

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Decision No. 1815

In the matter of the Application
of CALIFORNIA-WESTERN RAILROAD &
NAVIGATION COMPANY and UNION LUMBER
COMPANY for an order authorizing the
sale of a portion of the property
of the former company to the latter
company.

Application No. 1325.

Charles A. Strong for applicants.

THELLEN, Commissioner.

O P I N I O N.

This is an application by California-Western Railroad & Navigation Company for an order authorizing the sale of certain real estate in Fort Bragg to Union Lumber Company and the lease to Union Lumber Company of the right to use in so far as necessary for its purposes, the Railroad Company's wharf at Fort Bragg.

California-Western Railroad & Navigation Company was incorporated on July 1, 1905, for the purpose of constructing a line of railroad between Fort Bragg and Willits, in Mendocino county. This line of railroad has been completed and is now in operation. The capital stock of the Railroad Company has been owned from the first by Union Lumber Company, which company has a saw mill and extensive yards at Fort Bragg and built the railroad primarily to assist it in the development of its lumber business.

These two companies now find it desirable to make certain segregations of their property interests, as I shall now proceed to point out.

The wharf in Fort Bragg harbor belongs to the Railroad Company and is operated as a public utility. More than seventy per cent of the freight shipped over the wharf consists of the output of the Union Lumber Company, and of supplies and materials purchased by this company. Union Lumber Company desires to make improvements in the wharf and to do certain dredging in the bay, but naturally

does not desire to incur these expenditures on the property of someone else, unless the Lumber Company is assured of a long term right to use the wharf in connection with its business. The Railroad Company is unable to make the necessary improvements and its pecuniary interest in such improvements is far less than that of the Lumber Company. Accordingly, it is now proposed that the Railroad Company shall convey to the Lumber Company for a period of fifty years, the right to use the wharf and moorings at Fort Bragg in the conduct of its business; that the Railroad Company is to continue the operation of the wharf as a public utility, but that the actual handling of freight and material on the wharf will be done by the Lumber Company, which is to be paid the actual cost of the service; and that the Lumber Company is to make such repairs and improvements in the wharf, moorings and harbor as it may consider advisable and necessary, and that the Railroad Company is to pay to the Lumber Company such proportion of the cost of repairs and improvements as the shipments over the line of the Railroad Company bear to the total shipments over the wharf. The Lumber Company is interested in maintaining the wharf and harbor in good condition, so as to reduce and keep down sea freight charges.

The parties desire also to make certain changes in real estate ownerships. The Railroad Company desires to convey to the Lumber Company certain parcels of land, which are more particularly described in draft of deed which is attached to the petition herein and marked "Exhibit A." That portion of this property which is marked in red on the map which accompanies the petition herein, and is marked "Exhibit B," is now used for piling lumber of Glen Blair Redwood Company, in accordance with contract dated February 6, 1905, between Glen Blair Redwood Company and Union Lumber Company. While the Railroad Company has certain tracks over this property, these tracks are not used by the Railroad Company, for the reason that the grade is too steep and the curvature too great. As this property is not really used and useful

in the Railroad Company's business, but is used primarily for storing lumber, it is now proposed to have the Railroad Company convey the same to the Lumber Company. As part of the agreement, it is understood that the Lumber Company will grant to the Railroad Company the use of a track belonging to the Lumber Company and running from the depot grounds to the wharf. Although such track has been operated by the Railroad Company, it has not had title thereto and is at present in the position of not owning any feasible route to its wharf.

The portion of the property to be conveyed by the Railroad Company which is marked in blue on Exhibit "B" constitutes a part of the Railroad Company's right of way to Noyo Chute. While the Railroad Company owns a right of way part way to Noyo Chute, the Lumber Company has title to that ~~part~~ portion of the right of way which is nearest to Noyo Chute, so that the Railroad Company owns part of the right of way and the Lumber Company the right of way for the remaining distance. It is now proposed to convey the fee of the Railroad Company's property to the Lumber Company and to have the Lumber Company convey to the Railroad Company the necessary right of way the entire distance from the depot grounds to Noyo Chute.

