

## THE STORY OF "THE DES MOINES RIVER LANDS"

BY JAMES B. WEAVER

Perhaps the most dramatic chapter in the history of the settlement of Iowa is comprised in the story of what for a half century was commonly known as "The Des Moines River Land Grant." It had its origin in an era in which water navigation ruled supreme and the states of the Union vied with one another in their eagerness to secure grants of land from Congress for river improvement. The promise of railroads was but a remote dream, their invasion of the area west of the Mississippi believed to be far in the future, if possible at all of accomplishment. The dependence for transportation was upon the rivers, the Mississippi, the Ohio, the Des Moines, and all the rest. Thus a grant by Congress August 8, 1846, to the Territory of Iowa "to aid in the improvement" of the Des Moines River from its mouth to the Raccoon Forks (the present site of the city of Des Moines) of every alternate section (640 acres) lying within five miles of the river (not otherwise disposed of, incumbered or appropriated) was hailed with joy by all as marking a milestone in the history of the territory, then eagerly seeking admission to the Union as a state. Steamboats had for years traversed the Des Moines. Captain Allen on May 1, 1843, arriving by boat at the Raccoon Forks, had established Fort Des Moines. It was the fervent belief of those in public life and out of it that it was entirely feasible by dams and locks to make the river a great and permanent artery of trade, the chief dependence of the state in the teeming commerce certain to follow its rapid development already under way.

Not a soul of that period could by the wildest flight of the imagination have guessed that the grant of August 8, 1846, was to prove utterly ineffective, an idle dream to be rudely shattered by the coming of the Iron Horse, and that it was to be but the beginning of an active and bitter controversy that should last for forty-six years (until January 20, 1892), intimately involving the lives and fortunes of thousands of individuals scattered along the river from its mouth well to the north boundary of the state.

## EXTENT OF THE GRANT

It will be noted that the grant of land was to *aid in the improvement* of the navigation of the Des Moines River, and no conditions were attached. There was no guaranty of navigability. The grant arose from the conviction of Congress and of the people of Iowa that the river could be made an important artery of commerce, and that the funds for its improvement could be realized from the sale of the lands. The area to be improved was that portion of the river between its mouth and the Raccoon Forks, and was so stated in the grant. The river, however, in fact extended north to the Minnesota line. The gift did not in express terms fix the northern terminus of the *grant*, and immediately there arose between the state and the United States a question as to whether the grant of land stopped at the Raccoon Forks or extended north to the Minnesota line. If it extended only to the Raccoon Forks but 300,000 acres of land were involved; if to the state border, 1,300,000 acres. So the question of the extent of the grant was a very vital one to the state.

## THE STATE ACCEPTS THE GRANT

Four months after the grant to the territory, to wit, on December 28, 1846, Iowa was admitted to the Union, and on January 9, 1847, the legislature accepted the grant.

Commissioner Piper of the United States General Land Office on October 17, 1846, had taken the position that the grant of land extended only to the Raccoon Forks. It will be noted that the grant was in terms of every alternate section (except such portions as had been theretofore disposed of, incumbered or appropriated) within five miles of the river, but it did not state whether it was of the even or odd numbered sections. December 17, 1846, the state, or the territory as it then was, decided to take the odd numbered sections and the grant became complete.

The new state on February 24, 1847, created a Board of Public Works to supervise the improvement, sell the land, and apply the proceeds in payment of the expenses of the improvement. It must be remembered that at that time the price at which the government was selling public land everywhere was \$1.25 per acre. An entire section of 640 acres would sell for \$800.00. September 22, 1847, the Board of Public Works met to arrange a visit to other states engaged in like projects.

## CONFLICTING RULINGS BY DEPARTMENTS

On February 23, 1848, the United States commissioner of the General Land Office held that the grant extended to the north state boundary. In the meantime the state was busy with the work of improvement of the river. September 18, 1848, President Zachary Taylor, having recently issued a proclamation covering the matter of sale of public lands in Iowa, which appeared to conflict with the grant made to the state, the secretary of the State Board of Public Works, in behalf of the state, presented to the commissioner of the General Land Office at Washington a communication referring to the President's proclamation and stating that the state of Iowa had already contracted ninety miles of the proposed improvement and the consequent embarrassment growing out of the President's proclamation. In December, 1848, the General Assembly formally protested against the President's action and claimed that the grant extended north to the old territorial limits. January 8, 1849, senators and congressmen from Iowa filed a similar protest with Secretary of Treasury Robert J. Walker, and on March 2, 1849, Walker formally agreed that the grant extended from the source of the river to its mouth (except that portion embraced in lands located in the state of Missouri).

