

Decision No. _____

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

CITY OF SAN JOSE,

Complainant,

vs.

Case No. 1152.

SOUTHERN PACIFIC COMPANY
and THE WESTERN PACIFIC
RAILROAD COMPANY,

Defendants.

- Earl Lamb, City Attorney, for City of San Jose.
- George D. Squires and Elmer Westlake for Southern Pacific Company.
- Allan P. Matthew and A. R. Baldwin for The Western Pacific Railroad Company.
- L. D. Bohnett and C. S. Allen for Palm Haven Investment Company.
- L. D. Bohnett and Grant R. Bennett for Willow Glen Improvement Club.
- G. M. Fontaine for City Planning Commission.
- G. M. Fontaine and W. D. Wall for San Jose Traffic Bureau.
- Fabor L. Johnston for San Jose Lumber Company and other interests in East San Jose.
- Mrs. Edward L. Wilcox for Outdoor Art League.
- Mrs. Thomas Reed for Civic League.
- Miss Clara Smith for Collegiate Alumnae.

TRELEN and GORDON, Commissioners.

O P I N I O N.

The complaint of the City of San Jose alleges, in effect, that Southern Pacific Company, hereinafter at times referred to as the Southern Pacific, and The Western Pacific Railroad Company, hereinafter at times referred to as the Western Pacific, are railroad corporations operating railroads within the State of California; that if the Southern Pacific and the Western Pacific construct their railroads as proposed, there will be two main line railroads operating to and through the westerly portion of the City, each operating and maintaining separate railroads with all necessary appendages and

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adjuncts, including freight yards, ^{and} freight and passenger stations; that the effect of such construction and operation will be to surround ^{the} principal portions of San Jose with railroad tracks and to make difficult and dangerous interconnection between the City of San Jose and the surrounding territory; that such construction will tend to scatter industrial plants and manufacturing establishments, prevent the normal growth of the City in every direction and unnecessarily depreciate property values; that the convenience and safety of the general public will be best served by a concentration of the railroad tracks entering and passing through the City, by the operation of such railroads over a single set of tracks or over adjacent tracks so as to eliminate a large number of the existing and proposed grade crossings; that for the Western Pacific to best serve the community, it should be located nearer to the industrial centers or have access to them over existing tracks; and that in order to relieve the people of San Jose and vicinity and the general public from the dangers, damage and inconvenience complained of it will be necessary to concentrate the various existing and proposed tracks of the defendants, and to relocate some or all of them, to locate and provide for the joint use of said two railroads of tracks, freight depots, and a union passenger station and for adequate protection of all crossings. The City of San Jose asks the Railroad Commission to make its order granting the following relief:

- (a) The installation of a union passenger station;
- (b) The installation of a union freight depot or depots;
- (c) The relocation, reorganization and joint use of the existing and the proposed railroad tracks;
- (d) The adequate protection of all crossings; and
- (e) Such other relief as in the judgment of the Railroad Commission may be necessary or expedient.

The answer of the Southern Pacific denies the material allegations of the complaint.

The answer of the Western Pacific denies the material allegations of the complaint and alleges that ^{the} construction of its line of railroad as contemplated to and through the City of San Jose will largely increase and improve the transportation facilities of the City of San Jose and the territory contiguous thereto, will facilitate the transportation of freight and passengers, will stimulate the development of industrial plants and manufacturing establishments and will encourage the normal and natural growth of the City of San Jose in every direction.

Public hearings in this proceeding were held in San Jose on December 21 and 22, 1917. Additional data called for by the presiding Commissioners have been filed and this case is now ready for decision.

By stipulation of all the parties, the pleadings and testimony in the following two proceedings, in so far as relevant, will

may be considered as being in evidence in this proceeding:

1. Application No. 1966, being application of Southern Pacific Company for permission to construct, maintain and operate at grade 35 railroad crossings in the City of San Jose and the County of Santa Clara (Decision No. 3351, made on May 20, 1916, Vol. 10, Opinions and Orders of the Railroad Commission of California, p. 159).

2. Application No. 3139, being application of The Western Pacific Railroad Company for an order authorizing the construction at grade of railroad crossings in Alameda County, Santa Clara County and the City of San Jose (Decision No. 4744, made on October 11, 1917).

