

Decision No. 27743

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of the COUNTY OF TULARE for an Order authorizing the establishment of a grade crossing over the tracks of the Southern Pacific Company, at a point where the North Section Line of Section 30, Township 18 South, Range 24 East intersects the Southern Pacific Company tracks, and at which point a former crossing was known as B-239.9.

Application No. 19552.

ORIGINAL

In the Matter of the Application of the COUNTY OF TULARE for an Order authorizing the establishment of a grade crossing over the tracks of the Southern Pacific Company, at a point where the North Section Line of Section 30, Township 18 South, Range 24 East intersects the Southern Pacific Company's tracks, and at which point a former crossing was known as B-239.9.

Application No. 19647.

LeRoy McCormick, for applicant.
H. W. Hobbs, for Southern Pacific Company.

BY THE COMMISSION:

O P I N I O N

The two above entitled proceedings deal with applications of the County of Tulare seeking authority to reestablish two grade crossings over Southern Pacific Company's main line tracks in the unincorporated town of Goshen, commonly referred to as Goshen Junction, and which will hereinafter be referred to as Goshen.

The description in the above entitled Application No. 19647 should read as follows:

"In the Matter of the Application of the COUNTY of TULARE for an Order authorizing the establishment of a grade crossing over the tracks of the Southern Pacific Company in the southeast portion of Section 13, Township 18 South, Range 23 East, which crossing was known as B-238.7."

A public hearing was conducted in these proceedings before Examiner Hunter at Visalia, January 22, 1935, at which time it was stipulated by all interested parties that the two applications should be consolidated for the purpose of taking testimony.

In Application No. 19552 the County seeks authority to reestablish a grade crossing of a county road with Southern Pacific Company's track along the north line of Section 30, Township 18 South, Range 24 East, M. D. B. & M., designated as Crossing No. B-239.9. This crossing was formerly opened at grade across the track as a section of the east and west county road between Visalia and Hanford and is located approximately three-fourths of a mile south of Goshen.

In Application No. 19647 the County seeks authority to reestablish a grade crossing over Southern Pacific Company's track in Section 13, Township 18 South, Range 24 East, M. D. B. & M., designated as Crossing No. B-238.7 and located about half a mile north of Goshen. Previous to the change in the State highway at Goshen, as explained hereinafter, State Highway Route No. 4 crossed Southern Pacific Company's tracks at grade at this location. Upon completion of the new State highway, this road was returned to the County.

For convenience these two crossings will be referred to hereinafter by their respective numbers.

Within the past year the Division of Highways of the Department of Public Works of the State of California has relocated a three-mile section of State Highway Route No. 4 (U.S.99), at Goshen. State Highway Route No. 4 is the main artery between San Francisco and Los Angeles via San Joaquin Valley. In the vicinity of Goshen Route No. 4 parallels the railroad; to the north of Crossing No. B-238.7 it is located to the west of the track, while to the south, previous to the change, it was on the east side of the track. In

this highway improvement project the road was continued south on the west side of the railroad to a point where it intersects Route No. 10, which is the main State highway between Visalia and Hanford. These two highways were consolidated for a short distance to make use of a new undergrade crossing located about two miles south of Goshen (Crossing No. B-240.9-B). This undergrade crossing was authorized by the Commission in its Decision No. 25551, dated January 16, 1933, in Application No. 18101, under certain conditions, which, among other things, provided that with the opening of the new separation, said grade crossings Nos. B-238.7 and B-239.9 were to be abandoned and effectively closed to traffic. These are the two grade crossings involved herein. On March 24, 1934, this separation was completed and opened to traffic. The total cost of the improvement, exclusive of pavement, amounted to \$52,000, of which sum Southern Pacific Company was required to pay \$15,000. On April 6, 1934, the California Highway Commission adopted a resolution formally abandoning the highway easement at Crossing No. B-238.7 preparatory to closing same.

On February 11, 1933, the Board of Supervisors of Tulare County passed a resolution agreeing to close said Crossing No. B-239.9 to all vehicular traffic, upon the completion of the new undergrade crossing. The resolution further provided that a stock crossing was to be maintained at this location and gates provided on each side of the railroad right of way. After further study the Commission agreed to the plan of maintaining a stock crossing at said Crossing No. B-239.9 in accordance with the provisions of the above mentioned resolution, which assent is evidenced by a letter under date of February 21, 1933, to the interested parties.

