

THE COLORADO MAGAZINE

Published Monthly by

The State Historical Society of Colorado

Volume XXVII

Denver, Colorado, October, 1950

Number 4

The Origins of the Colorado System of Water-Right Control

ROBERT G. DUNBAR*

Colorado was the first Western State to create a state-wide system of public control of water rights. This system, which has had great influence on the irrigation institutions of the other Western States, is frequently referred to as the Colorado System. It is not to be confused with the Colorado Doctrine, which is another name for those legal principles known as the Doctrine of Prior Appropriation.

The first Colorado law which provided for the regulation of streams was enacted by the first Territorial legislature in 1861. Section 4 of this statute provided:

That in case the volume of water in said stream or river shall not be sufficient to supply the continual wants of the entire country through which it passes, then the nearest justice of the peace shall appoint three commissioners . . . whose duty it shall be to apportion, in a just and equitable proportion, a certain amount of said water upon certain or alternate weekly days to different localities, as they may, in their judgement, think best for the interests of all parties concerned, and with a due regard to the legal rights of all . . .¹

However, the pioneer irrigators had little need for a law of this character. Their ditches were small and the water in the rivers was abundant. It was more necessary to take measures for the regulation of individual ditches. The Spanish-Americans in the San Luis Valley had brought with them from New Mexico a system of ditch control. Annually, those who lived under each ditch elected one of their number to serve as major-domo or ditch superintendent in order that the ditches might be kept in repair and their waters divided equitably.² In the South Platte Valley, cities like Denver, Greeley, and Longmont appointed officials to supervise the distri-

*Dr. Dunbar, formerly Professor of History at the Colorado State College of Agriculture, is now Professor of History at the Montana State College of Agriculture.—Ed.

¹Colorado Territory, *Session Laws*, 1861, p. 68.

²Colorado Territory, *Session Laws*, 1866, pp. 61-64; New Mexico Territory, *Session Laws*, 1851-1852, pp. 276-281; Wells A. Hutchins, "The Community Acequia: Its Origin and Development," *Southwestern Historical Quarterly*, XXXI (January, 1928), 266-282.

bution of water from their ditches.³ Similar officials were appointed by the early agricultural ditch companies in this valley. After the Union Colony, which founded Greeley in 1870, had dug its large Colony Canal No. 2, it placed the ditch under the control of a superintendent.⁴ Before the completion of the Highland Ditch near Longmont, its board of trustees appointed two men to serve as ditch riders.⁵ Consequently, the irrigators of Colorado were familiar with ditch regulation when in the late seventies an increase in the size of the ditches necessitated some regulation of the streams.

Some of the first large ditches in the South Platte Valley were diversions of the Cache la Poudre River, a tributary of the South



U. S. Dept. of Agriculture
DIVERSION DAM OF THE GREELEY CANAL No. 2

Platte. The coming of the Greeley colonists to the Cache la Poudre Valley inaugurated a new economic era in its development. Most of them came from New England and the North Central States and

³Minutes of the City Council of Denver, Record Book F, pp. 47-49, Ordinance No. 43, passed and approved June 1, 1876 (ms. in the Municipal Building, Denver, Colo.); *Denver Daily Times*, June 2, 1876; July 11, 1876; *Greeley Tribune*, March 29, 1871, June 14, 1871, August 30, 1871, July 8, 1874; James F. Willard, ed., *The Union Colony at Greeley, Colorado, 1869-1871* (Boulder, 1918), 40, 70, 102-103, 344-345; Records of the Town of Longmont, *Journal of Proceedings of the Trustees and other matters*, pp. 46-47, 99, 149 (ms. in the City Hall, Longmont, Colo.).

⁴*Greeley Tribune*, March 22, 29, 1871, June 28, 1871, July 1, 1874; U. S. Geological and Geographical Survey of the Territories, *Tenth Annual Report*, 1876, p. 341.

⁵Record of Trustees' Meetings, Highland Ditch Co., April 4, 1872 to March 23, 1878, pp. 54-56 (ms. in the First National Bank, Longmont, Colo.). On June 28, 1873 the board of trustees "voted that Mr. [C. A.] Pound is hereby appointed water master for the upper end of the Ditch down to station 480 and Mr. Geo. A. Starbird for the balfance [balance] of the main ditch and lateral."

many of them were well educated. Moreover, they had plenty of energy and some capital. They began the construction of big canals to water the benchlands on both sides of the river. They commenced their Colony Canal No. 2 in the fall of 1870 and a year later enlarged its capacity to 280 cubic feet per second. John C. Abbott came to Greeley with the Union Colony, but within two years he went up the river and with Benjamin H. Eaton constructed in 1872-1873 the Lake Canal with a recorded capacity of 158 cubic feet per second. At the same time another colonist, General R. A. Cameron, organized the Larimer County Land Improvement Company, boomed Fort Collins, and built in 1873-1874 a canal larger than the Lake Canal to water lands west and south of that town.⁶

Such extensive appropriation of the waters of the Poudre, coupled with a dry growing season, precipitated a noisy conflict between the Greeley and Fort Collins communities in the summer of 1874. By the first of July there was not enough water in the river to supply both the Fort Collins and the Greeley ditches. Since the water came to the Fort Collins appropriators first, they took it and did not leave enough for those farther down the stream. The Greeley irrigators demanded their share of the water and the quarrel began.⁷