While the foregoing controversy was active, the state busy with its improvement, and the lands being sold for that purpose, the commissioner of the General Land Office, in view of the dispute as to whether the grant covered lands above the Raccoon Forks, on June 1, 1849, entered an order reserving from public sale all lands within the limits of the grant above the Raccoon Forks. This is a decisive fact in the whole history of the controversy after June 1, 1849, as will be later seen. The conflicting attitudes of the commissioners of the General Land Office at Washington from time to time were the origin of most of the trouble that arose over this grant in succeeding years. The General Land Office did not maintain a definite and consistent attitude, its holdings being dependent upon the decision of the commissioner in office at the moment a ruling was made.

## STATE BECOMES EMBARRASSED

For instance, December 19, 1849, agreeable with the reservation of June 1, 1849, the commissioner of the Land Office writes



to the state that he will soon send a list of lands north of the Forks, and on January 14, 1850, he sends an estimate to the state that the land north of the Forks would amount to 900,000 acres. March 13, 1850, the commissioner sends to Secretary of the Interior Thomas Ewing three lists of lands north of the Forks within the Des Moines River Grant and stated his intention to certify same to the state as a part of the grant. However, on April 6, 1850, Secretary Ewing renders an opinion that the grant does not extend beyond the Forks and refuses the lists. Iowa's senators and representatives appeal to the President at once, protesting and referring at length to the obligations already incurred by the state in the improvement depending upon the former holdings of the department that the grant extended to the northern boundary of the state, and the embarrassment of the state due to the action of Secretary Ewing.

President Taylor at once referred the matter to Reverdy Johnson, attorney general, and on July 19, 1850, the latter rendered an opinion that the grant extended the entire length of the river in Iowa and denied Ewing's power to hold up the lists of lands to be certified. On December 30, 1850, the Iowa delegation in Congress wrote to Secretary of Interior Stuart, referred to the contracts that had been made for the improvement, the debt incurred and reliance on the grant for the sole source of revenue to pay for the work, and that the Improvement Board had no authority to go in debt.

#### STATE'S SITUATION GROWS WORSE

At this stage of the project the state had become seriously embarrassed by its inability to sell sufficient land at \$1.25 per acre to meet the bills incurred in the improvement. It must be remembered that the state in the sale of lands had to compete with the lands in the even numbered sections adjoining and could not ask more for the lands embraced in the grant than was being paid generally for government lands, which was, as stated, \$1.25 per acre. The bills on the improvement grew faster than the sales of the lands. In this dilemma, which was being actively considered by the governor and the legislature, the latter passed a bill authorizing the state to contract with individuals or companies for the completion of the work at and

below Keosauqua, according to the plans and specifications which the state had prepared, and to *pay for same in land* lying below the Raccoon Forks at not less than \$1.25 per acre, the docks and dams above Keosauqua to be paid for from lands above the Forks.

At this stage of proceedings President Taylor died early in 1851, and on June 30th of the same year a new attorney general, Crittenden, rendered an opinion that the grant stopped at the Raccoon Forks. Pursuant to this opinion, on July 26, 1851, the secretary of the interior directed the commissioner of the land office to reserve from market all lands north of the Forks, to give the state a chance to petition Congress for an extension of the grant. After further consideration by the President and Cabinet the secretary of the interior directs the commissioner of the General Land Office, October 29, 1851, that the question of the extent of the grant must go to the courts for decision, but that he would approve the proposed lists of lands above the Forks to be certified to the state "without prejudice to rights, if any there be, of other parties." In accordance with this action, on October 30th the secretary of the interior approved a list of lands to be certified to the state comprising 81,707.29 acres, and on March 10, 1852, a like list was approved to the state for 143,908.37 acres. November 1, 1852, both lists were sent by the secretary of the interior to V. P. Van Antwerp, then president of the Des Moines River Improvement Board, representing the state. November 30, 1852, the Improvement Board reports to the governor receiving the lists, with congratulations on the implied decision that the grant extended to the northern boundary of the state.

