

ORIGINAL

Decision No. _____.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Decision No. 11741

In the matter of the application of)
the WESTERN PACIFIC RAILROAD COMPANY)
for an order permitting it to construct,)
maintain and operate its line of railroad)
at grade, first, across certain public)
roads, highways and streets in the counties)
of Alameda and Santa Clara and in the City)
of San Jose, second, across certain tracks) Application No. 3139
of the Southern Pacific Company in the coun-)
ties of Alameda and Santa Clara, third,)
across certain tracks of Peninsular Railway)
Company, and fourth, across certain tracks)
of San Jose Railroads in the County of Santa)
Clara and in the City of San Jose.)
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A. E. Baldwin, Allan P. Matthew and E. M. Ray for applicant.
George D. Squires for the Southern Pacific Company.
Louis Oneal and Wm. F. James for the Peninsular Railway
Company and San Jose Railroads.
John Roll, Henry Ayer and Irving L. Ruder for Board of
Supervisors of Santa Clara County.
Earl Lamb and T. H. Reed for City Council of San Jose.
T. P. Wittschen and P. A. Haviland for Board of Super-
visors of Alameda County.
L. D. Bohnett, J. E. Curtis, E. A. Wilcox and Grant R.
Bennett for the Willow Glen Improvement Club and
Residents of the Willows.
Paul W. Dee for the Traffic Bureau of San Jose Chamber
of Commerce.
Jos. E. Bone, E. E. Chase and Jos. T. Brooks for the San
Jose Chamber of Commerce.
S. F. Leib in propria persona and other owners of the
Imperial Walnut Orchard.
W. L. Clark for State Highway Commission.

DEVLIN AND GORDON, Commissioners.

O P I N I O N.

In this application the Western Pacific Railroad Com-
pany asks permission to construct its track across the public
highways and railroads on the line of its extension from Niles
to San Jose. Forty-seven streets and highways are to be
crossed, and eleven single and double tracks of steam, electric
interurban and street railroads. Eight of the proposed highway

crossings are in Alameda County, twenty-five in Santa Clara County, eleven within the incorporated City of San Jose, and three are partly within the City of San Jose and partly within unincorporated territory in Santa Clara County. Three of the proposed crossings are with state highways.

Two hearings were held upon this application. At the first hearing the engineer of the Western Pacific testified concerning the conditions at the various crossings and the methods he thought should be employed to protect them. After that hearing the Commission's engineering department made a study of the situation and reported to the Commission its ideas concerning the protection which should be installed. A copy of this report was sent to each of the interested parties prior to the second hearing. Either at the first or second hearing the engineers and representatives of all the interested parties, including the Commission's engineer, testified, and various schemes of protection were discussed. No great difference in opinion obtained as to the methods to be employed. Grade separations were proposed for several crossings in San Jose in the course of the two hearings but those who suggested them had given no consideration to the details of the grade separation problem and their testimony was directed merely to the desirability of separating grades at streets with heavy traffic - a matter concerning which there can be no dispute. There are, however, so many difficulties in the way of bringing about grade separations where the country is as level as it is at San Jose, and the streets so close together, that the traffic over the Western Pacific and the city streets will not justify the expense involved at this time.

In this opinion it appears to us to be unnecessary

to consider in detail the conditions surrounding the crossings, to discuss the various methods of protection suggested, or to give the reasons which have led us to require the several protective installations set forth in the following order. The reports of traffic, the reports of our own engineers, and the testimony have all been carefully weighed; each crossing was examined by a member of the Commission; the protection ordered has been decided upon after due consideration; and it seems unnecessary to extend this opinion by a discussion of these details.

The City of San Jose has granted the Western Pacific Company a franchise to construct its track across the various streets which lie within the limits of the city. At the time the franchise was granted, however, either the plans of the Western Pacific were not entirely known or the City failed to understand them as it now understands them, for its present attitude toward the construction of the Western Pacific in the city is not entirely in line with the action of the City Council in unanimously granting the Railroad the franchise.

