

ORIGINALDecision No. 60200

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 the County of Tehama, of the State)
 of California, Board of Supervisors,)
 for an order authorizing the con-)
 struction of the crossing at grade)
 of Federal Aid Secondary Route)
 No. 1079, near Los Molinos, in)
 Tehama County, California and the)
 tracks of Southern Pacific Company.)

Petition for Modification
 in Application No. 39529

Robert W. Trimble, for petitioner.

Randolph Karr and Harold S. Lentz, for Southern
 Pacific Company, protestant.

Martin J. Lewis, for the Commission staff.

O P I N I O N

Pursuant to application of the County of Tehama, it was authorized by Decision No. 56201, herein, to construct Aramayo Way, the relocated Tehama and Vina Road, at grade across the track of Southern Pacific Company near Los Molinos. Decision No. 56201 identified another crossing underpass as Crossing No. C-210.7-B to be "abandoned and closed by Southern Pacific Company." This order was complied with by Southern Pacific Company, which constructed drainage ditches on its right of way at right angles to the former County right of way. These ditches have made it impossible for vehicles and livestock to pass. In addition, barriers have been constructed.

On October 1, 1959, the County filed its Petition for Modification, and asked the Commission to permit reopening of this underpass with a clearance of only nine feet and three inches and again to be designated as Crossing No. C-210.7-B, upon such terms and conditions as the Commission may prescribe. As justification for the requested relief the County alleged that at the time of making

Application No. 39529 it was unknown to the Board of Supervisors "that the closing of the underpass would constitute a danger to the safety of the inhabitants near said crossing due to high water from the Sacramento River and its surrounding water shed which is in very close proximity to Crossing C-210.7-B. Crossing C-210.7-B provides the only means of ingress and egress to the public highway during floods. Said crossing is also a closer means to the City of Corning and Red Bluff which is the closest hospital facilities in the case of persons in need of immediate hospitalization."

Public hearings were held in Los Molinos before Examiner Rowe on April 21 and 22, 1960. Evidence, both oral and documentary, was adduced and on the latter date the matter was submitted for decision.

The protestant railroad presented its motion that the Commission dismiss the Petition for Modification, for the reason that Application No. 39529 had been granted and that Decision No. 56201 had been fully complied with so that there was nothing remaining for modification. The Petition for Modification has been and will be considered as an application requesting the opening of a county road at separated grades under the track of Southern Pacific Company. The motion, being considered as requiring proof of fact, was consolidated for hearing with the petition, and, like the petition, was submitted for decision on April 22, 1960. In the following order it will be denied.

Considering the petition as an application for a grade separation, it must be denied. Section 1202 of the Public Utilities Code, subsection (c), requires as a condition precedent to the granting of such relief that the Commission find that the separation as proposed is, in its judgment, one which will be practicable. The undisputed evidence shows that the underpass as used for many years

was not practicable. In fact, it was proved that the maintenance of the roadway under the trestle, with a clearance of only 9 feet 3 inches, constituted a continual hazard to the railroad structure itself and that the company was forced to maintain a warning device so that trains could be stopped after a truck, tractor or other vehicle became immobile thereunder and that attempts to extricate a vehicle resulted in damage to the wooden stringers or other portions of the structure. The underpass also constituted a menace to vehicular traffic with its 11 percent grade of approach and its impaired visibility which was aggravated by the fact that vehicles had to enter the underpass during a turn from either direction. The need for the use of the underpass as an escape from flood waters exists only during short periods of flood and then only during the time that Tehama-Vina road to the east might be flooded so as to be impassable and before the waters might rise a few feet more and make the underpass likewise impassable. Viewing the evidence of the County most favorably can result only in a determination that for a few hours during floods the underpass is needed by a few motor vehicles of average height. Keeping in mind the hazards to the structure itself and the peril of vehicular collision during normal use, the Commission is forced to find that the underpass, as proposed, is not practicable.

Counsel for protestant stated at the hearing that in view of the urgent need of those living in the flood area between the time that Tehama-Vina road becomes impassable and before the area which formerly constituted the underpass is also flooded, Southern Pacific Company would be willing to permit the County to restore the roadway on the company's right of way and use it for passenger vehicles and not-too-high trailers during such periods. This use,

however, must be conditioned upon the erection and maintenance by the County of effective barriers, designed in form satisfactory to the railroad company, and locked gates so as to prevent other uses. It was suggested that this could be accomplished by placing the key to such locks in the custody of a responsible county official with instructions to unlock the gates only during such flood periods. The Commission approves this plan and procedure and finds that it would be proper and unobjectionable and will authorize the parties to proceed accordingly. The Commission further finds that it would be proper and unobjectionable for the railroad protestant to place another such key in the possession of one of its employees who would be instructed and authorized to use, or permit under proper safeguards the use of, such key to open such gates and let livestock pass thereunder if such livestock originate at or are destined to its corral or other facility.

O R D E R

Application having been filed, public hearings having been held and the Commission being fully advised,

IT IS ORDERED:

- (1) That the motion to dismiss filed by Southern Pacific Company is denied.
- (2) That the application to reopen the grade separation at Crossing No. C-210.7-B is denied.
- (3) That the County of Tehama is authorized to repave the surface of Tehama-Vina road as it formerly existed on the right of way under the Southern Pacific Company trestle at Crossing No. C-210.7-B and to maintain said surface so long as it erects and maintains barriers on either side of the company right of way and effective gates which shall always be kept locked, provided, that a key to such lock

be placed in the possession of a responsible county official for use only in case of need during floods.

(4) That the Southern Pacific Company may also place in the hands of its own employees keys for such locks for use in permitting livestock originating at or destined to its corrals or other facility to pass thereunder.

(5) That the authority granted to the County of Tehama by ordering paragraph (3) hereof shall continue only so long as the company track is maintained on a trestle at this point and said order shall not be construed as preventing said railroad company from changing the grade of said track or placing it on filled ground.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 31st day of May, 1960.

[Signature]
President
[Signature]
[Signature]
[Signature]
Commissioners