

ORIGINAL

Decision No. 3505

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application
of The Western Pacific Railroad
Company, of Franklin V. Spooner,
Robert R. Pardow and John C. Rued,
and of Henry E. Cooper, A. M. Hunt,
James D. Phelan, George Whittell,
David R. Forgan, I. DeBruyn,
C. Ledyard Blair, Frederick H. Ecker,
Starr J. Murphy, Robert W. Martin,
William Salomon and Richard B. Young,
as the re-organization committee con-
stituted by the plan and agreement of
re-organization of Western Pacific
Railway Company, for authorization of
proceedings pursuant to said plan and
agreement of re-organization.

Application No. 2351.

.....

John F. Bowie for petitioners.
Perry Evans for Western Pacific Railway Company.

BY THE COMMISSION.

FIRST SUPPLEMENTAL OPINION.

The supplemental petition herein was filed on July 7, 1916. The petition alleges, in effect, that at a foreclosure sale held in the case of The Equitable Trust Company of New York, Complainant, vs. Western Pacific Railway Company, et al., Defendants, Equity No. 169, in the District Court of the United States for the Northern District of California, the entire property of Western Pacific Railway Company was sold for the sum of eighteen million dollars to Franklin V. Spooner, Robert R. Pardow and John C. Rued, acting at the instance of and pursuant to an arrangement with the re-organization committee constituted under the plan and agreement of re-organization, dated December 15, 1915, of Western Pacific Railway Company; that said sale was duly confirmed by a decree of said court entered on July 1, 1916; that said purchasers have transferred all their rights to The Western Pacific Railroad Company, one of the petitioners herein; that a deed to said property

is to be executed to The Western Pacific Railroad Company by Francis Krull, the Special Master, Western Pacific Railway Company, Warren Olney, Jr. and Frank G. Drum, as receivers of the property of Western Pacific Railway Company, The Equitable Trust Company of New York as Trustee under the first mortgage of Western Pacific Railway Company, Central Trust Company of New York as Trustee under the second mortgage of Western Pacific Railway Company, and the said three purchasers; that The Western Pacific Railroad Company desires to execute a revised deed of trust or mortgage to First Federal Trust Company of San Francisco and Henry E. Cooper, as Trustees, to secure an authorized issue of bonds of the face value of fifty million dollars; and that The Western Pacific Railroad Company, upon the issue of the bonds and capital stock referred to in the order of June 26, 1916, herein is to acquire the entire property of Western Pacific Railway Company and certain additional property hereinafter described. A description of the property to be acquired by The Western Pacific Railroad Company, as of July 10, 1916, is stated by petitioners to be as follows:

(a) All of the railroad, properties, franchises, shares of stock, accounts receivable, and other assets of Western Pacific Railway Company and its Receivers; subject, however, to the payment of taxes, the liabilities of the Receivers, preferred indebtedness of Western Pacific Railway Company and other amounts which are charged on said property by the decrees of foreclosure and confirmation

(b) Cash in the hands of the Receivers which since the date of the hearing on the original petition has increased to the sum of.....\$2,082,204.99

(c) The sums received by the Reorganization Committee from the depositors under the plan who elected to pay in full their subscriptions (covering \$4,539,380 principal amount of bonds) June 26, 1916, amounting to.....\$4,085,442.00

(d) The sum received by the Reorganization Committee from the Underwriting Syndicate as payment in full for \$5,070,631.27 principal amount of bonds, amounting to.....\$4,563,568.15

(e) The sums received by the Reorganization Committee from subscribing depositors who elected to pay only the installment of 20% called on June 26, 1916, on their subscriptions (the total face amount of bonds covered whereby is \$2,831,640.) amounting approximately to \$ 509,695.00

Total cash, approximately \$11,240,910.14

Less sum to be retained by the Purchasers amounting to \$ 2,350,000.00

Net amount to be paid The Western Pacific Railroad Company, approximately \$ 8,890,910.14

(f) The rights of the Reorganization Committee under the subscriptions of Syndicate and depositors for the unpaid portion of their subscriptions amounting (exclusive of accrued interest) to \$ 8,841,295.00

The petition asks that the Railroad Commission make its order as follows:

1. Authorizing Western Pacific Railway Company to sell and convey its entire property to The Western Pacific Railroad Company.

