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COLLIS P. HUNTINGTON AND THE TEXAS AND PACIFIC RAILROAD LAND GRANT

By RALPH N. TRAXLER, JR.*

THE railway land-aid policy of the Federal government was initiated by the grant made to the Illinois Central in 1850.¹ This legislation provided for a subsidy of six sections for each mile of completed track. The sections were to be located alternately bordering the track. Alternate sections were retained by the government for sale or entry under the Homestead Act. Indemnity limits were to extend fifteen miles on each side of the main line in case previous settlement denied access to the area within the six alternate sections. When the road was completed, land was given to the states which patented it to the railroad. The Illinois Central bill was approved by those Congressmen who had constitutional scruples against voting direct aid for internal improvements, yet did not want to go on record as being against a program that would help promote much needed railroad construction. By the Illinois Central Act the alternate sections retained by the government were to sell for not less than \$2.50 per acre, approximately twice the minimum value set for other public land.

The next federal subsidy was to the Union Pacific-Central Pacific in 1862 for ten sections per mile to build on a route from Omaha to San Francisco.² In 1863 Congress increased the Union Pacific-Central Pacific grant to twenty sections per mile.³ Congress also changed the system of patenting to allow acreage to be given directly to the road whether it was located in the states or territories.⁴ The last federal subsidy was made to the Texas and Pacific in 1871 for construction in the territories of New Mexico and Arizona and the State of California; it entitled the company to forty sections per mile.⁵

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1. *U. S. Statutes at Large*, IX (1850).

2. *Ibid.*, XII, 489 (1862).

3. *Ibid.*, XIII, 356 (1864).

4. John B. Sanborn, *Congressional Grants of Land in Aid of Railways* (Madison: The University of Wisconsin Press, 1899), p. 67.

5. *U. S. Statutes at Large*, 575 (1873).

Between 1850 and 1871 nearly 132,000,000 acres of federal land was acquired by various railroad projects for 18,738 miles of track.⁶

The land aid story in Texas followed a pattern similar to that of the Federal government. The enabling act which brought Texas into the Union allowed the state to retain possession of all its public domain. This amounted to almost 171,000,000 acres even after the United States purchased in 1850 more than 61,000,000 acres to settle the New Mexico-Texas boundary dispute.⁷ With an extensive unsettled area and the need for aid to promote railway construction, there developed increasing pressure for state donations of land. After the Federal government had set the precedent in 1850 with the Illinois Central grant, the same type of grant-in-aid system developed in Texas. State railway grants made from 1854 to 1882 included nearly 32,000,000 acres of Texas land for 3,000 miles of construction.⁸ Among these was included a grant to the Texas and Pacific Railroad to aid construction from the Texas-Louisiana boundary near Marshall to El Paso.

In the United States Senate on March 9, 1870, William Kellogg of Louisiana introduced a bill which was to result in Federal assistance for construction of the Texas and Pacific.⁹ The bill recommended a grant of twenty sections per mile in California and Louisiana and forty in the territories of New Mexico and Arizona. For construction in Texas land grants would have to come from the State of Texas. A provision was included for branch grants from San Diego to connect with the Southern Pacific of California, which was building south from the San Francisco Bay area. A complicated system of trackage to afford rail connection between the eastern boundary of Texas and areas of Louisiana, Mississippi, Alabama, and southern Tennessee, terminating at Chattanooga, was also provided.

One year elapsed before Congressional debates ended and

6. Thomas Donaldson, *The Public Domain* (Washington: Government Printing Office, 1884), p. 753.

7. *Ibid.*

8. D. G. Reed, *A History of Texas Railroads* (Houston: The St. Clair Co., 1946) p. 13.

9. *The Congressional Globe*, 41st Cong., 2d Sess. (Washington: Government Printing Office, 1870), p. 1776.

the Texas and Pacific received its charter and land grant. There was a growing hostility evidenced by many Congressmen against further land aid. Therefore it was March 3, 1871, before the grant was approved and signed by the President.¹⁰ The Texas and Pacific was to begin in New Orleans, run northwest to Marshall, Texas, and westward to El Paso and San Diego. The Company was permitted to purchase other roads to complete its trackage and subsequently acquired the Southern Pacific of Texas and the Southern Trans-continental. These two companies located within Texas had completed seventy-seven miles of track and received 318,000 acres.