At this time the debt of the state connected with the improvement was \$108,000, and the commissioner refers to slow sales, difficulties in completing the work, and that the value of the work already done amounted to \$300,000.

December 7, 1852, Governor Hempstead reported to the General Assembly that the difficulties in the progress of the work were multiplying, that work was nearly all suspended and none finished, that there were no funds on hand, that the 188,466 acres below the Forks, which had been sold for \$235,708.81, was all spent; that there remained 143,401 acres worth \$166,752.80; that there was \$65,000 due and unpaid to contractors; that there were unliquidated claims amounting to \$180,000, and that it

would cost to complete the improvement from St. Francisville, Missouri, to Keosauqua, Iowa, \$210,000.

#### STATE SEEKS OUTSIDE CAPITAL

This dilemma was the most active matter for discussion on the meeting of the General Assembly in January, 1853. On January 19th the legislature authorized sale of all lands to pay debts and for completion as far as possible, and authorized the commissioner to convey any of the land to persons or companies for funds to carry on the improvement. A few days later, on January 24th, the legislature provided that any contract made must provide for an expenditure of \$1,300,000 on the work and the debts, and for completion as far as practicable, the contractor to look alone to the funds derived from the lands and without primary liability of the state.

June 14, 1853, a legislative commission reported that much of the land within the grant was not yet surveyed; that there were yet unsold in all 1,300,000 acres; that there had been realized from sales to date \$317,642.55, and that the debts were now \$104,625.44. December 17, 1853, the secretary of the interior certifies additional land amounting to 33,142.43 acres, and on December 30th certifies 12,813.51 acres more.

As is obvious from the foregoing, at this stage of the improvement the state found itself heavily in debt and that it was impossible to sell the lands fast enough to meet the growing bills. Evidently this situation, which of course was dealt with extensively in the press, came to the attention of capitalists in the East. The newspapers throughout the nation were full of the story of the development of the Mississippi Valley. Immigration was active. The eyes of the nation were turned to the possibility of homes to be found and fortunes to be made in the West, of which Iowa was the most fertile section.

#### NEW YORK COMPANY ORGANIZED

On December 17, 1853, one Henry O'Reilly, Esquire, of the state of New York, attracted by the possibilities of improvement in land values, entered into a contract with the state to complete the work of improvement by July 1, 1858, according to the plans and specifications under which the state had been operating, in exchange for all unsold lands within the grant and of the tolls at the locks and dams for forty years. The state was



anxious to be rid of the burden of the improvement, and of the debts already incurred. O'Reilly evidently had faith in the future of the state, and if he could find capitalists who would put up the money and take land in payment, great profits might be realized. O'Reilly put himself in touch with capitalists residing in the state of New York, chiefly in the vicinity of Cazenovia.

On May 19, 1854, O'Reilly went to New York and organized the Des Moines Navigation & Railroad Company, and at his request his own contract of December 17, 1853, with the state was cancelled. The incorporators of the new company were Edwin C. Litchfield, a capitalist, Porter Kibbee, Orville Clark, B. K. Whitmore, Henry O'Reilly, Alva Hunt, Elisha C. Litchfield, Henry Ten Eyck, John Stryker, Nelson B. Stewart and Electus Litchfield. Later many other New York men were drawn into the company, including Roswell S. Burrows of Albion, New York, W. C. Johnson, Calvin Burr, Horatio Seymour, John and Ira Davenport, and others. The headquarters of the company was originally at Ottumwa, but on January 10, 1858, was removed to Des Moines.

#### STATE CONTRACTS WITH COMPANY

On June 9, 1854, the state entered into a contract with the Des Moines Navigation & Railroad Company containing the following provisions:

- a. Company to finish improvement from Mississippi to Racoon Forks by July 1, 1858.
- b. Company to pay debts, not exceeding \$60,000, paying \$55,000 cash on account.
- c. Company to receive all monies due from government and all demands and claims.
- d. Company to pay salaries of officers and employees of improvement.
- e. State to convey to company the lands at \$1.25 per acre, as fast as expenditures were made—24,000 acres for each \$30,000 expended.
- f. State to convey lands for expenditures (b) and (d).
- g. State engineers to govern prices of material and labor where not fixed in contract.
- h. State board and engineer to control the work.

i. Company to have the rents and tolls for seventy-five years instead of forty, because more lands were sold before the contract than the state or company thought.

