

University of Oklahoma College of Law  
**University of Oklahoma College of Law Digital Commons**

---

American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899

---

1-24-1877

## Texas and Pacific Railroad.

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>



Part of the [Indian and Aboriginal Law Commons](#)

---

### Recommended Citation

H.R. Rep. No. 139, 44th Cong., 2nd Sess. (1877)

This House Report is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact [darinfox@ou.edu](mailto:darinfox@ou.edu).

## TEXAS AND PACIFIC RAILROAD.

JANUARY 24, 1877.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. LAMAR, from the Committee on the Pacific Railroad, submitted the following

### R E P O R T :

[To accompany bill H. R. 4531.]

The Committee on the Pacific Railroad, to whom were referred House bills Nos. 25, 89, 472, 1035, 1305, and 3140, after considering the same, have instructed me to report the accompanying bill as a substitute therefor, with the recommendation that it do pass.

#### PURPOSE OF THE BILL:

The purpose of the bill which the committee report is to make certain amendments in the original acts chartering the Texas Pacific Railroad, by which amendments that enterprise will be relieved from the consequence of failure to comply with the terms of the original charter, and will receive such aid from the General Government as will secure its completion.

The causes which interfered with and prevented the prompt execution of the conditions originally attached to the charter, and which may be stated briefly but entirely to have been the disastrous and universal fall in value of all railroad securities in the money-markets of the world consequent upon the financial panic of 1873, are sufficiently well known. They were causes disconnected with any special mismanagement of the road itself, and simply rendered it impossible for the corporation to complete within a given time a certain portion of the work they had undertaken to accomplish, although they have completed and equipped 445 miles of road, which is doing a great work in the development of the country it traverses. There is nothing in the history of its management, and certainly no change in the immense national importance of the road itself, which would make this delay in its completion a ground for suspending its franchises or denying it any aid which the interests of the country and the constitutional power of Congress should, under other circumstances, fitly grant it.

The only questions, therefore, which this bill submitted to the consideration of the committee were these two: Has Congress the constitutional power to grant such aid as it proposes; and, second, Is it the interest of the whole country that this aid should be granted?

#### IS THE AID PROPOSED CONSTITUTIONAL ?

With regard to the constitutional power, the question would almost seem to have passed the point of practical discussion. If there is one

point in the general policy of the country which seems to be in consonance with the convictions and in harmony with the interests of all sections, it is that the completest, fullest, strongest, and most sensitive sympathy, politically, commercially, and socially, should be established between the Atlantic and Pacific coasts, that this great continent shall be indeed one republic. The universality and force of this sentiment cannot be better illustrated than by citing the declarations of principles set forth in the platforms of the great political parties into which the people of the country are divided.

THE DEMOCRATIC PARTY COMMITTED TO THE CONSTITUTIONALITY OF SUCH AID.

The democratic national convention of 1860, which at Charleston, S. C., nominated Stephen A. Douglas for President, adopted as part of their platform the following resolution :

3. That one of the necessities of the age, in a military, commercial, and postal point of view, is a speedy communication between the Atlantic and Pacific States; and the democratic party pledge such constitutional Government aid as will insure the construction of a railroad to the Pacific coast at the earliest practicable period.

The convention held at Baltimore in the same year, which nominated John C. Breckinridge for President, also adopted as part of its platform the following :

Whereas one of the greatest necessities of the age, in a political, commercial, postal, and military point of view, is a speedy communication between the Atlantic and Pacific coasts : Therefore,

*Be it resolved,* That the national democratic party do hereby pledge themselves to use every means in their power to secure the passage of some bill, to the extent of the constitutional authority of Congress, for the construction of a Pacific railway, from the Mississippi River to the Pacific Ocean, at the earliest practicable moment.

THE REPUBLICAN PARTY COMMITTED TO THE CONSTITUTIONALITY OF SUCH AID.

In the republican platform of 1860 we find the following proposition :

That a railroad to the Pacific Ocean is imperatively demanded by the interests of the whole country, and that the Federal Government ought to render immediate and efficient aid in its construction.

THE GOVERNMENT COMMITTED TO THE CONSTITUTIONALITY OF SUCH AID.