On March 12, 1934, the County filed with the Commission a petition for rehearing, seeking a revision of the order in said

Decision No. 25551 with respect to the closing of Crossings Nos. B-238.7 and B-239.9. This petition for rehearing was denied in the Commission's Decision No. 27013, dated May 2, 1934.

Following the denial of the County's application for rehearing, Mr. R. E. Wills, a rancher owning property on both sides of the track at Crossing No. B-238.7, filed an action in the Superior Court of Tulare County to restrain the Department of Public Works and the Southern Pacific Company from closing this crossing, as required in said Decision No. 25551. The court vacated and dissolved the temporary restraining order which it had previously issued, denied Mr. Wills' application for a preliminary injunction, and sustained without leave to amend the demurrer interposed by the defendants therein to the amended complaint. In its order the court held it was without jurisdiction in the matter, since the granting of the injunction sought would be a direct interference with the order of the Railroad Commission directing the abandonment of a portion of the public highway - an order which can be reviewed only by the Supreme Court. (Wills et ux v. Department of Public Works of the State of California, et al. No. 24449, Superior Court, Tulare County.)

On October 2, 1934, Southern Pacific Company advised that the two crossings involved herein were physically closed to all traffic except for the maintenance of a stock crossing at B-239.9.

Applicant presented a number of witnesses and petitions in support of its contention that public convenience and necessity requires the reopening of the two crossings involved herein. The primary need for the reestablishment of Crossing No. B-238.7 was to admit traffic along the old State highway, not only for the accommodation of local traffic but also to attract some of the through traffic which would trade at the few business establishments located

thereon. One witness testified that he had farm property on each side of the track and that this crossing afforded him a convenient means of driving stock and hauling farm products and machinery from the property on one said of the railroad to that on the other side.

With respect to Crossing No. B-239.9, there was an abundance of testimony to show a necessity for the reestablishment of this crossing to accommodate both live stock and vehicles. As stated above, this crossing connects with a county road which extends from Visalia to Hanford. The plan of keeping this crossing open for live stock only does not, in the opinion of these witnesses, meet the public requirements for access over the railroad, in fact it was the contention of the stockmen that the past practice of maintaining gates at this crossing worked a material hardship on the drivers of stock in that they were required to secure the gate key from the station agent and also it was practically impossible to get the stock over this crossing due to the fact that the company had dug a deep ditch across the old road to prevent its use by vehicles.

Southern Pacific Company took the position that these crossings should not be reopened, contending that the new undergrade crossing (No. B-240.9-B), together with the grade crossing over the tracks at Goshen Station (Crossing No. B-239.1) provide reasonable and ample access for vehicular and stock traffic over the railroad, particularly when a stock crossing is maintained at Crossing No. B-239.9.

The following tabulation is taken from Southern Pacific Company's Exhibit No. 5.

ESTIMATED ORIGINAL INVESTMENT AND AVERAGE
ANNUAL COSTS TO REOPEN CROSSINGS NOS. B-238.7 and B-239.9

I t e m	Crossing No. B-238.7				Crossing No. B-239.9			
	Invest.:	Depr.:	Oper.:	Total	Invest.:	Depr.:	Oper.:	Total
1 Crossing	\$ 160	\$ 18.24	\$ 5.70	\$ 23.94	\$ 280	\$ 17.70	\$ 5.00	\$ 22.70
2 Wigwags (2)	1,800	82.80	96.00	178.80	2,000	92.00	96.00	188.00
3 Signs	15	.69	.91	1.60	15	.69	.91	1.60
4 Cattle Guards	45	4.18	.76	4.94	45	4.18	.76	4.94
5 Sub-Total	\$2,020	\$105.91	\$103.37	\$209.28	\$2,330	\$114.57	\$102.67	\$217.24
6 Advance R.R. Signs	9	.45	-	.45	9	.45	-	.45
7 Floodlights	150	6.00	25.26	31.26	150	6.00	25.26	31.26
8 Highway Markings	8	-	8.00	8.00	8	-	8.00	8.00
9 Sub-Total	\$187	\$ 6.45	\$ 33.26	\$ 39.71	\$ 187	\$ 6.45	\$ 33.26	\$ 39.71
10 Grand Total	\$2,187		\$248.99	\$2,497			\$256.95	