The company at once took over the plans and specifications and proceeded with the work of improvement.

#### COMING OF THE RAILROADS

This was in 1854—the very year in which the imaginations of the people west of the Mississippi were beginning to be stirred by the possibility of the coming of the railroads. In fact, the Iron Horse, the new hope of civilization, was stamping the soil of Illinois, impatient to cross to Iowa ground. In the interior primitive steamboats, inadequate in size and half the time aground on sand bars or hidden snags, were a torment. Eastern capital watching the migration catches the fever and a dozen companies (to use their present names) enter the field, racing for the banks of the Big Muddy. The Rock Island begins construction in '55 and spans the state in '69. The Burlington, starting in '54 reaches the Missouri in '70. The Milwaukee does likewise from '70 to '81. The Illinois Central starts in '70 and ends in '81. The northwestern reaches Cedar Rapids in '59 and Council Bluffs in '67. Time even to a pioneer becomes vital and as the eager settlers crowd off the trains at improvised stations, come from Chicago overnight, the noisy little steamers, puffing their grimy protest, drift into forgotten bays, derelicts on the stream of time.

The coming of the railroads was a new factor in the situation, promising transportation of grain and live stock over night to Chicago as compared with the slow processes of river navigation. Nevertheless, the state had received its grant, had for eight years been busy with the improvement, though with indifferent results, and had just made the contract of June 9, 1854, with the Des Moines Navigation & Railroad Company to proceed with the work and take land in payment. The state's commissioner of improvement December 1, 1854, reported to the General Assembly the difficulty of interesting sufficient capital and the furor from the coming of the railroads. To those most familiar with the situation it was obvious that the railroad might put a new color upon the wisdom of the whole river improvement. However, May 14, 1855, the state certifies to the navigation company 88,853



acres below the Raccoon Forks in payment for expenditures made to that date. In September, 1855, the company, to procure the necessary capital, issued its bonds to be secured by lands deeded and to be deeded to it as the work progressed. May 6, 1856, the state certifies 116,636 acres above the Forks in payment of \$144,657.00 expended by the company.

#### RAILROAD GRANTS CONFLICT

At this stage the railroads were beginning to make their own influence felt in Congress, and on May 15, 1856, Congress granted to the state of Iowa for railroad subsidies every alternate section within six miles of four railroads then being built east and west across the state, *but not including any lands theretofore reserved by competent authority for any work of public improvement.*

January 1, 1857, Commissioner Edwin Manning reports to the General Assembly that up to June 8, 1854, the state itself had expended on the improvement \$475,000, and that the company to December 1, 1856, had expended \$366,711.00 and had received 205,489 acres of land at \$1.25 per acre, leaving a balance due the company of \$109,489.00.

#### STATE DEMANDS THAT WORK STOP

The building of the four great cross-state railroad lines was revolutionary in its effect upon public sentiment. It was obvious almost over night that the new era meant railroad, not river, transportation. The state became restive, for the company had a right to go on and complete the improvement and receive the lands, but even after completion public opinion was convinced that the dependence of the future must be upon the railroads and not upon the rivers. In this situation, on March 22, 1858, the legislature made a proposition to the company to cease work, relinquish its claim to lands not yet conveyed to it, and definitely *threatened to enjoin the company* from further operating unless it accepted the proposition. At the same time the state granted to the Keokuk, Fort Des Moines and Minnesota Railroad (the old K.D.), to aid in building the road, all of the remainder of the lands embraced in the River Land Grant, except those to be deeded to the company by the terms of the proposition made it by the state.

April 15, 1858, the company accepted the state's proposition and on May 3, 1858, the balance of the lands certified to the state were conveyed by Governor Lowe by fourteen deeds to the company covering the lands to which it was entitled under the terms of the settlement. January 9, 1860, the governor reports to the General Assembly that the settlement had been fully carried out and that the sum to be paid by the company as a part of the settlement had been paid.

It must be remembered that many thousands of acres of the land so deeded to the company were above the Raccoon Forks. Immediately after the execution of the deeds to the company United States Attorney General Jeremiah Black on March 29, 1859, rendered an opinion that the River Land Grant did not extend above the Raccoon Forks. In a suit by the Dubuque & Pacific Railroad Company against Litchfield the Supreme Court of the United States in December, 1859, held that the original grant did not extend above the Forks and that the certificates and deeds of lands above the Raccoon Forks were invalid.