It was also stipulated that such documents as might be filed by the parties subsequent to the hearings herein should be considered as evidence in this proceeding. The following documents have been filed by the parties indicated, have been given exhibit numbers as specified, and will be considered as being in evidence

in this proceeding:

Exhibit No. 5 of City of San Jose--application of The Western Pacific Railroad Company for franchise, together with form of proposed ordinance, filed July 23, 1917.

Exhibit No. 1 of Southern Pacific Company--application of Southern Pacific Company for franchise along new route, together with form of proposed ordinance, filed August 9, 1915.

Exhibit No. 3 of Southern Pacific Company--estimate for new double track main line from near Polhemus Street to a connection with the present main line at Monterey Road; ^{for} ~~if~~ a new passenger station and track system near The Alameda; ^{for} ~~if~~ new freight yard between Santa Clara and College Park; and ^{for} ~~if~~ new freight station at San Pedro Street.

Exhibit No. 1 of The Western Pacific Railroad Company--estimated cost of Niles-San Jose Branch, together with letter dated January 10, 1918, from Mr. T. J. Wyche, Chief Engineer, giving details of estimates.

Exhibit No. 2 of The Western Pacific Railroad Company--agreement to be entered into between The Western Pacific Railroad Company and The Utah Construction Company, providing for construction of The Western Pacific Railroad Company's Niles-San Jose Branch.

Exhibit No. 3 of The Western Pacific Railroad Company--correspondence between Mr. C. M. Levey, President of The Western Pacific Railroad Company, and Mr. William Sproule, President of Southern Pacific Company, with reference to possible joint use of portion of Southern Pacific's Niles-San Jose Branch.

Exhibit No. 5 of The Western Pacific Railroad Company--letter dated January 2, 1918, from Mr. Allan P. Matthew, Attorney for The Western Pacific Railroad Company, enclosing Auditor's statement to November 30, 1917, of expenditures by the Western Pacific on the Niles-San Jose Branch.

Exhibit No. 6 of The Western Pacific Railroad Company--

letter from Mr. A. R. Baldwin, Vice-President and General Attorney of The Western Pacific Railroad Company, dated January 21, 1918, giving estimated net loss which would be sustained by The Western Pacific Railroad Company if its proposed construction from the Monterey Road to The Alameda were abandoned.

Exhibit No. 7 of The Western Pacific ^{Railroad} Company--letter from Allan P. Matthew, Attorney for The Western Pacific Railroad Company, dated January 23, 1918, enclosing copy of letter dated January 19, 1918, from Mr. William Sproule to Mr. C. M. Levey, refusing to negotiate for joint use by The Western Pacific Railroad Company of any portion of the Southern Pacific's Niles-San Jose Branch.

The subject matter of this opinion will be discussed under the following heads:

1. Southern Pacific's facilities and plans.
2. Western Pacific's plans.
3. City of San Jose's plans.
4. Niles-San Jose situation.
5. Willow Glen situation.
6. Suggested plan for handling Western Pacific situation.

I. SOUTHERN PACIFIC'S FACILITIES AND PLANS.

The Southern Pacific's Main Line, Coast Division, enters the City of San Jose from the ^{northwest} ~~northwest~~, near the end of Autumn Street, runs thence eastward across a number of streets, including San Pedro Street, North First Street, North Second Street, ^{and} North Third Street, thence turns southerly and runs along Fourth Street longitudinally, crossing all east and west streets, through the heart of the City to Reed Street, thence continuing south over private right of way to and beyond the Oak Hill Cemetery and a crossing of the State Highway on the Monterey Road at Schuetzen.

The Southern Pacific's line to Niles branches from the

Main Line near its crossing with North Second Street and runs thence ~~along~~ in a northeasterly direction out of the City of San Jose to Miles.

The Southern Pacific's Santa Cruz Branch leaves the Main Line near Polhemus Street, north of the City, runs thence ~~along~~ in a southerly direction to and along Senter Street, enters the city limits at San Augustine Street, thence curving to the west and running southerly parallel with the west boundary of the City and about 50 feet east ^{of} ~~to~~ the city limits across the principal thoroughfare of San Jose, known at this point as The Alameda, thence south to Pine Street and thence curving to the west and running out of the city limits and beyond to Santa Cruz.