The railroad company contends that if these crossings are reopened, its \$15,000 contribution toward the separation should be returned. To this suggestion the District Attorney stated there was no legal way in which the county could reimburse the railroad. The record shows that the grade crossing at the station, which is over the company's yard and involves six tracks, is not only hazardous but is frequently blocked by trains for excessive periods of time. A ten-hour traffic count (7:00 A.M. to 5:00 P.M.) taken at this crossing on a normal weekday shows the following:

41 Automobiles.
15 Trucks.
1 Well Rig.
1 Horsesdrawn Vehicle.

It is apparent from the record in this proceeding that there is a public need for a grade crossing over the railroad in the vicinity of Goshen, as the separation does not afford a safe and convenient crossing for live stock, horsesdrawn vehicles or

certain types of farm implements. The record clearly shows that the most suitable place for such a grade crossing is at Crossing No. B-239.9 and with a grade crossing at this location, there would be little public need for a grade crossing at the station, these two crossings being located approximately three-fourths of a mile apart.

With respect to reopening Crossing No. B-238.7, there has not been shown sufficient public convenience and necessity to reestablish this grade crossing, in fact the evidence adduced at this hearing dealing with necessity for this crossing was substantially the same as that considered by the Commission when the crossing was ordered closed upon the opening of the underpass in said Decision No. 25551.

With respect to securing a farm crossing over the railroad to accommodate traffic between property which is under one ownership and management and divided by the railroad, the management of such property can apply informally to the railroad for such a crossing; failing under this procedure, it is his privilege to proceed under Section 485(a) of the Civil Code to obtain relief.

O R D E R

A public hearing having been held in the above entitled proceedings and matters having been submitted,

IT IS HEREBY ORDERED in Application No. 19552 that the Board of Supervisors of the County of Tulare, State of California, is hereby authorized to construct a county road at grade across the track of Southern Pacific Company at the location more particularly described in the application and as shown by the map attached thereto, subject to the following conditions and not otherwise.

- (1) The above crossing shall be identified as Crossing No. B-239.9.
- (2) The entire expense of constructing the crossing shall be borne by applicant. The cost of maintenance of that portion of said crossing up to lines two (2) feet outside of the outside rails shall be borne by applicant. The maintenance of that portion of the crossing between lines two (2) feet outside of the outside rails shall be borne by Southern Pacific Company.
- (3) The crossing shall be constructed of a width of not less than twenty-four (24) feet and with grades of approach not greater than four (4) per cent; shall be constructed equal or superior to type shown as Standard No. 2 in our General Order No. 72; shall be protected by two Standard No. 3 Wigwags, as specified in our General Order No. 75-A; and shall in every way be made suitable for the passage thereon of vehicles and other road traffic.
- (4) Prior to the beginning of actual construction of the crossing herein authorized, the County of Tulare shall file with this Commission a certified copy of an appropriate ordinance or resolution, duly and regularly passed, instituting all necessary steps to legally abandon and effectively close the existing public grade crossing in the vicinity of Goshen Junction Station and identified as Crossing No. B-239.1. Upon the completion of the crossing herein authorized and upon its being opened to public use and travel, said Crossing No. B-239.1 shall be legally abandoned and effectively closed to public use and travel.

- (5) Two Standard No. 3 wigwags, as specified in General Order No. 75-A of this Commission, shall be installed at the sole expense of applicant, for the protection of said Crossing No. B-239.9. The maintenance of said wigwags shall be borne by Southern Pacific Company.
- (6) Applicant shall, within thirty (30) days thereafter, notify this Commission, in writing, of the completion of the installation of said crossing and of its compliance with the conditions hereof.
- (7) The authorization herein granted shall lapse and become void if not exercised within one (1) year from the date hereof unless further time is granted by subsequent order.
- (8) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper and to revoke its permission if, in its judgment, public convenience and necessity demand such action.

The authority herein granted shall become effective on the date hereof.

IT IS HEREBY FURTHER ORDERED that Application No. 19647 be hereby denied.

Dated at San Francisco, California, this 11th day of February, 1935.

Leon Andrews

M. J. Lewis

W. B. Lewis

Arthur H. Lewis

Frank R. Lewis

Commissioners