The line of the Western Pacific enters the city limits of San Jose from the north near McKee Street; in a southerly direction traverses the portion of the city east of Coyote River; leaves the city again at William Street, to enter it on the south side near the proposed crossing of Keyes Street; and again leaves it on the southerly limits of the city near the intersection of the south line of the city with the main line tracks of the Southern Pacific Company. From near this point a spur track will be constructed on and along Fifth Street to Virginia Street. After the city limits are crossed below Keyes Street the line follows a westerly course for some distance.

then a northerly course to its proposed terminus at the Alameda. At no point on this line are the limits of the city entered and at no point are they very far removed from the city limits. The line, in other words, taken as a whole, encircles the city on three sides, on two of which it is entirely in unincorporated territory in the county of Santa Clara.

The city takes the attitude that inasmuch as the territory adjacent to the city, but now in the county, will eventually become part of the city of San Jose, and the Western Pacific's scheme of construction is intimately connected with the solution of its transportation problems, it is interested in the location of this line and the proper protection of the crossings, even though the crossings may now be in the county.

At the first hearing the city desired the application of the Western Pacific be considered in two parts. It was testified at the hearing that it was the understanding of the city officials that the passenger station would be located somewhere near the crossing of the Western Pacific with the Southern Pacific Company's main line to the east of Monterey Road, and as it was familiar with the location of this portion of the line it desired the Commission to consider that at this time, postponing consideration of the balance of the line to the westward. The location of the freight station will be at the terminus of the line on the Alameda; representatives of the Western Pacific stated very positively that the lines both to the east and to the west of the Monterey road were part of the same scheme to tap the sources of traffic; and there seems to be no reason why they should not be considered together.

To the west of the city is the Willows District, a highly developed residential section which will be traversed

by the railroad. Property owners in this section feel that their property will be greatly damaged by the coming of the railroad, and partly for this reason and partly because the Southern Pacific Company has secured permission from the Commission to build a line through this territory not far from the line of the Western Pacific, the city takes its present attitude in regard to the portion of the line to the west of the Monterey Road. Counsel representing the residents of Willows sought an opportunity to show the Commission that the public necessity of the railroad, through this section, would not counterbalance the damage to property and the hazard created by its construction. While the Commission may and does sincerely sympathize with those who find their property injured by the construction of a railroad in its neighborhood. under conditions such as are found herein, it has no power to refuse such construction on those grounds; eminent domain proceedings being provided to dispose of that matter; and as far as the danger attending the construction of the crossings is concerned, while it must be acknowledged that every new grade crossing creates a certain hazard, neither the amount of traffic using the highways in the Willows District nor the physical conditions surrounding the crossings makes it impossible for them to be amply and safely protected at grade.

The present attitude of the city toward this whole matter is set forth in Case 1151, filed by the city on September 26, between the first and second hearings on this application. This complaint is directed against the Southern Pacific Company and the Western Pacific Railroad Company. In it the Commission is asked to suspend the execution of its order in the application of the Southern Pacific Company which

was granted by the Commission some eighteen months ago; to postpone its decision in the present application, pending a decision in regard to the case; and, after investigating the entire situation, to order the installation of a union passenger depot, the installation of a union freight depot, the reconstruction and joint use of the railroad tracks existing and proposed, and the adequate protection of all crossings. At the final hearing on this application the city requested that a decision be postponed until the case should have been decided.

After careful consideration we believe that this request cannot properly be complied with and the requested delay granted. The Commission's order in this matter will be permissive only; it will prescribe the manner in which the crossings shall be made, the particular points of crossing and the protection which shall be afforded, all of which questions are pertinent to this application; and it must, of course, be clear that as the Western Pacific is aware of the case referred to, any expenditures made by it will be at its own risk. If Case No. 1152 had been pending at the time the application was filed, it is entirely possible that action on the application would have been delayed until that case was decided, but the application was filed a month before the case and applicant is entitled to a decision on the merits of its application regardless of proceedings which may have been filed at a later day.