2. Authorizing The Western Pacific Railroad Company to issue thirteen (13) shares of its common capital stock, of the par value of \$100.00 each, to its thirteen directors, one share to each director, upon the payment for said stock in cash at par.

3. Authorizing The Western Pacific Railroad Company to issue 474,987 shares of its common capital stock, of the par value of \$47,498,700.00 and 275,000 shares of its non-cumulative six per cent preferred capital stock, of the par value of \$27,500,000.00, to the Purchasers, ^{or} their assigns, in total payment, with the exception of \$2,350,000.00, in cash, for the entire property of Western Pacific Railway Company and its receivers, subject to the charges imposed thereon by the decrees of foreclosure and confirmation heretofore entered in said case of The Equitable Trust Company of New York, Complainant, vs. Western Pacific Railway Company, et al., Defendants.

4. Authorizing The Western Pacific Railroad Company to issue its first mortgage five per cent gold bonds of the face value of twenty million dollars and to sell the same so as to net not less than ninety per cent of their face value plus accrued interest, provided that The Western Pacific Railroad Company may credit the Purchasers or their assigns on account of the purchase price of the bonds with the interest paid or allowed by the re-organization committee to subscribing depositors and the Underwriting Syndicate for the period elapsing between the dates of payment by said subscribers or Underwriting Syndicate to the re-organization committee in payment for bonds and the date of

payment by the re-organization committee to The Western Pacific Railroad Company, the total not to exceed the sum of \$15,000.00, and also the amounts received by The Western Pacific Railroad Company in payment of ten per cent heretofore made on subscription for 14,987 shares of its common capital stock, amounting to \$149,870.00.

5. Authorizing The Western Pacific Railroad Company to execute and deliver to First Federal Trust Company and Henry E. Cooper, as Trustees, a deed of trust or mortgage to secure its first mortgage gold bonds of the maximum face value of fifty million dollars.

A public hearing on the supplemental petition was held in San Francisco on July 8, 1916, before the Railroad Commission en banc. It appeared at this hearing that on June 28, 1916, the entire property of Western Pacific Railway Company, subject to certain outstanding obligations, was sold for the sum of eighteen million dollars to three individual Purchasers, that these Purchasers have assigned their rights, in accordance with a previous agreement, to The Western Pacific Railroad Company, and that the parties desire the Railroad Commission's authority to the consummation of the transaction, in so far as the Commission's consent is necessary.

The first request is that Western Pacific Railway Company be authorized to sell and convey its entire property to The Western Pacific Railroad Company, subject, however, to the "payment of taxes, the liabilities of the receivers, preferred indebtedness of Western Pacific Railway Company and other amounts which are charged on said property by said decrees."

In addition to the taxes accruing in California, Nevada and Utah, and now amounting to approximately \$111,618.00, the only claims against the property for taxes are the sum of \$14,080.00, being an amount claimed by the Federal Government as income tax and

an item claimed by the City and County of San Francisco as taxes on the cash in the hands of the receivers. Both the latter items have been contested by the receivers. Petitioners report that the accounts payable and other fixed liabilities of the receivers on July 10, 1916 were approximately \$872,574.10 and that the accounts receivable were \$588,499.50. There are possible contingent liabilities on freight claims and personal injury, fire and live stock claims, the total estimated payments on which, it is reported, will not exceed the sum of \$60,000.00. The preferred indebtedness consists of a claim of the Southern Pacific Company which has been allowed to the extent of \$1400.00, and a claim of Utah Fuel Company amounting to approximately \$40,000.00, which claim is being contested in its entirety.

While technically there are no "other amounts which are charged on said property by said decrees", the Purchasers of the property were compelled to deposit with the Special Master in the foreclosure proceedings the sum of \$402,063.60 to cover certain items to which reference will now be made, which sum must be repaid to the Purchasers or their assigns, in so far as allowed by the Federal Court, by The Western Pacific Railroad Company, either from cash in the hands of the receivers or from some other source.