The Southern Pacific's main passenger station in San Jose is located in the northwesterly portion of the City, opposite the end of Market Street, west of First Street. The Southern Pacific also has a passenger station on the Santa Cruz Branch south of The Alameda.

The Southern Pacific's freight yards in San Jose are located in the general territory lying west of San Pedro Street, east of the Santa Cruz Branch and north of Bassett Street, partly inside the city limits and partly outside the city limits.

The Southern Pacific's Main Line running longitudinally along Fourth Street through the heart of the City was constructed under a 50-year franchise, which expired on January 27, 1918.

About the year 1906, the city officials of San Jose indicated to the Southern Pacific that this franchise would not be renewed at its expiration and that it would be necessary for the Southern Pacific to obtain a different right of way, not running through the heart of the City.

The Southern Pacific thereupon commenced the purchase of right of way along a new location through the extreme westerly portion of the City from a point on the Santa Cruz Branch near San Carlos Street, thence curving to the east and continuing in

a southeasterly direction until it joins the existing Main Line opposite the Oak Hill Cemetery and north of the Schuetzen Park crossing of the Monterey Road. The purchase of this new right of way was completed in 1913. The price paid for right of way ^{was} ~~the~~ testified as having been \$865,000.00, which sum, together with the commissions and interest to date was testified to amount at the present time to approximately \$980,000.00.

Mr. Thomas Ahearn, Division Superintendent of the Southern Pacific, testified that in connection with the proposed new location of the Main Line, the company also purchased at about the same time at a cost of approximately \$96,800.00, lands for a new freight terminal along the existing Main Line north of Newhall Street, northwest of the city limits. He testified that when the freight terminal is moved to this new location, the existing freight yards will be devoted to industry purposes.

Mr. Ahearn also testified that it is the Southern Pacific's plan to abandon the present Market Street passenger station and to construct a new passenger station on what is now the Santa Cruz Branch, south of The Alameda.

The Southern Pacific filed as its Exhibit No. 3, a statement of the construction expenditure which it anticipates in connection with the proposed alterations in and about San Jose, summarized ~~about~~ as follows:

New double track Main Line from near Polhemus Street and connecting with present Main Line at Monterey Road.....	\$620,070.00
New passenger station and track system near The Alameda.....	712,240.00
New freight yard between Santa Clara and College Park.....	427,350.00
New freight station at San Pedro Street.....	<u>110,000.00</u>
Total.....:	1,869,660.00

The foregoing estimates are based on present war prices. They include no land. The estimate for the new proposed passenger station south of The Alameda is \$120,000.00.

Having acquired all the right of way along the proposed new location for the Main Line in the westerly portion of San Jose, the Southern Pacific, on August 9, 1915, filed with the City of San Jose its application for a franchise along the proposed new route. No action has as yet been taken by the City of San Jose on this application.

On November 19, 1915, the Southern Pacific filed with the Railroad Commission its application (App.No.1966) for authority to construct, maintain and operate at grade, 35 railroad crossings in the City of San Jose and the County of Santa Clara, along the line of the new location of its Main Line. The Railroad Commission granted the application in part, withholding permission for the crossing of several streets which, in its judgment, should be closed, and ordering a separation of grades on West Santa Clara Street, commonly known as The Alameda. The order was made on April 20, 1916 (Vol. 10, Opinions and Orders of the Railroad Commission of California, p. 159). An application of the City of San Jose for rehearing, based on that portion of the order which required that the City of San Jose should pay 35 per cent of the cost of separating the grades at The Alameda, was denied on June 14, 1916 (Vol. 10, Opinions and Orders of the Railroad Commission of California, p. 433). The City of San Jose thereafter secured from the State Supreme Court a writ of certiorari. On June 4, 1917, the Supreme Court rendered its decision dismissing the writ and upholding the order of the Railroad Commission (Vol.53, Cal. Dec., p. 727).

Considerable uncertainty has heretofore existed as to the attitude which would finally be taken both by the City of

San Jose and the Southern Pacific with reference to the continued operation of the Southern Pacific along Fourth Street. At the hearing herein, the presiding Commissioners requested both the City of San Jose and the Southern Pacific to make definite statements of their respective attitudes on this subject.

