

ORIGINAL

Decision No. 9799.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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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 of the Southern
 Pacific Company in the counties of Alameda
 and Santa Clara; Third, across certain tracks
 of Peninsular Railway Company in the County
 of Santa Clara, and Fourth, across certain
 tracks of San Jose Railroads in the County
 of Santa Clara and in the City of San Jose.

) Application No. 3139

Lester J. Hinesdale and James S. Moore, for Applicant.
 T. P. Wittschen and George A. Posey, for County of Alameda.
 Archer Bowden, for City of San Jose.
 F. E. Chapin, for Peninsular Railway Company and
 San Jose Railroads Company.
 J. H. Skaggs, for California Highway Commission.
 W. H. Phelps, for Southern Pacific Company.

By The Commission:

THIRD SUPPLEMENTAL OPINION.

In this third supplemental application, The Western Pacific Railroad Company, a corporation, asks for a modification of the Commission's original order, Decision No. 4744, at fourteen of the forty-seven crossings at grade across public highways on its railroad under construction from Niles to San Jose.

A public hearing was held at San Jose before Examiner Geary on October 6, 1921.

The modifications of the original order asked refer to crossing protection and may be shown in the following tabulation:

Crossing Number	Location	Political Subdivision	Order In Decision No. 4744.	Modified Protection Now Requested.
6	County Road	Alameda County Unincorporated	Automatic Flagman.	None
16	Maybary Road	Santa Clara County Unincorporated	"	"
23	Twenty-fourth St.	City of San Jose	"	"
25	Williams Street	" " " " and Santa Clara County Unincorporated	"	"
26	Keyes Street	Santa Clara County Unincorporated	" and Human-Flagman	"
27	Keyes Street	City of San Jose	Human Flagman	"
29	Monterey Road	Santa Clara County Unincorporated	Center Automatic Flagman.	Side Automatic Flagman
31	Almaden Road	Santa Clara County Unincorporated	Center Automatic Flagman	"
35	Broadway Avenue	Santa Clara County Unincorporated	Automatic Flagman	None
37	Sunol Street	Santa Clara County Unincorporated	"	"
38	Savaker Street		"	"
39	San Salvador St.	Santa Clara County Unincorporated	Crossing Gates	Automatic Flagman
40	Sunol Street	"	Center Automatic Flagman	Side Automatic Flagman
43	San Fernando St.	"	Human-Flagman	None

In the above tabulation "none" means no protection other than the standard crossing sign, consisting of an X-shaped sign, appropriately lettered and mounted on a post. For Crossings No. 26 and 27 the original order read that "for the protection of Keyes and San Fernando Streets applicant shall maintain a human flagman" and inasmuch as there were involved two crossings of Keyes Street, applicant stated that the request for the modification of the order at this crossing was to remove any possible

ambiguity in the order, as the record indicated that there had been no discussion of a human flagman at Crossing No.27, Keyes and Fifth Streets, the testimony relative to the Keyes Street crossing being confined to the main line Crossing No.26, at Keyes Street near Twelfth Street. It also appeared that the original order might be construed so that Crossing No.26 was to be protected both by an automatic flagman and a human flagman, and applicant also brought up, as to this crossing, the question of possible ambiguity and asked an interpretation of the Commission's former order.

With regard to Crossing No.6, the testimony shows that at this crossing the county road is now of concrete, whereas at the time of the hearing of the first application the road was of gravel; that the view is good; that the crossing is practically level; that the grades of both The Western Pacific and the Southern Pacific (which is located parallel to and 60 feet from The Western Pacific track) are nearly level and that the traffic on either railroad is not heavy.

Witness for the County of Alameda, the Deputy County Surveyor, testified that in his opinion at least one wig wag is necessary for proper protection but also stated that two wig wags were preferable, one north of the Southern Pacific track and the other south of The Western Pacific track. Aside from this there was no objection on the part of any one present to the modifications requested by applicant. A witness for the Commission made certain recommendations. These recommendations are, briefly:

<u>Crossing No.</u>	<u>Recommendations</u>
6	Judgment reserved until traffic count was submitted.
16	No protection other than crossing sign necessary.
23	Automatic flagman when street is paved.
25	Automatic flagman when street is paved.
26	Automatic flagman.
27	No protection other than crossing sign necessary.
29	Automatic flagman at side of road.
31	Automatic flagman at side of road.
35)	
37)	
38)	Judgment reserved until track is laid.
40)	
43)	
39	Gates not necessary but judgment reserved on automatic flagman until track is laid.