Although the controversy centered around the character of the Colorado water right, with Greeley demanding recognition of the principle that priority of appropriation gave priority of use and with Fort Collins rejecting that demand, both sides recognized the need for some kind of stream regulation. The Fort Collins *Standard* in its issue of July 15, 1874, referred to the statute of 1861 and at a school house convention, held mid-way between the two quarreling communities, the Fort Collins delegation proposed the appointment of a river commissioner "to divide the water according to the amount of land in cultivation" and suggested "that he be paid \$5 a day for his services."⁸ Nathan C. Meeker, who as founder of the Union Colony and editor of the *Greeley Tribune* formulated the Greeley position, wanted "to consolidate the interest of every ditch owner, and to make the river an irrigation canal, subject to such superintendence as is established on our Number Two." He thought that "by this means everyone would have his rights, the supply of water would be constant, and all would know what to depend upon," but he refused to agree to the appointment of such a superintendent until the Fort Collins water users recognized Greeley's prior rights.⁹

⁶First Adjudication Proceedings in Water District No. 3, Case No. 320, Book I, 201-213, 268-270, II, 345-348 (ms. in the Larimer County Courthouse, Fort Collins, Colo.); *Proceedings Concerning Adjudication of Priorities under Irrigation Act of 1881 in Water District No. 3, Cache la Poudre District* (Denver, n.d.), 31, 34-36; Alvin T. Steinle, *History of Agriculture in Colorado* (Fort Collins, 1926), 395-396.

⁷Robert G. Dunbar, "Water Conflicts and Controls in Colorado," *Agricultural History*, XXII (July, 1948), 180-186.

⁸*Greeley Tribune*, July 22, 1874; David Boyd, *A History: Greeley and the Union Colony of Colorado* (Greeley, 1890), 120.

⁹*Greeley Tribune*, July 8, 22, 1874.

The school house conference, therefore, settled none of the basic issues in controversy, despite the consent of the Fort Collins people to lower their headgates and to let more water down the river. But the dispute did leave an awareness of the need for stream control, and as David Boyd records,

From that day forth the people of Union Colony set their hearts upon having a law enacted to enable them to have the water of the river distributed according to the vested rights of all concerned.¹⁰

The demand for stream control did not remain confined to the Cache la Poudre Valley, for, when a year and a half later the constitutional convention met in Denver, it was a delegate from the St. Vrain Valley, Byron L. Carr of Longmont, who proposed that:

It shall be the duty of the Legislature from time to time to pass such laws as may be necessary to secure a just and equitable distribution of the water in the streams of the State, for mining, irrigating and manufacturing purposes, in such a manner as to best foster and encourage these great industries . . .¹¹

Although this proposal was referred to the committee on irrigation, agriculture and manufactures of which S. J. Plumb of Weld County was chairman, the convention took no action upon it and limited itself to laying the legal basis for such control by incorporating into the constitution Article XVI, Section 5:

The water of every natural stream not heretofore appropriated within the State of Colorado is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the State . . .

As David Boyd implied, the Greeley people did not forget. Benjamin Eaton began to talk about taking a still larger canal out of the Poudre. In 1876, the year that Colorado became a State, he made a preliminary survey and in the spring of 1878 began to construct the big Larimer and Weld Canal, which, with a decreed capacity of 720 cubic feet per second, remains to this day the largest ditch in the valley.¹² The Greeley people had not been unaware of the probability of such a development because four years earlier Nathan Meeker had warned his Fort Collins opponents that men with money might divert "the whole of the river at the canyon to water Box Elder valley and the region toward Pierce station, leaving the Cache la Poudre desolate."¹³ Now his warning seemed about to be realized. The *Colorado Sun* reported that Eaton's ditch would be fifty-three miles long and would irrigate nearly 50,000 acres.¹⁴ The Greeley irrigators were worried; so were those near Fort Col-

¹⁰David Boyd, "Irrigation near Greeley, Colorado," U. S. Geological Survey, *Water Supply and Irrigation Paper 9* (Washington, 1897), 61.

¹¹Proceedings of the Constitutional Convention Held in Denver, December 20, 1875 to Frame a Constitution for the State of Colorado . . . (Denver, 1907), 44.

¹²First Adjudication Proceedings in Water District No. 3, Book I, 185; *Proceedings Concerning Adjudication of Priorities under Irrigation Act of 1881*, in Water District No. 3, pp. 17-20, 67.

¹³Greeley Tribune, July 8, 1874.

¹⁴Colorado Sun, (Greeley) October 12, 1878.

lins.¹⁵ In fact, no other event did so much to provoke the formulation of the Colorado system as the construction of this big canal. Now control of the Poudre became imperative. At the same time irrigators in other valleys, such as Lorin C. Mead and C. A. Pound of the Highland Ditch Company in the St. Vrain Valley, became anxious about their water supply.¹⁶

Again the Greeley people assumed the initiative. Shortly after the elections to the Second General Assembly, in which J. L. Brush of Greeley and L. C. Mead were elected to the House and Judge Silas B. A. Haynes was elected to the Senate, the following notice appeared in the October 9, 1878 issue of the *Greeley Tribune*:

TO THE FARMERS OF WELD COUNTY

Desiring an expression from the farmers of Weld County upon the subject of irrigation with reference to the legislation at the ensuing session of the General Assembly, the undersigned hereby invite all farmers and others interested, to meet at Barnum Hall, in the town of Greeley, on Saturday, Oct. 19th, at 2 o'clock p.m., to discuss the matter, and if thought expedient to appoint a committee to draft a bill concerning irrigation to be introduced in the Legislature.

