

AGREEMENT

Between

THE RIO GRANDE WESTERN RAILWAY COMPANY,

WESTERN PACIFIC RAILWAY COMPANY

and

BOWLING GREEN TRUST COMPANY

8-28-79
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AGREEMENT - - - - - Dated June 23, 1905

THIS AGREEMENT, made and entered into this 23rd day of June, A. D., 1905, by and between THE RIO GRANDE WESTERN RAILWAY COMPANY, (herein called the "Western Company"), a consolidated corporation organized and existing under the laws of the States of Colorado and Utah, party of the first part, WESTERN PACIFIC RAILWAY COMPANY, (herein called the "Pacific Company"), a corporation organized and existing under the laws of the State of California, party of the second part, and BOWLING GREEN TRUST COMPANY, a corporation organized and existing under the laws of the State of New York, as Trustee of the First Mortgage of the Pacific Company, (herein called the "Trustee"), party of the third part. WITNESSETH:

WHEREAS, the Western Company owns and controls, among other lines, a line of railway extending from the City of Grand Junction in the State of Colorado via Salt Lake City to the City of Ogden in the State of Utah, and the Pacific Company has partly acquired and constructed and is proceeding to complete the acquisition and construction of a standard gauge railway line from San Francisco, in the State of California, to a connection, already constructed, with the railway of the Western Company at said Salt Lake City, in the State of Utah; and

WHEREAS, the completion of the Pacific Company's said railway will be of very great advantage and benefit both to the Pacific Company and to the Western Company, and it is to the interest of both that the Pacific Company's line be speedily constructed and completed to the end that the same may be utilized as a part of a main artery of transportation for Pacific Coast traffic between San Francisco and points in Colorado and east thereof; and

WHEREAS, the Pacific Company for the purpose of raising capital wherewith to complete and equip its said railway has authorized an issue of Fifty Million Dollars of its First Mortgage Five Per Cent. Thirty Year Gold Bonds and secured the same by its mortgage simultaneously executed and delivered to Bowling Green Trust Company, Trustee; and

WHEREAS, the Pacific Company is now negotiating for the sale of its said first mortgage bonds secured as aforesaid and will, when the same are sold, use the proceeds thereof first for the construction, completion and equipment of its said line of railway from San Francisco to Salt Lake City as aforesaid, with terminals and other property necessary for use in connection therewith; and

WHEREAS, the Western Company has knowledge of the terms and conditions of said First Mortgage of the Pacific Company and of the covenants of the Pacific Company therein contained, and in view thereof the Western Company makes and enters into its several covenants hereinafter set forth; and

WHEREAS, the Western Company holds or, for the purposes of this agreement, controls substantially all of the capital stock of said Pacific Company, and certificates therefor have been deposited with the Trustee, together with irrevocable proxies authorizing the Trustee to vote upon said stock as hereinafter provided, and on the matters herein set forth; and

WHEREAS, the Western Company possesses, and at all times so long as any of the said first mortgage bonds of the Pacific Company are outstanding and unpaid will have, the right to use the line of the Pacific Company as provided in a certain agreement The Denver and Rio Grande Railroad Company and The Rio Grande Western Railway Company as parties of the first part, Western Pacific Railway Company as party of the second part, and Bowling Green Trust Company, party of the third part, the said agreement being of date June 23rd, 1905; and

WHEREAS, the Western Company, both as a stockholder of the Pacific Company and in the interest of the Pacific Company, is desirous of facilitating the sale of said bonds, and of increasing the market value thereof.