This witness brought out the fact that the track had not actually been constructed beyond Crossing No. 35 and that since changes in alignment had already been made and since the conditions at the crossing were often materially altered after the track was constructed he stated he would like to reserve final judgment until the actual location of the line had been determined. Applicant then suggested suspension of the requirements of Decision 4744 applying to those crossings beyond No. 33. To this no objections were made.

In accordance with the arrangements made a traffic count has been filed by applicant showing the number of vehicles passing over Crossing No. 6 between six o'clock A.M. and eight o'clock P.M. on Sunday, October 15, 1921. This traffic count shows a total of 2940 vehicles between six A.M. and eight P.M. with a maximum of 290 between five and six P.M., 276 during the following hour and 260 during the preceding hour.

From this evidence and the testimony it appears that the installation of one wig wag at this location, since the tracks are some 100 feet apart along the highway, would not be justified as such installation would introduce a hazardous condition because of the liability to confuse travelers on the highway. The one, The Western Pacific track, would be protected and the Southern Pacific track would not be protected. In this proceeding, however, the Southern Pacific crossing was not formally brought to the attention of the Commission and it is therefore concluded that a separate proceeding should be instituted, taking into consideration both the Southern Pacific and the Western Pacific crossings at this point. It can then be determined whether or not both roads should install an automatic flagman at this crossing, either flagman to be operated by the trains of both roads. Under these circumstances it appears that the original order of the Commission should be modified with respect to Crossing No.6 so that The Western Pacific shall, after future investigation by the Commission, install an automatic flagman when and if so ordered.

The representative of the California Highway Commission brought up the question of exact location of the automatic flagman at Crossing No.29 and it was suggested that he, the witness for the applicant, and the witness for the Commission should determine the correct location. There is no objection to this arrangement and the conference to determine the matter will be held, as suggested.

As to Crossing Nos. 16, 23, 25, 26, 27, 29, 31 and 35, with respect to crossing gates, the recommendations of the Commission's engineer seem well supported and reasonable and should be adopted.

As to Crossing Nos. 35, 37, 38, 39, 40 and 43 the desire of applicant and of the Commission's engineering department is alike in that both believe that final judgment of these crossings should not be rendered until the track is laid and the right of way is cleared so that the hazards at these crossings could be more accurately determined and it appears that there is no reason why final disposition of this part of the application should be made at this time.

THIRD SUPPLEMENTAL ORDER

The Western Pacific Railroad Company having in its third supplemental application herein asked for a modification of Decision 4744, as indicated in the foregoing opinion, a public hearing having been held and the matter having been submitted and now ready for decision,

IT IS HEREBY ORDERED, that Decision No. 4744 be and it is hereby amended as follows:

1. For Crossing No. 6, County Road, - Applicant is authorized to suspend the installation of an automatic flagman until further notice from this Commission.

2. For Crossing No. 16, Maybury Road, - That part of Decision No. 4744 requiring the installation of an automatic flagman at this crossing is rescinded.

3. For Crossing No. 23, Twenty-fourth Street, and Crossing No. 25, Williams Street, - The installation of automatic flagman at these crossings may be suspended until these streets are paved with permanent pavements.

4. For Crossing No. 26, Keyes Street near Twelfth Street, - An automatic flagman shall be installed at this crossing.

5. For Crossing No. 27, Keyes Street at Fifth Street, - Neither an automatic flagman nor a human flagman need be in-

stalled at this crossing.

6. For Crossing No. 29, Monterey Road, Crossing No. 31, Almaden Road,- An automatic flagman shall be installed at the side of the street instead of at the center of these highways.

7. For Crossings Nos. 36, Sunol Street, 38 Saverker Street, 39 Sunol Street, 40 and 43, San Fernando Street,-That part of the application herein dealing with these crossings is hereby denied without prejudice.

The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossings 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 8th day of November, 1921.

H. B. Brundage
H. D. Loveland
Charles J. ...
W. J. ...
Commissioners.