S. B. A. HAYNES

J. L. BRUSH

This meeting, although not well attended, was composed of farmers from both the Cache la Poudre and the St. Vrain valleys. Several of the Highland Ditch men were present, including L. C. Mead, who was elected chairman. Whichever valley they came from, they were apparently well-informed about the problems of water-right control because in the accounts of their discussion appears the embryo of the Colorado System. They agreed that necessary legislation included: (1) creation of a State irrigation bureau headed by a State officer who could superintend the distribution of stream waters by means of subordinate officials; (2) division of the State into water districts, conforming to the various watersheds; (3) provision for the measurement of the streams; and (4) clarification of the constitutional provision pertaining to priority of appropriation.¹⁷ The *Greeley Tribune* reported the conference in this manner:

The meeting of Saturday last, called by Messrs. Haynes and Brush for the purpose of obtaining views on needed legislation on the subject of water supply and irrigation, was not largely attended. Mr. L. C. Mead, of Highland Lake, the newly elected representative, was present, and also other gentlemen from that part of the county. Various views were presented, and three chief points were agreed upon as a basis for future discussion: First, That some legislation is needed to define what is meant in the constitutional provision concerning priority of appropriation in water. Second, That provision should be made by the state for the survey of all the streams, to test the water supply at different stages of their flow. Third, That districts should be formed,

¹⁵Boyd, "Irrigation near Greeley," *Water Supply Paper 9*, p. 61.

¹⁶Ibid.; *Colorado Sun*, October 26, 1878.

¹⁷Greeley Tribune, October 23, 1878; *Colorado Sun*, October 26, 1878.

conforming to the valleys of the different streams, and that a state officer should superintend the distribution of water, through deputies appointed, or district commissioners elected, by the people.¹⁸

Here in broad outline is the essence of the legislation of 1879 and 1881. The succeeding conventions and legislative sessions would only elaborate upon it.¹⁹

This conference did not appoint a committee to frame a bill as had been suggested by its sponsors. Those in attendance felt that they were too few to make such a recommendation to the legislature; consequently they decided to call a state-wide convention to meet at Denver during the first week in December for a more thorough discussion of these matters.²⁰

About fifty farmers, representing twenty-nine ditch companies and agricultural districts in the South Platte Valley attended the Denver convention which opened on December 5, 1878. No representatives, however, attended from the Arkansas or the Rio Grande watersheds. At least twelve men attended from the Poudre: David Boyd, J. D. Buckley, J. Max Clark, B. S. LaGrange, Joseph Moore, and W. F. Thompson from Greeley; and John C. Abbott, I. L. Bailey, J. G. Coy, A. L. Emigh, J. S. McClelland, and R. Q. Tenney from Fort Collins. In addition, Ledru R. Rhodes, a young lawyer from Fort Collins who had recently been elected to the Senate, was present as was the future State engineer, E. S. Nettleton. The Saint Vrain, Big Thompson, and Boulder valleys were also well represented.²¹

The convention was quickly organized. L. C. Mead, who had served as chairman of the October meeting in Greeley, was chosen chairman; he immediately appointed a nine-man committee headed by David Boyd to prepare an agenda.

During the next month, David Boyd served as a member of three committees and played a major role in the formulation of the Colorado System. He alone of its fathers was foreign born. He had been born in Ireland of Scotch-Irish parentage and had lived in upstate New York and in Michigan. His studies at the University of Michigan had been interrupted by the Civil War, in which he attained the rank of captain, but he resumed his studies after the war and was graduated in 1866. After farming for a few years in Michigan, he joined the Union Colony and became an irrigation

¹⁸Greeley Tribune, October 23, 1878.

¹⁹This record suggests that, although the Greeley people assumed the initiative, the Longmont farmers quickly seconded their efforts and probably contributed ideas. David Boyd, the historian of Union Colony, somewhat exaggerated the role of his community in the formulation of the Colorado System. Cf. Frank Hall, *History of the State of Colorado* (4 vols., Chicago, 1889-95), IV, 350; Boyd, *History*, 119-135.

²⁰Greeley Tribune, October 23, 1878; Colorado Sun, October 26, 1878; Fort Collins Courier, November 16, 1878.

²¹Greeley Tribune, December 11, 1878; Rocky Mountain News, December 6, 7, 8, 1878; Denver Weekly Times, December 11, 1878.

farmer.²² As a member of the Greeley delegation, he came to the convention with the advantage of having a well-thought-out program. The others were at a disadvantage. Although two members of the agenda committee, David Barnes of the Big Thompson and G. W. Harriman of Bear Creek, opposed any new irrigation legislation, the majority supported Chairman Boyd in presenting an agenda which was a restatement of the proposals discussed at the October meeting in Greeley. The Greeley Tribune reported:

The business committee came in at this point in the discussion and presented their report in a set of resolutions, as follows:

Resolved, That a law should be passed appointing a Commissioner of Irrigation for the State;

Resolved, That the State be divided into irrigation districts corresponding to the natural courses of the streams;

Resolved, That the Legislature take measures to measure the capacity of the natural streams of the State.

This was the majority report. Messrs. Barnes and Harriman offered a minority report, opposing all legislation on the subject of irrigation.

On motion the report was received.²³

Most of the discussion of the next two days seems to have concerned these three resolutions. There were many differences of opinion, for these farmers, attempting to create institutions new to American experience, had few precedents to guide them. They had come to a dry country to farm and they had only their needs and their frontier experiences to direct them.

The proposal for a State commissioner of irrigation provoked the counter-proposal for a commission. In fact, John C. Abbott of Fort Collins favored a board representing the various valleys of the State not unlike the later State Board of Control in Wyoming. Someone cited the regulatory system provided by the statute of 1861, but most members thought that it was inadequate. "The trouble with the law was that too much delay would occur—at least two weeks."²⁴ In the end, it was agreed that a separate commissioner of irrigation would be expensive; consequently the convention recommended that the president of the State Board of Agriculture serve as irrigation commissioner.

Most of the vocal members seem to have favored the second resolution.

Mr. Emigh believed that the districts should be by streams and not by counties . . . Mr. Bailey thought each stream should make one district, and the owners of the ditches on the stream should elect the officers [as in Idaho today]. J. S. Titcomb favored districts by valleys. There are three large streams on this side of the range—the Platte, the Arkansas and the Rio Grande; the others are merely tributaries to these.²⁵

²²Greeley, Daily Tribune, November 30, 1908; Hall, *History of Colorado*, IV, 386.