Mr. Thomas E. Reed, City Manager of San Jose, testified that the City Council is prepared to grant a franchise to the Southern Pacific over its proposed new route and that it does not desire that the Southern Pacific shall operate along Fourth Street any longer than is absolutely necessary until its ~~main~~ line can be constructed along the new location. Mr. Thomas Ahearn, Division Superintendent of the Southern Pacific, testified that the properties hereinbefore referred to have been purchased by his company in the expectation of locating its Main Line along the proposed new route in the western portion of San Jose and that the company proposes to abandon its operation along Fourth Street as soon as possible. He further testified that he has instructions from his company to accept a franchise along the new route, provided that its terms are just and reasonable.

Thus, for the first time, it definitely appears that both the City of San Jose and the Southern Pacific Company clearly agree that the operations of the Southern Pacific along Fourth Street shall not be continued longer than necessary and that the Main Line shall be located on the new route in the westerly portion of the City. No objection to this new location appears in this record and we may regard it as a settled fact that the Main Line of the Southern Pacific will be constructed along the proposed new route.

Mr. Ahearn testified that the Southern Pacific now has on hand sufficient ties for the new construction but that there may be some difficulty in securing the necessary rails. Whether the construction along the new route will proceed during the war is a matter which we assume will be determined by the Director General

of Railroads.

2. WESTERN PACIFIC'S PLANS.

The articles of incorporation of Western Pacific Railway Company, the predecessor of The Western Pacific Railroad Company, filed in the office of the Secretary of State on March 6, 1903, provided, in addition to the Main Line, for a number of branch lines, including an intermediate branch line from a point at or near the Town of Haywards, ^{to} and through the City of San Jose. It was always recognized that without branch lines tapping the producing sections along its route, the Western Pacific Railway Company's project could not be a financial success. By reason of financial difficulties, however, the branch line to San Jose was not constructed.

Upon the reorganization of Western Pacific Railway Company, after its inability to pay the interest on its bonded indebtedness, its successor, The Western Pacific Railroad Company, one of the defendants herein, likewise provided in its articles of incorporation for the construction of a branch line of railroad to San Jose. Upon the reorganization, provision was made that the new corporation should sell its 5 per cent gold bonds of the face value of twenty million dollars, the proceeds thereof to be principally used in the purchase or construction of extensions and feeders (Decision No. 3453, made on June 22, 1916, in Application No. 2351, Vol. 10, Opinions and Orders of the Railroad Commission of California, p. 438). The testimony ^{herein} shows that for a number of years the commercial interests of San Jose have been negotiating with the Western Pacific and its predecessor to the end that a branch line might be built from Niles to San Jose. The record shows that every effort was made by the Chamber of Commerce and other commercial interests of San Jose to induce the Western Pacific to construct this branch line. After the

reorganization, the Western Pacific, having now available the necessary funds for the construction of this line, agreed to construct the same. A route was surveyed from Niles, closely paralleling the Southern Pacific's Niles-San Jose Branch to a point near the northeasterly city limits, thence around the City on the east, entering the city limits at a point near McKee and Twenty-eighth Streets, thence southerly through a portion of the City east of Coyote River, thence leaving the city limits at Lendrum Avenue, again crossing a small corner of the City between Twenty-fourth Street and William Street, thence traversing unincorporated territory in a southeasterly direction across the Coyote River to and through the southeasterly corner of the City of San Jose, and thence south, leaving the city limits through what is known as the Phelan Tract and across the Southern Pacific's Main Line south of the City to the Monterey Road. Crossing the Monterey Road, the line as surveyed crosses the Southern Pacific's newly located line hereinbefore referred to, between Pomona Avenue and Almaden Road, and thence runs northwesterly, northerly and northeasterly across Almaden Road and Guadalupe River, thence through a high class residence section known as Willow Glen, across Minnesota Avenue, Bird Avenue, Willow Street, Broadway Avenue, Coe Avenue and Los Gatos Creek, thence across a number of other streets and on the Southern Pacific's Santa Cruz Branch into the main industrial section west of San Jose, and thence across a number of important streets, including San Carlos Street, Park Avenue and San Fernando Street to a point on the south line of The Alameda, in the block bounded by The Alameda, Bush Street, San Fernando Street and Wilson Avenue. As has been well said, the line of the Western Pacific as surveyed around San Jose may be compared to a fish hook, the point being on the southerly line of The Alameda west of the City, and the shank being east and northeast of the City. The line as surveyed from the Monterey Road south of the

city limits, to the southerly line of The Alameda, closely parallels ~~the~~ the city limits to the south and west, but at no point enters the limits of the City.

