision;

IT IS HEREBY ORDERED that the cost of constructing the separation of grades heretofore authorized by this Commission in its Decision No. 21365, dated July 8, 1929, in the above entitled application, be borne sixty-two and one-half ( $62\frac{1}{2}$ ) per cent by the applicant and thirty-seven and one-half ( $37\frac{1}{2}$ ) per cent by

The Western Pacific Railroad Company.

In all other respects the Commission's Decision No. 21365, dated July 8, 1929, shall remain in full force and effect.

Dated at San Francisco, California, this 12 day of February, 1932.

C. C. Jerney  
Leon O'Connell  
M. A. Lee  
W. B. Harris  
Fred G. Stewart  
Commissioners.