²³Greeley Tribune, December 11, 1878.

²⁴Ibid.

²⁵Ibid.

The convention finally voted that the State should be divided into irrigation districts, according to the natural courses of the streams. It is of interest to note that earlier that year John Wesley Powell in his *Report on the Lands of the Arid Region of the United States* had advocated the creation of pasture districts which would conform to topographic features.²⁶

No arid country concept was more difficult for farmers from the humid East to master than the concept of measurement of water. The South Platte farmers at Denver discussed this problem for some time. Many thought that flowing water could not be measured.

Mr. Harriman could see no benefit to anybody in the measure. Mr. Clark thought it of great importance . . . Mr. Barnes thought the measurement of the snow on the range more feasible. Mr. Emigh approved the measure . . . Mr. DeVinney said it seemed very beautiful to listen to eloquent speeches about measurement of the water. But it could not be done.²⁷

J. Max Clark, who had invented the Max Clark measuring box, supported the resolution by reference to Italian experience, and E. S. Nettleton gave an account of his measurements of the Poudre and the Arkansas. The resolution was adopted.

The convention members did not confine their discussions to these three resolutions. They also discussed the appointment of water commissioners, pollution of the streams, methods of ascertaining priority rights, and other questions. Toward the end of the convention, the chair appointed a committee to prepare a memorial petitioning the legislature to enact the will of the irrigation farmers into law. This committee consisted of J. Max Clark, J. S. Stanger, Daniel Witter, B. B. Stiles, and David Boyd. It presented the following memorial to the closing session of the convention:

To the Honorable, the General Assembly of the State of Colorado:

Gentlemen—Your memorialists in convention assembled, to take into consideration the subject of irrigation, one of so much importance to the whole people of Colorado, would respectfully represent—

That said convention met, in pursuance to a general call issued through the press, at the city of Denver, on December 5, 1878, and continued in session for three days.

That the regularly elected officers were as follows: viz.: Hon. L. C. Mead, president, R. Q. Tenney, vice president and I. L. Bailey, secretary.

That the measures adopted were carefully considered and thoroughly discussed, and are presented as expressing the deliberate convictions of your memorialists.

That the right to the use of water for irrigation, and its proper and equitable distribution is one of the most important subjects that can occupy the time and attention of your honorable body.

That the present and future welfare of our agricultural interests depends largely upon the satisfactory adjustment of the many intricate

²⁶U. S. Geographical and Geological Survey of the Rocky Mountain Region, *Report on the Lands of the Arid Region of the United States . . .* by J. W. Powell (2d ed., Washington, 1879), 21-29.

²⁷Rocky Mountain News, December 7, 1878.

questions regarding the priority of right to the use of water, the proper settlement of which increases in importance with the increase of our population.

That the following resolutions embody the sentiments of said convention, and your memorialists would respectfully request your careful consideration and adoption of the same in the enactment of laws upon irrigation:

Resolved, that the President of State Board of Agriculture have included among his duties those of Commissioner of Irrigation, and the Secretary of said Board be required to compile and preserve statistics in regard to irrigation in this State.

Resolved, That the State should be divided into irrigation districts, according to the natural courses of the streams, and that commissioners be appointed for the several districts.

Resolved, That measures should be taken for ascertaining and perpetuating the priority of the right of ditches, individuals, and farms to the use of water in each irrigation district, and also to measure the capacity of the natural streams in the state.

Resolved, That a Commissioner or Commissioners for each of the several water districts be appointed by the County Commissioners—one from each county in which the water district is situated—and that, in case of a tie on a question of disagreement, the District Commissioners shall choose another disinterested person to act as one of their number.

Resolved, That it should be the duty of the District Commissioners to collect and place on file, in the offices of the County Clerks and Recorders of their respective counties within their districts, all data respecting the volume of water in the natural streams within their districts as far as ascertained from time to time, also the date of construction, the date of all enlargements, the capacity at time of construction, the capacity of the enlargements, and the capacity of each ditch at the time they enter upon their duties.

Also, to divide the water among the ditches, individuals and farms respectively in accordance with the prior rights as ascertained by these data, and by such action as the law may direct.

Resolved, That the Commissioners should be empowered in the discharge of their duties, to enter upon the premises through which ditches and streams run, to call for persons and papers, to administer oaths and take testimony and their decision in regard to the use of water for the time being shall be final; but any parties who may deem themselves aggrieved, may appeal from the decision of the Commissioners to the District Court.

Resolved, That there should be some uniform method adopted for measuring the water entering the different ditches.

Resolved, That there is urgent need for legislation in regard to simplifying the method of obtaining the right of way for irrigating ditches.

Resolved, That the most stringent and efficient laws should be enacted to prevent the pollution of our streams and ditches, to the end that the water shall remain pure and fit for household uses.

Resolved, That the subject of reservoirs and the storage of water when it is abundant for use in seasons of scarcity, is one of very great importance, and should be encouraged and protected by careful legislation.²⁸

The memorial was adopted, the chair appointed a five-man committee to draft a bill for the legislature, and the convention adjourned.

²⁸Fort Collins Courier, December 14, 1878; Rocky Mountain News, December 8, 1878; Greeley Tribune, December 11, 1878.