The land-grant clauses of the charter to the Texas and Pacific are as follows: The railroad, its successors and assigns, were to receive alternate sections along the route in Louisiana and California totaling twenty sections. In Arizona and New Mexico forty sections were to be allowed. Mineral-bearing areas could not become the property of the railroad. Also excluded was any territory claimed under homestead and pre-emption laws. All areas not sold or otherwise disposed of within three years after the completion of the trackage would be subject to settlement and pre-emption at a minimum of \$2.50 per acre. Bonds could be issued on any portion of land granted to a railroad which was later purchased by the Texas and Pacific. There were no restrictions on the amount of bonds that could be issued. With the completion of each twenty-mile section, it was the duty of the Secretary of the Interior to issue patents. Within two years after the charter was given, the company had to designate the general route and file a map with the Secretary of the Interior. Acreage was then to be withdrawn from public entry. Commissioners were to be appointed by the President to inspect the road as each twenty-mile section was completed.

By 1873, the state of Texas had made a grant to aid the Texas and Pacific in its construction program from the Louisiana line to El Paso. The Texas section was completed from the Marshall, Texas, area to near El Paso in 1881. But due to the failure of the Texas and Pacific to build west of

10. *U. S. Statutes at Large*, VI, 575 (1873).

El Paso within the time limit (ten years) the only federal land earned was approximately 670,000 acres in Louisiana, patented for construction from near New Orleans to the Louisiana line near Marshall. Congress instituted forfeiture procedures for failure to construct in Arizona, New Mexico, and California, and the acreage was returned and opened for settlement in 1885.

It had become evident by 1880 that the Texas and Pacific would not be able to finance construction west of El Paso. The Southern Pacific was by 1880 firmly committed to building east from San Diego to El Paso and on through southern Texas to New Orleans. This stimulated the officials of the Southern Pacific of California to make an open attempt to work out a transfer of the Texas and Pacific grant west of El Paso. Collis P. Huntington assumed leadership for getting the Texas and Pacific land grant transferred to the Southern Pacific. Huntington in partnership with Leland Stanford, Mark Hopkins, and Charles Crocker got into the railroad business by undertaking the construction of the Central Pacific to junction with the Union Pacific in May 1869. Under the name Southern Pacific the foursome expanded rail facilities into southern California until they had strong economic control over the whole state. Huntington was the key man in the famous foursome. As attorney and eastern agent it was through his efforts that negotiations were carried on for claiming the Texas and Pacific land grant in Arizona, New Mexico, and California.¹¹

There is a strong evidence that Huntington was actively interested in acquiring the Texas and Pacific and its Arizona, New Mexico, and California land grants as early as 1876. Congress evidently was cognizant of this desire because the House Committee on the Judiciary in 1876 investigated the possibility that influence was used by Southern Pacific officials to help lobby for the original Texas and Pacific grant.¹² The allegation was that the Southern Pacific of California had sup-

11. Dumas Malone (ed.), *Dictionary of American Biography*, IX (Charles Scribner's Sons, 1933), pp. 408-412.

12. U. S. Congress, *Congressional Record*, 44th Cong., 1st Sess. (Washington: Government Printing Office, 1876), p. 598.

ported the Texas and Pacific legislation with the hope of gaining eventual control of the thirty-second parallel road. Although there had been no proof presented and the investigation had been abandoned the same year, there was danger of the inquiry being reopened if the California company attempted to acquire the grant by direct consolidation with the Texas and Pacific. Huntington was extremely reluctant to announce a definite policy of consolidation for he feared that forfeiture of the grant might ensue. The hostility aroused by such an announcement would have been alien to the best traditions of Huntington's diplomacy.

