

# Central Pacific--Southern Pacific Unmerger

## And Its Relation to Oregon Transportation and Development

### Following Are the Questions and Answers. The Decision Will Mean Much to Oregon. Are the People Ready to Decide

### WHAT DOES THIS MEAN TO YOU AS A CITIZEN OF OREGON?

By  
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#### Union Pacific-Central Pacific Constructed With Government Aid As ONE ROAD for "Military, Postal and Other Purposes."

1. Q. How was the construction of the Union Pacific and the Central Pacific brought about?

A. By the aid of the United States Government.

2. Q. What action was taken by the government?

A. President Lincoln advocated the construction and Congress passed the Pacific Railway Act in 1862, amending and supplementing it in 1864.

3. Q. What interest did the Government have in the construction of these railroads?

A. The title of the Act states the purpose to be "to secure to the Government the use of the same for Postal, military and other purposes."

4. Q. What aid did the Government extend to these two roads?

A. It advanced them large amounts in Government bonds and made large grants of land to them.

5. Q. Between what points were these lines built and when?

A. The Union Pacific was built westerly from Omaha and Kansas City and the Central Pacific easterly from San Francisco and Sacramento, the two lines meeting near Ogden, Utah, in 1869. Together they formed the first transcontinental railroad.

#### In Financing Them, Congress Imposed the Condition That They Should Work Together and Not Discriminate Against Each Other.

6. Q. Why should these two lines be required to work together, and in the interest of each other.

A. First: The Pacific Railroad Acts require them to operate "as one connected, continuous line," and in such operation "to afford and secure to each equal advantages and facilities as to rates, time and transportation, without any discrimination of any kind in favor of \* \* \* or adverse to the road or business of any or either of the others;" and

Second: Neither the Government nor the people can have "one connected and continuous lines" in operation if they refuse to work together and divert traffic from each other.

7. Q. Is it not true, as contended by the Southern Pacific, that the obligation to the Government is met if they "be operated as a physically connected line not in the sense of ownership, but as a matter not breaking the line by putting obstacles in the way which would prevent unobstructed movement?"

A. The Supreme Court says: "We do not think the acts Pacific Railroad Acts) stop with that requirement" (physical continuity) \* \* \* and the purpose of Congress to secure a continuous line of road, operating from the Missouri River to the Pacific Coast as one road, is further emphasized in the Act of Congress of June 20th, 1874, making it an offense for any officer or agent of the companies \* \* \* to refuse to operate and use the same \* \* \* as one continuous line, and \* \* \* to afford \* \* \* to each equal advantages and facilities \* \* \* without any discrimination \* \* \* in favor of or adverse to \* \* \* either of said companies." Furthermore no greater obstacle to the successful operation of a railroad could be conceived of than it divert its traffic away from it.

#### Southern Pacific Acquired Central Pacific Stock Subject to This Obligation but Has Evidently Discriminated Against Union Pacific in Operation of Central.

8. Q. What is the Southern Pacific Company?

A. It is a holding company of the State of Kentucky, controlling and operating a number of railroads and a steamship line, collectively

known as the Southern Pacific System. This system extends from San Francisco Bay by way of Los Angeles and El Paso to Galveston, Texas, and to New Orleans, where it connects with its steamer lines to New York City. At El Paso it connects with the Rock Island which runs to Omaha and Chicago. It also has a line from San Francisco to Portland and branch lines in Western Oregon.

9. Q. What is the nature of the control by the Southern Pacific of the Central Pacific?

A. It owns all of the stock of the Central Pacific.

10. Q. Is it true that the Southern Pacific, in its operation of the Central Pacific, has committed the discrimination prohibited by the Acts of Congress?

A. Yes. The Supreme Court finds: "The proof is ample that the policy of the Southern Pacific System has been to favor transportation on its line by securing for itself, whenever practicable, the carriage of freight which would normally move eastward or westward over the shorter line of the Central Pacific Railroad and its connections, for its own much longer and wholly owned southern route."

11. Q. Under the law, does not the shipper have the right to route his shipment?

A. Yes. This provision was incorporated into the Commerce Act in 1910, some four years before the Government brought this suit. But the Traffic Solicitor of the railroad can generally obtain the routing. As stated by the Supreme Court: "there are elements of competition in the granting of special facilities, the prompt carrying and delivery of freight, the ready and agreeable adjustment and settlement of claims, and other elements which that legislation does not control."

