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Northern Pacific land grants in Congress

Ted Schwinden
The University of Montana

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The
NORTHERN PACIFIC LAND GRANTS
in
CONGRESS

by

Theodore Schwinden
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Approved:

Paul C. Phieps

Chairman of board
of examiners

W. P. Clark

Dean, graduate school

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CHAPTER I

INTRODUCTION

In the development of the vast area west of the Mississippi one of the primary factors has been transportation. From the early day of horse or river boat, through the advent of the covered wagon, and finally to the era of more modern contrivances, the various modes of transportation encouraged settlement within that immense region. In this picture, the role of the railroad occupies a prominent position. The history of the growth of rail transportation is a conglomeration of inventiveness, speculation, greed, and service. Yet, like nearly every other American industry, the pattern of growth has been familiar. During its early period of expansion, the people and the government were anxious to encourage the railroads by various means; once the industry was established, dissatisfaction arose, and a reaction evolved which usually took the form of regulation or suppression.

This paper is concerned with only one aspect of the early, federally-encouraged, period of rail development. The problem to be investigated is the Congressional history of the Northern Pacific land grants. Two basic considerations determined the selection of the Congressional approach to this field of land grant history. First, owing to the

lack of other reliable material, Congressional records offer the best indication of the motivation which led to the land grant system. Second, the evolution of land grant policy, because of its Congressional origin, is best illustrated in the Congressional debates and reports which traced the history of the Northern Pacific grants.

While the entire field of land grant history has not as yet been subjected to intensive analysis, one of the more untouched areas is that relating to the Northern Pacific. Some of the Pacific roads have been individually analyzed as to their corporate history and their grants-in-aid.¹ The Northern Pacific, however, is a notable exception. Only one history of the road is in print, and that was written by an employee of the corporation in 1883, the date of the road's completion.² The land grant of the road, which styles itself the "Main Street of the Northwest", has received even less attention. Primarily for this reason, this paper seeks to set down the legislative data relating to the enormous acreage acquired by the Northern Pacific.

¹See, e.g., E. L. Sabin, Building the Pacific Railway (Philadelphia: J. B. Lippincott Co., 1919); Stuart Daggett, Chapters on the History of the Southern Pacific (New York: The Ronald Press Co., 1922); G. D. Bradley, The Story of the Santa Fe (Boston: R. G. Badger, 1920).

²Eugene V. Smalley, History of the Northern Pacific Railroad (New York: G. P. Putnam's Sons, 1883). Some other works tell part of the Northern Pacific story; see E. P. Oberholtzer, Jay Cooke, Financier of the Civil War (Philadelphia: George W. Jacobs Co., 1907), Vol. 2.

Suggested immediately are several opportunities for further research; there are no works on the grant proper, its administration and disposition. More remarkable, no attempt has been made to bring the railroad's history up to date. This scarcity is due, in large measure, to the reticence of the Northern Pacific to open its files for historical investigation. Historian James B. Hedges has made a conspicuous attempt to expand the information available on the Northern Pacific with his work on that company's colonization efforts, and its affiliation with Henry Villard. If, by scholarly study, the gaps now existing in the historical development of the Northern Pacific land grant can be filled, eventually it will be possible to compile a comprehensive study of the whole land grant policy.

With some exceptions, the material herein has been drawn from government documents: the Congressional Globe and Record, the Senate and House Journals, and the reports of the Committees on Public Lands, the Pacific Railroad, and the Judiciary. Memoirs and other similar sources were drawn upon for supplemental information.

The presentation has been kept as nearly chronological as possible without sacrificing the need for clarity. To that end, the following chapter is devoted to a

survey of the period preceding the incorporation of the Northern Pacific. Then, successively, the acquisition of the grants, the Congressional attempts at forfeiting the grants, and the eventual grant adjustment are treated. In conclusion, the writer will sum up the findings of the paper as they have been determined by him.

CHAPTER II

EARLY AGITATION FOR A NORTHERN RAILROAD TO THE PACIFIC COAST

For a long time prior to the incorporation of the Northern Pacific Railroad Company in 1864, individuals had conceived of a railroad stretching from the Great Lakes region to the Pacific coast. The credit for the first practical and concrete project for a Pacific railway, however, should properly go to Asa Whitney.¹ The details of Whitney's idea were encompassed in a memorial presented to Congress on January 28, 1845.² Zadock Pratt, Democratic representative from New York, introduced the memorial in the House, and made a few remarks on behalf of the proposal. The value of encouraging such a railroad, he said, was:

...for the most extended commercial purposes... promoting the capacities of our common country for warlike defence as well as for all the advantages of peaceful intercourse between the people dwelling on the shores of the Atlantic and Pacific oceans...³

¹Lewis H. Haney, A Congressional History of Railways to 1850 (Madison: Bulletin of the University of Wisconsin, No. 211, Economics and Political Science Series, Vol. 3, No. 2, 1906), p. 404. See also E. V. Smalley, History of the Northern Pacific Railroad (New York: G. P. Putnam's Sons, 1883). There were other proposals, notably that of Dr. Samuel Bancroft Barlow of Massachusetts, but none attracted national attention or had lasting significance. See pp. 57 et seq.

²Congressional Globe (Washington: F. & J. Rives, 1845), 28th Cong., 2nd Sess., p. 218. Hereafter cited as Globe.

³Ibid., p. 218.

Moreover, such a road, by furnishing passage between Europe and China, "managed with the proper liberality, would soon become the highway of nations".⁴

The first Whitney memorial proposed a railroad from Lake Michigan to the Pacific at an estimated cost of \$60,000,000, this cost to be met by granting to Whitney and his successors a grant of land sixty miles wide for the length of the route. Whitney pointed out the advantages of the road and of the route selected: the vast saving of time and transportation costs from coast to coast, the encouragement offered for settlement in the Northwest, the great commercial potentialities of a region endowed with untapped resources and a temperate climate. Whitney professed no personal ambitions and supported his claim by providing that the tolls charged on the completed road would suffice only to meet the actual operating expenses.⁵

The memorial was referred to the Committee on Roads and Canals which reported it unfavorably on several grounds. The proposed railroad, they felt, would not be practical in view of the many natural obstacles along its route and the unsettled character of the country traversed. The Committee favored instead a water route by way of the Missouri and

⁴Loc. cit., Italics in the original.

⁵Ibid., pp. 218-19.

Columbia rivers.⁶ This report seemed to indicate a carry-over of the older favorable attitude toward water transportation, and a lack of experimentive inclination. Haney also points out the unfavorable influence of Senator Thomas H. Benton, Missouri Democrat, whose advice the Committee sought.⁷ Benton would naturally oppose any route not originating in Missouri, and he carried considerable weight in Congress.⁸ Whitney prepared and presented two more memorials in the following year which were designed to overcome the objections of opponents to his plan. They included provisions for stricter government regulation, for piecemeal granting of lands as the road was completed, for a limitation on the time for construction, and for a payment of sixteen cents an acre for the lands. Moreover, Whitney became less specific in his route demands, being willing to accept a more southerly location.⁹

⁶Report of Committees (Washington: Ritchie & Weiss, printers, 1845), 29th Cong., 1st Sess., No. 773.

⁷Op. cit., p. 415. The Senate report on the same memorial was favorable, pointing out that the possibilities of the road would merit at least a trial. Ibid., p. 415.

⁸See Robert E. Riegel, The Story of the Western Railroads (New York: The MacMillan Company, 1926), pp. 12-20, for an account of Benton's activities in respect to a transcontinental railroad.

⁹See Haney, op. cit., pp. 410 et seq., for a detailed discussion of the various modifications. Haney points out that Whitney was never able to meet the greatest objection to his propositions; namely, that the risks entailed were backed solely by Whitney's own character and sincerity of purpose.

The Whitney memorial with its modifications was brought onto the floor of Congress several times in the years between 1845-50, but the reception it received was consistently unfavorable. On January 7, 1848, Alpheus Felch, a Democrat from Michigan, presented the memorial to the Senate.¹⁰ A resolution from the New Jersey legislature favoring the bill was presented on March 3, but Whig Senator William L. Dayton of New Jersey, in placing the resolution, said that for himself "my impressions are altogether against the scheme as unwise and impracticable".¹¹ A few months later, on June 27, Democratic Senator John M. Niles of Connecticut introduced a bill embodying the Whitney scheme. A month later when he proposed taking up the bill for discussion, Benton immediately objected to debate on any proposal to give away "one hundred million acres of the public lands at one swoop", and the motion was tabled by a 27 to 21 vote.¹² During the session, Niles made one final attempt to further his bill by making it an amendment to a bill granting lands to Alabama for railroad construction, but he withdrew his amendment at once.¹³ In the House

¹⁰Globe, 30th Cong., 1st Sess., p. 192.

¹¹Ibid., p. 473.

¹²Ibid., pp. 875, 1011.

¹³Ibid., p. 1051.

Whitney's projected railroad fared little better. Representative Robert McClelland, Michigan Democrat, introduced a bill granting lands to Whitney, but it was laid on the table.¹⁴

The second session of the thirtieth Congress, 1848-49, brings to a close the agitation for the Whitney proposal as far as it affects the history of the later Northern Pacific. By this time, Whitney was ready to accept an alternate route, further debate was largely repetitious, and the possibility of ever securing Congressional sanction seemed remote. In the Senate, Miles made another futile attempt to bring up the Whitney bill. There was no debate, but Henry S. Foote, a Unionist from Mississippi, offered an amendment to change the western terminus to the Bay of San Francisco.¹⁵ James Pollock, Pennsylvania Whig, attempted twice to have the Whitney bill, H. R. 468, made special order of the day in the House, but he was unsuccessful.¹⁶ Until 1852, variations of the Whitney bills were introduced without success. So, after a decade of Congressional struggle, the first Northern Pacific railroad scheme dropped from sight.

Several factors regarding the Whitney proposition say

¹⁴Ibid., pp. 716, 868.

¹⁵Globe, 30th Cong., 2nd Sess., pp. 381-2.

¹⁶See ibid., pp. 25, 381.

now be examined in their relationship to the project of Perham and the Northern Pacific advocates a decade later. It may be said first that Whitney's proposal was premature; Congress was not disposed toward such a farsighted proposal, although there was no lack of precedent for granting public domain for internal improvements, either to states or to individuals.¹⁷ Before 1850 the population along the Pacific coast was not large, nor vociferous in demanding a faster and cheaper connection with the east. Even when the discovery of California gold brought about increased western migration to California and the Oregon country, there was the rising sectional conflict to consider. Early evidence of the effect of the sectional schism may be noted in the Foote amendment to change the route of Whitney's road to a more southerly terminus.¹⁸ The chartering of the Pacific railroads was concomitant with the outbreak of war after 1860 when sectional divisions no longer plagued Congress. These were general negative factors operating against Whitney, but perhaps more important was another phase of the Congressional situation. By being the first of the Pacific railroad proposals to receive the attention

¹⁷See in this connection Benjamin H. Hibbard, A History of the Public Land Policies. (New York: The MacMillan Company, 1924), pp. 264-266. As early as 1796 land was granted for internal improvement purposes.

¹⁸See above, p. 9.

of Congress, Whitney's scheme was caught in the swirl of the entire land grant controversy, and became something of a trial balloon to test the national attitude.

Prior to the collapse of the Whitney project, however, new propositions were already before Congress that were destined to accentuate the entire Pacific railroad question and the types of aid which the government might utilize. Replacing Asa Whitney as leading proponent of the northern railroad was a Vermont-born engineer, Edwin F. Johnson.¹⁹ Johnson had an interest in railroads, and he became impressed with the practicability of a northern route while working in Wisconsin. From 1852 on, he wrote enthusiastic reports on his project, studied the Lewis and Clark journals, and constructed maps of a proposed line. His pamphlets expounded the potentialities of the rich northwestern region and the relative lack of natural obstacles to construction. Johnson thus offered the practical, scientific influence of an engineer to the earlier Whitney proposal.

In Congress during this period the Pacific railway question was steadily developing. One needs but scan the Journals of Congress to note the ever increasing number of proposals being formulated by optimistic railroad builders. In 1853, the picture was somewhat clarified by the passage of an appropriation for the surveying of the various pro-

¹⁹Smalley, op. cit., pp. 69 et seq.

posed routes to the Pacific. The obstinacy of the respective sectional groups had prevented agreement on any one route. The surveying period allowed both sides to recuperate from the rail conflict while awaiting the reports. In 1855 the results of the surveys were submitted to Congress and the southernmost route was recommended as most practical. Congressmen had little regard for the recommendation and continued to support their favorite route.

During the survey period, a new agitator for the northern railroad emerged. That was Isaac I. Stevens, governor of Washington Territory, and the officer in charge of surveying the northern route to the Pacific. From his explorations in the region, he became thoroughly convinced of the feasibility of constructing a rail line to Puget Sound. Stevens, from the time he completed the surveys until his death during the war, spoke and wrote enthusiastically on the subject of the railroad. Later, his reports were used with some effect to influence Congressmen who doubted the merits of the northern route.

After 1857 or 1858 the passage of some Pacific railroad bill appeared inevitable. Each Congress during the 1850's debated one or more Pacific railway bills and the Senate approved two of them. Lack of unanimity as to the proper location of the route of the railroad blocked

passage of any bill until the secession of the southern states.²⁰ The ultimate winners in the struggle for recognition were a combination of the Union and Central Pacific Railroad companies, chartered in 1862 to build from the 100th meridian, in Nebraska, to the Pacific coast.²¹ Each road received a subsidy in government bonds ranging from \$16,000 to \$48,000 per mile, and a land grant of twenty sections per mile. In 1864, an amendatory act allowed these roads to issue their own bonds in an amount equal to their subsidy, and secure them with a first mortgage. So the first experiment in Pacific railway building was begun, preceding by two years the chartering of the Northern Pacific. In concluding this brief account of the early agitation for a Pacific railway, some of the arguments which had arisen over the policy of granting lands to railroads may be enumerated.

Writing in 1880, one friend of the land grant system stated that:

...Dismissing now all thought of other subsidies, it may be laid down as a proposition capable of absolute demonstration, that the railway land grant system has done more than any other one

²⁰For a good discussion of this period see Lewis H. Haney, A Congressional History of Railways in the United States, 1850-1887 (Madison: Bulletin of the University of Wisconsin, No. 342, Economics and Political Science Series, Vol. 6, No. 1, 1910), pp. 55-64.

²¹Statutes at Large of the United States (Washington: Government Printing Office), Vol. 12, p. 489.

thing to place this country in its present position of prominence and prosperity...²²

Without passing upon the validity of this conclusion, it does serve to illustrate the enthusiastic tenor of thinking which characterized the arguments of the land grant supporters. They saw manifold advantages in active governmental support of railroad construction, when private enterprise and capital could not, or would not, venture. They envisioned the commercial possibilities to be exploited by introducing transportation into the unsettled western regions. They calculated the unifying effects of a railroad system which could ease the task of defending and policing the area west of the Mississippi. The western lands were valueless anyway, unless some means of inducing settlement could be found. In fact, the government could make a positive financial gain through rate concessions on land-grant railroads. Thus ran the basic reasoning of the grant-in-aid proponents, and with little modification those same arguments were convincing enough to permit the granting of nearly 150,000,000 acres of public domain in aid of railroads; not, however, without opposition.

Those individuals who fought, in and out of Congress, the land grant policy of the government, enjoyed varying

²²E. H. Talbott, Railway Land Grants in the United States (Chicago: The Railway Age Publishing Company, 1880), p. 9.

success. After constitutional questions had been largely settled in the early part of the century, the opponents of grants were at least moderately effective until the mid-1850's. From the time of the Illinois Central grant in 1850, however, their power waned to the extent that, by 1856,

...the doctrine could be advanced that where a railroad was to be built through the public lands it was as a matter of course entitled to an extensive portion of those lands to aid in construction...²³

For at least a decade this ineffectiveness persisted but, as will be demonstrated below, after about 1870 the trend reversed itself in a most abrupt manner, and the antagonists of land grants became dominant. Like the land grant supporters, these foes of the system developed their arguments early and changed them only to meet the exigencies of developing situations.

It is impossible to establish any particular order of importance for the objections and criticism leveled against the granting of land to railroads. In opportunistic fashion, points of debate were seized upon when it was felt they would be most effective and most likely to command public and Congressional support. Historically, questions of constitutionality were raised first, and, failing there, attempts were made to utilize the jealousy of the landless

²³John Bell Sanborn, Congressional Grants of Land in Aid of Railways. (Madison: Bulletin of the University of Wisconsin, Economics, Political Science and History Series, Vol. 2, No. 3, 1899), p. 316.

eastern states toward their more fortunate western neighbors. As the public domain dwindled, and the national debt grew larger, some deplored the forsaking of possible future revenue from land sales. With the passage of the Homestead Act in 1862 this line of reasoning was abandoned in favor of pleas on behalf of the settler whose rights would supposedly suffer by virtue of the railroad grants.²⁴ So the controversy over the Congressional granting of public lands to aid in railroad development developed during the nineteenth century, and continued down to the present, the only changes being those of degree of interest and point of emphasis.

This brief recapitulation is intended to establish a framework for an investigation of the grants made to the Northern Pacific railroad. Therefore, it is to that railroad, of which its historian has written that it was "The greatest public work, I mean the greatest in its ends and utilities that mortal man has ever yet accomplished,"²⁵ and to the grants of land which were incorporated in its charter, that we may now turn.

²⁴The Homestead Act, by providing to any actual settler the right to gain title to a portion of the public domain without paying for it, signified that the government had given up the idea that the public lands must be sold for revenue purposes. For provisions of the act see Statutes, Vol. 12, p. 392.

²⁵Smalley, op. cit., p. 53.