Mr. T. J. Wyche, Chief Engineer of the Western Pacific, testified that the company has as yet acquired title to no right of way from Miles to the northerly limits of the City of San Jose but that from the latter point to the Monterey Road, south of the City, approximately 90 per cent of the necessary right of way has been acquired and that from the Monterey Road to The Alameda, approximately 80 per cent of the necessary right of way has been purchased.

Exhibit No. 1 of the Western Pacific shows an estimated cost of \$1,302,719.00 for the Western Pacific's Miles-San Jose Branch, estimated as follows:

Miles to McKee Road(northeasterly city limits of San Jose) Main Line 16.58 miles, sidings, 1.71 miles.....	\$460,100.00
McKee Road to Southern Pacific's Main Line south of city limits, Main Line 3.032 miles, sidings 3.68 miles.....	379,766.00
Southern Pacific Main Line south of San Jose through Willow Glen across Los Gatos Creek to Southern Pacific's Santa Cruz Branch, Main Line 2.65 miles, sidings .81 miles.....	243,662.00
Southern Pacific's Santa Cruz Line to The Alameda, Main Line .825 miles and sidings 1.72 miles.....	219,191.00
	<u>\$1,302,719.00</u>

Western Pacific's Exhibit No. 5 shows that the expenditures incurred by the Western Pacific on this line to November 30, 1917, were \$367,208.82, as follows:

	<u>Total Expended</u>	<u>Expenditures north of North Boundary of San Jose</u>	<u>Expenditures south of North Boundary of San Jose.</u>
<u>ROAD:</u>			
1. Engineering	\$10,153.60	\$ 7,127.82	\$ 3,025.78
2. Land for transportation purposes	346,561.27		346,561.27
3. Grading	932.66		932.66
6. Bridges, trestles and culverts	10.13		10.13
8. Ties	1,477.61		1,477.61
9. Rails	4,759.92		4,759.92
10. Other track material	595.30		595.30
11. Ballast	133.86		133.86
12. Tracklaying and surfacing	1,585.47		1,585.47
15. Crossings and signs	487.37		487.37
<u>GENERAL EXPENDITURES:</u>			
71. Organization expense	2.33	1.64	. 69
73. Law	<u>509.30</u>	<u>357.52</u>	<u>151.78</u>
	\$367,208.82	\$7,486.98	\$359,721.84

The main expenditure, as will be noted from the foregoing table, has been the sum of \$346,561.27 for land from a point opposite the north boundary of San Jose along the proposed route east, south and west of the City.

Exhibit No. 6 of the Western Pacific shows that if the proposed line from the Monterey Road to The Alameda is abandoned, the Western Pacific would sustain an estimated loss of \$99,704.75 in its property investment, and of \$9,938.74 in its engineering investment.

The Western Pacific proposes to construct its passenger station in East San Jose on the northerly line of Santa Clara Avenue, between Twenty-seventh and Twenty-eighth Streets.

The company proposes to construct its principal freight terminal on the block bounded by The Alameda, Bush Street, San Fernando Street and Wilson Avenue, in the industrial section west of San Jose, as well as a freight house back of its passenger station in East San Jose, and team tracks on the Phelan Tract, south of San Jose, together with a team track north along Fifth Street to Virginia Street.

On July 23, 1917, the Western Pacific filed written application with the City of San Jose for a franchise crossing the streets along its surveyed route in the easterly and southeasterly portion of San Jose. On August 20, 1917, the City of San Jose granted to the Western Pacific Company a fifty-year franchise from and after August 16, 1917, along the route requested by the Western Pacific Company.

Thereafter, on August 22, 1917, the Western Pacific filed its application with the Railroad Commission asking authority to construct its crossings at grade along its route in the City of San Jose, as well as along its surveyed route in the County of Alameda and the County of Santa Clara. Reference has hereinbefore been made to the Railroad Commission's Decision No. 4744, made on October 11, 1917, granting the application, with provision for

the necessary protection of the grade crossings authorized.

3. CITY OF SAN JOSE'S PLAN.

At the hearing in Application No. 3139, the City of San Jose appeared through its City Manager and City Attorney and protested against the granting of the application in so far as it affected the proposed line south and west from the City of San Jose from the Monterey Road to The Alameda. Particular objection was made against the construction of the line and the crossing of the streets in the residence district known as Willow Glen.