On April 16, 1881, Jay Gould purchased the controlling interest of the Texas and Pacific from Thomas A. Scott, eastern railway magnate and president of the Pennsylvania Railroad, for \$3,500,000.¹³ Gould, one of the most famous of railroad financiers, already owned a large block of stock in the Union Pacific and controlled the Kansas Pacific, Missouri Pacific, and other smaller lines. In an era that abounded with fabulous figures, none had a more colorful career than Gould, speculator and railroad wrecker. It should have been an easy matter for Huntington and Gould to work out an arrangement concerning joint operation of the Texas and Pacific and Southern Pacific. Gould must have realized the impossibility of the Texas and Pacific ever finishing its track west of El Paso. Huntington, however, adhered to the cautious policy of making no open commitment. If he planned to work a deal with Gould for the Texas and Pacific grant, he did not intend to advertise the fact.

In the spring of 1881 the new administrator of the Texas and Pacific emphasized his independence by instituting suits in the territorial courts of Arizona and New Mexico to prevent the Southern Pacific of California from operating a line which was planning construction from San Diego through southern New Mexico and Arizona to El Paso and then to New Orleans. The Texas and Pacific case had little validity since Congress had seen fit to authorize the Californians to build in the territories. Gould must have suspected that if

13. *The Commercial and Financial Chronicle*, XXXII (April 16, 1881), p. 412.

the Southern Pacific built through Arizona and New Mexico first Huntington might attempt to claim the grant made for the Texas and Pacific. The court ruled that the operation of the Huntington line would be in direct violation of the rights granted to the Texas and Pacific by its charter, but since Congress had authorized the Southern Pacific construction the court's hands were tied.¹⁴ There is a strong probability that this suit was actually a sham action to camouflage the beginning of confidential negotiations with the California company. On the surface at least the Texas and Pacific had thereby indicated it would maintain its independence.¹⁵ The artful handling of the negotiations was an excellent example of Huntington's ability to allay suspicion.

By July, 1881, evidence appeared in *The Galveston Daily News* that Huntington had purchased the thirty-second parallel land grant with a one-million-dollar down payment; the amount of the balance was not announced.¹⁶ At this preliminary stage Huntington seemed reluctant to go to Congress for approval of the transfer of the land subsidy. But congressional action would be necessary before a transfer would be valid since the grant had not been patented to the Texas and Pacific.

Through a petition in 1881 a group of residents of both Arizona and New Mexico requested Congress to refuse any claim the Californians might make for the grant.¹⁷ The petitioners argued that no road had been constructed by the original grantee under the terms of the land-grant legislation. As for the Southern Pacific of California, it had begun construction through the territories without making an attempt to claim a land grant. The petitioners asserted that a certification of the original grant to the California organization would be unfair to the people of Arizona and New Mexico. Accordingly, since it was obvious that the Texas and

14. *Ibid.* (June 11, 1881), 628.

15. *Norton's Daily Intelligencer* (Dallas), July 1, 1881.

16. *The Galveston Daily News*, July 12, 1881.

17. Petitions to the Congress of the United States from the Citizens of the Territories of Arizona and New Mexico, Legislative Records Division, National Archives.

Pacific would not be constructed, individual settlers' claims were being located in the grant area.¹⁸

Despite the attitude of the residents in the territories toward the Southern Pacific of California it was completed to the western boundary of Texas early in November, 1881. The company continued construction east through San Antonio and Houston to New Orleans and on November 26, Gould decided to come to open terms with Huntington. The Texas and Pacific franchise to the projected line in Arizona, New Mexico, and California accordingly was sold and provision was made for a direct transfer of the land grant to the Huntington interests. The official deed of transfer was signed on January 18, 1882.¹⁹ Gould, of course, had no legal right to transfer a grant still controlled by the Federal government—a grant which had not been properly earned under the terms of the charter.