The necessity for this work of union had scarcely impressed itself upon the people when the civil disturbances of 1861-'65 forced its execution upon the Government, but under circumstances which compelled that Government to make its practical connection more northwardly than under other circumstances would, perhaps, have been deemed most judicious. But the work even then undertaken and accomplished at such prodigious expense, and with such masterful energy, developed a system of Pacific connection which it was evident could not reach its full and symmetrical completion until a more southern Pacific connection had been added to that already perfected. The road as proposed in this bill completes and perfects this system, and as the General Government has largely and liberally furnished aid and subsidy to what has already been accomplished, it would simply be a reversal of an established policy to refuse some sort of effectual aid to complete what had been so wisely and thoroughly commenced. And it would scarcely seem

consistent with the spirit of justice and fair dealing, to say nothing of the inconsequence and impolicy of leaving the system half finished, to refuse to the southern section of the country the same facilities which are afforded to the North, and which it must be remembered are the contributions of the South as well as the North.

There are sufficient reasons in the history of the Pacific connection why the most northern routes should have been first completed, but these reasons are deprived of nearly all their force unless these routes are considered as only parts of one great national system into which it is high time that southern interests should be fully incorporated. Looking upon the road proposed, therefore, as the completion of a system already in operation, the committee feel that this bill does no more than give to it the share to which it is fairly entitled as a part of that system of Pacific connection which the policy of the country has enacted, and the aid of the Government has partially completed.

Even then, if the committee felt that there was reasonable doubt as to the power of Congress to give the aid furnished by the guarantee of interest proposed, they would find themselves in the face of these facts: That during the war, under the pressure of national preservation, the General Government had found itself compelled to give aid and subsidy to the completion of a Pacific connection the location of which was limited to a certain section, and in determining which it was not allowed to consider fairly and fully the interests and necessities of the whole country, because the circumstances of the war had withdrawn some of these interests and necessities from their control. At the close of the war, when the interests of the whole country are again committed to their national guardianship, we find that this connection, proper in itself and eminently serviceable to the country, is yet a sectional advantage, if not monopoly, and does discriminate against the interests of a portion of the country, unless that section is now permitted to enjoy the same advantages of governmental aid, though in a greatly modified and much more secure form, that have been extended to other sections. Surely, whatever may be the constitutional view, the policy, once adopted, must be persevered in until this inequality is redressed. If the past aid given was right, then so is this. If the past aid given was wrong, its result can only be corrected by allowing it to work until it has corrected its own partiality; because what has been accomplished, if not carried out as a national system extending to all sections, would be simply to confine the advantage of the Pacific connection to one section, and, from the utter inability of the South to complete its own connection, render that now existing between the Atlantic and Pacific coasts a northern monopoly, not objectionable because northern, but because it would be a monopoly injurious to the interests of the whole country.

#### ARGUMENT TO SHOW THE CONSTITUTIONALITY OF SUCH AID.

But the committee does not feel any reasonable doubt of the right of the Government to contribute the aid provided in this bill to the completion of a railroad which is really necessary to its military and postal arrangements, in which the aid rendered is amply secured, and where the public are protected by proper legislation against the selfish use by the road of the power thus given it.

There is no question that the Government has the right to build its own military and postal roads, where necessary, and if by a combination with private enterprise it can secure such roads under its general control at a less expense, and with contingent advantage to the coun-

try through which such roads pass, it is difficult to see why this method of executing its powers should be any less constitutional than their direct and more costly exercise. It also appears to your committee that if the general power to regulate commerce justifies the execution of ocean-surveys, the erection of light-houses, the subsidizing of mail-contracts by sea, it would be difficult to say why the same power would not authorize the use of any means which would secure and facilitate the means of transacting a commerce not less important or vast in its ever-growing proportions; a commerce which does not pass from State to State, protected by the law, the order of self-governing communities, but crossing great prairies, immense mountain-ranges, vast territories, in which the only guardian of circulation and protection of property is the Federal Government. And while the committee feel too profound a reverence for the Constitution to tolerate any trifling with its positive and salutary provisions, they feel, to use the emphatic language of one of the great statesmen of the South, Mr. Hunter, of Virginia, who has proved his faith by the uncomplaining sacrifice of a great future, that "To prevent so grand an achievement by interposing objections, claimed by an extreme extension of the State-rights doctrine where there is neither use nor necessity for it, is only to bring into odium and ridicule those grand old bulwarks of human liberty, those prime defenses of American harmony and progress;" that, "We weaken them by attempting to stretch them to cases which they do not cover in right reason, and where the obtusion of such considerations can only seem to shock the common sense of mankind."