CHAPTER III

THE ACQUISITION OF THE GRANTS OF 1864 AND 1870

Amidst the growing tension which pressed upon the second session of the thirty-sixth Congress, 1859-1860, Pacific railway proposals gained both in number and significance. Among the various petitions was one which proposed a grant of land and right of way to the People's Pacific Railway Company, a Maine corporation, to secure the construction of a railway and telegraph from Missouri to San Francisco.¹ This was the only appearance of the bill during that session of Congress, but it appeared later with mounting success. The sponsor of the proposition was a man of considerable foresight and initiative, Josiah Perham, a Maine enterpriser. He and his associates eventually became the recipients of the Northern Pacific grant, through a series of circumstances which need explanation.

Josiah Perham, as storekeeper, manufacturer, and commission merchant, enjoyed a checkered business career of recurrent failure and success.² In his later years he

¹Congressional Globe (Washington: F. & J. Rives, 1860), 36th Cong., 2nd Sess., p. 183. Cited hereafter as Globe.

²See Eugene V. Smalley, History of the Northern Pacific Railroad (New York: G. P. Putnam's Sons, 1883), pp. 97 et passim., for a detailed account of Perham's career and his role in the formation of the People's Pacific Company.

became interested in the railroad excursion business, through which he amassed enough capital to finance his entry into the Pacific railway picture. The idea of constructing a Pacific road, financed by small sales of stock to the people of the country, seems to have first received his attention in 1853.³ Perham interested some of his friends in the scheme and, together, they sought a charter from the state of Massachusetts. Failing to secure legislative approval there, the group took its case to the Maine legislature, which, on March 20, 1860, approved the petition for incorporation.⁴ The charter provided for a road to extend from the Missouri river to San Francisco. The stock of the company was fixed at one million shares of a par value of one hundred dollars each, to be raised by popular subscription. Perham was elected president, and he hurriedly took his charter to Washington to secure federal land and money grants. Although Perham worked diligently in behalf of his measure, it was nearly three years before it gained considerable support.

During the years from 1860 to 1863, Congress gave principal attention to the bills which later authorized the Union Pacific-Central Pacific route. The advocates of these

³Ibid., p. 99.

⁴Ibid., p. 104.

roads labored with increasing success; and, by 1862, they had obtained not only a charter, but also a generous land grant and bond subsidies.⁵ Perham's proposal was rejected by Congress in favor of the other plans for a central route. In 1860, and again in 1861, bills encompassing the Perham ambitions were introduced without success.⁶ Undaunted by his repeated failures to secure approval of his railroad, Perham, after the passage of the Union Pacific-Central Pacific bill, renounced the central route in favor of one across the northern reaches of the country. By alternative choice, he became successor to the proposals of Whitney, Johnson, and Stevens for a northern Pacific railroad.

On December 14, 1863, Republican Thaddeus Stevens of Pennsylvania introduced in the House of Representatives a bill granting lands to the People's Pacific Railway Company to aid in the construction of a Pacific railroad along the northern route.⁷ This bill was referred to a select committee on the Pacific railroad, of which Stevens was chairman. Perham, in his Washington activities, must have impressed himself favorably upon Stevens for that gentleman ably led the fight for the passage of a chartering

⁵See above, p. 13.

⁶Globe, 36th Cong., 2nd Sess., p. 183, and 37th Cong., 2nd Sess., p. 169.

⁷Globe, 38th Cong., 1st Sess., p. 19,

act. The Pennsylvania representative, on February 15, 1864, reported back from the committee a bill, H. R. 5, which was the same as the later Northern Pacific act as to route and grant. The bill was read twice and referred to the Committee of the Whole.⁸ On April 11, the bill was to have come before the House but Stevens successfully moved for a postponement of one week. The following week, when the measure was called to the floor, Democrat William S. Holman of Indiana immediately moved to insert a provision for free transportation for the troops and property of the United States.⁹ He also mentioned that the proposed grant of forty-six million acres would absorb a large part of the remaining public domain, and to that extent defeat the purpose of the recently passed Homestead Act. Ithamar C. Sloan, Wisconsin Republican, said he favored the bill except for the fact that the People's Pacific had a state charter. Lorenzo D. M. Sweat, a Maine Democrat and a member of the select committee, replied to these objections.¹⁰

Recalling the sectionalism of a few years past, Sweat remarked that a more auspicious period for a discussion of the Pacific railway problem was at hand.

The political elements which heretofore have

⁸Ibid., p. 658.

⁹Ibid., p. 1698.

¹⁰Ibid., pp. 1698-1702.

obtruded themselves in the considerations of this question are now happily at rest, and there is nothing now to prevent the exercise of the subject, wisest, and most national views upon it.¹¹

As to the advisability of aiding in the construction of another Pacific route, he explained that "If for no other purpose, this road would be an economical expenditure of the public money to open up for settlement the cultivable land along its line."¹² If more justification were needed than the horse need only consider the demands of national defense in the Northwest; "...Without it [the railroad] we have not the adequate means of a military defense of that country."¹³ Sweet went on to point out other aspects of the bill. The Northern corporation was not asking bonds or money, not even a right to mortgage their property. The fact that the People's Pacific possessed a state charter had no significance, Sweet argued, except to demonstrate "Ohio's interest in western and national development. In concluding the day's debate he dwelt upon the potentialities of the region to be traversed by the railroad, emphasizing the practicality of the northern route as reported by the Stevens survey.

¹¹Ibid., p. 1696.

¹²Ibid., p. 1701.

¹³Ibid., p. 1702.

On May 16, despite Stevens' vigorous protests, the Holman amendment was passed, 55-47.¹⁴ Two other amendments were also passed. One required a two year limit for commencing work on the road; the other provided that the road should run north of the 45th parallel rather than the 44th. A short debate on the measure then ensued, with Republican Representative James F. Wilson, Iowa, and Rufus P. Spalding, an Ohio Democrat, attacking the state charter of the company. Then John A. Kasson of Iowa, a Republican, asked a twofold question of those who supported the act's passage. Would not this northern railroad inure to the benefit of the British in Canada who had strong interest in the western country; and should not some provision be made in the bill for forfeiture in case of noncompletion or other breach of condition?

¹⁴Ibid., p. 2292. The political division of the Holman amendment was not sharply along party lines. Thirty-three Democrats supported the additional obligation imposed on the railroad by the provision, while only eighteen voted against it. The Republican vote was twenty-four and twenty-seven respectively, indicating their general reluctance to saddle the company with further charter restrictions. An analysis of the sectional voting shows that only five of the nineteen western votes cast were in the affirmative. Because of Wisconsin's relationship to any measure affecting the Northern Pacific, it is classed as a western state along with all others beyond the Mississippi river. Unless otherwise indicated, it is understood that all references to vote distribution are for the page cited. Supplemental information on the party affiliation of Congressmen, etc., is drawn from Biographical Directory of the American Congress, 1774-1927. (Washington: Government Printing Office, 1928).

Sweat, a staunch friend of the company, answered the queries. What difference if the road did indirectly aid the British, he countered, it primarily benefited our own country. In reply to the second question, Sweat offered an amendment to the bill which the House passed. It provided that if the company made a breach of provisions or conditions, and continued to do so for six months, "...then in such case the lands hereby made shall be null and void".¹⁵ The retention of this amendment in the final charter act of 1864 would have altered the land grant history of the Northern Pacific. Its adoption could have obviated years of Congressional and legal bickering, and millions of acres of public land would have reverted to the federal government for disposition.

Before the amended bill came to a final vote Stevens made a last plea for passage. He emphasized that the northwestern lands were worthless until such time as they would be attractive to immigration. Stevens scoffed at the idea that the higher prices occasioned by the grant would discourage such immigration once transportation facilities were furnished. The House then, in a vote which must have surprised the usually victorious Stevens, turned down the measure; 66 nays to 55 ayes.¹⁶ Perham's plans for a

¹⁵Ibid., p. 2293.

¹⁶Ibid., pp. 2296-97. The political division of the

railroad to Puget Sound, like those of his predecessors, fell short of Congressional approval.

During the same session in the Senate, a resolution embodying the Perham scheme fared no better. Senator Solomon Foot, a Vermont Republican, introduced this bill, S. 11, on December 15, 1863. It was laid on the table until January 6, when it was referred to the newly appointed Committee on the Pacific Railroad.¹⁷ On the third of March, Jacob L. Howard, a Republican from Michigan, adversely reported the bill from committee. The adverse recommendation, he asserted, was

...founded entirely on the circumstance that the bill which I now report back is based upon a State Charter granted by the State of Maine.¹⁸

The Senate took no further action upon the People's Pacific bill that session.

Having failed in both houses of Congress to muster sufficient support for his measure, Perham sought to overcome the objections which had been made against it. While diverse arguments had been raised in opposition--the

House on the People's Pacific bill is similar to that on the Holman amendment. Only fifteen Democrats signified their approval, along with thirty-seven Republicans. Thirty-three Democrats and twenty-eight Republicans registered a negative vote on the measure.

¹⁷Ibid., pp. 24, 101.

¹⁸Ibid., p. 921.

tremendous size of the grant, the conflict with the spirit of the homestead law, the impracticality of constructing more western roads--the most effective had been directed at the state charter of the Company. Perham therefore made the logical countermove which he felt would insure success. On May 23 and 24, 1864, Representative Stevens and Senator Reverdy Johnson, Maryland Democrat, introduced identical resolutions in the House and Senate, entitled;

A bill granting land to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound on the Pacific coast by the northern route.¹⁹

The House bill, H. R. 483, was referred to the select committee on the Pacific railroad; then, on May 31, Stevens successfully moved to reconsider the vote which had placed the bill in committee.²⁰ Speaking for the new bill, Stevens emphasized that it was not the same as the one which had been defeated the previous week. Under the new proposal, he said, the federal government would issue the company's charter. The railroad would be built north of the forty-fifth parallel so as not to encroach in any way upon the territory of the Union Pacific. A two year deadline for commencing work was included, along with a provision for a ten mile indemnity limit. Finally, a

¹⁹Ibid., pp. 2427, 2438.

²⁰Ibid., p. 2611.

proviso had been added compelling the government to sell its land within the alternate granted sections at no less than \$2.50 an acre, if it ever decided to sell.²¹

Following Stevens' speech, Wilson of Iowa asked if the gentleman from Pennsylvania had taken care to provide that this road should be built with American iron. Amidst the laughter of the representatives, Stevens replied that: "It says so in the bill. I go for nothing but American iron of course."²² Then, without further debate, the bill was passed, 74 to 50.²³ In anticlimactic fashion, the Northern Pacific had become a half-reality.

The Senate received the House approved bill on June 1 and, after some debate as to which committee should receive it, referred it to the Committee on Public Lands. On the eighteenth of that month, Republican Senator James Harlan of Iowa reported the House bill from committee with amendments. On June 27 the Senate took up the bill and

²¹Ibid., p. 2611.

²²Ibid., p. 2612.

²³Ibid., pp. 2622, 2664. Democrats continued to cast a majority of their total votes against the aid proposals. On this roll call, there were twenty-four Democrats in favor and thirty-one against. Forty-nine Republicans voted aye, and only fifteen voted negatively. Compare this distribution to that on the People's Pacific bill, above p. 22. Sectionally, the west continued to give almost unanimous support to the Northern Pacific grant. Of twenty-two western votes recorded, only one was cast against the bill.

proceeded at once to vote on the amendments suggested by the committee. The Senators approved an amendment striking out of the bill a provision calling for the exclusion of mineral lands within the grant, and the indemnification of those mineral losses with agricultural lands. A section was added requiring that the railroad meet the gross costs of surveying, selecting, and conveying the grant lands. John Conness, California Republican, offered an amendment defining mineral as not to include iron or coal and this was approved. Alexander Ramsey, Republican of Minnesota, attempted unsuccessfully to enlarge the grant to include several small Minnesota railroads. Before the vote was taken on the bill, Harlan called the attention of his colleagues to the enormous size of the grant. Then, without recorded vote, the amended resolution was passed.²⁴

A conference committee of three legislators from each house was then appointed. They made their report on July 1, and it was accepted the same day in the House and Senate. The committee restored the mineral land provision, struck out the added section on surveying costs, and slightly changed the wording of section three.²⁵ On July 2,

²⁴Ibid., p. 3291.

²⁵Ibid., pp. 3388, 3459, 3479. The House members of the conference group were Stevens, Sweat, and Ignatius Donnelly, a Republican from Minnesota; all active supporters of the Northern Pacific. The Senate members were James R. Doolittle of Wisconsin, and Ira Harris of New York, both Republicans, and James W. Nesmith of Oregon, a Democrat.

1864, nearly nineteen years after the first Whitney memorial had been presented to Congress, President Lincoln signed the bill, and thereby authorized a northern Pacific railroad.²⁶

A striking characteristic of the situation in Congress prior to the passage of the Northern Pacific bill is the brevity of discussion on the proposal. Congressional readiness to charter the Northern Pacific in 1864 resulted from a number of factors. The precedent had been set by the Union Pacific bill and, since there was not yet any great popular resentment toward government aid to rail expansion, further aid followed naturally. The exigencies of war may have played a minor part in the decision to approve the Northern Pacific bill by giving constitutional justification for federal aid. War and the secession of the southern states eliminated particularistic opposition to the selection of a northern route. Finally, the Congressional attitude toward disposition of the public domain was such that no definite conflict between land grants and homestead policy had yet been evident. Congressmen tended to regard much of the land granted to the railroads as worthless, at least until transportation facilities had been constructed. The arguments of the railroad interests on the possibilities of western rail construction had some

²⁶Ibid., p. 3530.

effect on legislative minds. These factors, acting in conjunction, eased the passage of the Northern Pacific act.

The granting act of the Northern Pacific was typical of the other Pacific railway charters.²⁷ It created a Northern Pacific Railroad Company and named 120 commissioners as incorporators. The commissioners included a number of prominent individuals whose names added prestige, e.g., U. S. Grant and John C. Fremont. Also named were Perham, his friends, and J. Gregory Smith, who was soon to take over leadership of the enterprise. The newly created company was to build west "...by the most eligible railroad route, as shall be determined by said company..."²⁸ to a point on Puget's Sound, with a branch via the valley of the Columbia river to a point at or near Portland, leaving the main line trunk at a point not more than three hundred miles from its western terminus. Capitalization of the corporation was to be \$100,000,000, made up of one million shares at \$100 each, to be subscribed to by the public. A right of way two hundred feet wide on either side of the track was provided to the Company. Section three provided for

²⁷See Statutes at Large of the United States (Washington: Government Printing Office, 1864), Vol. 13, pp. 365-372, for full text of the act. This series cited hereafter as Statutes.

²⁸Ibid., p. 366.

the actual grant and some of the modifications and obligations attached to it. As much of the later land grant controversy centered upon this section, most of the text is reproduced below.

That there be, and hereby is, granted to the "Northern Pacific Railroad Company", its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores, over the route of said line of railway, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections of land per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any state, and whenever on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from preemption, or other claims or rights, at the time the line of said road is definitely fixed, and a plot thereof filed in the office of the commissioner of the general land office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or preempted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections:

.....
 Provided: That all mineral land be, and the same are hereby, excluded from the operation of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands, in odd numbered sections,²⁹ nearest to the line

²⁹This phrase, "in odd numbered sections", was added by the conference committee, and is important since it

of said road may be selected as above provided:

Provided: That the word "mineral", when it occurs in this act, shall not be held to include iron or coal:

Provided: That no money shall be drawn from the treasury of the United States to aid in the construction of the said "Northern Pacific Railroad."³⁰

The grant thus provided that, if certain conditions were met, the railroad would receive twenty sections, or 12,800 acres to the mile in the states, and double that amount through the territories. These were the primary, or place, limits of the grant, and a second, indemnity, limit was established ten miles beyond.

Section four made provision for patenting lands earned by the company as it completed each twenty-five mile section of road. Section five provided that the road should be constructed in a substantial manner, with best quality rails manufactured from American iron. The next section was concerned with the surveying of the grant lands, and stipulated that the surveys should be completed as soon as the general route was established. Moreover, the odd numbered sections of the land granted were withdrawn from sale, entry, or preemption, except by the company.

forestalled the Company from selecting mineral indemnity lands within the place limits. Indemnification within the place limits would have given the railroad control of solid blocks of land alongside the right of way.

³⁰Ibid., pp. 367-68.

On other lands the Homestead and Preemption Acts were to apply. If, however, the government should ever sell the reserved alternate sections--those within the grant limits but not odd numbered--the price must be no less than \$2.50 per acre. Section ten guaranteed to the public the right to purchase the stock of the company, and further provided that

...no mortgage or construction bonds shall ever be issued by said company on said road, or mortgage, or lien made in any way, except by the consent of the Congress of the United States... ³¹

Other sections of the act called upon the company to accept the grant within two years, and made the railroad a post route and military road subject to restrictions on government transportation. By the provisions of section eight, the company must commence work on the road within two years, build at least fifty miles per year thereafter, and finish construction by July 4, 1876. Sections thirteen through nineteen pertained to the operation and administration of the corporation, and section twenty reserved to Congress the right to amend the act. Section nine was the nearest approach to a positive penalty, providing that in the event the company broke the conditions of the act and continued to do so for one year, the United States might do whatever was necessary to complete the road--a

³¹Ibid., p. 370.

sterile substitute for a penalty or forfeiture clause.

Without attempting a detailed comparison, the more important differences between the Northern Pacific act and the other Pacific railroad grants may be noted.³² The Northern Pacific had as large a grant as any of the other Pacific roads but, unlike the Union and Central Pacific, it received no other subsidy. There was no provision for forfeiture in the Northern Pacific or later grants as there had been in the original Union and Central Pacific charters. Finally, the Northern Pacific had a unique provision for stock subscriptions. These were the principle variations from a rather homogenous statutory pattern. What later generations often came to regard as an overly-generous Congress had bestowed approximately 40,000,000 acres of land to aid in the construction of the Northern Pacific. Almost immediately, however, the individuals associated with the Northern Pacific began to find discrepancies in the law, and sought in Congress to modify or expand it.