The Railroad Commission having ruled that in an application under Section 43 of the Public Utilities Act, the Commission was authorized to consider only the safety at the proposed crossings and not any question of public convenience or necessity, the City filed the complaint in this proceeding, raising all the issues hereinbefore indicated.

The City, at the hearing herein, presented a definite plan embodied in its Exhibit No. 7, being a report on joint steam railroad terminals for the City of San Jose, prepared by Mr. F. A. Niskirk, Assistant City Engineer. The recommendations contained in this report are as follows:

1. A joint freight terminal should be built at or about the present Southern Pacific freight station, west of San Pedro Street.

2. A joint passenger terminal should be built at a point at or near the present west side passenger station.

3. The railway lines entering and leaving said terminals should be used in common by all ^{steam} ~~street~~ railroads within the City.

Mr. G. M. Fontaine, a member of the City Planning Commission of San Jose, presented as his ^{personal} suggestion a modification of the City's plan, contemplating that the Southern Pacific's Main Line from the straight track west of Second Street should be constructed

on a tangent through the tier of blocks between Washington Street and Julian Street, to a point near Coyote Creek, where, with a curve to the south, the line would connect at or near Alum Rock Avenue with the located line of the Western Pacific east of San Jose. The latter line was suggested as a joint line for both railroads. Without going further into this plan, and while it would probably have the advantage of avoiding more grade crossings than any other plan thus far suggested, it has the exceedingly grave disadvantage of providing for a mileage of approximately two and one-half miles more from the connection of the Main Line of the Southern Pacific Company with the Santa Cruz line than the new location in the westerly portion of San Jose proposed by the Southern Pacific and now approved by the City. For this reason alone, the plan would seem to be impracticable.

Referring first to the matter of a union passenger station, the testimony shows that the points reached by the Western Pacific are almost all also reached by the Southern Pacific and that there is no reasonable expectation that any substantial number of passengers will desire to transfer in the City of San Jose from one of these two railroads to the other. ~~There is no reasonable expectation that any substantial number of passengers will desire to transfer in the City of San Jose from one of these two railroads to the other.~~ Although the City of San Jose would like to have a union passenger station, it does not insist thereon. The testimony shows clearly that a union passenger station is not particularly needed in San Jose, although, if it could be secured as an incident to other matters, there would certainly be no objection to it.

Referring next to union freight terminals, there is no evidence herein to show that on the facts existing in San Jose such terminals would be desirable. In fact, it appears that in San Jose, the construction of several small freight depots in various parts of the city would be just as convenient to the shippers as if

there were a joint freight depot. Such construction would avoid serious operating difficulties which would be encountered in connection with a ^{joint} freight terminal and would also give to the Western Pacific a better opportunity to develop business. While it would be possible for each railroad to operate, ^{alternately} ~~separately~~, a joint freight terminal or to form a terminal company for this purpose, either alternative is impracticable as applied to the existing conditions in San Jose.

The testimony shows that although the City of San Jose would be pleased to have a union passenger station and union freight terminals, its real purpose in filing the present complaint is to avoid the large number of grade crossings which will result from construction along the Western Pacific's survey and particularly to avoid the grade crossings and the proposed construction of the Western Pacific's line through ^{the} Willow Glen district. If the Southern Pacific's line is constructed along the new route and if the Western Pacific constructs its line as proposed, a large number of grade crossings not now in existence will be created by the Southern Pacific in the southwesterly portion of the City and by the Western Pacific in the Willow Glen district, and two lines of railroad will girdle the City at this point.

The testimony shows that the officials of the City have no objection to the construction of the Western Pacific's line through and around the easterly section of the City to the Monterey Road south of the City. Although quite a number of grade crossings will necessarily result from this construction, the parties are apparently satisfied with the provision for the protection of these crossings made by the Railroad Commission in its said Decision No. 4744 and there is a possibility that this line may develop considerable business in this territory. The record shows no substantial reason why this part of the Western Pacific's line should not be constructed if its project is carried forward.

This construction would leave for solution the Willow Glen problem.