#### CONGRESS CONFIRMS COMPANY TITLE

The Dubuque & Pacific Railroad Company presented to the government a list of lands claimed by it in the Fort Dodge district, which included many tracts already deeded by the state to the company. July 7, 1860, the commissioner of the General Land Office writes to the secretary of the interior that the office would take no action but wait until Congress had acted. The state had received the lands certified to it by the federal government, maintaining and believing that the grant extended above the Raccoon Forks. The state and the company had both spent their money so believing, and the question was whether Congress would validate the grant so far as related to the lands *which had been deeded by the state to the company* under the circumstances mentioned.

May 2, 1861, Congress by joint resolution recited that the lands certified to the state as a part of the Des Moines River Land Grant *and now held by bona fide purchasers from the state* were relinquished to the state. On July 10, 1862, Congress formally extended the grant to the north boundary of the state *so far as affected lands held by bona fide grantees from the state*. Thus the title to the lands embraced in the fourteen deeds from

the State of Iowa to the company were made good so far as the action of Congress could affect them.

#### THE SETTLERS UNION TAKES A HAND

In July, 1862, it had been fourteen years since the grant was made. As has already been seen there had been many conflicting holdings by secretaries of the interior, commissioners of the General Land Office and attorneys general as to whether any lands above the Raccoon Forks were embraced in the grant from the government, and at such times as the particular official in office held that the grant stopped at the Raccoon Forks filings and preemptions were permitted and filed by settlers on many thousands of acres of land claimed by the company and the state. Many acres were also seized by mere squatters with no effort to preempt at the land office. This resulted in hundreds of suits, mainly in Boone, Webster and Hamilton counties, between the Des Moines Navigation & Railroad Company and its grantees and the preemptioners or squatters who had seized possession. Some of these cases were carried to the Supreme Court of the United States. In all cases the decisions were in favor of the title claimed by the company, but there were many cases of hardship. Some of the settlers had even received patents upon the strength of their preemptions. Some had made improvements, believing their title would be confirmed. The agitation and controversy thus engendered was acute on both sides of the river from the city of Des Moines to Humboldt County. It interfered with the development of the district involved. Hundreds of judgments for possession were rendered, but the settlers organized what was known as the Settlers Union, and as rapidly as writs of eviction were executed the settler moved back onto the land, or was restored to it by the Union. Writs of possession issued from the federal court were defied by the Union. In one instance, known as the Grosenbaugh case, United States Marshal Holbrook was shot in the arm while serving a writ of possession. United States Marshal Ethridge was very busy with the execution of these writs and had many dangerous experiences. There was one amusing case of a squatter, Mrs. Nicholas, who feigning illness when the marshal appeared, went to bed. The marshal, knowing of the ruse, sawed a hole in the side of the house sufficient to move the defendant out, bed and all. Standing by at the



time were many representatives of the Settlers Union, among them Henry Richardson, their local president. Needing some help in this situation the marshal on the spot deputized Richardson to assist in carrying out the bed, which he did, the crowd jeering. Immediately after which the settlers returned the defendant to the house.

About the town of Homer, in Webster County, which was a center of agitation, the officers met with the greatest difficulty, their harness being cut, and other like interference.

Just south of Pilot Mound, in Boone County, is a high mound which gives the name to the town. This was a rendezvous for the settlers, who lit bonfires on top of the mound when they wished to gather recruits. The agitation, of course, made itself felt in politics and congressmen from the affected district presented vigorously upon the floor of Congress their phase of the situation, demanding that Congress declare the company's lands public lands open to settlement.

#### CONGRESS DECLARES COMPANY'S TITLE VOID—CLEVELAND'S TWO VETOES

On March 11, 1886, Congress passed such an act, which was vetoed by President Cleveland, who reviewed the history of the grant and the decisions of the courts, and sustained the title of the company. In February, 1888, Col. C. H. Gatch, who was then in the state Senate, introduced a resolution memorializing Congress to make an appropriation to indemnify the settlers. Senator Woolson secured a substitute appealing to the government to bring an action in the courts to test the title of the company and of those who claimed by purchase from it.