In a letter to the Secretary of the Interior on May 1, 1882, Huntington made a formal request for the issuance of land certificates to the Southern Pacific after inspection of the construction had been carried out.²⁰ After almost a year elapsed and the Federal government had taken no action to examine the trackage, Huntington renewed his request, forwarding to the Secretary of the Interior a certification testifying to the construction of 441 miles of the main-line track in New Mexico and Arizona.²¹ This second request, like the first, was ignored. A few days later Huntington again asked for an official inspection.²² The Secretary refused to recognize the validity of the land transfer until Congress legalized the action. As far as his office was concerned, the acreage was still in the name of the Texas and Pacific, and that company had earned no land.

18. Letter from G. E. Daily, Land Office of the United States, Tucson, Arizona, To the Commissioner of the General Land Office, January 13, 1883, Land and Railroad Division, General Land Office, National Archives, hereinafter cited as L and RD, GLO, NA.

19. Deed of Transfer between the Texas and Pacific Railroad and the Southern Pacific Railroad of California, L and RD, GLO, NA.

20. Letter from C. P. Huntington, President of the Southern Pacific Railroad of California, to the Secretary of the Interior, May 1, 1882, L and RD, GLO, NA.

21. *Ibid.*, April 13, 1883.

22. *Ibid.*, April 24, 1883.

It was doubtful that Congress would ever approve aid to a company which had completed the desired line without the need of such help.²³ Nevertheless, the Southern Pacific of California maintained it had a legal claim to the acreage of the Texas and Pacific and at the same time tried to forestall forfeiture proceedings which Congress was threatening to begin. Even before Huntington's initial request for inspection and certification of the construction, the House Committee on the Judiciary recommended that the land be returned to the public domain of the United States.²⁴ The Committee indicated that section seventeen of the Texas and Pacific charter reserved for Congress the right to recover the grant if the railroad did not build along the thirty-second parallel.²⁵ Furthermore, section nine provided that the assignation or transfer of the grant had to be approved by the Federal government.²⁶ Since this had not been done the Committee insisted that the Southern Pacific of California had no legal claim.

Huntington argued that section twenty-two of the original Texas and Pacific charter permitted the New Orleans, Baton Rouge, and Vicksburg to make a direct transfer of its grant to the thirty-second parallel line in Louisiana without Congressional approval. Therefore, he declared, it was only just that the Texas and Pacific, in turn, be allowed to transfer any part of its acreage if a sale or any other fair agreement had been entered into between the original grantee and a second party.²⁷ Huntington, nevertheless, did not convince the House investigating committee that it should abandon the recommendations it had made for forfeiture.

During the investigation by the House Committee, charges of dishonesty in acquiring the original land grant

23. U. S. Congress, House Committee on Public Lands, *Letter from the Secretary of the Interior on Land Grant Railroads*, House Executive Document 144, 47th Cong., 1st Sess. (Washington: Government Printing Office, 1882), pp. 44f.

24. U. S. Congress, House Committee on the Judiciary, *Texas and Pacific Railroad Land Grant*, House Report 1803, to accom. HR. 286, 47th Cong., 1st Sess. (Washington: Government Printing Office, 1882), p. 4.

25. *Ibid.*, p. 2.

26. *Ibid.*, p. 3.

27. *A brief on the Matter of the Application of the Southern Pacific Companies of Arizona and New Mexico for the Appointment of a Commissioner to Examine the Said Railroad Construction, L and RD, GLO, NA.*

came into the discussion. The Secretary of the Interior had received a letter from one J. J. Newell, who claimed that as a lobbyist he had arranged for thirty members of Congress to receive payment in cash and railroad stock in exchange for their efforts in pushing the thirty-second-parallel grant through the two houses.²⁸ While he did not actually say that he had acted as an agent for the Southern Pacific in these dealings, he hinted that this railroad had paid for his services. He had many friends in Congress during the early seventies and therefore had undoubtedly been useful in obtaining approval for a thirty-second parallel grant. Although Newell quoted at length from a diary which he said had been kept at the time, there was no other substantiation of his charge. He concluded that since the grant was originally made under fraudulent conditions, it should now be forfeited. It is difficult to understand why, if his story of these past nefarious dealings were true, he now took his stand on the side of righteousness. Only an attitude of repentance, or the fact that he had had a falling out with his Southern Pacific friends, could explain this change of heart. Even though he was able to present no evidence to prove his charges, Newell's allegations made an impression on some Congressmen who were adverse to the transfer. On the whole, however, the allegations were ignored.