Only one Northern Pacific bill appeared during the

³²Lewis H. Haney, A Congressional History of Railway in the United States, 1850-1887 (Madison: Bulletin of the University of Wisconsin, No. 342, Economic and Political Science Series, Vol. 6, No. 1, 1910), has a good comparative analysis of the various Pacific charters. See pp. 152-153. For the charter acts see; Union and Central Pacific, Statutes, Vol. 12, p. 489 and Statutes, Vol. 13, p. 346; Atlantic and Pacific and Southern Pacific, Statutes, Vol. 14, p. 292; Texas Pacific, Statutes, Vol. 16, p. 573.

second session of the thirty-eighth Congress, 1864-65. This was a resolution introduced on February 25, 1865, by Republican Senator Nathan A. Farwell of Maine, which would have authorized the company to invest its funds in government securities.³³ The Committee on the Pacific Railroads, however, recommended its postponement, and it did not come up again during the session.

Before the beginning of the thirty-ninth Congress, certain events were occurring outside Congress which had an effect on the legislative pattern of the Northern Pacific in the years which followed. After the charter act was passed, the appointed commissioners under the act caused books to be opened for subscription of the Northern Pacific stock. By December of 1864 the requisite number of shares had been sold with at least ten per cent paid in on par value; some 200,000 shares. The subscribers then met on the sixth of that month, in Boston, and elected a Board of Directors with Josiah Perham president.³⁴ The Northern Pacific now existed in fact, and the next step was to prepare for construction. Instead, the project languished for lack of funds and effective leadership. During the months following, some support was gained from New England business leaders, and the possibility of an international line was

³³Globe, 38th Cong., 2nd Sess., p. 1045.

³⁴Smalley, op. cit., p. 124.

discussed with Sir Alexander Galt, a Canadian statesman.³⁵ However, these efforts gained nothing and, by the fall of 1865, the project seemed on the verge of failure. Perham's plan of popular subscription had failed dismally; he and the company were on the edge of bankruptcy.

At this point a meeting was again called in Boston and, on December 14, the franchise of the company was transferred to a new group headed by J. Gregory Smith.³⁶ Two tasks immediately confronted the new directors. They must secure an extension of the time limit on commencing construction, which was set by the charter act as two years after July 2, 1864; and they must find some means of raising funds for surveys and construction. Since the solution to the first problem necessarily took their case before Congress, why not seek the required financial assistance there also?

By the time the next Congress met the Northern Pacific had ready the first of a series of bills designed to secure financial assistance from the government. The bill, introduced in the Senate by Ramsey of Minnesota, was intended to pledge the credit of the United States to the payment of interest on the Northern Pacific stock on those

³⁵Ibid., p. 128.

³⁶Ibid., p. 130. Among the new directors was L. D. M. Sweat, Maine representative in Congress.

portions of the road which were completed. These payments would continue not more than twenty years, at six per cent. The company was obliged to make two annual payments from the proceeds of land sales south of its main line and, if this was insufficient, once the road was completed one-fourth of the net earnings were to be used to meet government obligations. The bill further provided for an increase in the capital stock to \$150,000,000 and stipulated that three-fourths of the directors should always be United States citizens.³⁷

The bill was reported from committee on July 2, and was brought up for consideration on the fourteenth. John Sherman, an Ohio Republican, made a long speech in opposition to the measure. This measure, he said, proposed to pay to the company over \$122,000,000, in spite of the fact that the original charter had forbidden any money grant or guarantee of interest. Sherman was also critical of the security provisions of the measure. "We give them twice as much land as we have ever given to any other railroad company; and they mortgage the excess to us for our security!"³⁸ Then the Senator from Ohio went on to point out the tremendous public debt, \$3,000,000,000, which was burdening the country. Moreover, he warned,

³⁷Globe, 39th Cong., 1st Sess., p. 3807.

³⁸Ibid., p. 3808.

there was always the threat of foreign capital securing control of the company. On July 17, Sherman moved to recommit the bill to committee, thus insuring its postponement to the next session. His motion was carried, 20 to 19.³⁹ A week later Senator Howard reported an amended version of the bill from committee, but no action was taken on it.

The House counterpart of this bill was introduced, by Representative Hiram Price, Republican of Iowa, on March 21, 1866, and referred to the Committee on the Pacific Railroad.⁴⁰ On April 24 the bill, with amendments and the Committees' recommendation, was reported. Democrat Samuel J. Randall, Pennsylvania, rose to a point of order, claiming that it was an appropriation bill. He moved that it be referred to the Committee of the Whole, but the motion was beaten down, 65 to 43, with 75 members not voting.⁴¹ Then Stevens moved successfully to recommit the bill; but Price, Pacific Railroad Committee chairman, without leaving

³⁹Ibid., p. 3867. As in the case of the House, the party alignment of the Senate on questions arising from the grant had not become definitely set. On this particular proposal, six Democrats and twelve Republicans constituted the majority. In the minority were three Democrats and fourteen Republicans. More significantly, only four western votes were cast in favor of recommitting the interest guarantee bill, while the other ten western votes were in opposition.

⁴⁰Ibid., p. 1547.

⁴¹Ibid., p. 2159.

the floor, immediately reported the bill out. Elihu B. Washburne, Illinois Whig, rose to a point of order, claiming the bill was not recommitted since Price never left the chamber. The chair overruled him, and the House then adjourned for the day.⁴²

On the following day, the bill came up again; now amended so it was clearly not an appropriation bill. Price then spoke in favor of the passage of the bill. The House version of the bill, he explained, provided that the government would guarantee the stock of the road to the amount of about \$22,500 per mile for the first thousand miles. The interest on this stock, at the stipulated rate of six per cent, would approximate \$1350 per mile. Price, using figures from another western railroad, estimated that after the Northern Pacific had completed its first one hundred miles of road it would earn near \$750,000 annually. By the terms of the bill, one-fourth of these gross receipts, \$187,500, would be paid to the United States Treasury to meet government interest obligations of only \$135,000. Thus the government might expect to receive over \$50,000 excess from its share of road receipts, plus whatever it gained from sales of the southern half of the grant. Price concluded; "I think I have sufficiently answered the financial argument of this subject to prove that there is

⁴²Ibid., p. 2160.

no money to be drawn from the Treasury of the United States."⁴³ After repeating again the desirability of the railroad from a developmental standpoint, he quoted from the 1865 report of Army Quartermaster General Meig:

The enterprise is one worthy of the nation. As a military measure, contributing to national security and defense alone, it is worthy of the cost of effectual assistance from the Government.⁴⁴

After a brief summary, Price gave up the floor to John Wentworth, an Illinois Republican. A debate followed in which Price, Frederick E. Woodbridge of Vermont and James H. Henderson of Oregon, all Republicans, defended the bill against the attacks of Republican Samuel Shellabarger and Columbus Delano of Ohio, Rufus P. Spalding, Ohio Democrat, and Wentworth.

Wentworth stated his sympathy with the interests of the railroad, but spoke his distrust of any measure which had the concerted support of a lobby. In this connection, he mentioned the many recent instructions forwarded to him by bill proponents. Considerable discussion centered upon the imposing list of commissioners named in the original act; some of whom did not know of their inclusion. Shellabarger expressed consternation over the rumored franchise transfer which had recently occurred. Delano then addressed

⁴³Ibid., p. 2183.

⁴⁴Ibid., p. 2183.

the House, casting some intelligent light into a debate which had previously generated only a little heat.

Accepting the merit of a completed railroad to Puget Sound, Delano attacked the bill on other bases. By the provision of section five of the proposed bill, the commencement of the survey of the railroad in good faith "shall be deemed and considered to be the commencement of the work within the meaning and intent of the act of incorporation."⁴⁵ This ingenious proposal, he declared, would virtually exonerate the company from the duty of beginning work except at its pleasure. In regard to the transfer of the franchise from the original recipients, he thought that the new group of men in control, "with their arms already in the public Treasury...want to run them in further."⁴⁶ Reading from a pamphlet issued by the company, which expressed highly optimistic estimates of the potential sale value of the grant lands and the security thus offered, Delano wondered at the need of a federal interest guarantee. Let the original contract, expressed in section three of the 1864 charter, stand, he demanded--no money to be withdrawn from the Treasury. For the next two days the debate continued, with a paucity of new ideas. The focal point of disagreement remained generally on the burdening of the credit of the

⁴⁵Ibid., p. 2186.

⁴⁶Ibid., p. 2188.

United States with further expenditures on a railroad which might, or might not, ever be completed. William D. Kelley, a Republican from Pennsylvania, delivered a particularly poetic bit of oratory, citing from Bryant and Shakespeare, and discoursing at length on

the mighty and varied resources of the North Pacific slope, the region through which the only river that penetrates the heart of the country pours itself into the beautiful but sleeping oceans.⁴⁷

Finally, in summing up the arguments for the bill, Stevens brought the three day debate to a close.⁴⁸ Calling for clear minds amongst his colleagues, Stevens attempted to meet the objections of the bill's opponents. To clarify the matter of the new leadership of the company, Stevens introduced a letter from J. Gregory Smith which detailed the reorganization.⁴⁹ Stevens derided the idea that any great liabilities would be incurred through passage of the act. The government guarantee would be in effect only after twenty-five-mile sections had been constructed, he pointed out, and would be terminated at the end of twenty years. This, coupled with the security of the gross receipts share

⁴⁷Ibid., p. 2203.

⁴⁸See ibid., pp. 2182-92, 2203-15, 2235-47, for the complete debate. For the best analysis of House Bill 414, see the speeches of Donnelly and Delano pp. 2208 et seq., and pp. 2188 et seq.

⁴⁹See ibid., p. 2243.

and land sale payments, would effectively protect the government. At the close of his speech, Spalding moved to lay the bill on the table. A vote was taken, and the bill was tabled, 76 yeas to 56 nays.⁵⁰

The Northern Pacific, having failed to secure one of its objectives from the thirty-ninth Congress strove to attain the other. On May 3, Stevens proposed an amendment to a Senate joint resolution extending for two years the time of completion of the Union Pacific, eastern division.⁵¹ The amendment, as approved, extended the time for commencing and completing the Northern Pacific for two years.⁵² The resolution was passed and concurred in by the Senate the following day. By attaching the amendment to a similar measure for the Union Pacific, Stevens assured that his own amendment would not be opposed by the Union Pacific group, which had often jealously obstructed action on other Pacific railroad measures. The Northern Pacific gained a new lease

⁵⁰Ibid., p. 2246. An analysis of the voting on this measure shows that the early alignment on the land grant questions was becoming more pronounced. Twenty-six Democrats voted in favor of the motion to table the interest guarantee bill; only two Democrats were opposed. The Republican vote was nearly even, forty-five Republicans voted for tabling and forty-nine voted against such a move. The sectional lineup again shows a majority of western votes in opposition to a motion which would work against the interests of the railroad. Eighteen westerners voted nay as compared to only six yeas.

⁵¹Ibid., p. 2383.

⁵²Statutes, Vol. 14, p. 355.

on life, for two more years at least.

In the second session of the thirty-ninth Congress only one bill relating to the Northern Pacific appeared, and it was killed in committee.⁵³ The next session was also barren of any bills affecting the Northern Pacific Company or its grant, but an interesting resolution by the Wisconsin legislature was presented to the House on March 15.⁵⁴ Again during the second session of the fortieth Congress, bills were introduced into both Houses proposing an extension of government credit to aid the construction of the road, but neither had any success.⁵⁵ In support of the Senate measure, Ransley introduced a memorial entailing a report of Edwin P. Johnson, chief engineer of the Company, to the board of

⁵³Globe, p. 594, 1668.

⁵⁴House Miscellaneous Documents (Washington: Government Printing Office, 1867), 40th Congress, 1st Sess., Vol. I, No. 21. Part of the resolution is herewith quoted for purposes of comparison with a similar resolution by the Ohio legislature only four years later. See below, p. 58. "Whereas the Northern Pacific route...has been shown to be a practicable and feasible route for the construction and operation of a railroad; and whereas the construction of a railroad upon said route would develop most agricultural and mineral resources hitherto undeveloped, and upon a more feasible and cheaper route for transportation...; and whereas the rapid development of the resources of our country is demanded by every consideration of sound policy, with a view to the early and easy liquidation of the public debt; [resolved] that our senators and representatives in Congress be requested to use all proper efforts to secure the passage of an act granting such aid by the national government to the Northern Pacific railway, as will secure its early construction."

⁵⁵Globe, pp. 120, 2022.

directors of the Northern Pacific. The report found that

...notwithstanding the many favorable provisions in their charter, including a liberal land grant, it was found impracticable after the most diligent and persevering efforts to induce capitalists to embark in the enterprise.⁵⁶

The report found no quarrel with the Congressional action of the prior year in defeating the interest guarantee scheme. On the contrary, the company was satisfied "that had the bill then before Congress become a law, it would not have proved successful in operation."⁵⁷ However, Johnson's report was not forsaking the hope of government aid. Rhetorically questioning the ability of the government to provide aid for the road, the report answered "...emphatically, yes; or rather, we ask in return, can the government afford to withhold the desired aid?"⁵⁸ Despite the seeming logic of the report and the other insistent demands of the Company, Congress refused to tender any aid to the languishing corporation.⁵⁹

⁵⁶Senate Miscellaneous Documents (Washington: Government Printing Office, 1867), 40th Cong., 2nd Sess., Vol. I, No. 9, p. 1.

⁵⁷Ibid., p. 2.

⁵⁸Ibid., p. 4. Italics in the original.

⁵⁹In January, 1867, another attempt was made to revitalize the Northern Pacific Company, in the form of the "Original Interests Agreement". Under the agreement, the enterprise was to be divided into twelve shares, each valued at \$8500 or a total of \$102,000--the amount which President Smith and his associates had expended in maintaining the company. The subscribers were each to be entitled to a director, and were pledged to strive for the

Since the last extension of time secured by the company had been effected in 1866, it was forced once again in 1868 to seek further grace. Ramsey introduced a resolution, S. Res. 126, on May 28 to accomplish the extension and the following day it was reported from the Committee on the Pacific Railroad.⁶⁰ It amended section eight of the original act by extending the time for beginning construction for five years after July 2, 1868. Thereafter, fifty miles of road must be completed yearly, and the road must be completed by July 4, 1883.⁶¹ On May 30 there was a brief debate on the resolution, and the two amendments were offered. Senator Conness successfully moved to substitute two, rather than five, years as the beginning date for work on the road; and Ramsey moved to strike out the fifty mile a year stipulation in favor of one hundred miles yearly. John Sherman objected to any extension of time. The country was expanding rapidly, he protested, and the great grant of the Northern Pacific would be an obstacle to settlement for at least twenty more years. It would be much better,

securing of government aid. Besides Smith and his group, most of the new enterprisers were well-known railroad men. In May the new board met and commissioned E. F. Johnson to survey and locate the main line; a task he completed during 1867-68. See Smalley, *op. cit.*, pp. 141 *et seq.*

⁶⁰*Globe*, 40th Cong., 2nd Sess., p. 2624.

⁶¹*Ibid.*, p. 2653.

Sherman felt, to let the road be built more rapidly by a number of smaller lines. To accomplish the latter suggestion Sherman concluded, "my own judgment is, that if Congress would act wisely, it would accept the surrender of this grant already acquired by lapse of time...".⁶² The Senate then adopted the Ramsey amendment and, just prior to the final vote on the measure, also agreed to another motion by Ramsey to change the completion date from 1883 to 1878. As amended, the resolution was approved and sent to the House.

In the House a comparable bill, H. R. 316, was introduced on June 29, differing from the Senate bill only in the completion date, 1877. Price urged his fellow members to prompt action, as July 2 was the expiration date under the extension of 1866. Indiana Republican George W. Julian, later a leader in the struggle for a forfeiture bill, moved to amend the resolution by requiring that the land be sold only to actual settlers, in blocks of no more than 160 acres, at a price not to exceed \$2.50 per acre. This motion was lost, however, and when the resolution came to a vote it was passed, 96-33.⁶³ The Senate approved the House bill the same day, and it became law July 1, 1868.⁶⁴ Once again, by a close margin, the

⁶²Ibid., p. 2689.

⁶³Ibid., p. 3588.

⁶⁴Statutes, Vol. 15, p. 255.

Northern Pacific managed to secure an extension of its original time limitations.

During 1869, two more measures were pushed through Congress at the behest of the company. On February 15, Representative Morton C. Hunter, Indiana Republican, introduced a resolution, H. R. 458, which would give Congressional consent to the issuance of bonds and a mortgage on the road and telegraph line. It also interpreted Puget Sound to mean all waters connected with the strait of Juan de Fuca.⁶⁵ When an attempt to get the proposal referred to the Public Lands Committee failed, it was passed by the House. On February 18, without debate, the Senate also passed the resolution.⁶⁶ On March 24, after the new session of Congress had convened, Eugene M. Wilson, a Minnesota Democrat, introduced another resolution, H. R. 48, in the House.⁶⁷ Brought up for debate on April 2, the bill was designed to hasten construction of the road by providing for a branch line extension. Julian urged that more consideration be given to the measure, but it was quickly passed; the Senate following suit a week later.⁶⁸

⁶⁵Globe, 40th Cong., 3rd Sess., p. 1222.

⁶⁶Ibid., p. 1363. For act, see Statutes, Vol. 15, p. 346.

⁶⁷Globe, 41st Cong., 1st Sess., p. 252.

⁶⁸Ibid., pp. 466, 667.