In December, 1888, Congress passed another act to take the lands from the company bodily and open them to public settlement. This again was vetoed by President Cleveland upon the same grounds as his earlier veto. It was the contention of the President and of the company that the title of the latter was complete; that the company had received the lands from the state in accordance with the contract, had paid for every acre conveyed to it the \$1.25 called for by the contract, and that the Supreme Court of the United States had repeatedly confirmed its title. On the other hand, the claim of the champions of the settlers in Congress was that the entire controversy was highly

detrimental to the district involved and prevented its improvement; that admitting the decisions of the courts had always been in favor of the company, no action had ever been brought by the United States government in its own name to test the company's title, and that such action was desirable both from the standpoint of the settlers and the company, that the controversy might be ended once for all.

#### GOVERNMENT BRINGS TEST SUIT

Following this contention the Fiftieth Congress provided for an action in equity in the name of the United States government against the company and the most outstanding of its grantees, Edward H. Litchfield and others, to test the company's title. The action was brought in the United States District Court at Fort Dodge before Judge Oliver Perry Shiras. His decision, following the earlier cases, was in favor of the company. The government took the case on appeal to the Supreme Court of the United States, where on January 20, 1892, the final decision was rendered affirming the lower court, the opinion being given by Justice George Shiras, Jr., of the Supreme Court of the United States, a brother of the District Court judge who had heard the case at Fort Dodge.

#### CONGRESS GRANTS INDEMNITY TO THE SETTLERS

The settlers had said to Congress that if such a suit was brought they would abide by the decision, and very largely they carried out that promise. March 3, 1893, Congress made an appropriation of \$200,000 to indemnify settlers whose entry upon the land had been bona fide and pursuant to preemption or other filing at the land office. The bill provided for a commissioner, who came to Iowa, heard testimony at Fort Dodge, Boone, Ogden, and other points within the district involved, made his report, pursuant to which distribution was made of the fund among those entitled to it. The first appropriation was found insufficient in amount. A later appropriation was made of \$150,000, which was administered in the same way.

Thus ended an active, bitter controversy which had continued for forty-six years. As Justice Shiras of the United States Supreme Court ended his reading of the final opinion and laid the paper aside, he closed with the words, *Requiescat in pace.*

CONFLICTING RULINGS AS TO EXTENT OF GRANT

The following is a tabulated statement of the conflicting holdings of various commissioners of the Land Office, Cabinet officers, attorneys general, United States Supreme Court and United States Congress as to whether the Des Moines River Land Grant extended for the full length of the river from the south line of the state to the Minnesota line, or stopped at the Raccoon Forks in the City of Des Moines:

Grant—August 8, 1846	
U. S. Commissioner Land	
Office—Oct. 17, 1846.....	to Raccoon Forks
U. S. Commissioner Land	
Office—Feb. 23, 1848.....	to Minnesota line
Secretary of Treasury Walker—Mar. 2, 1849.....	to Minnesota line
Secretary of Interior Ewing—Apr. 6, 1850.....	to Raccoon Forks
Attorney General Johnson—July 19, 1850.....	to Minnesota line
Attorney General Crittenden—June 30, 1851.....	to Raccoon Forks
Attorney General Black—March 29, 1859.....	to Raccoon Forks
U. S. Supreme Court—December, 1859.....	to Raccoon Forks
U. S. Congress—May 2, 1861.....	to Minnesota line
U. S. Congress—July 10, 1862.....	to Minnesota line
U. S. Congress—March 11, 1886.....	to Raccoon Forks
U. S. Congress—December, 1888.....	to Raccoon Forks
U. S. Supreme Court—Jan. 20, 1892.....	to Minnesota line

It was these conflicting holdings which kept the whole matter in a state of unrest until the final decision January 20, 1892. This decision did not reverse the holdings of the Supreme Court in December, 1859, that the grant of lands stopped at the Raccoon Forks, but it upheld the validity of the title to the lands which had been earned by and deeded to the Des Moines Navigation & Railroad Company north of the Raccoon Forks.

Following the decision the lands were mainly and rapidly sold from that time to this, by the various owners to whom they had been deeded by the navigation company. These owners were many, including Roswell S. Burrow, Edward H. Litchfield and others, of the state of New York, Woolsey Wells and Richard Snell of Fort Dodge, and various others scattered over the country.



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