

Decision 83 02 071 FEB 16 1983

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of John A. Seibel,	)	
John Cullen, Dennis L. Swanson	)	
and Charles Goubert, to obtain	)	Application 82-10-09
private crossing over the railroad	)	(Filed October 6, 1982)
and railroad right of way of the	)	
Western Pacific Railroad Company.	)	

O P I N I O N

Applicants, John A. Seibel (Seibel), John Cullen (Cullen), Dennis L. Swanson (Swanson), and Charles Goubert (Goubert), seek an order requiring Western Pacific Railroad Company (WP) to construct a private crossing over its railroad right-of-way.

The verified application avers that: Applicants own two parcels of land in Plumas County, one of which is landlocked. The parcels are separated by the WP right-of-way. The crossing will permit access to the landlocked parcel. Certain deeds conveying property to WP require the construction of a private crossing at WP's expense.

The Commission makes the following findings and conclusions in this matter.

Findings of Fact

1. The Commission has jurisdiction in this proceeding. (Public Utilities Code § 7537.)
2. The application was filed on October 6, 1982. Service by mail was made on WP on October 5, 1982. WP has not filed a protest or any responsive pleading in this matter. (Rules 8.1; 8.3; 8.4.)

3. A public hearing is not necessary.

4. On March 7, 1905, A. E. Bulson and wife conveyed the following to WP:

"A strip or tract of land One hundred feet in width, being Fifty feet on each side of and parallel with the located center line of said Western Pacific Railway Company's line of railroad as the same is staked out and located over and across the following parcel of land, to wit:

"The West half of the Southeast quarter of Section twenty-five in Township twenty-three North and Range Fourteen East, M.D.B. & M. W2 SE4 25-23 N-14 E, M.D.B. & M.

"The center line of said strip or tract of land hereby conveyed being particularly described as follows, to wit: Beginning at the East line about 333 feet North of the Section line, thence N.82°30'W. to the West line, intersecting the West line about 500 feet North of the Section line between 25 & 36, Twp.23 N. Range 14 East, M.D.B. & M.

"Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. To Have and to Hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to its successors and assigns forever. The afore-said conveyance is made upon the express condition that the said party of the second part, its successors or assigns, will build and maintain good and sufficient fences on each side of said strip of land. There is also to be a crossing made for Bulson on the West 20 feet of this right of way." (Emphasis added.)

5. On November 9, 1907, A. E. Bulson and wife conveyed the following to WP:

"A strip or tract of land Two hundred (200) feet in width, being all the land included between the East and West boundaries of the property next herein described and lines drawn parallel with and 50 feet and 250 feet distant on the South side of the center line of said Western Pacific Railway Company's line of railroad as now located across the property of the said parties of the first part, which said property of the parties of the first part is described as follows, to wit:

"The Southwest quarter of the Southeast quarter (SW $\frac{1}{4}$  of SE $\frac{1}{4}$ ) of Section 25, Township 23 North, Range 14 East, M.D.B. & M., containing 6.12 acres, excepting therefrom the right of way 20 feet wide for a lane on west line of said described strip.

"The said center line of said Western Pacific Railway, insofar as the same extends across the above described property, is particularly described as follows: beginning on west line of said SW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Sec. 25, 500 feet more or less north of the quarter section corner on south boundary of said Sec. 25; thence S.82°32'E. 1320 feet more or less to the east line thereof.

"Also a triangular tract of land being all that part of the NE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Sec. 36 T.23 N.R.14 E. M.D.M. lying north of the right of way of the Boca and Loyalton R.R. containing in all .02 acres, more or less.

"Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. To Have and to Hold, all and

singular the said premises, together with the appurtenances, unto the said party of the second part, and to its successors and assigns forever.

"The said party of the second part covenants and agrees that it, its successors in interest or assigns, will build and maintain good and sufficient fences separating said strip of land hereby conveyed from the lands remaining in the parties of the first part, also, build and maintain a grade crossing at lane at West end of tracts hereby conveyed."  
(Emphasis added.)

6. On March 8, 1905, A. E. Bulson and wife conveyed the following to California Safe Deposit and Trust Company:

"All that portion of the West half of the Southeast quarter of Section twenty-five township twenty-three North Range fourteen East, M.D.B. & M.

(W $\frac{1}{2}$  SE $\frac{1}{4}$  25-23 N-14 E.M.D.B. & M.)

lying between the rights of way of the Boca & Loyalton Railway and the Western Pacific Railway, except a strip on the west side of said parcel twenty feet wide, which is expressly reserved for a lane for use by the parties of the first part, containing forty-two acres, more or less." (Emphasis added.)

7. On June 14, 1905, California Safe Deposit and Trust Company conveyed the following to Standard Realty and Development Company:

". . .

"(2) All that portion of the West half of the Southeast quarter of Section Twenty-five, Township Twenty-three North, Range Fourteen East, Mount Diablo Base and Meridian, lying between the rights of way of the Boca and Loyalton Railway and the Western Pacific Railway Company, except a strip on the west side of said parcel twenty feet wide."  
(Emphasis added.)

8. On February 1, 1980, the Plumas County Tax Collector deeded the following to Seibel, Cullen, Swanson, and Goubert:

"Parcel No. 140-070-18, more particularly described as portion of Section 25, Twp. 23 N., Rge. 14 E., M.D.M. described as follows: The West 20.00 feet of the West  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  excepting therefrom the portion lying South of the North line of the Western Pacific Railroad right of way and except any portion conveyed in Book 160, O.R., Page 54, Plumas County Records.