12. Q. Is it fair to require the Southern Pacific to observe these Acts of Congress?

A. Certainly. It bought the Central Pacific stock with full knowledge of these obligations and should live up to them. The Supreme Court says: "the obligation to keep faith with the Government continued, \* \* \* notwithstanding changed forms of ownership and organiza-

tion," and by the 1912 decision in the case of United States vs. Union Pacific and Southern Pacific, the roads were warned that such discrimination might possibly result in forfeiture of all rights under the Acts of Congress.

#### United States Supreme Court Finds Such Combination "A Menace and Restraint Upon Freedom of Commerce."

13. Q. Is it true, as asserted by the Southern Pacific people, that the Central Pacific and Southern Pacific "have grown and developed like a healthy tree, from a common root into a single unit?"

A. No. The Southern Pacific Company (the Kentucky holding company) was not organized until 1884, fifteen years after the Central Pacific was built. The Southern Pacific Railroad Company was incorporated in 1865 to build the railroad from San Francisco south and east to the easterly boundary of California. The Supreme Court considered this contention, and found that these roads were always distinct corporations and for years had Boards of Directors not consisting of the same persons. It is true that latterly the Central Pacific, for years the parent and dominant company, has become submerged by the Southern's stock ownership and control, and referring to this the Supreme Court says: "Such combinations, not the result of normal and natural growth and development, but springing from the formation of holding companies, or stock purchases, resulting in the unified control of different roads or systems, naturally competitive, constitute a menace and a restraint upon that freedom of commerce which Congress intended to recognize and protect, and which the public is entitled to have protected."

14. Q. The Southern Pacific represents that enforcement of the Supreme Court's decision will operate to tear its system into "confused remnants" of railroad, neither of which can function of itself. What is the fact?

A. No tracks will be torn up, nor will abandonment of their operation be permitted, under the Transportation Act. The two companies will, where necessary operate them jointly and in competition. Instead of the one company controlling and operating both, in other words, the Central will be freed from Southern control. In disposing of this feature of the case, the decision provides that the several terminal lines and cut-offs leading to San Francisco Bay should be dealt with, "either by way of apportionment or by provisions for joint or common use, in such manner as will secure to both companies such full, convenient and ready access to the Bay and to terminal facilities thereon that each company will be able freely to compete with the other to serve the public efficiently, and to accomplish the purpose of the legislation under which it was con-

structed. And a like course should be pursued in dealing with the lines extending from San Francisco Bay to Sacramento and to Portland, Oregon."

#### The Greatest Agency in the Success of Washington's Transportation Systems Has Been Joint Railroad Operation. Same Reduces Overhead and Works to Advantage of Territory Served and Railroads Involved.

15. Q. Is such joint use practicable and common in railroad operation?

A. It certainly is--witness some seven joint operations of this kind by railroads in Washington, where in one instance three railroads joined in double tracking and operating between Vancouver and Tacoma. Maps attached illustrates Washington situation and possibilities in Oregon.

#### President Sproule Testified Under Oath That Sale of Central Pacific to Union Pacific Would Benefit the Public and the Southern Pacific Itself.

16. Q. If the Southern Pacific is compelled to sell the Central Pacific, will not be left in a crippled condition, unable to compete in an efficient way for traffic?

A. No. The Southern Pacific will be paid for the property sold and will secure rental for any of its property used by the Central under the joint arrangement. Indeed, in 1913, the Southern and the Union agreed upon terms of sale of the Central by the former to the latter, but under the agreement then made the Union was kept out of Western Oregon. Upon that occasion President Sproule of the Railroad Commission of California in an effort to accomplish the sale, and said in substance that: "The sale would bring the roads into competition with each other; the greater the number of roads, the less likelihood there is of maintaining rates at their present parity; the greater the number of railroads contending for any piece of traffic, the greater the tendency to reduce rates; competition always improves service and the competition will be chiefly in the service; the effect as to local points not competitive would probably be unnoted, depending, however, on the policy of the new owners. The effect from competitive points, Fresno for example, would be to give Fresno three railroads where it now has only two, at Tehama to give it two railroads where it now has only one, at points on the joint line between Sacramento and Oakland, by way of Benicia, two roads where they now have one; under this change, pursuant to this agreement, it is the Central Pacific that is likely to lose the

business and the Southern Pacific that is likely to get business; we are not by any means to the lion's paw of the Union Pacific; we will have the Western Pacific and Santa Fe soliciting us for this business, too; I will bet on the Union Pacific not getting the lion's share of it; the change of ownership of the Central Pacific will not affect the passenger."