Said sum of \$402,063.60 represents the proportionate share of the assenting bondholders in a total sum of \$425,000.00. As the portion of that sum which may hereafter be allowed by the Federal Court must be paid by The Western Pacific Railroad Company and will to that extent diminish the ability of The Western Pacific Railroad Company to make betterments to the existing property, acquire new passenger and freight equipment and construct necessary extensions and feeders, for all of which purposes The Western Pacific Railroad Company has asked the Railroad Commission to authorize the issue of bonds, it becomes necessary for the Commission to inquire into the various items which enter into the total amount which the Purchasers have been compelled to deposit with the Special Master. These items, as recited

in the decree of confirmation, are as follows:

1. Claim of receivers' counsel.....	\$170,000.00
2. Claim of receivers.....	80,000.00
3. Claim of complainant.....	25,000.00
4. Claim of complainant's counsel.....	75,000.00
5. Compensation and expenses of Special Master.....	30,000.00
6. Costs and expenses of complainant and counsel, and all other charges.....	25,000.00

The claim of John S. Partridge, attorney for the receivers, is for a fee of approximately \$125,000.00 per year for his services as counsel for the receivers. The salaries of the entire legal department of Western Pacific Railway Company, with the exception of certain local counsel, prior to the receivership, were not to exceed \$25,000.00 per year, consisting of \$10,000.00 for the general counsel, \$7,200.00 for the general attorney, and the compensation of two or three other attorneys. During the receivership, this legal staff, with the exception of general counsel, was retained and paid by the receivers, and continued to perform most of the legal work theretofore handled by the department. Mr. Partridge's services consisted of the usual routine work of counsel for receivers in a railroad receivership, together with the trial of a number of cases and some other work. The counsel for the receivers retained his general practice in the same office in which he practiced law prior to the receivership. Mr. John F. Bowie, counsel for the re-organization committee, testified that he had stated to Mr. Partridge that, in his judgment, a fee of \$40,000.00 would be a liberal compensation. This claim has not been approved by the receivers. In fact, Mr. Warren Olney, Jr., one of the receivers, as testified to by Mr. Bowie, has taken the position, as shown by the testimony herein, that the amount of the fee as claimed is not justified in any manner,

shape or form.

The claim of the receivers is for \$80,000.00. The testimony shows that the receivers met every morning on receivership matters. Each receiver, however, continued the business in which he was theretofore engaged, one as a member of one of the leading law firms in San Francisco and the other as a financier connected with numerous corporations. The testimony shows that Mr. C. M. Levey, who operated the railroad under the receivers and attended to all the details of operation, received a salary of \$20,000.00 per year.

The Equitable Trust Company of New York, Trustee under the first mortgage of Western Pacific Railway Company and complainant in the foreclosure proceeding in the Federal Court, claims a compensation of \$25,000.00 for its services. This is the only one of the items above referred to which is not being contested before the Federal Court by the re-organization committee.

Counsel for complainants ask a fee of \$75,000.00 for their services. This fee is to be divided between Murray, Prentice & Howland, the New York attorneys of The Equitable Trust Company of New York and Jared How of San Francisco. While the exact division of this amount, if it is allowed, has not been determined, the testimony shows that Mr. How's claim is between \$25,000 and \$30,000. Counsel for the re-organization committee takes the position that this fee includes a retainer in a suit against The Denver and Rio Grande Railroad Company and that the fee should not exceed the sum of \$50,000.00.

The fee of \$30,000.00 for the Special Master includes

an item of \$15,000.00 for the Federal Stamp Tax, \$4500.00 for advertising, \$1500.00 for Special Master's bond and \$7,000.00 for his services. The Special Master is also to take a trip to Europe for the purpose of stamping certain bonds, for which he is to be paid the sum of \$5000.00 in addition to the sum of \$50,000.00.

The item of \$25,000.00 covers possible costs and expenses hereafter to arise in connection with court proceedings.

Every person who has the welfare of the State of California at heart wishes to see the new railroad given a fair chance to succeed. Every dollar which is not fairly and reasonably necessary for the payment of the expenses of the receivership and other expenses in connection with the re-organization should be saved to the new company and should be expended by it in the purchase of equipment, in betterments to the property and in the construction of the branches and feeders which are vitally necessary if the railroad is to succeed.

It seems to be entirely too usual, when a railroad or other utility passes through receivership, for everybody connected therewith, the lawyers, the bankers, the re-organizers, the officers of committees and the special masters, to regard the unfortunate corporation as legitimate prey for the most exorbitant claims--claims which would never be presented by any rational person, for services of the same value to a going concern. Why services of this character should be deemed so much more valuable when performed for a bankrupt concern than for a going concern is difficult to understand.