A letter from a Southwestern oil agent, I. E. Dean, although making no charges against Huntington and Gould, voiced definite objections to the transfer of the grant to the Southern Pacific of California. The oil interests seemed anxious to keep as much acreage as possible open to general speculation, even though no important oil strikes had yet been made in the Southwest.²⁹ San Diego officials also expressed their disapproval of the transfer of the grant because such a move would leave the town off the main line of the thirty-second parallel railroad. The Southern Pacific of California did not intend to build its line into San Diego. These citizens hoped a Congressional refusal to approve the negotiations for

28. Letter from J. J. Newell to the Secretary of the Interior, May 12, 1883, L and RD, GLO, NA.

29. Letter from I. E. Dean, Oil Agent, to the Attorney General of the United States, July 27, 1883, L and RD; GLO, NA.

a land transfer would serve as partial punishment for depriving this city of a direct connection.³⁰ At a later date they were to display a more kindly attitude toward the California road when it constructed a branch line into the city.

The year 1882 and part of 1883 passed with no further discussion of forfeiture proceedings. In June, 1883, in a letter to the Secretary of the Interior, Huntington challenged the adverse attitudes displayed toward his company's acquiring the land grant by direct transfer. Since the Southern Pacific had taken over the construction and had completed it before the time limit had expired, Huntington insisted that the patents should be issued.³¹ By August, 1883, it was fairly obvious that Congress would make no decision concerning transfer or forfeiture that year.³² Meanwhile, letters continued to come into the office of the Secretary of the Interior strongly opposing the proposed transfer. Representatives W. T. Rosecrans of California, T. R. Cobb of Indiana, and Poindexter Dunn of Arkansas voiced the opinion that if the request were approved the Southern Pacific of California would immediately mortgage the land. While such a procedure might be justified during periods of construction, it merely became a speculative venture after the completion of a railroad. They charged that such schemes deprived the people of the United States of their public domain in order to "line the pockets" of a few wealthy land promoters.³³

In the fall of 1883, Senator William P. Kellogg of Louisiana announced that direct action would be taken in Congress to bring about the forfeiture of the grant during the session beginning in December, 1883.³⁴ This Senator had had an interesting career, first as a brigadier-general in the Union Army, and later as a carpetbagger politician in New Orleans.

30. Telegram from the Council of the City of San Diego to the Secretary of the Interior, May 27, 1883, L and RD, GLO, NA.

31. Letter from C. P. Huntington, President of the Southern Pacific Railroad of California, to the Secretary of the Interior, June 8, 1883, L and RD, GLO, NA.

32. *The Commercial and Financial Chronicle*, XXVII (August 5, 1883), p. 121.

33. Letter from W. T. Rosecrans, T. R. Cobb, and Poindexter Dunn, Representatives from California, Indiana, and Arkansas, respectively, to the Secretary of the Interior, June (no day), 1883, L and RD, GLO, NA.

34. Report by Senator Kellogg of Louisiana on the Forfeiture of the Texas and Pacific Railroad Lands, undated, L and RD, GLO, NA.

He had been elected to the Senate in 1868, then served a short term as governor of Louisiana, and was a Senator again.³⁵ On December 10, Louis Payson of Illinois introduced a bill in the House for forfeiture of the Texas and Pacific grant.³⁶ Kellogg did not seem inclined to introduce a companion measure in the Senate. His motive seemed to be to let the forfeiture measure pass the House before coming up for debate in the upper chamber.

After several revisions to the bill as introduced in December, the House Committee on Public Land reported to the House on January 22, 1884, with the recommendation that it pass. Debate was started in the lower chamber on January 31, 1884. After some discussion as to whether the committee report was to be read, a decision was reached to dispense with the reading and print it in the *Record*. T. R. Cobb of Indiana represented the temper for forfeiture by declaring that he believed it should take no more than five minutes to pass the legislation.³⁷ It is obvious from the lack of debate that the House was in a receptive mood for declaring the Texas and Pacific's Federal grant void.