San Jose, as has been indicated, desires to bring about the joint use of all industry tracks within the city, a matter not now properly before the Commission in this proceeding but which will be considered when properly presented.

The present line of the Southern Pacific would undoubtedly afford ample facilities to care for the traffic of both the Western Pacific and the Southern Pacific for many years to come; but if any construction should be necessary the money should be expended in double tracking the present Southern Pacific line rather than in building an independent one. If this were done no additional right of way would be needed, duplication of investment would be dispensed with, all additional grade crossings would be avoided, and both roads would unquestionably be in a position to operate faster, with greater safety, more economically and more efficiently than if they had independent lines into San Jose. The Union Depot matter would solve itself, and the City of San Jose, as well as the towns between San Jose and Niles, would be better off, while the shippers would be as well served as if both lines were built.

In their report our engineers recommended the closing of two streets (Owens Street and Barnes Avenue) in the City of San Jose which are very little used and where they thought crossings could be eliminated without causing inconvenience. The matter was not commented upon by the city but we shall withhold permission to cross these two highways until the Railroad Company and the City have had an opportunity to get together and see if they can not be dispensed with.

In the application permission is asked to cross Townsend Avenue, but the railroad line has since been slightly relocated and the crossing of this avenue eliminated. Applicant also asks permission to cross Twelfth, Eleventh, Humboldt, Archer and Home Streets, but as none of these streets have been opened the Commission's permission to cross them will be withheld. A crossing at Engineer's Station 276 was added to

the original application, from which it was omitted through error. It appears that the crossing with Hervey Lane can be eliminated by building a road along the south side of the right of way to connect Hervey Lane with Minnesota Avenue. This road we shall expect the Western Pacific Company to build and permission will be withheld for the Hervey Lane crossing. Nearly the same conditions exist at the proposed crossing of the Niles-Irvington Road in Alameda County, but here it will be necessary for the Company to build two roads, one on each side of its line, to avoid the crossing.

Applicant has come to no agreement with the railroad companies whose tracks are to be crossed. Permission, however, will be granted to cross all of them at grade, subject to the proper protection being installed, but in this application we will not undertake to pass upon all the other matters which arise in connection with the crossing of one railroad with another. If the companies at interest fail to agree, the matter can be decided by a supplemental order.

We recommend the following form of order:

WESTERN PACIFIC RAILROAD COMPANY having applied to the Commission for permission to construct its railroad track at grade across certain public roads, highways and streets in the counties of Alameda and Santa Clara, in the City of San Jose; across certain tracks of Southern Pacific Company; the Peninsular Railway Company; and the San Jose Railroads; and it appearing that this application should be granted subject to certain conditions to be hereinafter specified;

IT IS HEREBY ORDERED, That applicant be and the same hereby is granted permission to construct its track at grade, across the following streets and highways, subject to the

conditions hereinafter specified and not otherwise.

Crossing No. 1. A public highway known as Morrison Road, Alameda County, at Engineer's Station 28 plus 40.

Crossing No. 2. County Road No. 1670, Alameda County, at Engineer's Station 46 plus 19.

Crossing No. 3. County Road No. 12, Alameda County, at Engineer's Station 74 plus 18.

Crossing No. 4. Mission Road, Alameda County, at Engineer's Station 171 plus 35.

Crossing No. 5. County Road No. 4201, Alameda County, at Engineer's Station 276 plus.

Crossing No. 6. State Highway, Alameda County, at Engineer's Station 300 plus 71.

Crossing No. 7. County Road No. 406, Alameda County, at Engineer's Station 357 plus 30.

Crossing No. 8. State Highway, Santa Clara County, at Engineer's Station 538 plus 02.

Crossing No. 9. Calaveras Road, Santa Clara County, at Engineer's Station 571 plus 18.

Crossing No. 10. Dempsey Road, Santa Clara County, at Engineer's Station 652 plus 72.