The composition of this committee was varied—a farmer, a doctor, a ditch builder, a lawyer, and an agricultural journalist. David Boyd, the farmer, was again chairman. The doctor was Isaac L. Bond of Longmont. A graduate of a New York medical college, he had come west with the Chicago-Colorado Colony and for several years had practiced medicine in Boulder. Ill health, however, had forced him to give up his practice and to move to a farm near Longmont, where he had recently assisted in the organization of a mutual ditch company. As will be emphasized later, he had some very definite views on the subject of irrigation.²⁹ The ditch builder was John C. Abbott of Fort Collins, who had attended a Michigan college and had come to Colorado, as has been said, with the Union



U. S. Dept. of Agriculture
DEVICE FOR MEASURING WATER DELIVERED TO THE
LATERALS OF THE PLEASANT VALLEY CANAL

Colony. He had already assisted in the construction of the Lake Canal and the Larimer County No. 2 Canal, and the next year he was to begin digging the Pleasant Valley and Lake Canal.³⁰ The lawyer was Daniel Witter of Denver, the most prominent member of the group. He was born in Indiana and had come to Colorado with the '59ers. Fellow miners had elected him judge of a miners' court and then member of the first territorial legislature. Admitted

²⁹Portrait and Biographical Record of Denver and Vicinity, Colorado (Chicago, 1898), 320-321; James F. Willard and Colin B. Goodykoontz (eds.), *Experiments in Colorado Colonization, 1869-1872* (Boulder, 1926), 168; Certificate of Incorporation of The Supply Ditch Company (ms. in the office of the Secretary of State of Colorado, State Capitol, Denver, Colo.); *Boulder County News*, May 13, 1871, February 19, 1875.

³⁰Ansel Watrous, *History of Larimer County, Colorado* (Fort Collins, 1911), 353.

to the bar in 1862, he had gained recognition as a lawyer specializing in public land cases. At various times he had also been postmaster, banker, cattleman, land speculator, and director of a ditch company.³¹ The agricultural journalist was John S. Stanger, editor of the *Colorado Farmer*. A Pennsylvanian by birth, he had been educated at Allegheny College and had also risen to the rank of captain in the Civil War.³² Although these men had varied backgrounds, they had in common better than average formal education, humid country experiences, and familiarity with the problems of irrigation.

These men spent a week before the convening of the General Assembly translating the farmers' memorial into a legislative bill. They disagreed considerably over the nature of prior rights. At least two of them, Isaac Bond and John Stanger, favored the attachment of the right to the land, whereas David Boyd and undoubtedly John Abbott favored its attachment to the ditches.³³ This problem had arisen during the convention and Daniel Witter had presented the resolution on priority of right which was incorporated with slight alterations into the memorial. This resolution with its phrase, "priority rights of ditch companies, individuals and farms," was a compromise between these two views.³⁴ Dr. Bond was very much concerned about the rights of water users under the corporation ditches and his insistence that use rather than ditch construction constitutes an appropriation seems to have been motivated by this concern.³⁵ The Greeley farmers owned their ditch so they were not aware of this problem. So well and so persistently did Dr. Bond advocate his view, that, contrary to the memory of David Boyd, it was incorporated into the bill.³⁶

Fortunately, this bill which was introduced into the Second General Assembly as House Bill No. 22 is preserved in the Division of State Archives of Colorado. Most of its provisions simply rephrase in legal terminology the resolutions of the memorial. There are sections providing for a state commissioner of irrigation to measure the streams, for the division of the state into ten water

³¹Hall, *History of Colorado*, IV, 616-617; Minutes of the Capitol Hydraulic Company and the Platte Water Company, 60-78 (ms. in the Municipal Building, Denver, Colo.)

³²History of the City of Denver, Arapahoe County, and Colorado (Chicago, 1880), 597.

³³Boyd, *History*, 122-123; Greeley Tribune, October 27, 1880.

³⁴Rocky Mountain News, December 7, 1878.

³⁵Boyd, *History*, 122; Elwood Mead, *Irrigation Institutions* (New York, 1903), 83-84, 146.

³⁶H. B. 22, A Bill for An Act Entitled An Act Concerning Irrigation, 1879 (ms. in Division of State Archives, State Museum, Denver, Colo.); Boyd, *History*, 123; Elwood Mead, who seems to have relied upon Boyd's *History*, made a similar mistake in writing: "The committee which framed the bill also disagreed regarding the character of the rights to water which should be recognized. Some held that there should be no right to water except that of use, and that these rights should be attached to the lands reclaimed. Dr. J. [sic] L. Bond of Longmont supported this view with vigor and persistence, but was overruled by the irrigators from Greeley who favored giving the rights to the ditch owners." (Mead, *op. cit.*, 146).

districts with a water commissioner in each district, for the prevention of stream and ditch pollution, and for legislation regulating reservoirs and rights of way. The sections which deal with priority of right give that priority to the irrigated lands rather than to the ditches. The water commissioners are required to prepare records of the application of the water to the land rather than records of the construction of the ditches.

It shall be the duty of the water commissioners of each irrigation district to ascertain and keep on file a statement of the lands, with their description, which were irrigated from each ditch within the district, first, during the year 1878; second, in each previous year of its existence, and third, to continue the record of all lands irrigated from each ditch of the district from year to year; and it shall be the duty of the owners of each ditch within the district to furnish under oath to the water commissioners the above data for the year 1878, and thereafter yearly on or before the first day of November of each year, and also as near as may be the lands irrigated from each such ditch for each year of its existence prior to 1878; and such reports furnished by owners of ditches as above provided shall be considered correct until disproved by other testimony.

The water commissioners are empowered to divide the stream waters according to the prior rights of the farmers using the water of the ditches rather than according to the prior rights of the ditch owners. The emphasis is upon beneficial use rather than upon diversion. In times of scarcity, priorities and ditch capacities are to be disregarded and no ditch "allowed . . . to draw any more water from the stream than shall be necessary to irrigate the trees and crops then growing under it and needing further irrigation." Whenever a dispute arises over priority of use, the water commissioner is to "take evidence and render decisions in regard to the rights of claimants to the use of water under dispute in their district[s], and such decisions shall be made in writing, and shall be signed by the water commissioner . . ." In other words, prior rights are to be determined by an administrative officer. These provisions favor, in general, the water users rather than the corporate ditch owners.