Among the most extravagant of the claims presented in the Federal Court are, of course, the claims for various counsel

fees. Fees amounting to five times the entire annual salary roll of the legal department in San Francisco prior to the receivership, are demanded by the counsel for the receivers, and fees amounting to three times the annual salaries of the entire San Francisco legal department are demanded by the counsel for The Equitable Trust Company of New York. The claims would, of course, never be presented except in the case of a receivership. As a further instance of the fees which, apparently by force of tradition, are claimed in these receivership proceedings, reference may be made to the fee of \$7,000.00 claimed by the Special Master for his services, which services have consisted principally in reading the notice of the sale to the people assembled in front of the Western Pacific Railway Company's depot in Oakland, and accepting the bid made by the Purchasers. While he is charged with the responsibility in connection with the custody of certain bonds and the deposit of certain monies, it is interesting to note that the banks in which these bonds and monies are deposited claim a separate and additional fee for the same services. It is significant to draw attention to the fact that for the simple service performed by the Special Master, he is to receive a compensation within \$1,000 of the annual salary of the members of the Supreme Court of the State of California.

The history of this and similar receivership proceedings from one end of the United States to the other prompts us to suggest that the time has come for a complete change in the handling of such proceedings. Instead of having such proceedings handled by special attorneys, special experts and special officials of various kinds, all claiming extravagant compensation, they could be handled far more economically and generally more efficiently through the Interstate Commerce Commission in case of Federal receiverships and through the State Railroad or Public Service Commissions in case of State receiverships of

public utility properties. These commissions have available impartial experts, trained in every branch of public utility business. With the necessary changes in the laws, the Commissioners and their experts could handle receivership matters more expeditiously, generally more efficiently and always at tremendously less expense than the present court proceedings.

In Decision No. 3453, rendered on June 22, 1916, in the above entitled proceeding, the Railroad Commission stated that it would thereafter authorize the issue of first mortgage bonds of the face value of twenty million dollars, for certain purposes specified in the order, including the following:

"To pay the distributive shares of non-assenting bondholders, underwriting commission, expenses of foreclosure and re-organization, including court costs, compensation and allowances of the receivers and their counsel, the mortgage trustee and its counsel, taxes on the creation and issue of new securities, compensation and expenses of the protective and re-organization committees, their depositaries and counsel, fees of engineering, accounting and other experts, engraving, printing and miscellaneous requirements, not to exceed the sum of two million dollars."

The supplemental petition herein now alleges that in addition to the items mentioned in the decree of confirmation, totalling for the assenting bondholders the sum, as now claimed, of \$402,063.60, all of which items were included in the items covered by said sum of \$2,000,000.00, it will now be necessary to secure from the first mortgage bonds of The Western Pacific Railroad Company the sum of \$2,350,000.00. The petition asks that the Commission now amend its order so as to authorize the use of the proceeds of bonds, said proceeds amounting to the sum of \$2,350,000.00, for a part of the purposes for the total of which the Railroad Commission has heretofore stated that it would

authorize the use of proceeds amounting to two million dollars from the sale of bonds.

The revised statement of the purposes for which it is proposed to use said \$2,350,000.00 has been filed herein and reads as follows:

1. Amount payable to Special Master as part of purchase price.....	\$	971,424.
2. Commission of Underwriting Syndicate....		400,000.
3. Compensation of Underwriting Guarantors.		100,000.
4. Central Trust Company of New York Cross Complainant in foreclosure suit.....	\$5,000.	
Counsel.....	7,500.	
Expenses.....	<u>107.</u>	12,607.
5. Special Master's trip to Europe Compensation and traveling expenses.....	3,000.	
Expenses of advertising, distributing funds, etc.....	<u>2,000.</u>	5,000.
6. The Western Pacific Railroad Corporation Incorporation tax.....	3,850.	
Federal war tax on original issue of stock.....	37,500.	
Federal war tax on transfer of stock.....	15,000.	
New York tax on transfer of stock.....	15,000.	
Engraving of stock certificates and other printing.....	5,000.	
Notaries, filing fees, etc.....	100.	
Resident Delaware agent.....	100.	
Counsel fees for preparing Charter, by-laws, stock certificates, and attending to incorporation, issue of stock and incidental matters.....	<u>35,000.</u>	91,550.
Working Capital.		150,000.
7. Dutch bondholders Protective Committee		20,000.
8. Dutch stamp tax and transportation of securities.....		25,000.
9. Western Pacific First Mortgage Bondholders Committee.....		
Depository and agents of Depository.....	40,000.	
Printing, postage, and other disbursements to date.....	12,600.	
Disbursements of counsel.....	5,400.	
Counsel fees.....	60,000.	
Secretary	5,000.	
Eleven members of Committee @ \$7,500 each..	82,500.	
Chairman.....	<u>12,500.</u>	218,000.