#### THE GOVERNMENT SECURED AGAINST LOSS.

But the committee are fully of opinion that all such aid should be rendered on such conditions as will guarantee the Government against sacrifice and protect the people against the selfish exercise of the privileges and power which such aid confers.

The committee think that the provisions of this bill secure this end. The guarantee asked is the guarantee only of the interest upon the company's own bonds, which secures the bond against the fluctuations in value of such security.

#### THE LINE OF ROUTE.

Since the reference to the committee of the various bills on this subject introduced at the last session, the Texas and Pacific Railway Company has completed its road from Marshall, Tex., to Fort Worth, in that State, on the trunk-line, completing it also from Texarkana to Sherman on the transcontinental line, making in all about 445 miles finished, equipped, and operating.

The bill, therefore, as now reported, provides for the construction of a railway-line from Fort Worth to San Diego on the Pacific coast; authorizing the Texas and Pacific Railway Company to construct a road from Fort Worth to the Rio Grande near El Paso; thence westwardly 100 miles into New Mexico until it forms a junction with the line of the Southern Pacific Company, which is by the act given a like authority to build a road from San Diego, connecting with its line at San Gorgonio Pass; thence to or near Fort Yuma on the Colorado River; thence eastwardly along the thirty-second parallel of north latitude until it meets with the line of the Texas and Pacific Railway Company at the designated point of junctions.

It also provides for the construction of lines of railway from the main trunk to Saint Louis, New Orleans, Vicksburgh, and Memphis. To secure the connection with Saint Louis, the Atlantic and Pacific Railroad Company is authorized to construct a line from its present terminus, at Vinita, Indian Territory, southwestwardly, so as to intersect with the main trunk at a point between the ninety-ninth and one hundredth degree of longitude, upon the condition that that company renounces its right under its former charter to build to the Pacific Ocean, and to surrender to the Government the 33,000,000 of acres of land granted therein, and to release the Government from its obligation to extinguish the Indian title to any lands voluntarily granted to it by the Indians.

TERMS AND CONDITIONS ON WHICH THE PROPOSED AID IS GRANTED.

The bill requires that the road shall be built in sections of ten consecutive miles; that commissioners appointed by the President shall inspect the road as it is built, and upon the certificate that such section is completed in accordance with the provisions of the law the Secretary of the Treasury shall deliver to the company its own bonds, not exceeding \$35,000 per mile for the main trunk and \$25,000 for the branches, and \$30,000 on the San Diego connection. If, however, a less number of bonds be found, upon examination, to be sufficient to meet the cost of construction and equipment, then the number of bonds delivered to be correspondingly reduced. Upon these bonds so delivered the Government indorses its guarantee to pay the interest, at 5 per cent., in case the company should fail to do so. The guarantee of the Government therefore cannot, on any part of the road, exceed \$1,750 per mile, nor \$17,500 for any section of ten miles. The security which the bill provides against loss upon this guarantee of 5 per cent. is—

First. A mortgage, paramount to all other liens, upon the road, its equipments, net earnings, and proceeds of sales of the lands of the company.

Second. The application to the payment of this interest of amounts due from the Government for postal and Army transportation and telegraphic facilities.

Third. The retention of \$5,000 per mile in any event, and more if the road cost less than the average specified, of the guaranteed bonds, with the right to sell and use the proceeds in making up the deficiency of the payment guaranteed, should such deficiency exist.

Fourth. The payment into the Treasury of so much of the net earnings of the road as will be sufficient to meet the interest required.

The trunk-line upon which guaranteed bonds are to be issued is—

	Miles.
Main line, from Fort Worth to Fort Yuma.....	1,187
San Diego connection, from San Gorgonio.....	100
Eastern connections:	
Vinita to the Texas and Pacific .....	325
Shreveport and Vicksburgh extension to Monroe .....	96
Marshall to New Orleans .....	337
Jefferson to Memphis.....	260
Total trunk-line.....	<u>1,187</u>
San Diego extension .....	100
Eastern connections.....	1,018

## THE SECURITY OF THE GOVERNMENT AMPLE AND COMPLETE.

Assuming the maximum amount of bonds which can be used for construction, we have, on the trunk-line from Fort Worth to Fort Yuma, 1,187 miles; at \$35,000 per mile we have \$41,545,000, with the annual interest on the same of \$2,077,250.