When this bill was handed to Representative L. C. Mead as chairman of the irrigation committee of the House, he did not approve of it. Nevertheless, he introduced it and prepared to alter it in the committee. Nearly two years later he wrote:

When the bill came into my hands as chairman of [the] Irrigation Committee in the House, I found that the bill was framed upon the principle that the appropriation was acquired when each parcel of land first used the water for irrigation purposes and that records must be made accordingly.

My own view was that the ditches made the appropriation and that it should date from the time of the construction of the ditch and this was the view entertained by nearly all the members of the convention of farmers. I knew very well what brought about this change of base by the committee who framed the bill. Of course my first work was to get rid of the principal part of that bill. I advocated my view of the matter and Mr. Stanger, of the *Colorado Farmer*, was present at nearly every meeting of the committee insisting that the bill was

correct. The other members of the committee during this time said nothing but listened to the arguments on each side . . . Hon. B. H. Eaton, a man whom I suppose to be very much interested in the English Company's ditch and land under it was present at a meeting of the committee on irrigation and argued very forcibly in favor of my side of the question . .³⁷

The English company to which Mead referred was the Colorado Mortgage and Investment Company of London, Limited, which was assisting Eaton financially in the construction of the Larimer and Weld Canal.³⁸ There is no doubt, as Elwood Mead asserted, that the ditch corporations favored giving the prior rights to the ditches rather than to the land.³⁹

Whatever the influences, the bill was largely rewritten by the House irrigation committee. Those sections on prior rights were rewritten by Henry P. H. Bromwell, one of the committee members. This prominent Denver attorney was a veteran law-maker. An early Illinois Republican, he had been a friend of Abraham Lincoln and had served as Congressman for two terms. He had been a member of the Illinois constitutional convention of 1869-1870 which had laid the legal basis for the first Granger laws and, after coming to Colorado, had been a member of a territorial council and of the constitutional convention, where he had been partly responsible for Article XVI, Section 8, which empowered the county commissioners to fix the price of water.⁴⁰ He was now a member of the Second General Assembly. Unlike many lawyers, he favored legislation on irrigation, and he spent much time in formulating a substitute procedure whereby priorities could be determined and the right attached to the ditches rather than to the land. In this manner the ideas of Isaac L. Bond failed of incorporation into the Colorado System, but some years later they were espoused by Elwood Mead and through his influence written into the water code of Wyoming.⁴¹

³⁷Greeley Tribune, October 27, 1880.

³⁸Larimer and Weld Irrigation Co. v. Wyatt, Abstract of Record, pp. 128, 152, Colorado Court of Appeals, #837, bound in Colorado Supreme Court Library, Abstracts and Briefs, vol. CXXIX, case #3449.

³⁹Mead, *op. cit.*, 84-85; Also Leonard P. Fox, "State Regulation of the Canal Corporation in Colorado," *Michigan Law Review*, XVI (1918), 160-161. L. C. Mead revealed in the letter to the editor from which I have quoted (Greeley Tribune, Oct. 27, 1880) that James Duff, the Denver representative of the Colorado Mortgage and Investment Company, favored the revised bill which attached the water right to the ditches. L. C. Mead had been a trustee of the Highland Ditch Company which sold water to farmers in the St. Vrain Valley (Record of Trustees' Meetings, Highland Ditch Co., April 4, 1872 to March 23, 1878, pp. 15, 55, 81-90).

⁴⁰Colin B. Goodykoontz, "Some Controversial Questions before the Colorado Constitutional Convention of 1876," *Colorado Magazine*, XVII (January, 1940), 10-11; Eugene Parsons, "Henry P. H. Bromwell," *The Trail*, XV (December, 1922), 3-10; *History of the City of Denver, Arapahoe County, and Colorado*, 359-360; Carl Sandburg, *Abraham Lincoln: The War Years* (4 vols., New York, 1939), III, 334, IV, 132-133; *Proceedings of the Constitutional Convention* (Colorado), 61, 297.

⁴¹Boyd, *History*, 123; Denver Daily Tribune, February 4, 1879. Elwood Mead, who became U. S. Commissioner of Reclamation, was born in Indiana. He received a B. S. degree from Purdue University in 1882 and later that year accepted a position on the faculty of the Colorado Agricultural College at Fort Collins, where in 1886 he became the first Professor of Irrigation Engineering in the United States. In 1888, he became territorial engineer of Wyoming, and two years later State engineer of that State. See obituary sketch in *Transactions of the American Society of Civil Engineers*, CII (1937), 1611-1618.

The revised bill had no difficulty in the House, but in the Senate it ran into considerable opposition led by L. R. Rhodes of Fort Collins. Lawyer Rhodes had opposed the embryonic Colorado System in the Denver convention, and had been called to order by the chair. He apparently believed that property rights in water could be better protected by the courts than by some regulatory system. In the Senate,

He said the passage of the bill would be detrimental to all the best farming interests in the State. Want of time prevented him from pointing out all the objectionable features of the bill. He saw no use of any legislation on the subject of irrigation. The decisions of the Supreme Courts of California and Nevada have settled all the questions of prior rights, and these precedents are all the law that is needed. The bill should be entitled a bill to increase the practice of attorneys in the rural districts.⁴²

Later he would change his mind—he too had been raised in the wet country but now he moved to strike out all of the bill after the enacting clause. He was supported by most of the senators from the southern part of the State, where irrigation institutions imported from New Mexico prevailed, but the motion was lost. Two days later the revised bill passed the Senate and shortly thereafter became law.⁴³