NOW, THEREFORE, in consideration of the premises, and of the mutual covenants of the parties hereinafter set forth, the parties hereto do hereby covenant and agree each with the others as follows, to wit;

1. The Western Company will, until after the full and complete performance of the acts and covenants set forth in sections 2 and 3 hereof, retain and hold, or cause to be retained and held, in the names designated in the certificates so deposited with the Trustee, all of the said capital stock of the Pacific Company, represented by such certificates as aforesaid, and will not assign or transfer, or permit to be assigned or transferred, any portion thereof, until after such complete performance as aforesaid, and will allow the certificates for said stock to remain with the Trustee, and will not revoke, or permit to be revoked, the proxy or any of the proxies accompanying the same during the said period. Immediately after the increase of the capital stock of the Pacific Company as provided in section 2 hereof, and on or before the 30th day of September, 1905, the Western Company will cause a certificate or certificates for the shares constituting such increase of capital stock to be in like manner deposited with the Trustee and accompanied by like irrevocable proxies given to the Trustee for the purpose of better securing the performance of the covenants of the Western Company in section 3 hereof set forth. The Trustee will retain and hold all of the certificates representing shares of stock of the Pacific Company deposited with it under this agreement, until after the full and complete performance of all of the acts and covenants to be performed as provided in sections 2 and 3 hereof, and until after such complete performance thereof will not permit any of said certificates to be assigned or transferred.

2. The Pacific Company will, on or before the 25th day of August, 1905, by proper corporate action of its stockholders cause its authorized capital stock to be increased from Fifty Million Dollars (\$50,000,000) to Seventy-five Million Dollars (\$75,000,000), and the Western Company undertakes that the Pacific Company will promptly cause a meeting of stockholders of the Pacific Company to be lawfully convened for the purpose of making such increase, and undertakes that at such meeting the vote of the holder or holders of not less than two-thirds of the total capital stock of the Pacific Company will be cast in favor of such increase; and the Trustee as proxy for the holder or holders thereof will vote the same accordingly.

The Western Company will make or cause to be made valid subscription for such increased capital stock of the Pacific Company, to the full amount thereof, within three days after the meeting of stockholders at which such increase shall be authorized, but if such valid subscription shall not otherwise have been made prior thereto, then this contract shall be deemed and taken as a subscription by the Western Company, and be deemed to have been accepted as such by the Pacific Company, as of the last day of said three days period, for the full amount of said increase of stock, and shall be binding upon the Western Company as such subscription.

3. After such increase of capital stock as provided in Section 2 hereof, and within six months from the date hereof, the Pacific Company will, by proper corporate action and due action of its stockholders, authorize a further indebtedness to an amount not exceeding Twenty-five Million dollars (\$25,000,000), to be evidenced by its second mortgage bonds, the proceeds of which, when sold as hereinafter provided, shall be sufficient, together with the amount realized from the sale of the Pacific Company's said first mortgage bonds, to acquire, construct and equip its main line of railway in accordance with the general specifications designated as "Schedule A", and hereto attached and made part hereof, and so that the same shall be a standard gauge railway substantially constructed with steel rails of not less than eighty-five pounds weight to the yard, and suitably ballasted, and also to provide adequate terminals at Oakland and San Francisco, and adequate terminal facilities, by lease or otherwise, at Salt Lake City. And the Western Company undertakes that the Pacific Company will, in apt time, cause a meeting of stockholders of the Pacific Company to be lawfully convened for the purpose of authorizing such increase of bonded indebtedness, and that at such meeting the vote of the holder or holders of not less than two-thirds of the total capital stock of said Pacific Company will be cast in favor of such increase; and the Trustee, as proxy for such holder or holders, will vote said stock accordingly. The bonds to be issued under the authorization, aforesaid, shall be payable in gold coin, and bear interest at the rate of five per cent. per annum, payable semi-annually, and shall be secured by a second mortgage on the main line of railway of the Pacific Company from San Francisco to Salt Lake City, and its terminals and terminal rights at Oakland, San Francisco and Salt Lake City, which said mortgage shall be junior only to the mortgage securing the fifty million dollars first mortgage five per cent. bonds hereinabove mentioned.