(See Transcript in Application Southern Pacific et al to Railroad Commission of California, Filed February 17th, 1913, Number 409.)

#### Union Pacific Seeks to Insure Performance by Central and Union to Government That These Roads Work in the Interest of Each Other. The Southern Bought the Central With This Obligation Attached to the Property.

17. Q. The Southern Pacific claims that the Union Pacific is seeking to control the lines of the Southern Pacific and to tear down the property of the Southern Pacific. What justification is there for the Union Pacific to interest itself in the matter, and to contend for the enforcement of the decision of the Supreme Court of the United States?

A. The Union Pacific is not seeking to control the Southern, cannot legally do so, nor has it attempted nor does it desire to weaken or tear down the Southern Pacific. It is endeavoring to make secure the performance by the Central Pacific of its part of the mutual obligation imposed by Congress upon that road and the Union Pacific found in the Pacific Railroad Acts that created them and reaffirmed by the Supreme Court of the United States as attaching to the properties irrespective of change of ownership. The Supreme Court has found that this obligation has been violated by the Southern Pacific. The Southern Pacific proposes in effect that it be relieved from the obligation. Were this to happen the Southern could take the business of the Union at Ogden and the empty cars delivered to it at that junction, and after loading them with Central Pacific freight, route them over its own line to the middle west through El Paso and to the East at the Gulf, leaving the Union Pacific in a pocket at Ogden.

If the Southern Pacific has, as found by the Supreme Court, so diverted this business in the past in disregard of its obligations to the Government and to the Union Pacific, it is a moral certainty that it would starve the line from San Francisco to Ogden if the obligation were removed. Not only does the past conduct of the Southern warrant this apprehension, but the consolidation plan of the Interstate Commerce Commission providing for the merging of the Rock Island with the Southern whereby it would have

a 100 per cent. haul over its own line by way of El Paso to Chicago and other points in the middle west, emphasizes the duty of the Union Pacific to oppose the continued control by the Southern Pacific of the Central Pacific. The Union Pacific has too long refrained from taking part in this litigation, with the result that the Southern Pacific is now boldly claiming that the Central Pacific has become a part of the Southern Pacific unit, whereas the Supreme Court has held that the Union Pacific and Central Pacific are to operate from the Missouri River to the Pacific Coast "as one road."

18. Q. In view of the ownership by the Union Pacific of a line from Salt Lake to Los Angeles, is it eligible to acquire the Central?

A. Yes. The Acts of Congress under which they were built contemplated that the Union and Central should be one road and authorized their consolidation. Furthermore, the Central Pacific does not reach Los Angeles, and the Supreme Court in the case of the United States against the Union and the Southern approved the proposal of the Government that the Union acquire the Central.

19. Q. Is it true that the decision of the Supreme Court exonerates the Southern and the Central from alleged violation of the Pacific Railroad Acts and limits the offense to a violation of the Sherman Act?

A. No. The decision affirmatively finds the Southern guilty of discrimination upon ample proof, and the Southern, in the brief of its Counsel in the Supreme Court, in substance admitted the charge. True, the Court says it finds it unnecessary to pass on the Government's contention that the leases to the Southern and the acquisition by it of the Central Pacific stock were in and of themselves violative of the Pacific Railroad Acts, but this observation is made after it had stated its findings of guilt against the offending defendants, which required reversal of the decree of the lower court. Furthermore, the Court's opinion shows a desire not to visit a forfeiture penalty upon the defendants, and orders that in severing the control by the Southern of the Central Pacific by stock ownership or lease, the mortgage lien securing the outstanding bonds shall be protected.

#### Upon Joint Operation of Main Line Shippers on Southern Pacific Branches Can Secure Competition by Forcing Joint Rates.

20. Q. If the Central and the Southern should, pursuant to the decision of the Supreme Court, acquire

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