4. NILES - SAN JOSE SITUATION.

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For ~~xxxxx~~ miles, from Niles to Milpitas, the surveyed line of the Western Pacific runs within a stone's throw of the existing Niles-San Jose line of the Southern Pacific. From Milpitas south to the northerly limits of San Jose, a distance of approximately 9 miles, the lines are nowhere more than two and one-half miles apart.

Mr. Thomas Ahearn testified that twice the present business could easily be handled over the Southern Pacific's Niles-San Jose line.

Western Pacific's Exhibit No. 1 shows that the estimated cost of the Western Pacific's proposed line from Niles to the north city limits of San Jose will be \$450,100.00.

In the light of these facts, there is no reasonable excuse for the duplication of the present railroad facilities from Niles to San Jose. The existing line of the Southern Pacific is ample to take care of the traffic of both the Southern Pacific and the Western Pacific for many years to come. If any new construction is necessary, the money should be expended in double tracking and block signalling the present Southern Pacific line. If this were done, the Western Pacific could get into San Jose without duplicating the present investment of the Southern Pacific Company, additional grade crossings would be avoided, the Southern Pacific would secure interest on a portion of its investment in the existing line and both the Southern Pacific and the Western Pacific would be better off financially.

The testimony shows that on August 10, 1917, Mr. C. M. Levey, President of the Western Pacific, wrote to the Southern

Pacific, suggesting a joint use of the Southern Pacific's line from Niles to Milpitas, a distance of approximately ^{eleven} miles.

Mr. Levey intended to have the line of the Western Pacific diverge from this point to the southeast, the line, however, at no point to be more than one and one-half miles distant from the Southern Pacific's line.

After a period of negotiation, Mr. William Sproule, President of the Southern Pacific, replied, on November 20, 1917, as follows:

"After considering, conclusion has been reached that for this piece of track it would not be a convenient arrangement to have it occupied and operated by two companies. I wish to thank you, however, for giving us the opportunity of considering it, and will take early occasion to talk with you about it."

The advantage to both railroads of joint operation of at least a part if not all of the Southern Pacific's Niles-San Jose line being obvious, the presiding Commissioners at the hearing asked Mr. Levey whether he were still willing to negotiate to this end. Mr. Levey having testified in the affirmative, counsel for the Southern Pacific was asked, in view of the ^{present} ~~current~~ situation and also of the altering attitude of the public toward needless and useless expenditures in duplicating existing railroad properties, if he would not take up the matter again with the President of the Southern Pacific Company. The matter was again taken up with Mr. Sproule, whereupon, on January 19, 1918, he gave his answer as follows:

"Having gone further into this subject, have again come to the conclusion previously reached that it is advisable for us to retain our facilities for the further development of the company."

Joint operating agreements between rival railroads are quite common in California as well as in other sections of the country. The Southern Pacific and the Santa Fe have an agreement for joint operation over the Tehachapi grade.

Likewise, the Santa Fe and the Salt Lake have an

arrangement for joint operation between Daggett at a point near the city of Riverside, a distance of about a 100 miles. The station employees are joint, an arrangement satisfactory to both parties ^{having} ~~made~~ been made with reference to the payment of maintenance and operating expenses, depreciation and a fair return on the investment.

No logical reason exists why a similar arrangement should not be made between the Southern Pacific and the Western Pacific covering the Niles-San Jose Branch or at least that portion thereof which lies between Niles and Milpitas.

The attitude of the Southern Pacific in refusing to negotiate on this subject with the Western Pacific does not commend itself to us. This attitude is contrary to the growing realization that our Nation must put an end to further wasteful duplication of railroad construction. If the Government owned the railroads of the country as it is now operating them, we may be sure that no such construction would be permitted. More and more, our people will judge the acts of our railroads, particularly in the matters of duplicate construction and duplicate operation, by what the Government would do if it both owned and operated the property.

We assume that the question whether the Western Pacific shall get into San Jose will be passed upon by the Director-General of Railroads. If he decides that the proposed construction is not justified, particularly at present, there will be no need for considering further the matter now under consideration. On the other hand, if he decides that the Western Pacific may enter San Jose,

we hope that he will take steps to have this done in such a manner as to prevent the wasteful duplication now contemplated in connection with the Niles-San Jose situation.