As approved, the bill authorized the Northern Pacific to extend its branch line from a point at or near Portland to some point on Puget Sound, and to connect same with the main line west of the Cascade Mountains. Provided, however,

That said company shall not be entitled to any subsidy in money, bonds, or additional lands of the United States, except such lands as may be included in the right of way on the line of such extension as it may be located.⁶⁹

At least twenty-five miles of the extension were to be completed by July 2, 1871, and forty miles each year until the line was complete. By the provisions of the act, the company would build without subsidy a connecting line between the main line terminus at Puget Sound and the branch terminus at Portland.

Having secured at least some of their desired assistance, the company endorsed a bill which was introduced in the second session of the forty-first Congress, 1869-1870. Ramsey introduced the measure, S. 121, in the Senate on February 8, 1870.⁷⁰ The bill was referred to the Committee on the Pacific Railroad, and, after being reported out once, was recommitted. On February 28, at the motion of Howard of Michigan, the bill with proposed amendments was taken up. It provided that the company should be allowed to issue its bonds and mortgage, securing

⁶⁹Statutes, Vol. 16, p. 57.

⁷⁰Globe, p. 1097.

the same by a mortgage on all its property. This included the grant, which had not been included under the act of 1869. Furthermore, the main line of the road was changed so that it went directly to Portland and thence northward to Puget Sound, the branch line extending from a point west of the Cascades to the Sound. Some minor amendments were agreed to, including one setting limits on the dates for beginning and completing construction.⁷¹ Senator Harlan then moved to strike out a provision of the bill which established a second ten mile indemnity limit to make up any deficiencies in the grant. This new limit, Harlan admonished his colleagues, would increase the Northern Pacific grant to one-half of a hundred mile wide strip halfway across the country. Howard correctly replied that the indemnity limit was not a new grant. On the contrary, he said, the company wanted only

to have this grant of land as it exists in their charter simply made good to them throughout their whole line, and to be allowed...to make up the deficiency which may have been occasioned by homesteads and preemptions.⁷²

The following day another short debate occurred on the bill. Democrat Eugene Casserly of California, speaking for the opposition, posed a pertinent question which Howard could only evasively answer. Did the United States,

⁷¹Ibid., pp. 1584-85.

⁷²Ibid., p. 1585.

Casserly asked, guarantee to the Northern Pacific any particular quantity of lands, any specified number of acres--no, it had never done so. Therefore, the company should be allowed to take only that land which was available within the grant, and accept any deficiencies. Henry Wilson, Massachusetts Democrat, moved to amend the bill by adding the following provision; that the additional alternate sections granted by the act should be sold by the company only to actual settlers at no more than \$2.50 per acre, in quantities not exceeding a quarter section.⁷³ This touched off a debate which dragged for two days. Howard and the other supporters of the bill argued that the lands belonged to the company, therefore, the company should be able to sell the land as it saw fit. They maintained that any increase in land value should properly go to the company. The proponents of the \$2.50 provision held that it would keep the price of land down for actual settlers, thus being more closely in line with the homestead principle. Wilson then withdrew his amendment in favor of one by Allen C. Thurman, Ohio Democrat, which would have more drastically restricted the sale of lands. It would apply to all lands earned by the Northern Pacific, and on these it set a maximum sale price of \$1.25.⁷⁴

⁷³Ibid., p. 2481.

⁷⁴Ibid., p. 2569.

This amendment failed of passage, however, and the bill was passed on April 10.

In the House, another intolerably prolonged debate occurred, and the Senate arguments were repeated. On May 26 the House voted favorably, 107 to 85, on the measure, and five days later it became law.

As enacted, the measure differed little from its original form. The bond issue and mortgage provision was retained intact, as was the main line change. The alteration of the main line permitted the company to receive the regular grant for the line from Portland to Puget Sound. As this had formerly been authorized as a branch line extension, it had been explicitly denied a grant. The act of 1870 therefore is to be considered as a second granting act. The bill, as approved, retained the second indemnity limit, the same to be used to make up deficiencies which occurred "subsequent to the passage of the act of July two, eighteen hundred and sixty-four."⁷⁵ The lands granted by the act which were not disposed of, or which remained subject to the mortgage, were to be sold five years after the completion of the road for not more than \$2.50 an acre. And, if the mortgage authorized by the statute should ever be foreclosed, then all such lands were to be sold at public sale in lots no larger than a single section.

⁷⁵ Statutes, Vol. 16, p. 379.

The Northern Pacific, by the acts of 1864 and 1870, received twenty sections of land through Minnesota and Wisconsin, and forty through the territories of Dakota, Montana, Idaho, and Washington. The approximate length of the proposed road being 2300 miles, the total acreage granted was in excess of 42,000,000 acres.⁷⁶ Despite the magnificence of the grant, and the optimistic attitude of the company,⁷⁷ sufficient capital was not attracted to begin construction until Jay Cooke & Company came into the scene. Talbott appears at least partly in error when he states that "It was the possession of a portion of the land through which the lines were to run, which justified capitalists in putting their money into the construction of these roads."⁷⁸ It was the failure of the Northern Pacific to induce risk capital which led it to seek first a stock guarantee and later a mortgage on the railroad and the grant. Only then did Jay Cooke consider investing in the road's construction. A better analysis was that "the value of the land-grant was all in the future, and capitalists would not lend money

⁷⁶ Thomas Donnellson, The Public Domain (Washington: Government Printing Office, 1884), p. 915.

⁷⁷ For an example of the great claims made for the future of the grant, see the pamphlet; The Northern Pacific Railroad's Land Grant and the Future Business of the Road (Philadelphia: Jay Cooke & Co., 1870).

⁷⁸ E. H. Talbott, Railway Land Grants in the United States (Chicago: The Railway Age Publishing Co., 1880), p. 9.

upon it."⁷⁹

By 1870 Congress was evidencing a change in its attitude toward the railroad land grants. Studying the various debates on land grant matters, one notices a gradual development of antagonism. The act of 1834 passed almost without debate but, from the first extension bill of 1836, opposition began to increase. This increased opposition was reflected by the various circumscribing amendments which were offered; the shortening of the completion limit, the \$5.00 provisions, and even a suggestion that the grant be allowed to lapse in order that the government might restore it to the public domain. These were early indications of a distinct change in policy which Congress adopted after 1870.

⁷⁹Smalley, op. cit., p. 137.

CHAPTER IV

THE ATTEMPT TO FORFEIT THE NORTHERN PACIFIC GRANT

For two decades after the passage of the second Northern Pacific grant, Congressional attitude toward land grants and related topics was markedly different from that of the preceding period. In Congress, and among the public, opposition formed against land-grant aid to railroads. Even transportation hungry westerners eventually joined the protest movement, having found that rail development was not an unmitigated good. The anti-railroad agitation of the Granger movement which culminated in the Interstate Commerce Act of 1887 was directed toward the elimination of contemporary evils in the railroad system. In regard to land grant policy, the principal attack took the form of a demand that the previous grants of land to railroads be revoked. No exact date may be established as the beginning of the forfeiture movement, but one author selects 1872 as a possible dividing point between "the old period of unbounded enthusiasm and the new period of suspicion and opposition".¹ During the period, Congressional antagonism prevented any further extension of time to the Northern Pacific and thus permitted

¹Robert E. Riegel, The Story of the Western Railroads (New York: The MacMillan Company, 1926), p. 47.

the grant to lapse. In 1890, Congressional antipathy became translated into a partial forfeiture act. Another topic of Congressional interest during this period and later was the fate of the homesteader or preemptor whose claims often conflicted with those of the land-owning railroads. In view of the breadth of this phase of public land history, it will be treated only as it related integrally to the forfeiture controversy. Until well into the present century, nearly every Congress passed one or more acts for the relief of settlers on, or adjacent to, railroad grant lands. The long battle between railroad and settler is a story by itself, exclusive of its land grant origin.

The Northern Pacific Railroad Company, during the years between 1870 and 1890, endeavored to fulfil the obligations set forth in its chartering act. The group led by J. Gregory Smith, after acquiring control of the franchise, found during the latter part of the 1869's that they were unable to finance construction. In desperation, they turned to the great private banking house of Jay Cooke & Company. The Northern Pacific agent in Washington sought to induce Cooke to handle the proposed bond issue authorized by the act of March 11, 1869.² Nearly a year later, after Cooke

²The Northern Pacific Land Grants. Hearings before the Joint Congressional Committee on the Investigation of the Northern Pacific Railroad Land Grants (Washington: Government Printing Office, 1928), Part 8, p. 4278. Abbreviated hereafter to The Northern Pacific Land Grants.

had thoroughly investigated the Northern Pacific and explored its route, a contract was drawn up on January 1, 1870, in supplement to a preliminary agreement on May 20, 1869.³ In its main provisions, the contract provided that a \$100,000,000 bond issue, bearing interest at seven and three-tenths per cent, would be sold by the banking firm. Jay Cooke & Company received the bonds at a twelve per cent discount, and also received a bonus of company stock. The twelve shares of the Northern Pacific established under an agreement of 1867 were increased to twenty-four, the additional shares being assigned to Cooke.⁴ Construction was to be started at once.

Cooke was very much in the struggle to secure passage of the act of May 31, 1870, using prestige and, more persuasively, money to gain the votes of recalcitrant Congressmen.⁵ With the passage of the act, bond sales

Hearings. A letter from Samuel Wilkeson, the Washington D. C. agent to Thomas Confield, director in the company, dated March 20, 1869, is interesting. It reads in part; "I found Jay Cooke on my return from the coal region a little 'off'. He said he did not see how he could recommend the North Pacific bonds to widows and orphans without a Government subsidy under them." Ibid., p. 4278.

³William P. Oberholtzer, Jay Cooke, Financier of the Civil War (Philadelphia: George W. Jacobs & Co., 1907), Vol. 2, pp. 152-156.

⁴See footnote on pp. 44-45 above for the details of the "Original Interests Agreement" of 1867.

⁵Oberholtzer, op. cit., pp. 175-176. Ignatius Donnelly, former Union member, lobbied for the bill, and Jay Cooke made personal contacts in Congress. See pp. 175, 179.

began and construction started during the summer. Progress on the road continued until the depression of 1873 precipitated the fall of the supposedly invulnerable Cooke & Company. Along with Cooke, the Northern Pacific was forced into default on its obligations, and bankruptcy proceedings were instituted.⁶ As reorganized in 1875, the former bondholders became the recipients of the preferred stock of the company, the 575 miles of completed road with its earned grant, and the right to earn the remainder of the grant. From that time, work on the road moved ahead so that by 1883 the main line was completed, and in 1887 the branch line from Wallula, Washington, to the Sound was also finished.

On March 31, 1870, William S. Holman introduced a resolution in the House of Representatives which declared that "the policy of granting subsidies in public lands to railroads...ought to be discontinued..."⁷ The House concurred in the motion, and thereby indicated its changing attitude. This reversal of policy exhibited itself mainly in a negative way for several years, as positive attempts to restore previously granted lands did not occur until about 1880. The Northern Pacific felt the first sting of

⁶Eugene V. Smalley, History of the Northern Pacific Railroad (New York: G. P. Putnam's Sons, 1883), pp. 208-9.

⁷Congressional Globe (Washington: F. & J. Rives, 1870), p. 2095.

Congressional hostility in 1870, when an act was approved which shifted the costs of surveying a portion of the grant lands to the railroad.⁸ Illustrative of the rising resentment outside of Congress was a resolution of the Ohio legislature put into the hands of Congress on February 13, 1871. The Ohioans protested.

That land monopoly is one of the greatest evils of our country, and against the spirit of our institutions; and especially it is impolitic to place large tracts of the public domain under the control of railroad or other corporations.⁹

The land grant policy, they stated, not only destroyed the benefits of the homestead principle but also gave undue power to corporations. Recommending the discontinuance of the grants, they warned that the alternative result would be the concentration of all public lands in the hands of "mammoth corporations, which are already too powerful",¹⁰ While Ohio's attitude was not truly representative of the country, since she stood to gain less from Pacific rail development, it was not long before similar resolutions appeared from the northwestern states.

The Northern Pacific underwent a close Congressional

⁸Statutes at Large of the United States (Washington: Government Printing Office), Vol. 16, pp. 291, 305. Henceforth referred to as Statutes.

⁹House Miscellaneous Documents (Washington: Government Printing Office, 1871), 41st Cong., 3rd Sess., Vol. 2, No 83.

¹⁰Ibid., No. 83.

surveillance during 1872, in response to a resolution submitted by Republican Representative Nathaniel P. Banks of Massachusetts. The Committee on the Pacific Railroad was directed to investigate the condition of the company in order to answer some forty-odd questions. The questions ranged from queries as to the financial condition of the road, its outstanding mortgages, extent of construction, land policy of the company, to one inquiring as to the possible existence of a construction ring inside the company.¹¹ A few months later, on June 8, the Committee submitted a report embodying the results of the interrogation, and it concluded that there was nothing amiss in the operation of the Northern Pacific.¹²

The Northern Pacific, suffering from the effects of the panic of 1873, resolved in 1874 to seek relief from Congress. Unable to secure funds during the post-panic years, they renewed their old requests of 1867 and 1868, namely, for a Congressional guarantee of interest on their bonds. Two bills to that end were introduced during the first session of the forty-third Congress.¹³ They provided

¹¹House Miscellaneous Documents, 42nd Cong., 2nd Sess., Vol. 4, No. 228.

¹²House Reports (Washington: Government Printing Office, 1872), 42nd Cong., 2nd Sess., Vol. 4, No. 99.

¹³Congressional Record (Washington: Government Printing Office), pp. 3749, 3778.

that the company might issue bonds to the amount of \$50,000 per mile, the same to be deposited with the Secretary of the Treasury. As each twenty mile section was completed, the Secretary was to deliver \$40,000 of these bonds to the company with a guarantee of the five per cent interest they bore. To secure payment to the United States, the company would convey to the government its entire grant, earned and unearned, to be sold to actual settlers at a minimum of \$2.50 per acre. The receipts were to be used to secure the interest guarantee, and the surplus would be placed into a sinking fund to retire the bond issue thereby authorized.¹⁴ Congress would have no part of any suggestion for further railroad aid, and neither bill ever came up for consideration. The managers of the Northern Pacific, convinced that the opportunity of obtaining financial succor from Congress was forever gone, then decided on another method of protecting their grant.

On December 8, 1875, a bill, S. 14, to extend the time for construction and completion of the Northern Pacific was introduced in the Senate.¹⁵ James K. Kelly, Oregon Democrat, on February 9, 1876, moved for Senate consideration of the measure. As reported from the Committee on Railroads, it provided for an eight year extension of the completion

¹⁴Smalley, op. cit., pp. 222-23.

¹⁵Record, 44th Cong., 1st Sess., p. 186.

limit, except for the Cascade branch of the line. The section of the act of July 15, 1870, requiring the railroad to pay surveying costs was repealed. Provisions were included to eliminate the difficulties surrounding the rights of settlers on railroad lands.¹⁶ Despite Kelly's anxiety over the bill, Aaron A. Sargent, a Republican from California, urged that further precautions be taken to guard the rights of settlers. Under the existing laws, Sargent said, settlers were unable to get clear titles to land included in the odd numbered sections within the place limits of the grant. Therefore, if a homesteader or pre-emptor abandoned his claim, or if he died, this land reverted to the railroad. Sargent offered to amend the proposal by providing that patents be given the settlers on odd numbered sections and that in case of abandonment the land would remain open to settlement. The Senate approved the amendment and passed the bill at once and sent it to the lower chamber.¹⁷

The House Committee on the Pacific Railroad reported it out on July 24 with its recommendation. Representative Lucius Q. C. Lamar, Mississippi Democrat, moved to suspend the rules so that the bill might be taken up, but he was not successful.¹⁸ The measure was carried over

¹⁶Ibid., p. 958.

¹⁷Ibid., p. 996.

¹⁸Ibid., p. 1237.

to the second session of the Congress, but never received a place on the calendar. Lamar attempted on December 7, to get it before the House. Martin Maginnis, the Democratic delegate from Montana Territory, made a short plea in behalf of the 13,000 stockholders of the company before its reorganization. Failure to pass the measure, he warned, would amount to a virtual confiscation of their property since their original investment would likely be lost.¹⁹ The House was unresponsive, however, and no action was taken. Lamar made one more futile attempt, on March 2, 1877, to suspend the rules, but failed to secure the necessary two-thirds votes.

The Northern Pacific renewed its attempts to secure a time extension during the forty-fifth Congress. There was good reason for their concern in the matter. By the act of 1864, the date for completion was set at July 4, 1876. Two years later, in 1866, an extension had moved this date ahead two years, to 1878. However, Congress in 1868 had passed an extension act amending section eight of the original charter to make the completion limit July 4, 1877.²⁰ By explicit Congressional action, the proper completion date would appear to have been 1877. On November 9, 1877, Democratic Senator John W. Mitchell of Oregon

¹⁹Record, 44th Cong., 2nd Sess., p. 52.

²⁰For these acts see above, pp. 42, 45-46.

introduced S. 238, an extension bill.²¹ No action was taken until the following session, when Mitchell brought up the proposal and explained its provisions and purpose. He outlined the past history of federal land grants to railroads, and then traced the Congressional history of the Northern Pacific. This bill, he stated, made neither a grant of land nor an extension of government credit. It thus recognized the public sentiment toward federal grants-in-aid, which had led to the cessation of grants on March 3, 1871. Citing the provisions of the measure, Mitchell noted that it engendered a new principle in grant policy. The company would release its control over all its lands, and they would be opened to settlement at \$2.50 an acre. Proceeds of land sales would go to the Treasury to pay interest on the company bonds. The innovation was thus a repetition of the interest guarantee bill of 1874. Since the bill would restore the lands of the railroad to settlement, Mitchell said

It would remove...a mortgage from forty-seven million acres of the people's land...which is today and has been for years a constant menace to the settlement and prosperity of the country within its paralyzing limits...²²

S. 238 further stipulated that the Northern Pacific main

²¹Record, 44th Cong., 2nd Sess., p. 52.