That portion of the property to be conveyed by the Railroad Company to the Lumber Company which is marked in green on Exhibit "B" includes the round house, station, repair shops and terminal yards of the Railroad Company. This property was originally conveyed by the Lumber Company to the Railroad Company, but such errors ~~xxxxx~~ in the description were made that it is now proposed to include this property with the other adjacent property which is to be conveyed by the Railroad Company to the Lumber Company, and the Lumber Company is then to re-convey this property, by deed containing the accurate descriptions, to the Railroad Company.

The Lumber Company proposes to pay to the Railroad

Company for the real property which it is to receive, and for the right to use the wharf, as aforesaid, the sum of fifty thousand dollars, and also to enter into the agreements and make the conveyances on its part which have hereinbefore been referred to. This price has been agreed upon between the parties as being fair. While the two companies are controlled by the same men, so that it is difficult to deal with one another at arm's length, this sum has been agreed upon between them in good faith as being fair. It is at present impossible for me to say that this sum represents an adequate consideration for the use of the wharf for fifty years. This Commission must, of course, see to it that no discrimination exists in the rates paid for the use of the wharf as between the Union Lumber Company and other patrons, and the Union Lumber Company does not, itself, desire that any such discrimination shall exist. While I shall recommend that the application be granted, it will be on the understanding that the Commission reserves the right, which it would have in any event, to examine at any time more closely into the question of the rates or rentals charged for the use of the wharf.

I am of the opinion that the transactions which I have indicated are being entered into in good faith for the purpose of making the proper segregations between the property interests of the Railroad Company and the Lumber Company and of straightening out existing difficulties in descriptions, and recommend that the application be granted. The order, however, should contain a condition to the effect that the Railroad Company's conveyance of real estate to the Lumber Company, and its agreement with reference to the use of the wharf, should become effective only concurrently with the delivery by the Lumber Company to the Railroad Company of a deed or deeds carrying out the Lumber Company's part of the agreement. This condition, of course, is inserted for the purpose of preventing the possibility that the Railroad Company might find itself in the position of having conveyed its property without having received a

satisfactory conveyance of the property which is to be deeded to it by the Lumber Company. While this Commission's authority is not necessary for the conveyance of property by the Lumber Company, this company not being a public utility, the Commission is interested in seeing to it that the Railroad Company's rights are protected, so that it may continue to be in a position to serve the public efficiently.

I submit herewith the following form of order:

O R D E R.

CALIFORNIA-WESTERN RAILROAD & NAVIGATION COMPANY having applied for an order authorizing the conveyance to Union Lumber Company of certain real property in Mendocino county, California, more particularly described in draft of deed which is attached to the petition herein and marked "Exhibit A," and also authorizing the conveyance to Union Lumber Company of the right for a period of fifty years to the use of the wharf and moorings at Fort Bragg by Union Lumber Company, in so far as necessary in the conduct of its own business, and UNION LUMBER COMPANY having joined in said application, and a public hearing having been held,

IT IS HEREBY ORDERED that said application be and the same is hereby granted, on the following conditions and not otherwise, to-wit:

1. Before the agreement with reference to the wharf is executed and the conveyance of the real property made, California-Western Railroad & Navigation Company shall first have presented to the Railroad Commission a form of deed from Union Lumber Company and shall ~~first~~ have secured from the Railroad Commission a supplemental order approving the same, this deed to convey to California-Western Railroad & Navigation Company--

(a) An easement for the use of such track or tracks as may be necessary and convenient in the conduct of the Railroad

Company's business between the Company's terminal grounds and the wharf in Fort Bragg harbor, to the end that the Railroad Company may secure an unincumbered title to the necessary connecting link between its terminal grounds and its wharf;

(b) The necessary right of way for such track or tracks as may be necessary to give to the Railroad Company adequate means of communication between its terminal grounds in Fort Bragg and Noyo Chute;

(c) The unincumbered fee by proper descriptions, of the property used by the Railroad Company for round house, station, repair shops and terminal yards at Fort Bragg.

2. The agreement with reference to the use of the wharf should be substantially in the terms outlined in the petition herein.

3. The wharf at Fort Bragg shall continue to be operated as a public utility, with the same rights therein in behalf of the public as now exist, and the Railroad Commission reserves the right, notwithstanding any agreement between the parties hereto, to investigate at any and all times the rates, rentals and service in connection with said wharf.

4. After execution, a certified copy of each deed and agreement referred to herein shall be filed with the Railroad Commission.

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 21st day
of September, 1914.

John M Esbleman

H. H. Overland



Max Thelen

Commissioners.