"Parcel No. 140-070-20, more particularly described as that portion of the West  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of Section 25, Twp. 23 N., Rge. 14 E., M.D.M. which lies South of the Western Pacific Railroad right of way."

9. As a result of the conveyance from the Tax Collector set forth in Finding 8, Seibel, Cullen, Swanson, and Goubert are the successors in interest of the grants and reservations contained in the deeds set forth in Findings 4, 5, 6, and 7.

10. On August 27, 1980, William E. Pearson, Pauline Pearson, Kenneth O. Pearson, and Louella Pearson granted the following easement to Seibel, Cullen, Swanson, and Goubert:

"...a non-exclusive easement 60 feet in width for ingress, egress, public utilities and incidental purposes as shown on a map recorded in Book 6 of Parcel Maps at page 7, records of said Plumas County, and designated as Easement No. 1 and Existing 60' Road and Utility Easement.

"Subject to the condition that the Grantees, their successors or assigns shall maintain that portion of said easements designated, 'Existing 60' road and utility easement,' with

3 inch minus road cover to a depth of 6 inches in the event the easement is put into use by the grantees, successors or assigns."

11. As a result of the easement set forth in Finding 10, the property owned by Seibel, Cullen, Swanson, and Goubert north of the WP right-of-way has access to a public way which connects to State Highway 70. The property south of the WP right-of-way is landlocked.

12. A private crossing over the WP right-of-way would connect all the land owned by Seibel, Cullen, Swanson, and Goubert and would remove the landlocking of the portion of the land south of the WP right-of-way.

13. It is reasonable to require WP to construct a private crossing over its right-of-way on the west line of the southwest quarter of the southeast quarter (SW $\frac{1}{4}$  of SE $\frac{1}{4}$ ) of Section 25, Township 23 North, Range 14 East, M.D.B. & M.

14. In the light of the covenants contained in the deeds set forth in Findings 4, 5, and 6, it is reasonable and consistent with the public interest to require WP to pay all the costs of constructing and maintaining the private crossing.

15. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

#### Conclusions of Law

1. By failing to respond to the application, WP admitted the truth of all facts properly pleaded therein. (Brown v Brown (1915) 170 C 1, 5; Horton v Horton (1941) 18 C 2d 579, 585; Fitzgerald v Herzer (1947) 78 CA 2d 127, 131.)

2. The Commission is not a body charged with the enforcement of private contracts. (Hanlon v Eshelman (1915) 169 Cal 200.) Its function, like that of the Interstate Commerce Commission, is

to regulate public utilities and compel the enforcement of their duties to the public, not to compel them to carry out their contract obligations to individuals. (Atchison, T. & S.F. Ry. Co. v Railroad Commission (1916) 173 Cal 577, 582.) When the Commission acts, it is acting under the police power of the state and is not bound by private contracts in the exercise of that power.

(San Bernardino v Railroad Commission (1923) 190 Cal 562; Miller v Railroad Commission (1937) 9 C 2d 190, 195-96; Truck Owners, etc., Inc. v Superior Court (1924) 194 Cal 146, 156; People v Superior Court of Sacramento County (1965) 62 C 2d 515, certiorari denied, 85 S. Ct. 1341; People v Ryerson (1966) 241 CA 2d 115; Pratt v Coast Trucking, Inc. (1964) 228 CA 2d 139; Vallejo Bus Co. v Superior Court (1937) 19 CA 2d 201, 205.) The Commission can, however, consider such contracts in arriving at its decision. (Application of The City of Parlier (1930) 34 CRC 739, 742; PG&E and Cal. Water Serv. Co. (1954) 53 CPUC 666, 670; Southern Pacific Co. (1914) 5 CRC 103, 106; see also Marvelous Marin et al. v S.P. Golden Gate Ferries (1931) 36 CRC 536, 538.)

3. WP should be ordered to construct and maintain a private railroad crossing, 20 feet wide, at the west line of the southwest quarter of the southeast quarter (SW $\frac{1}{4}$  of SE $\frac{1}{4}$ ) of Section 25, Township 23 North, Range 14 East, M.D.B. & M., Plumas County, California.

O R D E R

IT IS ORDERED that:

1. Within 180 days after the effective date of this order WP shall construct a private railroad crossing, 20 feet wide, at the west line of the southwest quarter of the southeast quarter (SW $\frac{1}{4}$  of SE $\frac{1}{4}$ ) of Section 25, Township 23 North, Range 14 East, M.D.B. & M., Plumas County, California.

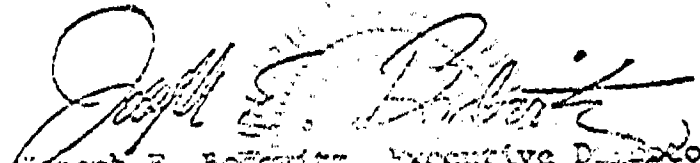
2. WP shall pay the entire cost of constructing the crossing ordered in Ordering Paragraph 1.
3. WP shall, at its expense, continue to maintain the crossing ordered in Ordering Paragraph 1.
4. WP shall notify the Commission, in writing, of the date on which the private crossing ordered here is completed, within 30 days from the date of completion.
5. The Executive Director is directed to serve a copy of this decision on WP by certified mail.

This order becomes effective 30 days from today.

Dated February 16, 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.  
President  
VICTOR CALVO  
PRISCILLA C. GREW  
DONALD VIAL  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Joseph E. Bođevitz, Executive Director



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Dated FEB 16 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.  
President  
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Commissioners