²²Record, 45th Cong., 2nd Sess., p. 62.

line down the Columbia must be built on the south, or Oregon, side of the river. Since Oregon was a state and Washington a territory at the time of passage of the original act, the amount of the grant would be reduced some seven million acres. Finally, the grant originally bestowed upon the Cascade branch was not to come under the eight year extension provided for the remainder of the line. Instead, these lands were to be transferred to the Portland, Salt Lake and South Pass Railroad to aid in the construction of a railroad from Umatilla, Oregon, to Salt Lake.²³ Mitchell then asked that the bill be referred to the Committee on Railroads. Before the motion was approved, Allen Thurman of Ohio pointed out that if the time for completion was actually July 4, 1877, then this bill would make a completely new grant of land to the Northern Pacific.²⁴

On the twenty-second of April, 1878, Mitchell brought up an amended form of S. 238, reported from the Committee in the nature of a substitute. Mitchell explained that he had "entertained the hope that that bill would not

²³This provision was instituted by Oregon interests who feared that Portland would lose important ground to the Puget Sound terminal of the Northern Pacific railroad in the struggle for the Northern shipping business. For the details of that long and heated battle, see James B. Hedges, Henry Villard and the Railways of the Northwest (New Haven: Yale University Press, 1930).

²⁴Record, 45th Cong., 2nd Sess., p. 66.

encounter the hostility of the Northern Pacific Railroad Company, but in this I was mistaken."²⁵ He referred to the introduction of another measure, S. 1015, which was more in line with the railroad's ideas on extension. The compromise bill, Mitchell reported, differed only slightly from its original form. The main change provided that the company would release control of its unearned land only, these lands to be open to settlement as provided before. William Windom, Minnesota Republican, defended the bill, reminding the Senate that the circumstances which had originally prompted the grant had not been altered. In conclusion he asked,

Shall we sacrifice all the great interests to be subserved by the completion of this road, to a supposed popular prejudice (which in fact does not exist) against land grants to railroads?²⁶

The next day debate on the bill resumed, and a host of minor amendments were considered. One proposed by Frank Hereford, a West Virginia Democrat, occasioned a sharp discussion. It provided that as soon as the railroad had filed a map of definite location of its route, the lands adjacent to such located line would be subject to taxation

²⁵Ibid., p. 2692.

²⁶Ibid., p. 2698. Italics mine. This statement is difficult to reconcile with the Ohio resolution mentioned above, and the increasing number of forfeiture bills and memorials then before Congress.

by state and local governments. With this and the other accepted amendments, the Senate passed the bill and sent it to the House.²⁷

The Senate extension proposal did not come before the House until the next session, and then only on March 1, the day prior to adjournment. William W. Rice, Republican of Massachusetts, made a last minute effort to get the rules suspended to make possible the consideration of the bill. By a vote of 133 yeas to 104 nays the House failed to give the two-thirds majority needed, and the extension attempt thereby collapsed.²⁸ Extension bills made a final appearance during the next Congress, at which time they did not even receive consideration.²⁹

During the years in which the Northern Pacific was seeking an extension of its charter time limitations, Congress was undergoing a change of attitude. This was particularly true of the House of Representatives, which had twice failed to approve Senate action on extension bills. The House also led in the forfeiture attempt; a pair of bills introduced in the forty-fourth Congress indicated its early

²⁷Ibid., p. 2736.

²⁸Record, 45th Congress, 3rd Sess., p. 2259.

²⁹See Record, 46th Cong., 1st Sess., bills S. 82, p. 34; S. 264, p. 128; H. R. 74, p. 606; also Record, 46th Cong., 2nd Sess., H. R. 6160, p. 3176 and S. 82, p. 2587.

aggressiveness.³⁰ The next Congress marked the appearance of forfeiture measures in both houses. A Senate bill, S. 147, instructing the Secretary of the Interior to declare forfeitures in certain cases, was killed in Committee during the first session.³¹ The House experienced some similar activity. On January 14, and again on February 5, 1878, House bills were introduced which would have forfeited portions of the Northern Pacific grant.³² The second of these measures, H. R. 3066, was referred to the House Committee on the Pacific Railroad which considered it.

On April 17, the Committee reported a substitute, H. R. 4397, which provided for an extension of time for the railroad, rather than a possible forfeiture proceeding.³³ In a report accompanying the substitute bill, a majority of the committee found that "further time must be granted, or this great enterprise, as at present organized, must be abandoned".³⁴ Everything considered, they concluded

³⁰See Record, 44th Cong., 1st Sess., H. R. 1552, p. 592; H. R. 3134, p. 2458; both bills sought to restore to the public domain certain land in Washington territory, but no action was taken on either of them.

³¹Senate Journal (Washington: Government Printing Office), 45th Cong., 1st Sess., p. 36.

³²House Journal (Washington: Government Printing Office), 45th Cong., 2nd Sess., pp. 185, 365.

³³Record, 45th Cong., 2nd Sess., p. 2617.

³⁴House Reports, 45th Cong., 2nd Sess., Vol. I., No. 120, p. 1.

The committee are of the opinion that a due regard to the interests of these Territories, and of the hardy pioneers who have settled them, demands liberal action on the part of Congress to complete this road, to which, in a measure, the public faith was pledged; that the lands originally granted for it are held, as it were, in trust for the benefit of those settlers; and that, even if, strictissimi juris, advantage might be taken of the failure to meet the requirements of the charter in point of time, still, good policy, if not good faith, requires the waiver of that advantage and a reasonable extension of time to secure the accomplishment of this great national work.³⁵

The expiration of the grant nearly a year before, the Committee evidently agreed, should elicit patient generosity and not Congressional vindictiveness. A minority of the Committee did not agree with such a policy, stating that they

opposed the passage of the bill for a renewal of the grant of lands made by it, which is in substance and principle a new grant, to which we are opposed. Such grants are not now warranted by the public interest, and are condemned by the public judgment.³⁶

The House failed to take any action on the substitute, or on another proposal made during the following session by Delegate Orange Jacobs of Washington Territory. Jacobs's bill, introduced February 13, 1879, declared forfeit all unearned lands of the Northern Pacific upon its failure to construct one hundred miles of its main line, and

³⁵Ibid., p. 2.

³⁶Ibid., p. 4.

twenty-five of its branch, within a year after the passage of the resolution.

The next Congress, 1879-1881, was almost barren of forfeiture activity, only one bill of that category being recorded.³⁷ The numerous forfeiture resolutions of the forty-seventh Congress, therefore, mark the beginning of a new period. For, from 1882 onward, the pressure was never reduced until the passage of a general forfeiture act. In that year, one House bill and two joint resolutions were introduced in the lower chamber. Each provided for the restoration of certain Northern Pacific lands because of a breach of the conditions of the original charter.³⁸

On January 9, in the Senate, and a week later in the House, resolutions were approved directing the Secretary of the Interior to inform the respective houses as to any decision of the Commission of the General Land Office declaring the Northern Pacific land grant lapsed. The Interior Secretary was directed to furnish the text of a decision by Carl Schurz, former Secretary, overruling that decision and restoring lands to the company without Congressional consideration.³⁹ The reply of W. C. McFarland,

³⁷House Journal, 46th Cong., 1st Sess., H. R. 1759, p. 234.

³⁸House Journal, 47th Cong., 1st Sess., See H. R. 2490, p. 230; H. R. Res. 264 and H. R. Res. 265, p. 1720.

³⁹Record, 47th Cong., 1st Sess., pp. 266, 423.

General Land Office Commissioner, is a clear presentation of the legal considerations involved in any contemplated forfeiture proceeding. He first stated that no Secretary of the Interior had reversed any decision of the Land Office Commissioner in relation to the lapse of the grant. The position of the General Land Office, McFarland explained, was expressed in a letter by its Commissioner of October 12, 1877, to the land office at Bozeman, Montana Territory. The Bozeman agent had inquired as to whether the grant to the railroad had lapsed. The Commissioner in his answer pointed out that by the terms of the grant the expiration date was July 4 of that year, but warned that this did not necessarily mean the grant had lapsed. He explained,

The Supreme Court of the United States...in the case of Schulenberg et al. vs. Harriman, announced that the provision for reversion is a condition subsequent and cannot operate until a declaration of forfeiture, either by some judicial proceeding authorized by law, or by legislative assertion of ownership on the part of the government has been made.

This office, therefore, has no power to enforce a forfeiture of the grant, or restore the lands, and until action of the above character is taken, the lands will continue in their present state of reservation.⁴⁰

The position of Carl Schurz as to the lapsing of the grant was contained in his letter of June 11, 1879, to the General Land Office. Schurz held that the company's time had not expired at that date. By his interpretation, the extension.

⁴⁰Senate Executive Documents (Washington: Government Printing Office), 47th Cong., 1st Sess., Vol. 2, No. 64, p. 3.

act of 1868 had not repealed the act of 1866. Therefore, he reasoned, since the act of 1868 set 1877 as the date for completion of the road and the act of 1866 extended the limit two years, the actual expiration date was July 4, 1879, plus the one year's grace provided in the charter act.⁴¹

The effect of the decision in Schulenberg vs Harriman was to make forfeiture a positive action on the part of the government. Since the act of 1864 had no forfeiture clause providing for automatic reversion upon breach of condition, the railroad's interest in the grant lands remained secure unless such action was instituted by Congress through legislation or court procedure. The interest which the railroad had in the lands was also defined in that case--one of the most significant in land grant history. The court held grants such as that of the Northern Pacific to be in praesenti, i.e., importing an immediate transfer of property and title from the government to the railroad company, subject to conditions mentioned in the charter.⁴² Stated simply, Congress would have to act if it desired to restore to the public domain any of the lands granted

⁴¹Ibid., pp. 5-6. Compare this interpretation to that on p. 62, above.

⁴²Schulenberg et al. vs Harriman, United States Supreme Court Reports (Newark: The Lawyers Cooperative Publishing Company, 1885), Vols. 86-89, p. 551.

in 1864 or 1870. The fact that the company had not met the conditions of the charter was insufficient to cause reversion.

The House Committee on the Judiciary, studying the problem of the Northern Pacific grant and possible Congressional policy, reported their conclusions on June 6, 1882.⁴³ The majority reported that the time for completion had by then unquestionably expired. Sections eight and nine of the original act, they found, stated the conditions of the grant. Taken together, these sections vested "in the company an estate upon conditions subsequent."⁴⁴ The majority felt that section nine was enacted to modify and define section eight, and by that limitation "the sole right which remains in the United States at the present time is the right, "by its Congress, to do any and all acts which may be needful and necessary to insure the speedy completion of the road."⁴⁵ In conclusion, those members of the committee could "conceive of no legislation which would hasten the completion of the road, and therefore recommend none."⁴⁶

⁴³House Reports, 47th Cong., 1st Sess., Vol. 5, No. 1283.

⁴⁴Ibid., Part 2, p. 2. For an explanation of these sections see p. 32, above.

⁴⁵Ibid., p. 2.

⁴⁶Ibid., p. 3.

A minority of seven of the fifteen members of the Judiciary Committee disagreed. They asserted

that the power to declare an absolute forfeiture of this land grant is in Congress, and that the question of the policy of action to that end should be considered and be decided after a careful examination of existing conditions as well as past transactions...⁴⁷

Democratic Representative James P. Knott of Kentucky filed a supplemental report in which the other minority members concurred. Using figures supplied by the Auditor of Railroad Accounts, he estimated that the value of the land grant exceeded \$108,000,000 and the cost of construction exceeded \$67,000,000. This left the railroad a surplus of \$41,000,000 plus, over and above the cost of construction. Knott noted that even the figures of the President of the Northern Pacific anticipated a surplus of \$16,000,000. Taking cognizance of these figures, Knott and the others supposed

that all that could be asked of the government in the exercise of the most prodigal generosity would be a sufficient amount of lands to enable the company to construct its road without costing it a single dollar of its own money, and...it has occurred to them that it might be to the interest of the people of the United States generally to look somewhat after that surplus, whatever it may be.⁴⁸

⁴⁷Ibid., Part 2, p. 2. The minority members were Democrats Nathaniel J. Hammond, Georgia; David B. Culbertson, Texas; James P. Knott, Kentucky; Vannoy H. Manning, Mississippi; Richard W. Townshend, Illinois; and Republican Lewis E. Fayson, Illinois; N. A. McCoid, Iowa.

⁴⁸Ibid., p. 10.

They therefore proposed a resolution declaring forfeit those Northern Pacific lands not patented by July 1, 1882, by reason of a breach of conditions upon which the grant was made.

Representative Holman incorporated the forfeiture sentiment in another of his resolutions during the opening session of the forty-eighth Congress, 1883-1884. As adopted on January 21, 1884, it held

That in the judgment of this House all the public lands heretofore granted to States and corporations to aid in the construction of railroads, so far as the same are now subject to forfeiture by reason of the nonfulfillment of the conditions on which the grants were made, ought to be declared forfeited to the United States and restored to the public domain.⁴⁹

To crystallize this stated policy into action, a plethora of forfeiture bills were introduced during that Congress, along with petitions and memorials from the various states and from private organizations.⁵⁰ The House Committee on Public Lands, on April 11, 1884, reported out a measure, H. R. 5534, as a substitute for various forfeiture proposals.⁵¹ To explain its position in regard to the proposed

⁴⁹Record, 48th Cong., 1st Sess., p. 546.

⁵⁰See, e.g., Senate Journal, 1st Sess.; S. 67, p. 14, and S. 2289, p. 658. Also House Journal, 1st Sess.; H. R. 184, p. 55 and H. R. 5019, p. 590. The last mentioned bill was designed to put the cost of surveying upon the company and also to subject the grant lands to taxation.

⁵¹House Reports, 48th Cong., 1st Sess., Vol. 5, No. 1256.

bill, it reported that after a study of the original charter

They are satisfied that the grant was one in praesenti upon condition subsequent; that by breach of such condition the grant, along the entire line so far as it was incompleted on the 4th day of July, 1879, is, and has been since that date, subject to forfeiture, and that justice to the United States and her citizens now require that a forfeiture and restoration of the lands to the public domain should be declared by act of Congress.⁵²

The Committee refuted one by one the various objections which had been made to such an action by Congress. Some had professed that Congress, after authorizing the bond issue by the company, would hurt the interests of the bondholders by a forfeiture act. There was no validity to such an assertion, the Committee found, for the company never had an absolute fee title to its lands. Furthermore, it continued, the government had no concern in such a matter for "the mortgagee took with his eyes open".⁵³ The company had also objected that the government had not carried out all its obligations under the chartering act. For instance, it alleged that the government had failed to survey the granted lands rapidly enough for the purposes of the railroad. The Committee denied this also, replying that the government had surveyed as rapidly as practicable under the circumstances. For those who maintained that

⁵²Ibid., p. 1.

⁵³Ibid., p. 9.

inaction on the part of the government constituted a waiver of its right to forfeit, the Committee concluded that "silence cannot be construed into a waiver of a breach of condition".⁵⁴ A minority of the Public Lands Committee submitted an accompanying report. While agreeing with the reasoning of the rest, they concluded that the more just and expedient course of action by Congress would be a forfeiture limited to the still uncompleted portion of the railroad in Washington Territory. They suggested also the rapid completion of surveying of the grant with a view toward an early final adjustment.⁵⁵

Only one Northern Pacific forfeiture measure occasioned debate during the forty-eighth Congress. It was introduced on April 14, 1884, and on the seventeenth James H. Slater, Oregon Democrat, had the rules suspended in order to bring his bill, S. 2036, before the Senate.⁵⁶ He made an extended speech justifying the adoption of a forfeiture policy by Congress. Slater pointed out that between the years 1861 and 1874 approximately 190,000,000 acres of public land had been granted for internal improvement purposes, and nearly 160,000,000 acres of that had gone to private corporations. Turning his attention

⁵⁴Ibid., p. 16.

⁵⁵Ibid., p. 27.

⁵⁶Record, 48th Cong., 1st Sess., pp. 2919, 3044.

to the Northern Pacific grant, he explained that its grant "...was by far the most valuable grant ever made to any corporation".⁵⁷ Slater then sought to explain the attitude which Congress should adopt in its treatment of the Northern Pacific. "This company is not entitled to leniency..."⁵⁸, he maintained, because of its past record. The Oregon Senator then cited examples of the company's land policy to bear out his position. The company, he asserted, had advertised its lands for sale at \$2.60 an acre; but, since the road's completion, it had consistently raised the actual price to \$4.50, and even up to \$15, an acre. The bill was then referred to the Committee on Public Lands which reported it out June 26, with its report. The resolution, the Committee reported, proposed to forfeit Northern Pacific lands along nearly 400 miles of its uncompleted line, about 10,000,000 acres in all. The Committee had postulated two questions in its consideration of the measure, and it answered each affirmatively. Did Congress have the power to declare a forfeiture, and if so, did sound policy require the exercise of that power?⁵⁹ Despite the favorable report, no further action was taken on the

⁵⁷Ibid., p. 3047.

⁵⁸Ibid., p. 3048.

⁵⁹Senate Reports, 48th Cong., 1st Sess., Vol. 7, No. 804.

proposal.

Forfeiture bills continued to receive attention in Congress during its next meeting in 1886-1887. Adding to the number of measures which fell into the general category of anti-land grant were a new group which sought to shift the burden of surveying costs from the government to the Northern Pacific. None of these was acted upon, however.⁶⁰ Most of the proposed forfeiture and restoration bills never got beyond committee consideration, but one Senate measure was nearly enacted into law.⁶¹

The Senate Public Lands Committee, on April 19, 1886, reported S. 2172 as a substitute for another forfeiture proposal, S. 66.⁶² The substitute provided for the forfeiture of lands along the 214 miles of incompletd line from Wallula, Washington Territory, to Portland, on the Columbia River. On May 27, Joseph N. Dolph, Republican of Oregon, brought the bill before the Senate. Republican Charles H. Van Wyck of Nebraska immediately proposed an amendment which would have forfeited all the lands coterminus

⁶⁰See House Journal, 49th Cong., 1st Sess., the following bills; H. R. 456, p. 159; H. R. 3752, pp. 342, 895; H. R. 6667, pp. 895, 1306.