5. WILLOW GLEN SITUATION.

Reference has already been made to the fact that the proposed line of the Western Pacific southwest of the City of San Jose is projected through the high-class residential district known as the Willow Glen district. There are no industries in this district and the testimony shows that the Western Pacific does not expect to secure any business here. The line through this district is merely a bridge between the Monterey Road and the industrial section located west of the City and between Los Gatos Creek and The Alameda.

It is our judgment that if there is any reasonable way in which the Western Pacific can reach the industrial district south of The Alameda without traversing the Willow Glen district, the proposed construction of the Western Pacific through this district should not be consummated.

On the other hand, we realize that unless the Western Pacific can reach the industrial section south of The Alameda and west of the City, its construction to San Jose would not be justified.

We are thus confronted with the problem of enabling the Western Pacific to reach the district south of The Alameda and west of the City without traversing the Willow Glen district. This is the problem which the City of San Jose really had in mind when it filed the complaint herein and is the one problem which, in addition to the Niles-San Jose situation, requires a constructive solution.

6. SUGGESTED PLAN FOR HANDLING WESTERN PACIFIC SITUATION

We shall now make our suggestion as to how we believe the Western Pacific's problem can be handled in a manner just to all parties concerned. While we realize that the Railroad Commission does not have jurisdiction to make an order compelling the complete execution of this plan, we nevertheless are of the opinion that it is the duty of public authorities to be constructive in suggestion, even though they can not legally compel obedience to an order made in conformity to such suggestion.

The ideal solution of the problem, in our judgment, would be running rights for the Western Pacific on the Southern Pacific's line from Niles to San Jose and as far through the city, along both the proposed Main Line and the Santa Cruz Branch as it may be necessary for the Western Pacific to go to reach the existing industries on the west side and the terminal properties which it has already acquired in that vicinity. There is no reason why the Western Pacific could not build its necessary industry tracks and spur tracks from the line of the Southern Pacific as well as from a line owned by itself. In this way, the industrial section between The Alameda and Los Gatos Creek could be satisfactorily reached by the Western Pacific without traversing the Willow Glen district.

If the Western Pacific desires to construct its east side line, this could be done from a point on the Southern Pacific's line near the northeasterly limits of the City and to and thence along the Western Pacific's surveyed route to the Monterey Road.

The Western Pacific's passenger station could be located, as planned, on Santa Clara Street between Twenty-seventh and Twenty-eighth Streets in case the company did not desire to arrange for passenger facilities on the west side of the City.

The Western Pacific's freight yards could be located at some point near the northerly limits of the City, where cars from both the east and the west side would be assembled into trains

and trains coming in with cars for both sides of the City could be split up.

The plan just suggested would result in the saving of several hundred thousand dollars in construction cost to the Western Pacific, would yield to the Southern Pacific a substantial revenue as rental of its line, would permit the Western Pacific to make its desired industrial developments and would make unnecessary the proposed construction through the Willow Glen district and the additional grade crossings connected therewith.

The foregoing plan is suggested on the assumption that the Federal authorities will permit the proposed entry by the Western Pacific into San Jose. The facts have been quite fully set forth herein. The policy is for the Government to determine.

While, as hereinbefore indicated, the Railroad Commission is without jurisdiction to compel the performance of vital portions of the plan herein suggested, without which the plan itself can not be executed, we are still hopeful that the parties to this proceeding, animated by a desire to avoid useless expenditures, will agree on the plan herein suggested or some similar plan which will accomplish the same purposes.

For the reasons hereinbefore indicated it will be necessary to dismiss this complaint.

We submit herewith the following form of order:

O R D E R .

Public hearings having been held in the above entitled proceeding, the proceeding having been submitted and being now ready for decision, and the Railroad Commission finding that the installation of a union passenger station in the City of San Jose

is not necessary, that the installation of a union freight depot or depots is not advisable, that the protection ordered by the Railroad Commission at the grade crossings in connection with the applications of the Southern Pacific Company and The Western Pacific Railroad Company heretofore passed upon has not been questioned, and that the Railroad Commission is without jurisdiction to compel the enforcement, in its entirety, of the solution of the San Jose railroad problem suggested by the Commission in the opinion which precedes this order,

IT IS HEREBY ORDERED that the complaint in the above entitled proceeding be and the same is hereby 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 4th day of February 1918.
~~January~~

Max Thelen
H. D. Loveland
Alfred Gordon
Frank R. Berlin
Commissioners.