Amount brought forward \$ 1,993,581.

10. Re-organization Committee:

Depository and agents	\$40,000.	
Printing, postage, traveling expenses and other disbursements to date	20,492.	
Disbursements of counsel	5,000.	
Secretary	10,000.	
Eleven members of Committee @ \$12,500 each	137,500.	
Chairman	27,500.	
Counsel fees	60,000.	\$ 300,492.

11. Reserved to provide for future expenses, such as insurance on transporting securities between New York, San Francisco, Boston and Chicago, cost of Interim Receipts of Depositaries to be used in case of delay in engraving of permanent securities, and other expenses, any unexpended balance to be turned over to Holding Company as additional working capital

	\$ 55,927.
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Total \$ 2,350,000.

Many of the items in the foregoing list are entirely reasonable. Other items are clearly too high and should be reduced. We are of the opinion that we would not be justified in authorizing the capitalization of any amount for the items hereinbefore referred to in excess of the amount stated in our original order herein, being the sum of two million dollars. If, after a reasonable effort has been made to place these expenditures on a reasonable basis, the sum of two million dollars will not be sufficient for this purpose, we assume that any remaining sum may be paid from cash in the hands of the receivers, and not capitalized by the issue of bonds.

We are of the opinion that the protective and re-organ-

zation committees and their counsel should be commended for the efforts which they have made to bring about an honest re-organization with as reasonable an expenditure as is consistent with the way in which re-organizations are handled. However, the mere fact that the present re-organization is on terms more reasonable than some other re-organizations in the past is by no means conclusive of the wisdom or efficiency of the present method of handling receiverships.

Western Pacific Railway Company will be authorized to sell and convey its entire property to The Western Pacific Railroad Company, subject to the usual condition that the grantee shall file with the Railroad Commission a stipulation in form satisfactory to the Commission that it will never claim before the Railroad Commission or any other public authority any value for its franchises in the State of California in excess of the sum paid for them by the original grantee.

The Western Pacific Railroad Company will be authorized to issue thirteen shares of its common capital stock, of the par value of \$100.00 each, to its thirteen directors, one share to each director, upon the payment for said stock in cash, at par, and will also be authorized to issue 474,987 shares of its common capital stock of the par value of \$47,498,700.00 and 275,000 shares of its non-cumulative six per cent preferred capital stock of the par value of \$27,500,000.00, to The Western Pacific Railroad Corporation, the Holding Company, incorporated under the laws of Delaware, in partial payment for the property of Western Pacific Railway Company. The sum of \$149,870.00 heretofore paid on a subscription for 14,987 shares of the common capital stock of The Western Pacific Railroad Company will, we assume, be repaid out of cash now in the hands of the receivers.

The Western Pacific Railroad Company will be authorized to execute and deliver to First Federal Trust Company and Henry

E. Cooper, as Trustees, a deed of trust or mortgage in substantially the form attached to the supplemental petition herein as "Supplemental Exhibit No. 3", securing a maximum issue of first mortgage bonds of the face value of fifty million dollars.

The Western Pacific Railroad Company will be authorized to issue bonds of the face value of twenty million dollars and to use the proceeds thereof for the purposes specified in the order herein of June 22, 1916.

FIRST SUPPLEMENTAL ORDER.