⁶¹For the short-lived measures see Senate Journal, 49th Cong., 1st Sess., S. 66, pp. 49, 575 and S. 1172, p. 193. The House resolutions are noted in House Journal, 49th Cong., 1st Sess. See H. R. 147, pp. 144, 1009; H. R. 2891, p. 291; H. R. 4223, p. 404.

⁶²Record, 49th Cong., 1st Sess., p. 3598.

with the sections of the road uncompleted on July 4, 1879. Senator George F. Edmunds, Vermont Republican, suggested that he withdraw his amendment, for without it the bill would readily pass, and the forfeiture of the 214 miles would be secured at least. Van Wyck reiterated that to do so would merely be a recognition on the part of Congress that it was then satisfied with the status of the Northern Pacific grant. He noted

...that there is no one from the Northern Pacific Railroad Company who asks us to keep our hands off this piece of ground from Wallula to Portland. They want Congress to do it this way, so that it shall be a concession on the part of Congress that it ends the question.⁶³

Van Wyck did withdraw his amendment, however, when Democrat James B. Beck of Kentucky offered a proviso stipulating that the United States was not waiving its right to forfeit Northern Pacific grant lands, and it was accepted.

On the following day Van Wyck had a new amendment to the proposed bill, this time providing for the forfeiture of lands coterminus with uncompleted portions of the main line and branch as of the date of this act. This would have made possible the forfeiture of lands along seventy-five additional miles, on the Cascade branch.⁶⁴ Debate on the first and second of June was largely taken

⁶³Ibid., p. 4989.

⁶⁴Ibid., p. 5017.

up by Dolph, urging the passage of the bill. Wilkinson Call, a Florida Democrat, managed to register a protest against the proposed legislation, decrying the piecemeal approach and explaining that the people of the country demanded and deserved a final settlement of the question. On June 11, the bill was again subjected to a long discussion but the emphasis was now shifted more to the legal consideration involved. After Senator James Z. George, Democrat of Mississippi, had expressed his views on the subject, concentrating on the difference between the value of the grant and the actual cost of the railroad, Sherman of Ohio took the floor. Asserting that the government had done nothing in the matter of forfeiting since July 4, 1879, he questioned whether the courts would uphold a forfeiture at the present time.⁶⁵ Democrat James L. Eustis, Louisiana, immediately rose to dispute the point, asserting that if the United States had the right to forfeit on July 5, 1879, then that right still existed. Call then ended the day's debate with an appeal to the gentlemen of the upper chamber.

The question is, shall we to the ruin of the people of the United States create and continue a monopoly of land of the United States the like of which has never existed in the history of the world and vest in a few individuals by the direct action of Congress an accumulation

⁶⁵Ibid., p. 5558.

wealth in the shape of a perpetual right of taxation upon the settlers upon the public lands...?⁶⁶

Call ended his speech by expressing the desire that his colleagues might give the railroad all the lands it wanted but asked that they not forfeit this insignificant portion to make a pretense of satisfying the popular demand. On June 15, by a vote of 24 to 18, the second Van Wyck amendment was accepted. Eustis then proposed another embodying the same provisions as that withdrawn by the Nebraskan. After a spirited debate, this amendment was rejected.⁶⁷ A final amendment by Van Wyck, which repealed the provision of the act of 1864 exempting the railroad's right of way from taxation, was accepted, and S. 2172 was then passed, 42-1, by the Senate.⁶⁸

⁶⁶Ibid., p. 5563.

⁶⁷Ibid., p. 5715. The leadership of the Democrats in the Senate in the forfeiture battle is shown by the vote distribution on the Van Wyck amendment. The Democrats voted sixteen to three in favor of the proposal. Republicans voted eight and fourteen, respectively, against the amendment. On the Eustis amendment which was more stringent in its forfeiture implications, only eleven Democrats joined Van Wyck in favoring the proviso. Eight Democrats and twenty-three Republicans successfully combined to defeat the Eustis amendment. Also significant is the breakdown of the older sectional voting pattern. On the Van Wyck amendment, the western Senators voted nine to eight in its favor, but this includes four votes from Texas and Arkansas. On the Eustis amendment, all the Democratic votes cast in support were from Southern states--Kentucky, Arkansas, Missouri, Texas, Louisiana, Mississippi, Tennessee, and Maryland.

⁶⁸Ibid., p. 5719.

On July 26, the House proceeded to consider the Senate bill, as reported from its Public Lands Committee. That Committee had substituted for the Senate approved version a bill identical to the amended version as proposed by Senator Eustis. William T. Price, Wisconsin Republican, spoke for the Senate version of the forfeiture bill, but Democrat Barclay Henley, California, Republican Lewis E. Payson, Illinois, and Democrat Charles S. Voorhees, Washington Territory, ably supported the Eustis version. The latter was passed the following day, 187 ayes to 47 nays, and a conference committee was appointed to settle the Senate-House differences.⁶⁹ The conference committee did not report until the following session, and then it declared that no agreement could be reached to reconcile the differences between the respective House and Senate measures.⁷⁰

Despite the passage of forfeiture bills by each house during 1886, final action seemed no nearer than before

⁶⁹Ibid., pp. 7613, 1651. The forty-seven negative votes cast against the House forfeiture bill reflect the Democratic support of that policy on the one hand, and they also reflect the almost complete reversal in attitude among the western legislators. Only nine Democrats voted against the bill and some of those may have been members of the group which desired a more comprehensive forfeiture measure. Nearly all thirty-eight Republican votes came from the northeast. Only four western votes, all Republicans, were cast against forfeiture. Ibid., p. 7613.

⁷⁰Record, 49th Cong., 2nd Sess., p. 1717.

when the fiftieth Congress convened in 1888. The degeneration of debate merely emphasized the apparent inability of Congress to take definite action in regard to the Northern Pacific lands. On August 30 of that year, another forfeiture bill, S. 3504, was introduced; and, on September 24 it came before the Senate.⁷¹ Preston B. Plumb, Kansas Republican, led off the discussion with a prolonged defense of the Republican party. On a purely political plane, he rejected the charges made by some members that the Republican party was the land grant party. In its defense, he accused the Democrats of inefficiency and corruption in its management of what had been a systematized land grant policy under the Republicans. A week later, James H. Berry, Arkansas Democrat, replied to these charges in a speech which reached the nadir of the forfeiture controversy. He eloquently proclaimed that "the Democratic party was organized to defend the poor...and it has always been the champion...of those who are compelled to labor for their daily bread".⁷² Continuing, he alleged that

The cardinal principle of the Republican party... is that it is the duty of the Government to force by law and by the strong hand of power from the consumers of this country a large donation of money to support in luxury and idleness...a comparatively few manufacturers... .⁷³

⁷¹Record, 50th Cong., 1st Sess., pp. 8088, 8876.

⁷²Ibid., p. 9056.

⁷³Ibid., p. 9056.

No further action was taken by the Senate on the bill.

The House Committee on Public Lands reported, on September 26, 1883, a substitute for several other forfeiture proposals.⁷⁴ Like the bill passed in the previous session, H. R. 9151 provided for the forfeiture of all lands unearned by the Northern Pacific on July 4, 1879. Without debate, the resolution was passed the same day by the House. As the reporting committee had affirmed in its report on the bill, since the railroad had completed only 530.5 miles of road at that date, the remainder, or 1754.8 miles of road, would come under the provisions of this bill.⁷⁵ The House bill did not come up in the Senate until the next session, and when it came up on the calendar it was passed over, thereby sealing its fate.⁷⁶

The advent of the fifty-first Congress marks the close of the forfeiture period. The customary number of forfeiture propositions made their appearance in both houses,⁷⁷ but the report of the House Public Lands Committee

⁷⁴Ibid., p. 8968. For other bills see House Journal, 50th Cong., 1st Sess., H. R. 1313, p. 189; H. R. 1352, p. 192; H. R. 1765, p. 214; H. R. 2000, p. 228; and H. R. 4432, p. 346.

⁷⁵House Reports, 50th Cong., 1st Sess., Vol. 5, No. 1498.

⁷⁶Record, 50th Cong., 2nd Sess., p. 238.

⁷⁷See Record, 51st Cong., 1st Sess., pp. 238-239. Following resolutions intended to forfeit portions of the Northern Pacific grant; S. 64 and S. 65, pp. 97-98; S. 4437, p. 10,554; H. R. 83, p. 227; H. R. 740, p. 252.

on one bill, H. R. 8919, indicated that that body was now ready to accept the Senate's restricted forfeiture policy. The committee conceived of three possible methods of forfeiture. The government could seek forfeiture of the entire grant where there was not a full performance by the company under its charter. It could forfeit all land opposite the road which was built after the expiration date of the charter. Finally, the government could cause forfeiture of lands coterminus with the still unconstructed portion of the road, an estimated 3,425,000 acres. The House Committee proposed H. R. 8919 to carry out the latter method.⁷⁸

The passage of a forfeiture act, when it came, was a weak palliative to men like Holman of Indiana who had struggled for so long to secure a law which would restore appreciable portions of the railroad grants to the public domain. On September 29, 1890, the president signed into law the results of two decades of forfeiture agitation, a general forfeiture statute. Congress, having failed in the attempt to forfeit particular grants like that of the Northern Pacific, at last reconciled itself to a general forfeiture. Thus the special considerations and problems involved in each grant were simply lumped together for the purpose of securing some form of final answer to the

⁷⁸House Reports, 51st Cong., 1st Sess., Vol. 4, No. 1179.

perplexing forfeiture question. The enacted bill provided that

All lands heretofore granted to any State or to any corporation to aid in the construction of a railroad opposite to and coterminus with portions of any such railroad not now completed, and in operation, for the construction or benefit of which such lands were granted...⁷⁹

were forfeited to the United States, but such forfeiture was not to include the rights of way or station grounds of the railroad. Section two of the act set up protection for the rights and interests of actual settlers upon such forfeited lands. For a few more years forfeiture bills directed specifically toward the Northern Pacific lands were introduced in Congress, but none was passed.⁸⁰

The year 1890 ended one phase of land grant history. Remorseful Congressmen, anxious to mitigate the effects of the often hasty land grant legislation of the 1860's, resorted to forfeiture in a belated attempt to appease public sentiment. Though unable to enact any legislation applying directly to the Northern Pacific, Congress managed by the act of 1890 to restore over 3,000,000 acres to the dwindling public domain from the more than 40,000,000 originally granted that company.

⁷⁹Statutes, Vol. 26, p. 496, September 29, 1890.

⁸⁰Some bills were acted upon, however. See, e.g., Record, 52nd Cong., 1st Sess., p. 5125.

Yet, even before the enactment of the general forfeiture bill settled that question, a new problem, more vexatious than its predecessor, was attracting Congressional attention. That problem was centered upon the final adjustment of the Northern Pacific grants.

CHAPTER V

THE FINAL ADJUSTMENT OF THE NORTHERN PACIFIC LAND GRANTS

The Congressional attempt to adjust the Northern Pacific grants began when that body enacted a statute in 1887 which provided

That the Secretary of the Interior be, and is hereby authorized and directed to immediately adjust, in accordance with the decisions of the Supreme Court, each of the railroad grants made by Congress... .¹

Another section of that act authorized the Attorney General to prosecute, in the event such action was necessary to the adjustment procedure. The interest of Congress in passing such a measure was to achieve a final settlement with the railroads. The necessity for adjustment grew out of the provisions of the granting acts of 1864 and 1870. The act of July 2, 1864, had provided that the Northern Pacific might indemnify its losses in the primary limits of the grant from an indemnity belt ten miles beyond the place limits, in any of the states or territories which the line traversed. Such losses could arise either from homestead or preemption claims within the place limit, or by virtue of the mineral nature of land within those limits. Moreover, by the provisions of the act, indemnity could be claimed by

¹Statutes at Large of the United States (Washington: Government Printing Office), Vol. 24, p. 956. Hereafter abbreviated to Statutes.

the Northern Pacific on any such losses which had occurred prior to July 2, 1864, or subsequent to that date up to the time that the road was definitely located.²

The resolution of May 31, 1870, established a second indemnity belt for the company to make up losses sustained in the primary limits, subsequent to July 2, 1864, because of homestead or preemption of place lands. Losses of a mineral character were excepted, however, and these were to be made up only in the territories within fifty miles of the line.³ All losses sustained under the provision of this act were to be made up in the states or territories where they occurred. Since the railroad received only odd-numbered sections, the limits set by the two acts established the following pattern. Through the states the company received a forty mile wide belt as its primary grant, and two ten mile indemnity strips were added to make the total width eighty miles. Through the territories, Washington, Montana, Idaho, and Dakota, the original limits were eighty miles broad, and the two indemnity limits extended this to one hundred miles. As the act of 1870 provided that the mineral indemnity selection privilege must be exercised within a fifty mile limit of the road, the second indemnity limits in the Territories, which lay

²See p. , above, section three.

³Statutes, Vol. 16, pp. 378, 379.

between fifty and sixty miles from the line, were unavailable for such selection. The significance of this last provision will be seen when the Northern Pacific and the government began their long struggle over the adjustment.

One further aspect of the procedure followed by the road in the procuring of its grant lands merits explanation. The original practice followed by the company and the government had been for the latter to make a withdrawal of all the grant lands as soon as the route of the railroad had been definitely established. The lands were then surveyed as rapidly as possible by the government and the railroad could immediately receive patents for the odd sections within the primary limits. As deficiencies in the place limit were uncovered, the Northern Pacific made lieu selections within the appropriate adjacent indemnity limits. The difficulties which later presented themselves developed when the company found that insufficient lands remained in the indemnity limits to make up for losses sustained in place. The company, assuming that the original grants had guaranteed an aggregate quantity of lands, sought indemnification for their loss.

During the 1890's three laws were passed by Congress which related to the problem of adjustment. The first, approved February 26, 1895, provided in part,

That the Secretary of the Interior...cause all

lands within the land districts hereafter named in the States of Montana and Idaho within the land grant and indemnity land grant limits of the Northern Pacific Railroad Company...to be examined and classified...with special reference to the mineral or nonmineral character of such lands... .⁴

After the classification, the act stated, any lands claimed by the Northern Pacific and found to be mineral would be rejected and disallowed. The purpose of this mineral classification bill was to help clarify the status of the lands embraced by the Northern Pacific grant. On July 1, 1898, a section was added to an appropriation bill which applied to company lands held by settlers, prior to January 1, 1898, in either place or indemnity limits. Where settlers held such lands, the Northern Pacific might replace such losses by lieu nonmineral selections "not valuable for stone, iron, or coal"⁵ in any state or territory through which the grant extended. By its action, Congress thus made easier the possibilities of indemnification. The act eliminated the earlier restriction which allowed indemnification only in the state or territory where the loss occurred; and it also extended until 1898 the period in which losses to settlers would be subject to recovery. The last of the trio of acts was one enacted on March 2, 1898, which established the Mt. Rainier National Park. Since the

⁴Statutes, Vol. 28, p. 683.

⁵Statutes, Vol. 30, pp. 597, 620.

government withdrew lands within the limits of the Northern Pacific grant in order to create the park, it thereby authorized the company to select an equal quantity of nonmineral public lands.⁶ These selections could be made from any available public lands in the states and territories traversed by the railroad.

It was a similar withdrawal of lands by the government for the purpose of creating a forest reserve which led to the eventual adjustment of the Northern Pacific grant. In the process of adjustment, the respective cases for the railroad and the government were presented first to the Supreme Court, then to a special joint Congressional committee, and finally to another court case and settlement. On January 29, 1904, under the direction and authority of the Secretary of the Interior and the President of the United States, the Commissioner of the General Land Office withdrew from entry, sale, or any other forms of disposal specified lands within the first indemnity limits of the Northern Pacific.⁷ The lands so withdrawn were located in Montana, and were subsequently made a part of the Gallatin

⁶Statutes, Vol. 30, pp. 993, 994.

⁷The Northern Pacific Land Grants. Hearings before the Joint Congressional Committee on the investigation of the Northern Pacific Land Grants (Washington: Government Printing Office, 1928), Part 9, p. 5102. Hereafter cited as The Northern Pacific Land Grants. Hearings.

National Forest. At the time of the withdrawal, the Northern Pacific had not filed an indemnity selection list on any of the lands therein. That the withdrawal was therefore valid on the part of the government was borne out by a later decision of the Interior Department which asserted:

the right of a railroad company does not attach to any specific lands within the indemnity limits of its grant until selection, notwithstanding the loss on account of which indemnity might be taken is ascertained to be largely in excess of all the land subject to indemnity selection.⁸

However, when the Northern Pacific, on April 5, 1906, the date of the completion of the survey of the lands, did file an indemnity selection covering 5,681.76 acres of the withdrawn lands, the list was accepted in error by the local land office, the General Land Office, and the Secretary of the Interior respectively.⁹ Patents were then issued to the company for those selections. Upon discovery of the error, the Interior Department demanded the return of the patents but the Northern Pacific refused, stating that their grant was deficient and they would not comply with the request. Subsequently, the Justice Department instituted a suit for the cancellation of the patent, and

⁸Decisions of the Department of the Interior and General Land Office in Cases Relating to the Public Lands (Washington: Government Printing Office), Vol. 36, p. 349. Referred to hereafter as Land Decisions.

⁹The Northern Pacific Land Grants. Hearings, Part 9, p. 5102.

the long process of adjustment was begun.

