

Decision No. 25373.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of the People of the State of California, on relation of the Department of Public Works for an order authorizing the abandonment and closing of an existing crossing at grade of the State highway and the Southern Pacific Railroad, near Tipton, Tulare County, California.

Application No. 18120.

ORIGINAL

Frank B. Durkee, for Applicant.  
Leroy McCormick, Assistant District  
Attorney, for the County of Tulare.  
Henry W. Hobbs, for Southern Pacific Company.

WHITSELL, COMMISSIONER:

O P I N I O N

This is an application of the People of the State of California, on relation of the Department of Public Works, to close an existing crossing of a state highway at grade over tracks of the Southern Pacific Company near Tipton, Tulare County. The application was filed on April 29, 1932, and on May 18, 1932, the Commission entered an ex parte order granting the permission sought (Decision No. 24774). On August 4, 1932, the County of Tulare filed application for rehearing in this matter, in which it objected to the closing of the crossing and requested that a hearing be held and the order be set aside. A public hearing was held at Visalia on September 28, 1932.

The crossing involved in this proceeding is known as Crossing No. B-258.4 and was formerly a crossing of State Highway Route 4 with the main San Joaquin Valley line of the Southern Pacific Company. Until recently this highway route was located on the westerly side of the railroad, southerly from the City of Tulare to Crossing No. B-258.4 but, during the past year, the Department of Public Works

has constructed a new highway entirely on the easterly side of the tracks and it is no longer necessary for through highway traffic to cross the railroad. The old constructed highway southerly from the City of Tulare, to and including the crossing involved, was relinquished to the County of Tulare and is now county road.

From a consideration of the record, it appears that this old state highway crossing serves no public convenience and necessity that cannot be served by adjacent crossings and, if the question of public convenience and necessity were the only consideration, it would be recommended that the present order of the Commission remain undisturbed. It appears, however, that the crossing involved is no longer within the jurisdiction of the Department of Public Works and that, although that Department is the applicant in this proceeding, the County of Tulare has jurisdiction over the crossing. Since the County is not disposed to close the crossing and, in fact, protests such closing, it is my opinion that, although little or no necessity for the crossing exists, I am not justified in recommending the closing of this crossing upon the present record in this proceeding. Therefore it is recommended that the previous order of the Commission be rescinded and the application dismissed.

FIRST SUPPLEMENTAL ORDER

Public hearing having been held in the above entitled application and it appearing that the applicant herein is without authority to carry out the abandonment of the grade crossing as requested herein,

IT IS HEREBY ORDERED that the Commission's Decision No. 24774, in the above entitled proceeding, be rescinded and the application dismissed.

The foregoing opinion and order are hereby approved and

ordered filed as the opinion and order of the Railroad Commission  
of the State of California.

Dated at San Francisco, California, this 21<sup>st</sup> day  
of November, 1932.

Oliver

Leon Whidely

W. H. Cunn

W. B. Harris

Fred G. Stewart

Commissioners.