WESTERN PACIFIC RAILWAY COMPANY and THE WESTERN PACIFIC RAILROAD COMPANY and other parties having filed herein a supplemental petition as indicated in the opinion which precedes this order, and a public hearing having been held on said supplemental petition, and the Railroad Commission finding that the purposes for which the capital stock and bonds herein authorized to be issued are to be used are not in whole or in part reasonably chargeable to operating expenses or to income,

IT IS HEREBY ORDERED AS FOLLOWS:

I.

Western Pacific Railway Company is hereby authorized to sell and convey to The Western Pacific Railroad Company its entire property, more particularly described in Exhibit "A" which is attached to this order and made a part thereof; provided, that within thirty days from the date of this first supplemental order, The Western Pacific Railroad Company shall have filed herein a stipulation, in form satisfactory to the Railroad Commission, duly authorized by its board of directors, agreeing for The Western Pacific Railroad Company, its successors and assigns, that they will never claim before the

Railroad Commission or any other public authority, in any proceeding of any character, any value for the franchises and permits in the State of California herein authorized to be conveyed in excess of the amount paid therefor by their original grantee in each case, which stipulation shall refer by number of ordinance or resolution and date to each such franchise or permit and shall state the sum paid in each instance by the original grantee.

II.

The Western Pacific Railroad Company is hereby authorized to issue 475,000 shares of its common capital stock of the par value of \$47,500,000.00 and 275,000 shares of its non-cumulative six per cent preferred capital stock of the par value of \$27,500,000.00 and \$20,000,000.00, face value, of its first mortgage gold bonds, to mature on March 1, 1946, and to bear interest at the rate of five per cent per annum, payable on the first days of March and September of each year, on the following conditions and not otherwise, to-wit:

1. The Western Pacific Railroad Company is hereby authorized to issue thirteen shares of its common capital stock, of the par value of \$100.00 each, to its thirteen directors, one share to each director, upon the payment for said stock, in cash, at par, and shall apply the proceeds from the sale of said capital stock to the construction of extensions and feeders.

2. The Western Pacific Railroad Company is hereby authorized to issue 474,987 shares of its common capital stock, of the par value of \$47,498,700.00 and 275,000 shares of its non-cumulative six per cent preferred stock of the par value of \$27,500,000.00, to The Western Pacific Railroad

Corporation, the Holding Company, in total payment, with the exception of a sum not to exceed two million dollars, in cash; hereafter referred to, for the entire property of Western Pacific Railway Company, more particularly described in ~~Exhibit "A"~~ Exhibit "A", hereto attached; provided, that the par value of said capital stock shall never be claimed before the Railroad Commission or any other public authority as representing for rate making or any other purpose the present fair value of the property herein authorized to be conveyed.

3. The Western Pacific Railroad Company is hereby authorized to issue its first mortgage gold bonds of the face value of twenty million dollars, to be secured by the deed of trust or mortgage hereinafter referred to, on the following conditions and not otherwise:

(a) Said bonds shall be sold so as to net The Western Pacific Railroad Company not less than ninety per cent of their face value, plus accrued interest.

(b) The proceeds from the sale of said bonds shall be used for the following purposes:

(1) To pay the distributive shares of non-assenting bondholders, underwriting commission, expenses of foreclosure and re-organization, including court costs, compensation and allowances of the receivers and their counsel, the mortgage trustee and its counsel, taxes on the creation and issue of new securities, compensation and expenses of the protective and re-organization committees, their depositaries and counsel, fees of engineering, accounting and other experts, engraving, printing and miscellaneous requirements, not to exceed the sum of \$2,000,000.00.

(2) When detailed statements of the purposes for which following the expenditures are to be incurred shall have been filed by The Western Pacific Railroad Company, the proceeds from the sale of said bonds may be used, in general, for the following purposes:

a. For betterments to the existing property of Western Pacific Railway Company, not to exceed the sum of.....\$2,597,750.00

b. For the acquisition of new passenger and freight equipment, not to exceed the sum of \$3,514,000.00

c. For the acquisition by purchase, construction or otherwise of extensions and feeders, including payment of interest during construction, the acquisition of additional new property, the payment of receivers' car trust obligations, the provision of working capital for The Western Pacific Railroad Company, and the possible protection of claims against The Denver and Rio Grande Railroad Company; not to exceed the sum of.....\$10,506,250.00

4. The Western Pacific Railroad Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the capital stock and bonds hereby authorized to be issued, and on or before the 25th day of each month the company shall make a verified report to the Railroad Commission, stating the sale or sales of said bonds and capital stock during the previous month, the terms and conditions of sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

5. The authority hereby given to issue capital stock and bonds shall apply only to capital stock and bonds issued by The Western Pacific Railroad Company on or before July 1, 1917.