On 100 miles for San Diego connection, at \$30,000 per mile, we have a total issue of \$3,000,000, with an annual interest of \$150,000.

On the eastern connections, including the Vinita, New Orleans, Vicksburgh, and Memphis connections, we have a total distance of 1,018 miles, at \$25,000 per mile, with the total issue of bonds to the amount of \$25,450,000, at an annual interest of \$1,272,500.

Total of bonds that can be issued for construction under the provisions of this bill, \$69,995,000, with a total annual interest of \$3,499,750.

This liability of \$3,499,750 of annual interest, we repeat, is protected, under the provisions of the bill, by a first mortgage upon all the property and net earnings of 2,305 miles of road, so that an earning of \$1,750 on the trunk or main line, and \$1,500 per mile on the short San Diego connection of 100 miles, and \$1,250 per mile on the eastern connections, will more than amply secure the Government.

Certainly a mortgage on property worth \$40,000 per mile at an original cost to secure a liability of \$2,000 per mile, will place the security of the mortgagee beyond any conceivable contingency.

Besides this, the Government reserves all the earnings from its own transportation, mails, and telegraph service, and receives the proceeds of all the United States and State lands granted in aid of the construction of the line, as follows:

	Acres.
United States land-grants, west of El Paso.....	16,640,000
Texas grants, east of El Paso to Fort Worth.....	7,680,000
Grants in Louisiana approximately.....	2,490,000

This calculation, it will be observed, is based on the aggregate amount of bonds that can be issued for construction under the bill; but it is believed that the roads can and will be constructed and equipped for a sum of money greatly below this estimate, thus reducing the amount of the guaranteed bonds that will be issued, and consequently the annual interest-charge very materially, probably twenty to twenty-five per cent. below the figures given. When it is considered that the Union and Central Pacific roads, by their last annual reports, July 1, 1876, show gross earnings of \$12,910 per mile, with gross expenses of operating of \$5,520 per mile, leaving average net earnings of \$7,388 per mile, or more than three times the amount of net earnings required on the main line, four times the amount on the San Diego line, and five times as much as on the branches, to pay the interest on the amount of bonds proposed to be issued by the roads to be aided under this bill, there can be no reasonable doubt that the earnings of the lines under discussion will greatly exceed the sum needed to meet the liability of the Government by the proposed guarantee of interest, and that there will never be required from the Treasury of the United States the advance of a dollar of the money of the people.

In addition to this security the Government will retain in its vaults \$5,000 per mile of the bonds of the companies, or \$12,000,000 in all, as a contingent fund, with the full power in the Secretary of the Treasury to sell any portion of the same at the expense of the companies, to meet any possible liabilities during construction or otherwise.

It is believed, too, that the reserve will be greatly increased by reason of the reduced cost of constructing and equipping the lines, through the

ability of the company to secure capital on a cash basis, and the diminished cost of labor and material.

It appears to the committee that if ever a guarantee was protected by the provisions under which it was given, this is.

#### THE INTERESTS OF THE PEOPLE PROTECTED AGAINST COMBINATION OR MONOPOLY.

As to the interests of the people, it will be observed that the bill makes it impossible for the trunk line to become a monopoly strong enough to sacrifice local interests, for every local connection has the right, under the provisions of the bill, to use the trunk line as if it were in fact a part of it, and this right is capable of legal enforcement. It will be further observed that the bill provides for control by Congress over the rates for transportation of freight and passengers, and for postal and telegraphic service. Whether this control should be absolute or limited by the phrase "under general laws applicable alike to railroads aided by the Government of the United States," was a question gravely considered by the committee. Without special and unfavorable reference to other and previous legislation, it is sufficient to say that in the opinion of the committee this limitation seemed rather a confirmation and extension to this road of privileges and franchises hitherto unwisely conferred, than a clear declaration of power on the part of Congress, which ought to be carefully and judiciously exercised, but the right to exercise which ought neither to be doubted nor crippled. The committee felt that the subject was a delicate and difficult one. They felt on the one hand that a great enterprise, in which large private fortunes have been risked, should not be at the mercy of congressional legislation, affected, as it must always be in such cases, by selfish combination or popular excitement. But, on the other hand, they could not consent to leave any such enterprise, so largely aided by the Government credit, and so directly affecting great public interests, entirely free from such control. If they attempted to fix a rate of profit beyond which Congress should have the right to interfere, they would be forced to come to their conclusion on very insufficient information, and to expose the corporation to the temptation of coloring the reports of their business so as to maintain the rate of profit at a point nominally below the rate of interference. To leave the rate uncertain and require simply a reasonable profit, would be to introduce subjects of very difficult discussion, and impose upon Congress the decision of differences between the corporation and the public, not only very difficult of decision, but open to influences which it is the great desire of the people to see forever excluded from the national legislature. The committee have therefore deemed it simplest, wisest, and best to recognize the power which Congress unquestionably possesses, and to leave its exercise to the wisdom and patriotism of each succeeding Congress as the great enterprise develops healthy and beneficial proportions.