Crossing No. 11. Capital Avenue, Santa Clara County, at Engineer's Station 653 plus.

Crossing No. 12. Trimble Road, Santa Clara County, Engineer's Station 666 plus.

Crossing No. 13. Hostetter Road, Santa Clara County, at Engineer's Station 739 plus.

Crossing No. 14, Lundy Road, Santa Clara County,
at engineer's station 770 plus.

Crossing No. 15, Berryessa Road, Santa Clara County,
at Engineer's Station 502 plus.

Crossing No. 16, Maybury Road, Santa Clara County,
at Engineer's Station 831 plus.

Crossing No. 17, McKee Road, one-half in the City
limits of San Jose.

Crossing No. 18, Alum Rock Avenue, or Santa Clara
Street, City of San Jose.

Crossing No. 19, Shortridge Avenue, City of San Jose.

Crossing No. 20, Jefferson Street, City of San Jose.

Crossing No. 21, Whitton Avenue, City of San Jose.

Crossing No. 22, Franklin Street, one-half in City
of San Jose.

Crossing No. 23, Twenty-fourth Street, City of San Jose.

Crossing No. 24, Twenty-third Street, City of San Jose.

Crossing No. 25, Williams Street, one-half in City
of San Jose.

Crossing No. 26, Keyes Street, City of San Jose.

Crossing No. 27, Keyes Street, City of San Jose. Cross-
ing of Fifth Street spur.

Crossing No. 28, Martha Street, City of San Jose..Cross-
ing of Fifth Street spur.

Crossing No. 29, Monterey Road or First Street, Santa
Clara County.

Crossing No. 30, Pomona Avenue, County of Santa Clara.

Crossing No. 31, Almaden Road, Santa Clara County.

Crossing No. 32, Minnesota Avenue, Santa Clara County.

Crossing No. 33, Bird Avenue, Santa Clara County.

Crossing No. 34, Willow Street, Santa Clara County.

Crossing No. 35, Broadway Avenue, Santa Clara County.

Crossing No. 36, Coe Avenue, Santa Clara County.

Crossing No. 37, Sunol Street, Santa Clara County.

Crossing No. 38, Sayaker Street, Santa Clara County.

Crossing No. 39, San Salvador Street, Santa Clara County

Crossing No. 40, Sunol Street, Santa Clara County.

Crossing No. 41, San Carlos Street, Santa Clara County.

Crossing No. 42, Park Avenue, Santa Clara County.

Crossing No. 43, San Fernando Street, Santa Clara

County.

All of the above as shown by the maps attached to the application; said crossings to be constructed subject to the following conditions.

(1) The entire expense of constructing the crossings, together with the cost of their maintenance thereafter in good and first-class condition for the safe and convenient use of the public shall be borne by applicant.

(2) Crossings shall be constructed of a width and type of construction to conform to the portions of the highways and streets to be crossed now graded, with grades of approach not exceeding six (6) per cent; shall, unless protected by an automatic flagman, be protected by a standard crossing sign; and shall in every way be made safe and convenient for the passage thereover of vehicles and other road traffic.

(3) For the protection of Crossing No. 4, Mission Road, Crossing No. 6, State Highway, Crossing No. 8, State Highway, Santa Clara County, Crossing No. 11, Capital Avenue, Crossing No. 13, Hostetter Road, Crossing No. 14, Lundy Road, Crossing No. 16, Maybury Road, Crossing No. 18, Alum Rock

Avenue, Crossing No. 23, Twenty-fourth Street, Crossing No. 25, Williams Street, Crossing No. 26, Keyes Street, Crossing No. 29, Monterey Road, Crossing No. 31, Alameda Road, Crossing No. 32, Minnesota Avenue, Crossing No. 34, Willow Street, Crossing No. 35, Broadway Avenue, Crossing No. 36, Coe Avenue, Crossing No. 37, Sunol Street, Crossing No. 38, Savaker Street, Crossing No. 40, Sunol Street, Crossing No. 41, San Carlos Street, Crossing No. 42, Park Avenue, automatic flagmen of a type approved by the Commission shall be installed, the entire expense of installing and maintaining which shall be borne by applicant.