Huntington's correspondence with his associate Leland Stanford, incorporated into the House committee report, revealed the manner in which Huntington had labored to arrange for a transfer of the Texas and Pacific grant to the Southern Pacific of California. His attempt to stir up Congressional hostility toward the Texas and Pacific was well planned and carried out in its initial stage. As early as November 10, 1875, Huntington made it clear that the Texas and Pacific had to be stopped from building its line westward from El Paso. He announced in a pious vein that "The Texas and Pacific Railroad is in no way a Southern Pacific road, but a road if built by the Government would prevent the Southern States from having a road to the Pacific for many years."³⁸

35. Dumas Malone (ed.), *Dictionary of American Biography*, (Charles Scribner's Sons, 1933), pp. 305f.

36. U. S. Congress, *Congressional Record*, 48th Cong., 1st Sess. (Washington: Government Printing Office, 1884), p. 64.

37. *Ibid.*, p. 787.

38. *Ibid.*, p. 790.

This pronouncement was in direct contrast to what Congress intended the Texas and Pacific to become when it was finished—a southern railway which would prevent the Central Pacific-Southern Pacific monopoly from spreading eastward from California. Included were other similar letters covering the period between 1874 to 1878, during which the Texas and Pacific had attempted to obtain further federal aid.

The House Committee also demonstrated that the California group had openly declared its intentions to build east to El Paso without federal assistance. A Huntington letter of November 28, 1874, maintained that the Southern Pacific of California would “. . . build east of the Colorado to meet the Texas Pacific without aid, and then (we shall) see how many members (of Congress) will dare give him (Thomas A. Scott of the Texas and Pacific) aid to do what we offered to do without.”³⁹ The committee further declared that Huntington had attempted to obtain unfavorable Congressional action against the Texas and Pacific when it was attempting to get additional aid to finance land-grant bonds. In a letter to David Colton, one of Huntington's associates in the Southern Pacific Company, dated November 19, 1874, Huntington stated, “I think the Texas Pacific or some of their friends will be likely to take the ground that the Southern Pacific is controlled by the same parties that control the Central Pacific (which of course it did). . . . I am disposed to think that you had better come over and spend a few weeks at least in Washington.”⁴⁰ By Colton's visit Huntington must have hoped to convince official Washington that the interests of the Southern Pacific of California and the Central Pacific were completely separate with respect to their dealings with the Texas and Pacific. The existence of this letter was evidence enough to convince the House Committee that there had been a long standing plot on the part of the California company to gain control of the Texas and Pacific and its lands. The Texas and Pacific, the committee concluded, was still in existence as a corporation and the Southern Pacific of California could not, therefore, legally claim to be the successor of the original

39. *Ibid.*, p. 789.

40. *Ibid.*

grantee.⁴¹ The spirit of the times precluded the Californians' gaining land for which they had no previous claim.

If any argument were needed to convince the skeptical that the Texas and Pacific land grant should be returned to the public domain, it could not be found in the documents published in the House Committee's report. The forfeiture bill passed the House on January 31, 1884 by the overwhelming margin of 261 to 1 with 58 abstaining.⁴² The only vote cast against the bill was that of Samuel F. Barr of Pennsylvania.⁴³ There is no indication as to why he took such a unique stand; moreover an explanation of the one negative vote hardly seems important in view of the large majority in favor of forfeiture. After the vote was recorded, several House members made it clear that certain of their colleagues who were unable to attend when the vote was taken wanted to be placed on record as having supported the measure.⁴⁴

After the House approved the forfeiture, the attorneys of the Southern Pacific of California protested that the railroad's representatives were not given time to present their case adequately before the House Committee.⁴⁵ Before this charge could be carried any further, the Senate Committee on Public Land gave that chamber their conclusions on the forfeiture bill.⁴⁶ The report, submitted in March, 1884, took approximately the same stand as that of the House Committee. The only major difference between the House and Senate reports was that the latter included an amendment to delay entrance on the land for two years after it was forfeited. This stipulation was inserted to enable all land claims to be adjusted before new claims were made. The session of 1884 adjourned before action could be taken by the Senate on the legislation.