#### SUMMARY OF ADVANTAGES OF THE PROPOSED ENTERPRISE.

In concluding this report the committee desires to say that it has been adopted after the most careful consideration. The committee could not help feeling that legislation of this sort was growing unwelcome to the popular sense; that there was a general conviction that it was too liable to be controlled by speculative and selfish influences, and that in most of it, however disguised, there lurked some private advantage gained at the public expense. They have scrutinized this bill as thoroughly and as conscientiously as their ability permitted, and they are of opinion that the scheme proposed is honest and patriotic in its purpose, and that while from it, as from every enterprise of the kind properly and

economically completed, there must result great advantage to individuals, yet that, in this case, the private gain will not have been made at the public expense, and that the advantages to the Government and the people are ample compensation for that use of the Government's credit which they advise.

The construction of this road and the completion of its branches will bring the vast region it traverses—a region of surpassing richness, adapted to the culture of the finest cotton, to the production of wool, the raising of cattle, teeming with agricultural resources, and abounding in mineral wealth—into connection with all the great cities on the Atlantic seaboard, and also with all the interior centers of trade in the West and Northwest. It will bring the merchants and manufacturers of the East into a direct, easy, and cheap communication with the commerce of the Pacific coast, Mexico, and Asia, and thus open up to them new and invaluable markets for the surplus products of their manufacturing industry and skill. With its branch lines extending to New Orleans, Vicksburgh, and Memphis, and with its connections with Galveston, it will not fail to infuse new life and prosperity in the South, to develop its capital and resources, and to give to the people of that section the assurance that in this great Union their material interests are considered and protected, and that they are to become in future full participants in its greatness and glory and prosperity.

This material reconstruction, if thus wrought, will restore to the North her greatest and best customer, who will be enabled, by that renewed interchange of those productions which formerly made the exchange of southern and northern trade the vital energy of our national prosperity, to recommence a new and prosperous life—a life produced by common interests, and illustrated by mutual respect and affection. In the stimulus, by the exclusive use of American iron, which it will give to our manufacturers; in the supply of work and wages to thousands of skilled and honest mechanics and laborers who are now in destitution and despair; and in unlocking and putting into active circulation millions of dollars now hoarded and lying uninvested in a few money centers, it will tend to relieve much of the embarrassment of our financial affairs, and to restore our agricultural, manufacturing, and commercial interests to their natural condition of prosperity. It will effect a great economy to the Government in the transfer of its military forces, supplies, and mails, and it is believed by your committee that the direct saving to the Government will exceed the annual gross amount of the interest guaranteed upon the bonds.

The advantages to the United States in conducting the administration of the courts in the Territories, and the benefits that will accrue from the settlement of all matters relating to the Indian question, and the protection of life and property on our borders, are so great that your committee deem it only necessary to make a brief allusion thereto. But your committee do not dare to enter at large upon the advantages and importance of this road, either sectional or national, for in their opinion the propriety of a complete system of Pacific connection, and the essential necessity of this road as a part of that system, have already been decided by the action of the Government, and confirmed by the approval of the people, and they feel that in recommending an adhesion to that policy they are advocating one of the simplest and yet surest means of reconciling the interests and harmonizing the sentiment of this whole country, and thus advancing the approach of that future of universal peace and prosperity which this people confidently anticipate, even in the midst of serious political perplexity and threatened danger.

○