The legislation of 1879 created part of the present system of public control of the streams in Colorado. It provided for the division of the state into ten water districts, most of them consisting of an entire watershed. Nine of these were in the South Platte Valley. The Cache la Poudre valley, for instance, became as it remains to this day, Water District No. 3. New districts have been added until today there are 69 of them, which include every valley in the State. In each district, the statute provided for a water commissioner to divide the water according to the prior rights of the various ditches. Priority was to be determined by the district courts which could appoint referees to take testimony concerning construction dates, cross-section measurements, capacities and gradients, and upon that testimony could adjudicate property rights in water. The customary lawsuit was not involved, the court acting rather as an administrative board which could issue "a decree determining the several priorities of the several ditches and reservoirs . . ." No mention was made of a State commissioner of irrigation nor of stream measurement, but the act retained with alterations the provisions of the original bill pertaining to the regulation of reservoirs.⁴⁴

The Colorado System was now half completed, but only half, for in the form in which the Second General Assembly left it, it satisfied neither the lawyers, the ditch owners nor the farmers.

⁴²Denver Daily Tribune, February 8, 1879; see also Fort Collins Courier, April 22, 1880.

⁴³Colorado, General Assembly, Senate Journal, 1879, 385-386, 441.

⁴⁴Colorado, Session Laws, 1879, 94-108.

Continued interest in the evolving Colorado System owes much to the fact that the next two growing seasons were dry, as dry as that of 1874 or drier.⁴⁵ "The Poudre . . . has not been so low at this season of the year for several years," reported the *Colorado Sun* in July, 1879. The farmers on the St. Vrain quarreled, while on Bear Creek "one-half of our . . . farmers were literally burnt out . . ."⁴⁶ The harassed irrigators naturally turned to the new legislation for assistance and petitioned Governor Frederick W. Pitkin to appoint water commissioners. The first commissioner whom he appointed was John Reese for the St. Vrain Valley in Water District No. 5. This was on June 6, 1879. The governor appointed two other commissioners in 1879, one for Boulder and Coal Creeks (Water District No. 6), and the other for parched Bear Creek (Water District No. 9).⁴⁷ The first step toward the adjudication of water rights was taken in Water District No. 6, where Edward J. Morath was appointed referee by Judge William E. Beck on July 3, 1879. This referee started taking testimony at Boulder early in September, 1879.⁴⁸

North on the Poudre, where as five years earlier, the editor of a Greeley paper believed there was "more water being used in Larimer county than is legal," no water commissioner was appointed in 1879, but on August 25, Judge Victor A. Elliott of the Second Judicial District appointed Harry N. Haynes, son of the State senator, referee for Water District No. 3. Immediately, Haynes published his notices and began taking testimony on September 29, 1879, first in Fort Collins and later in Greeley. One by one each ditch owner appeared with his witnesses to give proof in support of his claim to the river. The law required that the referee record the dates of the construction of each ditch together with a statement of its size, grade, and capacity. The Greeley irrigators, as may be imagined, cross-examined and challenged the Fort Collins witnesses. The claimants employed surveyors and civil engineers, such as Edwin S. Nettleton, Franklin C. Avery, and H. P. Handy, to testify as to the grades and capacities, some to gain accurate data, others apparently to substantiate an exaggerated claim. The taking of testi-

⁴⁵The annual precipitation recorded at Denver for the year 1874 was 13.45 inches, for 1879, 10.86, for 1880, 9.58. The 74 year average is 14.01. See R. J. Martin and E. Corbin, editors, *Climatic Summary of the United States* (Washington, 1930), sec. 23, pp. 9-10; U. S. Bureau of the Census, *Statistical Abstract of the United States*, 1947 (Washington, 1947), 150-151; Boyd, *History*, 444. The Denver weather station is the only station in the South Platte Valley with complete records for these years.

⁴⁶Colorado Sun, July 12, 1879; Fort Collins Courier, June 5, 1879; Rocky Mountain News, January 23, 1881.

⁴⁷Colorado State Engineer, *Second Biennial Report*, 1883-1884, 28-29; Rocky Mountain News, June 7, 1879.

⁴⁸Adjudication Proceedings in Water District No. 6 before Referee Edw. J. Morath, Vol. I, 1-812 (ms. in the Boulder County Courthouse, Boulder, Colo.).

mony was completed in January, but Haynes did not present his evidence to the district court until the following April.⁴⁹

On April 15, 1880, Harry Haynes went to Denver. The precipitation of the winter and early spring had been below normal and the Poudre irrigators were already concerned about their 1880 water supply.⁵⁰ The week before he had filed his testimony in the district court at Fort Collins, and now he sought from Judge Elliott a decree based upon that testimony which would determine the rights to the use of the river. To his surprise, the judge refused to issue such a decree. In common with others of the legal profession, Judge Elliott believed that the irrigation act of 1879, in not providing for the customary lawsuits and personal summonses, had created a procedure which was contrary to the principles of Anglo-American law.⁵¹ As Judge Beck declared when this problem came before the Colorado Supreme Court:

... no provision is made for suits upon the dockets of the courts or for parties thereto, nor for personal service of process upon owners of water rights, and persons whose titles to alleged appropriations are to be affected by such decrees. It appears to be the view of petitioners and their counsel that the spirit and intent of the act simply require a general notice to all concerned that the taking of testimony has been completed by the referee, and that on a certain day a decree will be entered thereon settling the rights and titles of all claimants. If this be the correct view, such a proceeding would certainly be an anomaly in legal jurisprudence.⁵²

As has been said, the statute of 1879 provided for an essentially administrative procedure, a procedure not too different from that of the later State Board of Control in Wyoming. The Colorado lawyers objected to this statute for the same reason that later lawyers objected to the Wyoming System.

