

Decision No. 10839

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

In the matter of the application of the Board of Supervisors of the County of San Joaquin, State of California, for permission to construct a public road at grade across the tracks of the Southern Pacific Company at the line between Sections 14 and 23, Township 1 South, Range 6 East, Mount Diablo Base and Meridian, about one mile north of Lathrop, San Joaquin County.

) Application No. 6633.

R. C. Pardoe, for County of San Joaquin.

Elmer Westlake, for Southern Pacific Company.

W. C. Foss, in propria persona.

MARTIN, Commissioner:

O P I N I O N
ON ORDER FOR REHEARING ON PROPOSED
MODIFICATION OF PRIOR ORDER.

The above entitled proceeding originally came before the Commission in the form of an application for permission to construct the L. J. Squires Road No. 461 at grade across the tracks of Southern Pacific Company, on the southerly line of Section 14, T. 1 S., R. 6 E., M.D.B. & M., a little over one mile north of Lathrop.

In this original application the following statement was made:

"That if this application be granted, the Board of Supervisors of San Joaquin County is willing that the first highway crossing located about one-quarter of a mile north of the crossing herein requested be abandoned."

In accordance with the usual procedure in such cases the Commission addressed a letter to Southern Pacific Company to

ascertain whether the Railroad would agree to or oppose the granting of this application and in answer to this inquiry the Railroad wrote a letter containing the following statement:

"Southern Pacific Company offers no objection to permitting County of San Joaquin to construct highway crossing at grade over our right of way and tracks in vicinity of Lathrop, the location, as we understand it, being shown within red inked lines on map hereto attached; this with the understanding that the County will assume all expense of constructing and paving the new crossing and installation of any necessary protective device, we thereafter to maintain and operate such protective device and bear the cost of maintaining the crossing between the rails of main track and for a distance of not more than two feet outside thereof. This approval is also given with the understanding that County will legally close and cause to be abandoned for all public purposes except railroad use by this Company the existing crossing shown within yellow inked lines on map."

The map attached to this letter indicated in red inked lines the location of the L. J. Squires Road No. 461, and in yellow inked lines the location of the first road to the north, sometimes known as the Meyers Road, which is actually one-half miles instead of one-quarter mile north of the L. J. Squires Road No. 461, as indicated in the application.

In the meantime the Commission's engineering department made an investigation of the conditions at the proposed crossing and recommended that the application be granted. Thereupon, in accordance with the usual procedure, the Commission made an ex parte order (Decision No. 8915) dated May 2, 1921, in which permission was granted the County of San Joaquin to construct this road at grade across the tracks of Southern Pacific Company subject to certain conditions among which was the following:

"5' The existing public crossing located one-half mile north of the crossing herein authorized shall be closed."

Some months later informal requests were made to the Commission by certain interested citizens for a modification of this decision by eliminating the above quoted condition, whereupon the Commission ordered a hearing on the proposed modification of prior

order in this proceeding, which was held at Stockton on July 24, 1922.

It appears that the crossing of the L. J. Squires Road No. 461 has actually been constructed at a cost to the County of \$896.14, but that the Meyers crossing, one-half mile to the north, has not been closed, as required by the order.

The Southern Pacific's railroad in this location is a highspeed, double-track, main line running northerly and southerly between Lathrop and Stockton, over which a large volume of railroad traffic moves. Approximately one-half mile west of the railroad is located a northerly and southerly paved highway known as the Mossdale Highway and the principal purpose of crossings over the railroad in this vicinity is to give access to this highway from the territory east of the track. A few hundred feet east of the track there is a north and south dirt road known as the Peter Alix road which extends northward from Lathrop to French Camp. In addition to the newly constructed L. J. Squires crossing and the old so-called Meyers crossing there is a crossing of the J X Road one-half mile north of the Meyers crossing and there is another County Road crossing one mile south of the L. J. Squires crossing.

At the hearing the County contended that although it was willing that the Meyers crossing be closed this road was not a public road, as it never had been dedicated or accepted by the County and, therefore, the County did not have the power to order its abandonment. There seems to be, however, some question as to the merit of this contention, as it is evident that the public has enjoyed uninterrupted use and travel of this road for many years.

The closing of this road would result in some inconvenience to a few of the residents and property owners in this vicinity, and it was claimed that the location of the old Meyers road was a more satisfactory location than the new L. J. Squires road because of the

hazard of flood. There have been two floods in the past thirteen years, caused by the breaking of levees during periods of high water, the last of these floods having occurred some eleven years ago.

It was testified that there were about twelve families on the easterly side of the railroad who are directly interested in and benefitted by the Meyers crossing, but it appears that all of these families actually do have an outlet either to the north or to the south by means of the Peter Albx road and the crossings on either the north line or the south line of Section 14 to the highway and that the principal benefit that they receive from the Meyers crossing is to enable them to use an additional half-mile of paved road in lieu of an equivalent distance of relatively poor dirt road.

The physical conditions surrounding the locations at either the Meyers crossing or the L. J. Squires crossing are practically the same in so far as public safety is concerned. The view is open and unobstructed at both of the crossings and the track is about six feet above the adjacent natural ground surface permitting equal grades of approach in either location. It thus appears that, so far as the public safety is concerned, there is little choice as to which of the crossings is to be permitted if only one. On the other hand, every grade crossing constitutes a very real public hazard and it is the duty of the Commission to decline to authorize the installation of any public grade crossings that are not clearly necessary for public convenience and necessity.

In view of the location of existing roads in this vicinity and considering the sparsity of population, it does not appear that public necessity and convenience require three crossings within a distance of one mile in this vicinity, but since the hazard of

accident would be equal at either of the crossings in question it seems proper that the local authorities should, in this instance, be permitted to select whichever location for the crossing they believe will best serve the local interests, and it must be assumed that the Board of Supervisors is the best judge of this local demand.

While it is realized that an inconvenience might accrue to certain individuals should either of the two crossings in question be closed, the natural sympathy that is felt for these individuals must not be allowed to stand in the way of adequately protecting, as far as it is possible to do so, the safety of the entire public. Under these circumstances it appears that the prior order of the Commission in this matter is right and proper, under the terms of which the Board of Supervisors have the choice of maintaining the old Meyers crossing or of maintaining the new L. J. Squires crossing, as it elects, but not both of them; if the County elects to maintain the new L. J. Squires crossing it is its duty, under the terms of the order by which this crossing was authorized, to abandon the Meyers crossing to public use and travel, insofar as the County of San Joaquin has power so to do. Whether or not this Meyers crossing shall continue to be maintained as a private crossing is a subject which will then be a matter of private agreement between the Railroad Company and the private interests to be accommodated.

The following form of order is submitted:

O R D E R

Proceedings in the above entitled matter having been reopened on the Commission's own motion, a public hearing having been held, the Commission being apprised of the facts and the matter being under submission and ready for decision,

IT IS HEREBY FOUND AS A FACT, that public convenience and necessity require the establishment and maintenance of a public crossing at grade across the tracks of Southern Pacific Company

at a point on the south line of Section 14, T. 1 S., R. 6 E., M.D.B. & M., or at a point one-half mile northerly therefrom, but not at both of these locations; therefore

IT IS HEREBY ORDERED, that the proceeding instituted for the proposed modification of the prior order herein be and the same is hereby dismissed and that said prior order (Decision No. 8915) and all conditions thereof shall be and continue in full force and effect without modification.

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 10th day of August, 1922.

H. B. Brundage
Erving Martin
Charles A. Farnsworth
J. P. Pennington

Commissioners.