41. U. S. Congress, House Committee on Public Land, *Forfeiture of the Texas and Pacific Land Grant*, House Report 62, to accompany S. 3933, 48th Cong., 1st Sess. (Washington: Government Printing Office, 1884), p. 1.

42. U. S. Congress, *Congressional Record*, 48th Cong., 1st Sess. (Washington: Government Printing Office, 1884), pp. 795f.

43. *Ibid.*, p. 796.

44. *Ibid.*

45. *San Diego Union*, February 13, 1884.

46. U. S. Congress, Senate Committee on Public Land, *View of Minority on Forfeiture of Texas & Pacific Lands*, Senate Report 607, to accompany S. 3933, 48th Cong., 1st Sess. (Washington: Government Printing Office, 1884), p. 1.

On February 13, 1885, discussion on the forfeiture bill was begun in the Senate.⁴⁷ Huntington still refused to concede that the conveyance of the land grant by the Texas and Pacific was illegal. He argued that the transfer of the grant was no different in principle from the transfer of a mortgage on the land; the latter course, it was argued, had been taken by several other railroads.⁴⁸ John T. Morgan of Alabama refuted the stand taken by the Southern Pacific by asserting that while a mortgage might be disposed of at the will of a corporation, the only manner in which the public domain could be legally transferred from one company to another was by an act of Congress. Morgan maintained that land grants were made at the will of Congress and remained under its jurisdiction until the patents were issued. Only then could acreage be disposed of at the discretion of the railroad.⁴⁹

Although there was no disagreement among the senators as to whether or not to declare a forfeiture of the federal grant, a lengthy discussion ensued on the recommendation of the Senate Committee to withhold the land grant from public entry for a period of two years after the forfeiture was approved.⁵⁰ Senator John Sherman of Ohio formally introduced the recommendation of the Senate Committee as an amendment to the bill passed by the House.⁵¹ Briefly, the amendment stipulated that at least two years should be allowed to adjust land claims before the acreage was opened to entry. John Ingalls of Kansas believed that it should be made clear in the amendment that the lands would be used only for homestead entry after that period.⁵² A Senator from Kentucky, James Beck, indicated that the amendment had been so phrased that it denied entry to the grant for two years except for pre-emption claims.⁵³ If the phrasing were thus interpreted it would give speculative land interests a fling at the acreage before it became available for homesteading. Sherman and

47. U. S. Congress, *Congressional Record*, 48th Cong., 2nd Sess. (Washington: Government Printing Office, 1885), p. 1620.

48. *Ibid.*, p. 1878.

49. *Ibid.*, p. 1887.

50. *Ibid.*, p. 1895.

51. *Ibid.*

52. *Ibid.*

53. *Ibid.*

Ingalls both denied that any such interpretation was intended. The amendment had been worded, they maintained, so as to deny entry on the forfeited land under any of the existing land laws.⁵⁴

John Miller of California maintained that the lands under discussion were not fit for homesteading but were more suited for grazing land or as a potential source of mineral wealth. Although the soundness of the Californian's argument must be respected, the mere mention of denying acreage to the homesteader caused a veritable explosion within the land reform group in Congress.

Debate in this vein might have continued indefinitely except for the overwhelming strength of the forfeiture advocates, who wanted the bill passed immediately whether or not it contained all the stipulations proposed. The amendment introduced by Sherman was defeated by a vote of forty-one to twelve. This meant that entry could be made on the public domain immediately after forfeiture.⁵⁵ The twelve members who supported the amendment represented a group who believed that forfeited land should be administered by the courts before it was opened for public entry. These twelve insisted that the fundamental rights of private property were being tampered with by permitting Congress to assign the grant directly to the Executive Department before all contested claims were settled. Under executive control claims would be settled by administrative decisions of the Department of the Interior and the General Land Office. From the distribution of the twelve votes—two from the South, two from the Midwest, three from the far West and five from the East—it can be seen that the East cast no significant number of votes which might lead to a charge of sectional support for the amendment.⁵⁶ Although ten of the twelve votes were registered by members of the Republican Party, the fact is only relatively more significant than the geographical distribution of the ballot, since Republicans cast a majority of their strength against the amendment.