4. The proceeds of the fifty million dollars first mortgage five per cent. bonds of the Pacific Company shall be used in the manner provided in the Pacific Company's first

mortgage to acquire, construct, complete and equip its proposed line of railway from San Francisco to Salt Lake City in accordance with said general specifications (Schedule A) and as hereinabove described, and to provide adequate terminals at Oakland and San Francisco, and adequate terminal facilities, by lease or otherwise, at Salt Lake City, and to make all other payments authorized by said first mortgage to be made prior to, or for the purpose of, the completion and equipment of said main line of railway and the providing of such terminals and terminal facilities. In case the proceeds of said first mortgage bonds shall be insufficient for the purposes aforesaid, and unless the necessary funds for such acquisition, construction, completion, equipment and payments shall have been otherwise provided as permitted by section 7 of this agreement, then, and as soon as the fact of such insufficiency shall have been ascertained and certified by any engineer appointed as provided in Section 4 of Article Two of said first mortgage of the Pacific Company, the Pacific Company will from time to time issue, and the Western Company will likewise buy such second mortgage bonds as funds may be required by the Pacific Company for the purposes aforesaid, to such amounts as at the price hereinafter stipulated will yield to the Pacific Company the additional amount of moneys necessary to enable it to acquire, construct, complete and equip its line of railroad from San Francisco to Salt Lake City as herein provided and in accordance with the specifications aforesaid, including adequate terminals at Oakland and San Francisco, California, and adequate terminal facilities by lease or otherwise at Salt Lake City.

5. The Western Company will pay for such second mortgage bonds seventy-five per cent. (75%) of the face value thereof and accrued interest, and the Pacific Company will, at that price, sell and deliver said bonds to the Western Company, subject, however, to the provisions hereinafter, in Section 7 hereof, set forth.

6. The Western Company will pay to the Pacific Company, the purchase price of such second mortgage bonds in such amounts as shall be required (in excess of the proceeds of said Pacific Company's first mortgage bonds) to enable said Pacific Company so to acquire, construct and equip its said line of railway and terminals, at such times as such moneys shall become necessary for use by the Pacific Company, for the purposes aforesaid, or any thereof, and the said second mortgage bonds shall be delivered to the Western Company immediately or so soon as practicable after the making of any such payment or payments by the Western Company.

7. Subject always to the maintenance of the first mortgage of the Pacific Company as an absolutely first lien upon the property, rights, interests and franchises covered thereby, nothing in this instrument contained shall be deemed to prevent the Western Company and the Pacific Company from raising funds by other methods on which they may agree for the prompt supply of moneys sufficient to acquire, complete and equip said line of railroad and terminals as herein provided and in accordance with said specifications, or to prevent the said Pacific Company from selling its said second mortgage bonds, or any part thereof, to any person or corporation other than the Western Company for a price higher than the price which the Western Company has hereinbefore agreed to pay therefor, provided, however, that nothing in this paragraph, or elsewhere in this instrument contained, shall be construed in any manner or relieve either party to this

agreement from the duty of providing in apt time all funds contemplated by this agreement, for the purposes and to the amounts hereinbefore expressed.

8. The refusal, neglect or other failure of the Pacific Company to perform any or all of the covenants, agreements or conditions herein contained, by it to be performed, shall not constitute ground for the rescission or refusal to perform or delay in performing this contract, by the Western Company, but in the event of any such refusal, neglect or other failure by the Pacific Company, the Western Company may have resort to such remedy, by suit for specific performance or action for damages or otherwise, as may be appropriate. But nothing herein contained shall be taken to authorize any action that shall have the effect of impairing in any manner or to any extent the lien or security of said First Mortgage of the Pacific Company or of preventing, obstructing or interfering with the exercise of any of the remedies thereby granted to the Trustee. Time is strictly of the essence of each and all the covenants and agreements to be performed by the Western Company.