6. The authority hereby given to issue bonds shall not become effective until The Western Pacific Railroad Company has paid the fee specified in the Public Utilities Act.

III.

The Western Pacific Railroad Company is hereby authorized to execute its deed of trust or mortgage to Federal Trust Company and Henry E. Cooper, Trustees, to be dated June 26, 1916, and to secure the issue of a maximum face value of first mortgage gold bonds in the amount of fifty million dollars, to mature March 1, 1946, of which bonds the first twenty million dollars principal amount are to bear interest at the rate of five per cent per annum, payable on the first days of March and September, and to be redeemable at the face amount thereof and accrued interest thereon, and the other bonds are to bear interest at such rate or rates, not exceeding six per cent per annum, payable on such semi-annual dates and to be redeemable at such price or prices as shall be determined by the board of directors of the company at the time of the issue thereof, subject to the approval of the Railroad Commission, said deed of trust or mortgage to be in substantially the form attached to the supplemental petition herein and marked "Supplemental Exhibit No. 3"; provided, that the approval herein given of said mortgage or deed of trust is for the purpose

of this proceeding only and is an approval in so far as the Railroad Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said mortgage or deed of trust as to such legal requirements to which said mortgage or deed of trust may be subjected.

Dated at San Francisco, California, this 12th day of July, 1916.

Fee \$8,000.00
JUL 14 1916
Charles R. Dwyer
Clerk

Man Thelen
W. Howard
W. Gordon
Edwin C. Edgerton
Frank R. Dehu
Commissioners.

EXHIBIT "A"

(1) Western Pacific Railway Company's main line of railroad from San Francisco, California, to Salt Lake City, Utah, commencing at the City and County of San Francisco, running thence in and through the said City and County of San Francisco, and along, over and across the streets, alleys and squares thereof; thence by ferry and barge system to the City of Oakland, Alameda County, California; thence in and through said City of Oakland, and along, over and across the streets, alleys and squares thereof; thence southeasterly and easterly to a point on the boundary line between the said County of Alameda and the County of San Joaquin, State of California; thence in a general easterly, northeasterly and northerly direction to the City of Stockton, said County of San Joaquin; thence in a general northwesterly and northerly direction to the City of Sacramento, County of Sacramento, State of California; thence in and through said City of Sacramento, and along, over and across the streets, alleys and squares thereof; thence in a general northerly direction to the City of Marysville, County of Yuba, State of California; thence in a general northerly direction to a point at or near the Town (now City) of Oroville, County of Butte, State of California; thence northerly and northeasterly along the North Fork of the Feather River, easterly and northeasterly along the East Branch of the North Fork of Feather River, southerly and southeasterly along Spanish Creek and Spring Garden Creek, southeasterly and northeasterly along the Middle Fork of the Feather River to a point in Sierra Valley, County of Plumas, State of California; thence easterly across Sierra Valley and through Beckwith Pass to a point on the boundary line between the States of California and Nevada; thence in a general easterly direction across the State of Nevada to a point on the boundary line between the

States of Nevada and Utah; thence in a general easterly direction to a point in Salt Lake City, Salt Lake County, said State of Utah, including that certain line of railroad formerly owned by the Alameda and San Joaquin Railroad Company and now owned by the Western Pacific Railway Company, extending from the City of Stockton, County of San Joaquin, State of California, to Tesla, Alameda County, California, a distance of about 36.6 miles, together with all the other property and franchises acquired by the Western Pacific Railway Company from said last named company.

Also all the railroads, terminals, rights of way, franchises and other property heretofore acquired by Western Pacific Railway Company from the San Francisco Terminal Railway and Ferry Company, the Sacramento and Oakland Railway Company and the Stockton and Beckwith Pass Railway Company.