54. *Ibid.*, p. 1897.

55. *Ibid.*

56. *Ibid.*

The forfeiture bill was finally passed by the Senate with a vote of fifty-six to two,⁵⁷ becoming law on March 2, 1885, three years after the deadline for completion of the railroad.⁵⁸ Support given to the termination of the Texas and Pacific grant presents an interesting contrast to the way in which Congress voted when the grant was approved. The ballot on the forfeiture showed no sectional or party rivalry in either house. There was, of course, a conflict in the Senate between the pro- and anti-land grant forces. The two senators voting negative refused to accept the trend of public opinion against corporations which had not completed construction on time.

During the period of uncertainty when no one knew whether or not the transfer to the California line would be legalized or the grants forfeited, individual settlers were anxious to obtain judgment on disputes that had arisen over the validity of their claims. Administrative decisions in the Department of the Interior assumed great importance. For instance, the Secretary decided that a pre-emption claim within the grant area of the railroad was valid even if the final payment had not been made by the time the grant was withdrawn from public entry.⁵⁹ A later decision made it clear that pre-emptors did not need to have the final patent to lay claim to acreage within the grant area if the original settlement had been made before the withdrawal of the acreage from public entry.⁶⁰

By an order of March 17, 1885, the Secretary of the Interior ordered the Commissioner of the General Land Office to notify the local land offices to begin the process of returning the grant of the Texas and Pacific to the public domain.⁶¹ The General Land Office immediately put into operation the local administrative machinery needed to return the grant to public entry. It was to be many months, and in some areas years, however, before all the acreage again became available for settlement by the individual land seeker. Public notices

57. *Ibid.*

58. *Ibid.*, p. 2409.

59. The Department of the Interior, *Decisions of the Department of the Interior*, III (Washington: Government Printing Office, 1895), 122.

60. *Ibid.*, 164.

61. Letter from the Secretary of the Interior to the Commissioner of the General Land Office, March 17, 1885, L and RD, GLO, NA.

were published announcing that tracts were to be disposed of either by direct sale for \$1.25 per acre or under the conditions of the homestead act.⁶² There is no evidence that speculators were responsible in any way for delaying the return to public entry of the acreage which was being held pending settlement of private claims. The settlement of all claims, however, took considerably longer than was anticipated by that amendment.

The total acreage returned was about 18,500,000.⁶³ This, of course, represented a serious blow to Huntington's plans for the Southern Pacific of California. The forfeiture had been brought about by the reaction that had taken place against land grants in general, although the immediate factors making such a movement possible were the failure of the original grantee to construct the line on time and the attempt to transfer the grant without the approval of Congress. In the forfeiture process it is interesting to note how closely the executive and legislative branches cooperated in collecting information and drawing up the necessary legislation.

The loss of the land grant did not destroy the effectiveness of the Southern Pacific-Central Pacific monopoly of West coast trade. Huntington's "coup d'etat" failed but the loss of 18,500,000 acres did not alter the fact that the Southern Pacific had succeeded in extending its empire east to New Orleans. The grant thus failed completely in fulfilling the two purposes for which it had been created: the prevention of a monopoly of Pacific coast trade by California railroad interests and the building of a thirty-second parallel line in Arizona, New Mexico and Texas which would be free from control by Huntington and his Southern Pacific railroad associates.

62. *Arizona Daily Star* (Tucson), March 24, 1885; *Los Angeles Daily Herald*, March 26, 1885; *Rio Grande Republican* (Las Cruces, New Mexico), March 28, 1885.

63. U. S. Congress, House Committee on Public Land, *Forfeiture of Certain Railroad Lands*, House Report 2476, to accompany s. 1430, 50th Cong., 1st Sess. (Washington: Government Printing Office, 1888), p. 1.