The case was tried in the lower Federal courts, upon an agreed stipulation of facts prepared in Washington which recognized a deficiency in the grant. The Circuit Court held in favor of the company. Judge Ross delivered the opinion of the court:

Under the land grant to the Northern Pacific Railroad Company of July 2, 1864, on completion of its road the company became vested with a contract right to select nonmineral lieu lands within the indemnity limits, and the United States could not defeat such right by withdrawing for possible inclusion in a national forest reservation any of the lands within those limits subject to selection before their survey, prior to which time under the practice of the department the company was not permitted to make selections.¹⁰

The justice went on to point out that the original grants made to the Northern Pacific, once accepted by them, constituted a contract from which neither party could depart except in the manner prescribed by law. Therefore, Ross concluded that the

promise of the government of indemnity lands in lieu of what might be lost in the place limits was an essential part of the contract between the government and the Northern Pacific Railroad Company for the building of the road it did build, the compliance with which contract on its part clearly precludes, in our opinion, the government from subsequently taking such land for other purposes of its own.¹¹

¹⁰United States vs Northern Pacific Railway Company, Federal Reporter (St. Paul: West Publishing Co., 1920), Vol. 264, p. 898.

¹¹Ibid., p. 909.

The United States appealed the case to the Supreme Court which heard it in 1921. Justice Van Deyanter delivered the majority opinion in the case. He summarized the facts in the case and the obligations of the respective parties. He recognized the fact that insufficient lands were available to make up the grant, but noted that the government

does not admit that the correct measure of the grant is the aggregate area of all odd-numbered sections within the primary or place limits, or that any definite quantity of land was granted and guaranteed to the defendant...¹²

The Supreme Court thereupon reversed the lower court ruling and remanded the suit to the District Court with directions "to accord the parties a reasonable opportunity, on a further hearing, to supplement and perfect the showing made in the present record..."¹³

It was at this stage of the adjustment proceedings that Congress began to take an active interest. During the years which had elapsed since 1900, it had showed little interest in the Northern Pacific land grants.¹⁴ On December

¹²United States vs Northern Pacific Railway Company, United States Supreme Court Reports, Lawyers Edition; (Rochester: The Lawyers Cooperative Publishing Co., 1922), Book 65, pp. 825, 928. Decision rendered April 11, 1921.

¹³Ibid., p. 928.

¹⁴Exceptions to this lack of interest were a number of relief acts for the benefit of actual settlers on the Northern Pacific lands. See Statutes, the following laws; Vol. 26, p. 647; Vol. 31, p. 950; Vol. 34, p. 197 Vol. 36, p. 739; Vol. 39, p. 946; Vol. 40, p. 120. Another source

19, 1923, William Spry, Commissioner for the General Land Office sent identical letters to the Forester of the Department of Agriculture, to Britton & Gray, the law firm representing the Northern Pacific, and to the Attorney General.¹⁵ Spry remarked that his letter represented the tentative conclusions reached in the pending adjustment of the grants, made necessary by the Supreme Court decision of April 11, 1921. He advised the interested parties to file their briefs within sixty days. Citing figures of the Interior Department, Spry pointed out that the total area of the primary limits of the grant under the acts of 1864 and 1870 was 43,998,861.04 acres. On December 31, 1921, the grant was found to be deficient by 3,933,712.51 acres.¹⁶ The reply of the Forester, January 12, 1924, set down twenty-one disputed points which served as the basis for the

of Congressional interest revolved around the reorganization of the railroad in 1896 when it came under the control of Morgan & Co., and the later consolidation of the Northern Pacific Railway Company and the Great Northern which was disrupted in 1904. For details of the reorganization of 1896, when the Northern Pacific Railway Company became successor in interest to the older company, see The Northern Pacific Land Grants. Hearings, Part 9, pp. 5233-5234. For the story of the Northern Pacific-Great Northern merger under a holding company, the Northern Securities Company, see Robert E. Reigel, The Story of the Western Railroads (New York: The MacMillan Company, 1926), pp. 311 et seq.

¹⁵The Northern Pacific Land Grants. Hearings, Part 1, p. 249.

¹⁶Ibid., Part 1, p. 250.

later joint committee's investigation.¹⁷ On February 12 the Secretary of Agriculture, Henry C. Wallace, and the Secretary of the Interior, Hubert Work, addressed a joint memorandum to N. J. Sinnott, Chairman of the House Committee on the Public Lands.¹⁸ They informed Sinnott that preliminary figures had indicated a deficiency in the Northern Pacific grants, and warned that if those figures were accepted as final, several million acres of national forest and other lands might pass to the company. They thereupon suggested that Congress make an inquiry into the adjustment problem. The following day, Calvin Coolidge, President of the United States, also addressed a letter to Sinnott.¹⁹ The president briefly outlined his understanding of the case in question, and pointed out that at no time had there been a comprehensive review of the entire transaction between the United States and the Northern Pacific. That review, he felt, was now appropriate, and suggested that the determination and settlement of the adjustment be undertaken by Congress. Coolidge concluded his letter with a summary of some of the questions which had been raised by the Forester, and a justification of a Congressional investigation.

¹⁷Ibid., Part 1, p. 10.

¹⁸Ibid., Part 1, pp. 7-8.

¹⁹Ibid., Part 1, p. 93.

The United States has granted lavishly of its public resources to aid the extension of transportation facilities, and thereby the economic development of the Western States. No question as to the wisdom of that policy is involved in this issue. Nor is any question involved as to the legal and moral obligations of the Government to discharge in full the contractual obligations which is assumed for the accomplishment of the public benefits. That the legal and equitable claims of the grantee should be fully weighed and safeguarded goes without saying. But it is still more imperative that the interest of the public, both in the possession and conservation of valuable natural resources and in the accomplishment of the purpose from which the grant was made, be adequately protected in an equitable settlement of this question.²⁰

The position of the Northern Pacific was aptly stated in the reply of Charles Donnelly, president of the road, to the presidential letter.²¹ Donnelly outlined the history of the adjustment proceedings, pointing out that the government had accepted the road forty years previously. The Northern Pacific president went on to answer the charges made in the Coolidge letter and to assert that certain equitable and moral considerations existed on the side of the railroad. Donnelly alleged that the chartering of the Northern Pacific could not be regarded as a purely private measure because it was a post and military route and all people had the right of

²⁰Ibid., Part 1, pp. 95-96.

²¹Charles Donnelly, The Facts About The Northern Pacific Land Grant (St. Paul: 1924).

stock subscription. Moreover, Donnelly asked that the benefits accruing to the government through the \$2.50 reserved section proviso be taken into account. He closed his arguments by saying that:

The American people like fair play; and even in a time of seething excitement like the present they will recoil from what is unfair, or from what savors of repudiation.²²

Hearings were then held by the House and Senate Public Lands Committee from March to May, 1924.²³ The results of the hearings were embodied in reports of the two committees on May 5 and April 24.²⁴ Both Committees agreed that the question of adjustment deserved the scrutiny of Congress, and to that end they proposed a joint resolution to permit an investigation of the Northern Pacific land grants. On the fifth of June, 1924, that resolution became law. As enacted, it provided

That the Secretary of the Interior is hereby directed to withhold until March 4, 1926, his approval of the adjustment of the Northern Pacific land grants..., and he is also hereby directed to withhold the issuance of any further patents and muniments of title..., until

²²Ibid., p. 16.

²³The Northern Pacific Land Grants. Hearings, contains the discussions which occurred before the respective committees. See Part 1, pp. 5-348, for House Committees, and Part 5, pp. 5091-5139 for Senate.

²⁴See Senate Reports (Washington: Government Printing Office, 1924), 68th Cong., 1st Sess., Vol. 2, No. 501. Also House Reports (Washington: Government Printing Office, 1924), 68th Cong., 1st Sess., Vol. 3, No. 512.

after Congress shall have made a full and complete inquiry into the said land grants and the acts supplemental thereto for the purpose of considering legislation to meet the respective rights of the Northern Pacific Railroad Company and its successors and the United States in the premises.²⁵

The act then authorized the establishment of a joint Congressional committee to carry out such an inquiry into the grants. That committee was duly appointed and held hearings from March 18 to May 20, 1925, and from April 14 to June 29, 1926.²⁶

The hearings before the Joint Committee on the Investigation of the Northern Pacific Land Grants included over 5000 pages of testimony from the representatives of both parties. The Joint Committee heard testimony, and accepted various exhibits and documents, covering nearly every aspect of the Northern Pacific Railroad Company, its history, its successors, and its management of the grant lands obtained by the granting acts of 1864 and 1870. The presentation of testimony and evidence generally followed the pattern set down in the Forester's letter of January 12, 1924. The government, represented by D. F. McGowan,

²⁵Statutes, Vol. 43, Part 1, p. 461.

²⁶The original members of the committee included Representatives Nicholas J. Sinnott, Oregon, William N. Valle, Colorado, Arthur B. Williams, Michigan, and Senators Robert N. Stanfield, Oregon, Peter Norbeck, South Dakota, Selden Spencer, Missouri, all Republicans; the Democrats were Representatives John E. Raker, California, William J. Driver, Arkansas and Senators John B. Kendrick, Wyoming, Henry F. Ashurst, Arizona.

presented its case around the points of dispute raised by the Forester. James B. Kerr was the representative of the company during the hearings.

The first three points were statements of fact which related to the adjustment. The government pointed out the limitations on mineral indemnity selection provided by the acts of 1864 and 1870.²⁷ McGowan, speaking for the government, then asserted that, if on the date of the forest withdrawals covering lands in the second indemnity belt there was sufficient acreage remaining to lawfully satisfy losses sustained in the place limits, the forest withdrawals were then valid. Points four through nine were concerned with alleged errors in the previous grant adjustment. The government desired that these errors of acreage be deducted from any deficiency of the Northern Pacific. Point four claimed an error of over 370,000 acres due to a conflict of grant limits with a Wisconsin railroad.²⁸ Point five involved an error of 11,424.48 acres at the Portland terminal of the Northern Pacific. This discrepancy was due to the failure of the railroad to construct a mile of its located road at Portland.²⁹ The

²⁷See discussion of these provisions on pp. 88-90, above.

²⁸The Northern Pacific Land Grants. Hearings, Part 2, pp. 875-913 and Part 4, pp. 2159-2171, has a discussion of this point.

²⁹Ibid., Part 2, p. 914.

sixth point related to a similar error at Ainsworth, Washington. In this case, the amount to be deducted was about 41,000 acres mistakenly patented to the company because of the use of an incorrect map of definite location.³⁰ The next two points suggested that an error of 100,000 had occurred in Montana and Idaho because of inaccuracies in the early survey lines through those regions. Point nine was unusual; it proposed that approximately 27,000 acres be deducted because the Northern Pacific had used a ferry transfer across the Columbia river at Kalama. The government questioned the treatment of the transfer as a part of the railroad line.³¹ On these five points of error, involving only minor acreages, the Northern Pacific was generally ready to agree, at least in part.

The remaining suggestions made by the Forester were more serious in their implications. The tenth related to the Tacoma overlap, and involved approximately 637,500 acres. The forty mile square overlap was caused by the entrance into Tacoma, roughly at right angles, of the Cascade branch line and the main line from Portland. The government alleged that the main line grant absorbed the other; the company answered that such was not the case,

³⁰Ibid., Part 1, p. 12.

³¹Ibid., Part 1, pp. 417, 919 and Part 4, p. 2202.

and indemnity should be allowed for the overlap.³²

In its eleventh point, the government asserted that the railroad had received 1,500,000 acres in Washington to which it was not entitled. This position was based on the provision of the act of 1864 which provided that the railroad was to build on the most eligible line from Lake Michigan to Puget's Sound. McGowan pointed out that the Chicago, Milwaukee, and St. Paul was 82.2 miles shorter than the Northern Pacific between Lind and Ellensburg, both on the Cascade line of the latter railroad. The company reiterated that, by the express provision of the 1864 law, the most eligible route was to be determined by the company.³³

The next point was of less importance, involving only 75,000 acres. The government pointed out that the Northern Pacific, in making lieu selections as provided under the Mt. Rainier Act, had made those selections within their indemnity limits. The equitability of these selections, the government asserted, rested upon the fact that even though the company was allowed by the Mt. Rainier Act to make lieu selections outside its indemnity limits, it had purposely chosen more valuable lands lying close to

³²See discussion, ibid., Part 2, pp. 923-950 and Part 4, pp. 2245-2256.

³³Ibid., Part 1, pp. 67-71, 421.

its line. The company replied that it had the right to make selections where it chose.³⁴ Point thirteen was related to the one preceding it. The government claimed that the company received great additional values by the exercise of its lieu selection rights under the various relief of settlers acts and the Mt. Rainier Act of 1899. The company countered this suggestion by pointing out that it was nowhere required to accept in exchange lands of equal value, so any excess values accruing to it was allowable.³⁵

The fourteenth point raised in connection with the adjustment related to half a million acres which had erroneously been patented to the Northern Pacific. The land in question was part of an overlap which would have occurred at Wallula, Washington, if the line between that point and Portland had been built. The grant of the Cascade branch of the railroad overlapped the main line grant at Wallula. Although the line from Wallula to Portland had been forfeited by the act of September 29, 1890, the Interior Department erroneously allowed the company to make indemnity selections for the unearned portion of the overlap.³⁶

The next proposition of the government was to uncover the facts surrounding the classification of mineral lands under the act of February 26, 1895, with a view toward

³⁴Ibid., Part 1, p. 12.

³⁵Ibid., Part 1, p. 425 and Part 7, pp. 3709 et seq.

³⁶Ibid., Part 13, pp. 5486-5488. For an

eliminating the unsatisfied mineral losses from the deficiency figures. In the hearings, the government sought to establish the fact that much of the classification was erroneous and that the Northern Pacific had exerted influence, perhaps fraudulent, upon the examining commissioners. The testimony of A. A. Crane, one of the commissioners who classified Idaho land as to its mineral character, is illustrative:

Mr. Crane. Lands that were timber, had timber growing on them, we classed as nonmineral.

Mr. McGowan. And where there was no timber you gave that the mineral classification?

Mr. Crane. Generally so.

Mr. McGowan. Was not that universally so?

Mr. Crane. Yes, that was.³⁷

W. W. McElroy, employed by the Northern Pacific during the Idaho classification, also testified. His instructions, he said, stated that

I was to go with that commission, accompany them, assist them in looking over the lands, help them describe them, and to secure as favorable classification for the Northern Pacific as possible... . It was the desire of the company to acquire as much timber land as possible, and if there was land of very little value, rugged mountainous country, the Northern Pacific did not desire it.³⁸

As to the thoroughness with which the examiners pursued the classification, McElroy testified that after he joined

illustration of the Wallula overlap, see ibid., p. 5492.

³⁷Ibid., Part 7, p. 3965.

³⁸Ibid., Part 7, p. 3903.

the Idaho commissioners he doubted "if they got on more than 5 or 10 per cent of the land."³⁹ The dispute over the mineral classification represented one of the most advantageous aspects of the government's case.

In point sixteen, the government charged that losses suffered by the company in the Crow Indian Reservation could not be indemnified in the second indemnity belt. This position they based on the existence of a Treaty of Ft. Laramie of 1851 which established the reservation boundaries. A later treaty, in 1868, reduced the size of the reservation, and this act was used in the estimation of the amount of Northern Pacific loss in place. If the 1851 treaty were used in the determination of the extent of the company's loss, such losses could be made up only in the first indemnity belt since they occurred prior to July 2, 1864. The Northern Pacific, by 1925, had already indemnified Crow Reservation losses in the second indemnity belt to the extent of over 1,300,000 acres. These acres the government would also deduct from the alleged deficiency.⁴⁰

The seventeenth proposal of the Forester also dealt with the issuance of erroneous patents.⁴¹ Point eighteen

³⁹Ibid., Part 7, p. 3906.

⁴⁰Ibid., Part 13, p. 5501.

⁴¹Ibid., Part 13, p. 5502.

asked the deduction from the grant of an area equal to the acreage sold under the 1875 foreclosure proceedings. The justification was made on the grounds that such sale violated the public sale provision of the act of 1870. The next point also charged violation of the resolution of 1870, alleging that the company had failed to carry out the provision calling for sales of the lands granted by that act at \$2.50 per acre.⁴² The twentieth section charged that the Northern Pacific had made illegal expenditures of the funds raised by its sale of the bond issue authorized in 1869 and 1870. The final charge made by the government was the old assertion that the company had failed to complete its road in the time specified by law.

The Joint Committee took cognizance of all the evidence supplied by the government and the railroad; and, at its request, Attorney General John Sargent forwarded to the Committee, on December 14, 1928, a proposed bill. Embodying the conclusions of the committee, it provided for the institution of a suit to remove the controversy, and instructed the Interior Secretary to continue to withhold the issuance of any patents to the disputed land until the suit was settled.⁴³ Congress, which had

⁴²These provisions are discussed above, see p. 51.

⁴³The Northern Pacific Land Grants. Hearings, Part 15, pp. 5537-5539.

made possible the Joint Committee's inquiry, acted rapidly on its recommendation.⁴⁴ On June 25, 1929, a bill amending the act of July 2, 1864, became law.⁴⁵ Section one provided that all lands in the indemnity limits of the Northern Pacific, which, on June 5, 1924, were within the boundaries of any national forest or other government reservation, were to be returned to the United States free from claims. The company might receive compensation for such lands, however, if the courts so decided. Section two of the statute provided that any unsatisfied selection rights, if they existed, were declared forfeit. Section five instructed the Attorney General to institute a suit, in one of the States through which the Northern Pacific operated, with the purpose of removing the cloud from the title of the grant lands.

In 1936, on May 22, another act was passed by Congress authorizing the right of review by the Supreme Court of the case instituted under the provisions of the act of June 25, 1929.⁴⁶ Before that case reached its conclusion in 1941, Congress approved another measure which affected the land

⁴⁴A succession of laws extended the time for completion of the investigation, and also extended the dates limiting the issuance of patents by the Secretary of the Interior. See Statutes, Vol. 44, Part 2, p. 1405; Vol. 45, Part 1, p. 789; Vol. 45, Part 1, p. 1221.