9. The Trustee shall give each stockholder depositing stock and giving an irrevocable proxy under this agreement, a certificate or certificates acknowledging the receipt of the stock so deposited; and, after the increase of the capital stock as provided in section 2 hereof, and the increase of authorized bonded indebtedness as provided in section 3 hereof, the proxies held by the Trustee as aforesaid shall be surrendered and cancelled, and the certificates of stock then on deposit with the Trustee shall be delivered to or upon the order of the holders thereof as in said certificates respectively named. Transcripts of the minutes of the stockholders' meetings respectively so authorizing such increase of stock and such increase of bonded indebtedness, certified by the Secretary, and under the corporate seal of the Pacific Company together with certified copies of the certificates required by law to be filed, duly certified by the Secretary of State of the State of California, as to such increase of capital stock, and as to such increase of bonded indebtedness, shall be sufficient evidence to the Trustee of the facts of such increases respectively of capital stock and of bonded indebtedness.

10. Upon the completion and equipment of the main line of the railway of the Pacific Company as herein provided and in accordance with said general specifications (Schedule A), and the acquisition of terminals and terminal facilities as aforesaid, such completion, equipment and acquisition to be evidenced in the manner provided in Section 4, of Article Two, of the First Mortgage of the Pacific Company, of date September 1st, 1903, and upon full payment of all claims incident to such construction, acquisition and equipment, but subject to the said first mortgage and also to the said second mortgage of the Pacific Company, then this contract shall be deemed terminated, and all the obligations thereunder of either or any of the parties hereto to have ceased and determined. And in the event that upon such termination of this agreement, as aforesaid, the said proxy or proxies, or said certificates of capital stock or any of them shall still remain with the Trustee then the Trustee shall forthwith cancel and surrender such proxy or proxies and deliver such certificates to or upon the order of the holders thereof as therein named.

11. The Pacific Company, with the consent of the Western Company, does hereby assign to and specifically pledge with the Trustee, all the rights of the Pacific Company under this agreement, to be held by said Trustee in trust for the benefit and security of the holders of said First Mortgage Bonds, as provided in said mortgage, with power to said Trustee at any time, in case the Western Company shall have neglected or refused to fulfill this agreement, or any of the covenants therein contained, and whether or not the Pacific Company shall have made default under any of the provisions of said mortgage, to take any and all proceedings at law, or otherwise, either in its own name as Trustee or in conjunction with the Pacific Company, which it may deem requisite or appropriate, for the purpose of compelling the specific performance by the Western Company of each and every of its covenants and obligations herein contained whatsoever the nature of any such covenant or obligation may be.

12. The Trustee does hereby accept the foregoing assignment and pledge, and covenants to hold and enforce this agreement as security for said bondholders under the provisions of the said ^{First} mortgage of the Pacific Company; provided, however, that the Trustee shall not be answerable for the default or misconduct of any agent or attorney employed by it in connection with any of the matters herein referred to, if such agent or attorney shall have been selected with reasonable care, or for or by reason of any recital contained herein, or anything mentioned or referred to in any such recital, or for the doing or omission of any act or thing necessary to give validity hereto, or for anything whatever in connection with the trust hereby established except willful misconduct or gross negligence. And provided further that the Trustee shall not be under any obligation hereunder to take any action towards the execution or enforcement of the trust hereby created, which in its opinion will be likely to involve it in expense or liability, unless one of the other parties hereto, or one or more of the holders of the bonds secured by the first mortgage of the Pacific Company shall furnish it reasonable indemnity against or liability, and that the Trustee shall not be required ^{hereby} to take notice of any default hereunder unless notified in writing of such default, or to take any action in respect to any default, unless requested in writing to take action in respect thereof, by one or more of the holders of the bonds secured by said mortgage and then outstanding, and upon the tender of satisfactory indemnity as aforesaid, anything herein contained to the contrary notwithstanding. But neither any such notice or request, nor this provision therefor, shall affect any discretion hereby given to the Trustee, to determine whether or not to take action in respect of such default, or to take action without such request.