(2) All other lines of railroad wherever situated whether owned by Western Pacific Railway Company at the time of the execution and delivery of its First Mortgage or thereafter constructed or acquired whether by the Railway or the Receivers of its property, and owned by it, including all branches, extensions, terminals, terminal property and interest in terminals, union depots or stations, and all way-grounds, rights of way, depot grounds, roadbeds, superstructures, rails, tracks, side tracks, sidings, switches, and turnouts, bridges, viaducts, culverts, embankments, lands, yards, buildings, offices, depots, stations, warehouses, car houses, engine houses, freight houses, coal houses, wood houses, machine shops and other shops, turn-tables, water stations, water tanks, fences, telegraph lines, elevators, structures, erections and fixtures, and all wharves, piers, docks, ferries, boats, steamers, barges, transports, tugs and transfer and ferry boats.

(3) All the right, title and interest of Western Pacific Railway Company in and to any and all parcels of real property wherever situated, either owned by it or purchased or acquired by

the Receivers of its property, or in which it has the sole beneficial interest, and which have been acquired from time to time, although such parcels may be detached from and do not form an integral part of the Railway's line of railway.

(4) All locomotives, engines, cars and other rolling stock, steam or electrical equipment, machinery, instruments, tools, implements, materials, supplies, furniture and other chattels of Western Pacific Railway Company wheresoever situated, whether acquired by the Railway or by the Receivers of its property.

(5) All the following described shares of stock, which said stocks, with the exception of stock in Salt Lake City Union Depot and Railroad Company, are deposited and pledged with and are held by The Equitable Company as Trustee of the First Mortgage of Western Pacific Railway Company, namely:

\$400,500 par value of stock of Standard Realty and Development Company.

\$2,500,000 par value of stock of San Francisco Terminal Railway and Ferry Company.

\$1,000,000 par value of stock of Stockton and Beckwith Pass Railway Company.

\$99,900 par value of stock of Salt Lake City Union Depot and Railroad Company.

(6) All cash in the possession of the Receivers of the property of Western Pacific Railway Company or to which they are entitled, all sums of money and all accounts of every kind due to the Receivers, all estates, interests and rights under leases, trackage, terminal, crossing, operating and other executory contracts and agreements to which the Railway or the Receivers may be parties.

(7) Western Pacific Railway Company's rights and interests in and under the following agreements:

(a) An agreement dated June 23, 1905, between Western Pacific Railway Company, The Rio Grande Western Railway Company

(now consolidated into The Denver and Rio Grande Railroad Company) and the Bowling Green Trust Company, as Trustee under the First Mortgage of the Railway.

(b) Agreement dated June 23, 1905, between Western Pacific Railway Company, The Denver and Rio Grande Western Railway Company (now consolidated into The Denver and Rio Grande Railroad Company), and the Bowling Green Trust Company, as Trustee under the First Mortgage of the Railway.

(c) An agreement dated June 23, 1905, between The Missouri Pacific Railway Company and The Denver and Rio Grande Railroad Company.

(d) All other agreements, leases and traffic contracts to which Western Pacific Railway Company is a party or in which the Railway has an interest.

(8) All other property of every kind and description owned by Western Pacific Railway Company or acquired by the Railway or by the Receivers of its property; also any and all corporate and other rights, powers, privileges and franchises, easements, tenements, hereditaments and appurtenances, reversions and remainders, which the Railway held at the time of the execution and delivery of its First Mortgage, or which it or the Receivers have subsequently acquired and now possess or exercise, and any and all rents, issues, profits, tolls and other income of said lines of railroad, extensions and branches, or any part thereof, and all the estate, right, title and interest, property, possession, claim and demand whatsoever, as well at law as in equity, of the said Railway of, in and to the said lines of railroad, terminals and other property, and any and every part thereof, with all of the appurtenances.

(9) Excepting out of and reserving from the property above described so much thereof, if any, as shall heretofore have been conveyed by Western Pacific Railway Company and released from the lien of the First Mortgage by the Trustee thereunder and released from the

Second Mortgage by the Trustee thereunder.

(10) Excepting also out of and reserving from the property above described any and all trackage and operating rights now existing in the Boca and Loyalton Railroad Company, Chester L. Hovey, as Receiver thereof, and the Mercantile Trust Company of San Francisco, as Trustee under the first mortgage of the Boca and Loyalton Railroad Company, over a certain portion of the track approximately three and three-fourths miles in length.

Subject to all lawful obligations against said property.