(4) Automatic flagmen located on the following streets shall be placed in the center of the highway and electrically lighted:

Crossing No. 25,	Williams Street.
"	No. 29, Monterey Road.
"	No. 31, Alameda Road.
"	No. 37, Sunol Street.
"	No. 40, Sunol Street.

(5) For the protection of Keyes and San Fernando Streets applicant shall maintain a human flagman.

(6) For the protection of the crossings at Berryessa Road, Crossing No. 15, and San Salvador Street, Crossing No. 39, crossing gates shall be installed in connection with the interlocking plants to protect the railroad crossings, which will be hereinafter ordered.

(7) Applicant shall, at its own expense, construct subways, the plans of which shall have been approved by the Commission, under its tracks on County Road No. 12, Alameda County (Crossing No. 3) and Monterey Road, Santa Clara County (Crossing No. 29) at this time or make preparations to construct them at such time as the adjacent grade crossings of Southern Pacific Company are eliminated.

IT IS HEREBY FURTHER ORDERED, That applicant be and the same hereby is granted permission to construct its tracks at grade across the following railroad tracks:

Crossing No. 1 - Crossing of a spur track of the Southern Pacific Company near Irvington.

Crossing No. 2 - Crossing of the Peninsular Railway Company near the Berryessa Road.

Crossing No. 3 - Crossing of the San Jose Railroads on Alum Rock Avenue.

Crossing No. 4 - Crossing of the San Jose Railroads on Keyes Street.

Crossing No. 5 - Crossing of the main line of the Southern Pacific Company about 1200 feet south of the southerly city limits of San Jose.

Crossing No. 6 - Crossing of the San Jose Railroads on Monterey Road.

Crossing No. 7 - Crossing of San Jose Railroads on Willow Street.

Crossing No. 8 - Crossing of the Peninsular Railway Company on Coe Avenue.

Crossing No. 9 - Crossing with the College Park and Santa Cruz line of the Southern Pacific Company, about 200 feet south of San Salvador Street.

Crossing No. 10 - Crossing with the Peninsular Railway Company on San Carlos Street.

Crossing No. 11 - Crossing of the Peninsular Railway Company on Park Avenue between Sunol Street and McAvoy Avenue.

These crossings to be constructed at the points shown on the maps attached to the application and subject to the following conditions:

(1) The entire expense of constructing the crossings, together with the expense of their maintenance thereafter, shall be borne by applicant, subject to such agreements as have been or may be made between Western Pacific Company and the other companies interested.

(2) For the protection of Crossing No. 2, Peninsular

Railway Company's crossing on Berryessa Road, Crossing No. 5, crossing of Southern Pacific Company's main line, and Crossing No. 9, College Park and Santa Cruz line of Southern Pacific Company, applicant shall, at its own expense, install first-class interlocking plants, the maintenance of which shall be borne by applicant, Southern Pacific Company and Peninsular Railway Company for their respective crossings, in proportions to be determined in a supplemental order, provided applicant is unable to agree with Southern Pacific Company and Peninsular Railway Company concerning the same.

IT IS HEREBY FURTHER ORDERED, That after the installation of crossing frogs with the tracks of the Peninsular Railway and the San Jose Electric Railway, except for Crossing No. 2, where an interlocking plant will be installed, all engines, trains, motors and cars of the Peninsular Railway Company and the San Jose Railway Company shall come to a full stop before passing over the same and shall not proceed until it has been ascertained that it is safe to do so; and all engines, trains, motors and cars of applicant shall approach and cross over same at a speed not exceeding six (6) miles an hour.

IT IS HEREBY FURTHER ORDERED, That the Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of the crossings for which permission is herein granted

as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 11th
of October, 1917.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission.

H. H. Loveland
W. H. Gordon
Edwin C. Edgerton
Frazer R. Decker

Commissioners.