In WITNESS WHEREOF each of the parties hereto has caused its corporate name to be hereunto subscribed by the hand of its President or Vice-President, and its corporate seal to be hereto affixed and attested by its Secretary or assistant Secretary the day and year first above written.

THE RIO GRANDE WESTERN RAILWAY COMPANY

By E. T. Jeffery,
President

Attest:
Stephen Little,
Secretary

(SEAL)

WESTERN PACIFIC RAILWAY COMPANY,

BY

E. T. Jeffery,

President.

Attest:

L. R. Bush,
Asst. Secretary

(SEAL)

BOWLING GREEN TRUST COMPANY,

BY

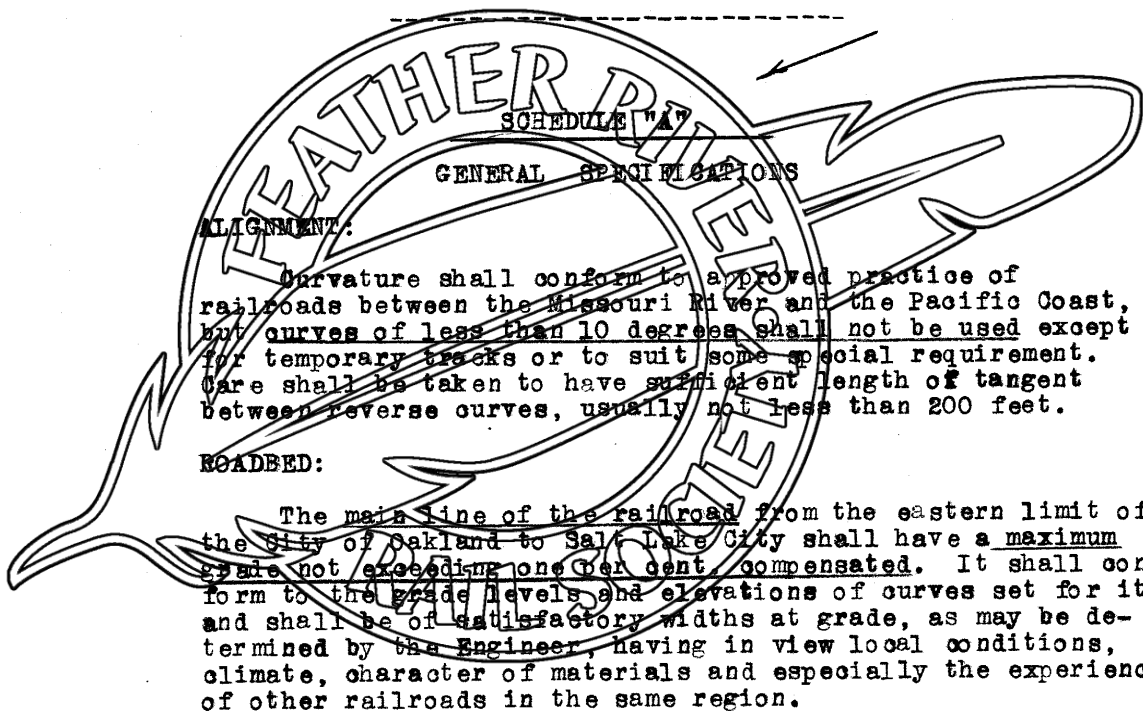
William H. Taylor,

Vice-President

Attest:

William M. Laws,
Secretary.

(SEAL)



ALIGNMENT:

Curvature shall conform to approved practice of railroads between the Missouri River and the Pacific Coast, but curves of less than 10 degrees shall not be used except for temporary tracks or to suit some special requirement. Care shall be taken to have sufficient length of tangent between reverse curves, usually not less than 200 feet.

