

ORIGINAL

Decision No. 80079

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation for the purpose of establishing a list for the year 1972 of railroad grade crossings of city streets or county roads most urgently in need of separation, or existing separations in need of alteration or reconstruction as contemplated by Section 189 of the Streets and Highways Code.

Case No. 9257

Laurence W. Milnes, for City of Fremont; James P. Maddox, for City of Anaheim; Ted W. Shettler, for City of El Monte; Harold McDonald, for Butte County Department of Public Works; Graham Ritchie, Attorney at Law, for City of Industry; John C. Miller, for Western Pacific Railroad; Melvin R. Dykman, Attorney at Law, for State of California, Department of Public Works; and Harold S. Lentz, Attorney at Law, for Southern Pacific Transportation Company; respondents.
William L. Oliver and James Cherry, Attorney at Law, for the Commission staff.

O P I N I O N

By Decision No. 79775, dated February 25, 1972, the Commission reopened Case No. 9257 for the limited purpose of accepting nominations of "proposed" crossings which qualify under Chapter 1602, California Statutes, 1971 (Assembly Bills Nos. 1587 and 388 and Senate Bill No. 141 amended through Chapters 1232, 1602 and 1798).

Public hearing was held before Examiner Daly in San Francisco on March 30, 1972, and the matter was submitted upon the receipt of late-filed Exhibit 1-B and points and authorities, which have been since filed and considered.

Copies of the order reopening the investigation were served upon each city, county and city and county in which there is a railroad crossing or separation; each railroad corporation; the Department of Public Works; the California Highway Commission; the Greater Bakersfield Separation of Grade District; the League of California Cities; and the County Supervisors Association. All parties were notified that if they desired to have a particular "proposed" crossing or crossings considered as a possibility for inclusion in the 1972 list they should send to the Commission by March 24, 1972, the original and three copies of a letter of request for such consideration, setting forth specified information relating to each crossing. The order reopening Case No. 9257 also provided that the 1972 priority list as set forth in Decision No. 79466, dated December 14, 1971, would not be modified except to the extent that any nominations which were favorably acted upon would receive a place below any crossing presently on said list.

Thirteen public agencies nominated 27 projects to be considered, but included certain nominations which did not fall within the purview of recent legislation. As evidenced by late-filed Exhibit 1-B, those nominations which do qualify were reduced to 17.

The staff considered each nomination according to certain traffic and cost factors.

Because the Separation of Grade Crossing Fund for the fiscal year of 1972-73 has approximately \$19 million available for projects included on the 1972 Priority List, the staff recommends that all 17 nominations be added to the list for 1972.

During the course of hearing the attorney for the Department of Public Works raised the issue as to whether an established list can be amended after the mandatory date for establishing the list has passed. He contends that the amended version of Section 189 of

the Streets and Highways Code did not change the original language of Section 189, which reads as follows:

"On or before the first day of each year, the Public Utilities Commission shall establish and furnish to the Department of Public Works a list....",

and because the section refers to a single list, there can be no subsequent amendment thereto.

Staff counsel argues that there is no language in the Streets and Highways Code, including Section 189, which restricts the Commission from altering or amending a priority list and according to Section 1708 of the Public Utilities Code:

"The Commission may at any time upon notice to the parties affected...rescind, alter or amend any order or decision made by it...."

The attorney for the Department of Public Works further argues that even if the Commission can amend the list heretofore established by Decision No. 79466 the legislation relied upon (Assembly Bill No. 1587 and Assembly Bill No. 388) contained no emergency clauses and therefore did not become effective until March 4, 1972. In response staff counsel contends that the legislature, by increasing the amount of money to be made available to cover "proposed crossings", clearly expressed a legislative intent in Senate Bill No. 141 that said money be immediately made available. Senate Bill No. 141 became effective on December 17, 1971, and Section 4 thereof reads as follows:

"This act is an urgency measure necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

"Funds for the elimination of an extremely dangerous highway railroad crossing will be lost if the provisions of the bill are not made operative at once.

"In order that this hazardous crossing may be eliminated immediately, it is necessary that the act take effect immediately."

It appears that the arguments made by counsel for the Department of Public Works are not tenable and that the Commission may within its statutory authority amend the priority list established by Decision No. 79466 by adding thereto projects nominated pursuant to the provisions of Chapter 1602, California Statutes, 1971 (Assembly Bills Nos. 1587 and 388 and Senate Bill No. 141).

After consideration the Commission finds that the priority list for 1972 as set forth in Decision No. 79466, dated December 14, 1971, should be amended by adding thereto the following:

ADDITIONS TO PRIORITY LIST OF GRADE SEPARATION PROJECTS OR ALTERATIONS
YEAR 1972
PURSUANT TO SECTION 189 OF THE STREETS AND HIGHWAYS CODE

Priority No.	Proposed Crossing No.	Street	Agency	Railroad
44	2-169.5-B	Lewis St.	Anaheim	AT&SF
45	2-187.0-B	Canada Rd.	Orange County	AT&SF
46 (a)	E-76.7	Lena Ave.	Santa Clara County	SPT
47	2-187.6-B	Ridge Route Dr.	Orange County	AT&SF
48	2-154.87-B	Florence Ave.	Los Angeles County	AT&SF
49	E-451.2-B	White Oak Ave.	Los Angeles	SPT
50	B-496.1-B	Durfee Ave.	El Monte	SPT
51	DAB-40.8-B	Paseo Padre Parkway	Fremont	SPT
52	2H-19.5-A	Prairie Ave.	Los Angeles County	AT&SF
53	2B-1.3-A	Mill St.	San Bernardino	AT&SF
54	3-26.38-A & B-508.5-A	Grand Ave.	Los Angeles County	UP & SPT
55 (a)	6T-31.51 & 6T-32.02	Berkeley Ave. through College Ave.	Claremont	SPT
56	2-116.4-B	Cerritos Ave.	Los Angeles County	AT&SF
57	2B-35.85-A	Weir Canyon Rd.	Orange County	AT&SF
58	2-189.3-A	Alicia Parkway	Orange County	AT&SF
59 (a)	-	Century Freeway	Los Angeles County	SPT

(a) Track or road relocation affecting existing crossing.

O R D E R

IT IS ORDERED that the Secretary shall furnish a full, true and correct copy of this decision and order to the State Department of Public Works.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 18th
day of MAY, 1972.

William Lyons Chairman
[Signature]
Vernon L. Sturgeon
[Signature] Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.