⁴⁵Statutes, Vol. 46, Part 2, p. 1405.

⁴⁶Statutes, Vol. 49, Part 1, p. 1369.

grant of the Northern Pacific. The Transportation Act of 1940 contained a section applicable to the Northern Pacific. That section permitted any carrier which had received a grant of land from the United States to secure a release from the special provisions of its charter in regard to the transporting of government troops or property. The government agreed to pay full rates in the future, in return for a release by said carrier, of any claims for land or grant against the United States.⁴⁷

On April 18, 1941, the interminable adjustment controversy struggled toward its close. Robert H. Jackson, Attorney General, submitted to Congress a letter which summarized the history of the case instituted by the act of 1929.⁴⁸ In 1939, Jackson wrote, the lower courts had rendered a decision in the case. They held that the railway company was entitled to compensation for 1,453,061.02 acres withdrawn by the government, and also entitled to patents on 428,986.68 acres charged to the company during the adjustment, but not patented. The United States, the

⁴⁷Statutes, Vol. 58, Part 1, pp. 898, 954. The Northern Pacific, as a military and post road subject to government regulation released 370,000 acres under this provision. Board of Investigation and Research, Public Aids to Domestic Transportation (Washington: Government Printing Office, 1945), 79th Cong., 1st Sess., House Document No. 159, p. 120, Table I.

⁴⁸Senate Miscellaneous Documents (Washington: Government Printing Office, 1941), 1st Sess., Vol. 1, No. 48.

court had held, should receive compensation for 65,829.77 acres which had been erroneously patented to the company. The case had then been appealed to the Supreme Court for review. That tribunal remanded the case back to the lower court for further hearing. The Supreme Court based its action on a number of reasons, Jackson said. The first reason was the validity of the Northern Pacific claim to over a million acres of the 1,453,061.02 acres awarded it by the lower court. The Supreme Court, noting that the claim was based on the right of the company to select lands in lieu of mineral losses in place limits, decided that the United States should have further opportunity to prove its charges of fraud in connection with those mineral losses. In the second place, the Supreme Court overruled the lower court decision which held the words "agricultural" and "non-mineral" to be synonymous as far as selection rights were concerned. Thirdly, the Supreme Court decided that the United States should have further opportunity to prove its charges that the company had broken the \$2.50 provision of the resolution of May 31, 1870. Finally, the Supreme Court maintained that the United States should have more opportunity to prove its allegation that the company had received unauthorized benefits by error of the Interior Department.

At that point in the proceedings of the case, Jackson informed Congress, the defendant had submitted a proposal to settle the controversy. The stipulation which the company offered the United States proposed that the Northern Pacific relinquish its claim for compensation for the 1,453,061.02 acres in question. The company would also relinquish its claims to 363,000 of the 428,986.68 acres for which it was awarded patents by the lower court, and which the Supreme Court confirmed. The remainder, sixty-thousand acres, had already been sold. Finally, the company would consent to a judgment in favor of the United States of \$300,000. In return for these concessions, Jackson added, the stipulation provided that the United States agree to discharge its claim against the company for lands erroneously patented. Furthermore, the United States would agree to relinquish its claims to damages for violation of the \$2.50 proviso, and its claims for damages growing out of illegal withdrawals for the benefit of the company. Attorney General Jackson then placed the propositions before Congress, stating that if he received no instructions to the contrary within sixty days, he would act upon the company's proposal. Jackson concluded

In my judgment, settlement upon the basis of the terms set forth in the stipulation is for the best interest of the United States.⁴⁹

⁴⁹Ibid., p. 5.

On August 28, 1941, Judge Lewis B. Schwellenbach issued a decree in the state of Washington confirming the stipulation suggested by Jackson,⁵⁰ thus terminating the adjustment controversy; and, incidentally, also ending the seventy-seven year history of the Northern Pacific land grants.

⁵⁰Railway Age, CXI (September 6, 1941), p. 385.

CHAPTER VI

CONCLUSION

The basic question to be considered in an analysis of the Northern Pacific land grants is the wisdom of Congress in authorizing such grants. Closely correlated to that problem are the events which precipitated the Northern Pacific grants and the later modifications of them. Before attempting to judge the wisdom of the Congressional land grant policy, a restatement of those earlier factors is necessary. The first problem, both historically and logically, is the ascertainment of the motives or intent which prompted Congress to grant, in 1864 and in 1870, an aggregate of over 40,000,000 acres of land to the Northern Pacific Railroad Company.

The explicit intent of Congress is contained in the various sections of the charter acts. Thus, by statutory declaration, Congress pledged itself to aid in the construction of a northern railroad, which was to be a post route and military road. One can infer, however, from the debates which occurred on the bills contemplating such grants, that the real motivation encompassed more than a simple desire for a railroad to transport troops and mail. Defense factors—the need for transportation to

speed the movement of troops, to guard the borders, to control the Indians--did receive attention in the debates on the Northern Pacific bill. They were not, however, as important in the case of the Northern Pacific as in that of the Union Pacific which was chartered during the darker days of the Civil War. More basic than the defense arguments was the assertion by Congress that a railroad would enhance the development of the Northwest. In that respect, Congressmen offered a number of highly plausible arguments for such a line. The primitive state of much of the northwestern area, they asserted, would be wholly changed. A railroad would encourage settlement along its line and beyond, thereby encouraging trade and commerce and increasing the productivity of the west. The possibility of encouraging and extending Oriental trade was also envisaged by the legislators in promoting the Northern Pacific enterprise. The combination of all those factors provided motivation for the decision by Congress to aid a northern railroad; the type of encouragement selected was a result of the then prevalent opinion that the lands of the region were worthless until the population increased. Congressional modifications of the original 1864 charter of the Northern Pacific--approval of a mortgage and bond issue, main line change, new indemnity provisions--reflected the continuing anxiety of Congress to secure the construction of the

railroad. The intent of Congress was founded upon a valid foundation--a sincere attempt to hasten the settlement, and exploit the resources, of the rich northwestern section.

Beginning about 1870, and despite the fact that those reasons offered in justification of the Northern Pacific grants were still extant, a sharp reversal in attitude swept the floors of Congress. Anti-railroad sentiment, crystallizing in the form of forfeiture bills, led Congress into a twenty year battle to recoup some of those lands so generously bestowed to the railroads during the 1860's. The forfeiture movement can not be interpreted as of strictly anti-land grant origin. Congressional retaliation, reflecting public sentiment, took the form of forfeiture because it usually afforded the best, if not the only, method of attacking some railroads. The origin of the forfeiture controversy, therefore, lay in the evils attributed to the railway system in general. In the post-Civil War decades, the public became increasingly resentful of the various malpractices and corruption which surrounded much of the railroad construction and operation. Such practices as stock-watering, personal discrimination, and rebates, aroused popular indignation. The prevalence of corruption, as evidenced by the Credit Mobilier, Congressional lobbying and vote-buying, merely confirmed the skeptical views of the people. The financial

crisis of 1873, at least partly due to speculation in railroads, was the final blow to a disgruntled public and its Congress, and gave added impetus to the forfeiture move.

In the case of the Northern Pacific, the forfeiture attempt began seriously about 1880, when the construction time limit as prescribed by law had expired, and only about one-fourth of the railroad was completed. For ten years, Congress sought a suitable forfeiture bill for the Northern Pacific; but a conservative Senate, led by railroad Senators Dolph and Mitchell of Oregon, consistently refused to act on severe House measures.¹ The general forfeiture act of 1890, which virtually closed the forfeiture question, was a victory for the Northern Pacific. The company lost only lands along a section of the road it never intended to build, and it was almost certain that the remainder of the grant would be free of any threat of forfeiture in the future. In large measure, the failure of Congress to pass a more stringent forfeiture movement rests upon the Senate, where the railroad's friends were more numerous and effective than in the House.

¹Ellis, David M., "The Forfeiture of Railroad Land Grants, 1862-1894," Mississippi Valley Historical Review, XXXIII (June, 1946), p. 50. Ellis includes Edmunds of Vermont in this group which helped to prevent forfeiture. Mitchell's sympathy with the Northern Pacific was not complete, however; see his position in regard to the extension bill of 1877, above pp. 58-61.

The final phase of the Congressional history of the Northern Pacific land grants was one of adjustment. The necessity for adjustment of the grants arose out of the inability of the railroad to make up deficiencies in its place limits on the one hand; and the government withdrawal of various lands within the indemnity limits of the grants on the other. Litigation in the courts resulted in an exhaustive Congressional inquiry into the whole grant question. The investigating committee, after extended hearings, advised the prosecution of a suit to settle the matter once and for all. Accordingly, a case was instituted in the federal courts and, in 1941, a final settlement was achieved by a stipulation agreed to by the United States and the Northern Pacific.

The most difficult of the questions raised in connection with the grants to the Northern Pacific is also the most important. Did Congress, judging by the history of the Northern Pacific grants, act wisely in 1864 and 1870, when it decided to aid in the construction of that railroad by providing it over 40,000,000 acres of public domain? The only way to answer such a query is to weigh the benefits received by the United States against the losses that it suffered because of its action. The difficulty in such a procedure is the inexactness in measuring

the respective gains and losses, and because of this inability to gauge accurately, no absolute decision can be made on any of the railroad land grants.

Leading the list of indirect, but profitable, gains received by the United States by virtue of its grants to the Northern Pacific are those resulting from the actual construction of the railroad. Included therein is the facilitation of transportation, which made defense easier and brought east and west closer together. Settlement was speeded in the regions traversed by the railroad, and settlement brought economic benefits--increased agricultural and mineral production, increased trade--which contributed to the material wealth of the country. While such settlement, and transportation, would undoubtedly have occurred without Congressional assistance to the Northern Pacific, it did come sooner than if left completely to unaided private enterprise. A second source of benefits to the United States was due to the provision in the charter act which forbade the government's selling the reserved sections of the grant at less than \$2.50 per acre. Up to 1863 the total land sales by the government, under the Preemption Act of 1841, had averaged less than \$1 per acre.² After 1863, while the average per acre price increased beyond

²Benjamin H. Hibbard, A History of the Public Land Policies (New York: The MacMillan Company, 1924), p. 106.

a dollar, it never approached the \$2.50 allowable under the Northern Pacific grant provisions.³ Therefore, to the undetermined extent which the United States made sales within the place limits of the grant, it received more than the usual proceeds. The most objective gain made in connection with the Northern Pacific was the reduction in rates on the transporting of government troops, mail and property allowable under the act of July 2, 1864. One government agency concluded in 1938 that "to the extent of the value of these concessions, the land grants were not public aid but, in effect, prepayments for the service."⁴ From 1874-1927 the United States benefited to the extent of \$17,200,929 from such rate reductions.⁵ These benefits, both tangible and intangible, must in justice be deducted from the value of the original grant and from any losses sustained by the United States in connection with the grant.

On the liability side of the United States ledger, are located a comparable group of items. Besides the loss of public lands, the United States sustained other less obvious losses. There was the loss of tax revenue from those grant lands which were withdrawn but not surveyed or

³Ibid., pp. 113-115.

⁴Federal Coordination of Transportation, Public Aids to Transportation (Washington: Government Printing Office, 1938), Vol. 2, p. 3.

⁵Ibid., p. 163.

patented to the company. Had settlers been on those lands, they could have served as a source of tax revenue for the localities in which they were situated. The fact that the government was forced by law to withdraw from settlement the grant area often worked hardships on settlers attracted to the area by the railroad. Another situation which developed from the land grant policy ran counter to the established federal public land policy. While the government by the homestead law prohibited settlers from filing on large sections of land, the Northern Pacific as the possessor of its tremendous grant was in a position to speculate in lands. It could make sales of large timber and agricultural areas to prosperous individuals or companies, in direct contrast to the small acreage allowed to actual settlers.

Other even more intangible disadvantages beset the government as a result of its grant-in-aid program. While the Northern Pacific was not unique in any sense, it was the overall pattern of railroad grants which often led to lobbying in Congress, to the distribution of rail stocks to legislators, and the like. These unsavory practices developed when the grant holding companies fought to hold their lands, or when non-grant roads sought to secure federal assistance. The speculation in railroad issues, the often too rapid expansion of the rail system,

helped bring on the panic of 1873. Failure of railroads, such as the Northern Pacific in 1873 and 1893, often worked hardships on the stock and bond holders, the widows and orphans of the country.

Overshadowing all other factors in its magnitude and its significance, however, was the Northern Pacific grant itself. It is the most accurately measurable of all the contributions which the United States made to the Northern Pacific Company. Before the final adjustment in 1941, the Northern Pacific had received 39,843,053 acres, thirty-one per cent of the total net acreage of all federal grants.⁶ Of the total acreage received, the Northern Pacific, by December 31, 1927, had sold 35,648,296 acres for \$138,483,626; the net proceeds after taxes, etc., amounted to \$100,928,128.⁷ The remainder of the lands were held for sale, except for a relatively small amount retained for carrier purposes, i.e., for right of way, station grounds and depots.⁸ On the lands sold by the

⁶Ibid., pp. 32, 111. This includes the grants of four subsidiaries which are now part of the Northern Pacific system. Their land contributions were negligible, however. The total net acreage of all federal grants to railroads in June, 1933, was 131,230,358. See ibid., p. 111. Board of Investigation and Research, Public Aids to Transportation (Washington: Government Printing Office, 1945), in House Document No. 159, 79th Cong., 1st Sess., gives the same figure for December 31, 1940. The Northern Pacific also received 1,052,085 acres in a state grant from Minnesota. See p. 110.

⁷Ibid., p. 111.

⁸The Northern Pacific, by the settlement of 1941,

company they averaged about \$3.90 an acre gross, and approximately \$2.80 net. At this same net rate, the remaining lands would conservatively bring \$11,745,319 more, raising the total net receipts to over \$112,000,000.⁹

During the Congressional hearings in 1925-1926, the cost of the Northern Pacific was estimated at \$67,271,251.¹⁰ In round figures, based upon estimates which are at best only approximate, the Northern Pacific grossed over \$150,000,000 on its land grant, and this does not take into account the non-land earnings of the company's grant. In return, the company constructed a railroad costing about \$70,000,000, and gave the government rate reductions to the amount of \$17,000,000. The apparent surplus is \$63,000,000. However, the actual realization of the company through the sale of its lands does not measure the extent of aid of the United States. The proper basis of calculation is the

lost about 300,000 acres of its patented lands; this would slightly reduce their lands held for sale. See provisions of stipulation, above, p. 111.

⁹Another source of income from the land grant was derived from the sales and use of coal and timber. It is impossible to ascertain with any accuracy the total value of such holdings.

¹⁰The Northern Pacific Land Grants. Hearings of the Joint Committee on the Investigation of the Northern Pacific Land Grants (Washington: Government Printing Office, 1925), Part 4, p. 2022. See Charles Donnelly, The Facts About the Northern Pacific Land Grant (St. Paul, 1924), p. 7, for a much higher estimate by the company.

value of the grant lands upon their presentment in 1864 and 1870.¹¹ Using figures for all land sales by the United States in the period 1864-1870, the per acre average was slightly over \$1.50 per acre.¹² The average price, \$1.50, would generally apply to agricultural lands, while a large proportion of the Northern Pacific grant was mountainous, timber areas. Applying that average sale price to the land grant of the Northern Pacific, the value of the grant approximated \$60,000,000 at the time it was bestowed. If the \$60,000,000 estimate is used, the government appears to have made a reasonable bargain. At a cost of \$60,000,000 worth of public land, the government received rate concessions to the amount of \$17,000,000, plus the construction of a \$67,000,000 railroad.¹³

From the purposely emphasized vagueness of the above figures it is apparent that any final conclusion on the merits of the Northern Pacific land grants as a business

¹¹The Board of Investigation and Research, op. cit., does not agree with this method, which is used by the Coordinator. The Board holds that public aid of the land grant type is measured by adding the net realization on lands plus the value of present holdings and deducting the amount of rate concessions. See p. 112.

¹²Hibbard, op. cit., p. 114, Table XI.

¹³Board of Investigation and Research, op. cit., p. 112, states that if the value of public aids are to be determined by the original value method on interest charge, five per cent, should be added to the total original value of lands. At that rate, the interest accumulation on the aid to the Northern Pacific would exceed \$200,000,000.

deal is largely conjecture. Couple these estimations with the numerous subjective considerations and the problem is made more difficult. Carrying the matter further, one must consider that many Congressmen in 1864 did not consider the lands embraced in the Northern Pacific grant as worth \$1.50, or worth even fifteen cents. Moreover, there is no evidence in the debates on the Northern Pacific grants to indicate that the members of Congress expected more than the completion of the railroad. Encouragement to private industry through federal grants or subsidies has rarely been prompted by a profit motive on the part of Congress.

In contemplation of the above facts and considerations, it appears that the United States fared reasonably well as a result of the Congressional decision to grant lands to the Northern Pacific. Congress desired a railroad through the Northwest, and the settlement of that region. In time, perhaps, the Northern Pacific, like the Great Northern railroad, could have been built by private industry. Yet, the United States got what it contemplated, and sooner than if aid had not been offered. As one author has concluded on the overall grant policy to aid domestic development through railroad construction;

It may not have been the wisest way to achieve these results, though no one even yet has suggested a better way by which a nation long on

land and short on cash and credit could have enlisted the driving forces, which, in the short space of less than a generation, laced the West with rails. It may not have been the wisest way, but it worked. The job was done.¹⁴

The Congressional history of the Northern Pacific land grants bears out the validity of that conclusion.

¹⁴Robert S. Henry, "The Land Grant Legend in American History Texts," Mississippi Valley Historical Review, XXXII, No. 2 (September, 1945), p. 190.

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