ROADBED:

The main line of the railroad from the eastern limit of the City of Oakland to Salt Lake City shall have a maximum grade not exceeding one per cent, compensated. It shall conform to the grade levels and elevations of curves set for it and shall be of satisfactory widths at grade, as may be determined by the Engineer, having in view local conditions, climate, character of materials and especially the experience of other railroads in the same region.

CLEARING:

The ground included in the right of way shall be cleared of timber, as may be directed by the Engineer, care being taken that the surface of ground is thoroughly cleared, where embankments, drains or bridges are to be built, in accordance with approved practice.

GRADING:

Excavations shall be made to approved slopes and all

perishable material shall be excluded from embankments. Side drains and surface ditches shall be left neat and clear of obstructions, and a berme of suitable width shall be left between borrow pits and the foot of embankments. The roadbed and slopes shall be neatly trimmed so as to be in good condition for the track.

TUNNELS:

Tunnels will be generally excavated for single track, the normal cross section being not less than 16 feet wide by 22 feet in height above sub-grade. The tunnels where necessary will be lined with timber, upon approved plans. Where timber lining is used, the section will be enlarged sufficient to provide therefor. Drilling and blasting will be conducted with care so as not to shatter the roof and sides outside the prescribed section.

MASONRY:

The masonry structures will conform to the drawings of the Engineer. Where stone is used, the same shall be of sound, durable quality. There may be several classes of masonry, such as are usual in railroad construction, but the masonry will generally be of concrete made according to the specifications of the Engineer, and of good quality.

FOUNDATION:

Character of foundation and plans for same shall be determined by the Engineer. Excavations shall be made to such depth as to secure a solid foundation, or, where deemed necessary, timber, piles and iron may be used, piles being driven to a firm bearing sufficient to sustain the weight of imposed loads.

PILE AND TRESTLE BRIDGES:

Pile and trestle bridges will conform to detail drawings furnished by the Engineer and shall in design conform with modern practice. All timber shall be of suitable quality, generally of Yellow Pine, Sugar Pine or Fir.

SPAN BRIDGES:

Bridges over North Fork of Feather River and Spanish Creek will be of steel, but all other bridges will be of steel or wood, as the Engineer may decide, having always in view the necessity of early completion of the road. All bridges shall be designed under the direction of the Engineer and will conform to modern practice. At this time, the loading specification would be two locomotives coupled one behind the other of 177½ tons each, followed by a train of 5,000 pounds per lineal foot, known as Cooper's "E" Loading Specification.

TRACK:

The main line shall be laid with new steel rails that have passed inspection and have a weight of not less than 85 pounds per lineal yard, usually in 33 foot lengths. They shall have suitable splices of bolts and angle bars and be full spiked to the ties. Tie plates will be used on curves where directed by the Engineer. Switches, switch stands, etc. shall be of approved modern design.

The number of ties per mile shall be determined by conditions such as class of timber, dimensions of ties and character of roadbed. Where ties of 8" to 9" face can be obtained at reasonable cost, a less number can be used per mile than where it is advisable to use ties having 6" to 8" face. Usually not less than an average of 2,640 ties per mile will be used, but this number may be exceeded, as directed by the Engineer.

EQUIPMENT:

This will consist of Locomotives of different classes, modern design and best construction. Also cars of various classes and modern design for passenger train service, and cars of various classes and suitable design for freight service, the aggregate cost of the Equipment being not less than \$3,000,000.

GENERAL FACILITIES:

There will be provided suitable yards, side tracks, wyes and turnouts where necessary; also at suitable points and where necessary, water stations of modern design and sufficient capacity; also necessary station houses for the accommodation of passenger and freight traffic; also, where necessary, suitable engine houses, machine and repair shops and appurtenances, such as turn-tables, coaling apparatus, etc., for taking care of and maintaining the locomotives and cars of the Company, all conforming to modern practice.

WORKMANSHIP:

All workmanship shall be done in a first-class manner, such as will produce a first-class property.

April 19th, 1905.