The Greeley farmers were very much disappointed, although the *Larimer County Express* thought that "some in Collins are well enough pleased with the turn of affairs."⁵³ They immediately met together and decided upon petitioning the Supreme Court for a writ of mandamus to compel Judge Elliott to proceed according to the law. They appointed a committee, composed of Mayor James M. Freeman, Bryant S. LaGrange, and David Boyd, to employ counsel and to begin the suit.⁵⁴ Hot-tempered David Boyd, on his part, wrote an irate article for the Greeley *Tribune*:

⁴⁹First Adjudication Proceedings in Water District No. 3, Book I, 1-297, II, 298-596; Order appointing H. N. Haynes Referee in the District Court of Larimer County, Colorado, for Water District No. 3 and Report of H. N. Haynes, Esq., Referee of Water District No. 3, Case No. 320 (mss. in the Larimer County Courthouse, Fort Collins, Colo.); *Colorado Sun*, August 30, 1879, November 8, 15, 1879; *Fort Collins Courier*, August 28, 1879, December 4, 11, 1879.

⁵⁰*Colorado Sun*, April 3, 1880.

⁵¹*Fort Collins Courier*, April 22, 1880; *Larimer County Express*, April 23, 1880; *Colorado Sun*, June 19, 1880.

⁵²Union Colony of Colorado v. Victor A. Elliott, 5 *Colorado Reports*, 380 (1880).

⁵³*Larimer County Express*, April 23, 1880.

⁵⁴*Colorado Sun*, April 24, 1880.

We understand that Judge Elliott suggests no improvement in the law, but says that we must have remedy by the usual procedure. This shows how little he has looked into the matter, and how utterly incompetent he and his class are to adjudicate this affair. To the unbiased mind it would appear that a situation wholly unique could not be met by ordinary remedies. American legislation never has had to deal with irrigation. The same is true of the English, from whence we derive most of our jurisprudence and modes of procedure . . . How long, my fellow sufferers, are we to be the playthings of these quibbling lawyers, these men of hidebound precedents, of regular procedures, of blind conservatism, of narrow routine, of crass stupidity?⁵⁵

The summer turned out to be drier than the preceding summer and the judge refused to determine who had the better rights to the river. Again there were rumors circulating in Greeley to the effect that the Fort Collins people were taking more water than they were entitled to.⁵⁶ One measure that could be taken was to have the governor appoint a water commissioner, to do that which had been suggested in 1874. The governor was petitioned and on July 9, 1880, he appointed Bryant S. La Grange as the first water commissioner in Water District No. 3. Lacking a legal record of the prior rights, the new commissioner tried to divide the river by "moral suasion," apparently not without some success.⁵⁷ In irrigation communities, however, legal records and police power are more efficacious than moral suasion.

The controversy over the irrigation law was interjected that fall into the campaign for elections to the Third General Assembly. Stockgrower Jared L. Brush was again a candidate for the House, and Mayor James M. Freeman ran for the Senate. The latter promised that if he were elected he would amend the irrigation law so as to enable "all the farmers and ditchowners to get a decree from the court that would give them the priorities [to] which, under the proof offered, they might or ought to be entitled." Though some opposed him because of his association with the Colorado Mortgage and Investment Company, both he and Brush were elected.⁵⁸

The demand for new legislation on irrigation came not alone from the Greeley community. The editor of the Fort Collins *Courier* supported it.⁵⁹ J. S. Stanger advocated it in his *Colorado Farmer*. The State Board of Agriculture, of which Stanger and LaGrange were members, recommended it.⁶⁰ Early in January, 1881, some of the progressive farmers and fruit-growers of the South Platte Valley held a farmers' institute in Denver. They listened to a talk

⁵⁵Boyd, *History*, 131.

⁵⁶*Colorado Sun*, April 3, 1880; *Fort Collins Courier*, May 6, 1880; *Larimer County Express*, December 16, 1880; Boyd, *History*, 127.

⁵⁷*Larimer County Express*, July 15, 22, 1880; *Greeley Tribune*, July 14, 1880; Colorado State Engineer, *Second Biennial Report*, 1883-1884, 28.

⁵⁸*Greeley Tribune*, October 27, 1880; *Colorado Sun*, October 9, 1880.

⁵⁹*Fort Collins Courier*, November 18, 1880.

⁶⁰The State Board of Agriculture Record from Sept. 11, 1877 to June, 1886 inclusive, p. 47 (mss. in files of the Secretary of the State Board of Agriculture, Colorado A. & M. College, Fort Collins, Colo.); *Fort Collins Courier*, December 9, 1880.

given by B. S. LaGrange on irrigation legislation and then chose him chairman of a committee to write an irrigation bill for presentation to the legislature.⁶¹

There was more concern over the corporation ditch companies than two years previously. The Colorado Mortgage and Investment Company, now commonly known as the English company, was digging three big ditches in the South Platte valley. It had organized in March, 1879, the Larimer and Weld Irrigation Company to assist Eaton in the completion of his ditch. A year later it had begun the large High Line Canal out of the Platte south of Denver and on January 3, 1881, it incorporated the Loveland and Greeley Irrigation and Land Company with Senator James M. Freeman as one of the directors to build a big canal out of the Big Thompson.⁶² To many farmers, this development made imperative some legal registry of their stream rights. State Grange Master Levi Booth expressed their fears when on January 12, 1881, he addressed in Denver an annual meeting of the Grange:

But railroad companies are not the only strong monopolies which are threatening to rob us of our rights. Vast ditch companies are being formed, controlling a large amount of foreign capital—capital that has no sympathy for us or ours. These companies are taking possession of our waters, without any regard to prior rights or prior use of such waters. And if we do not look well to our rights we shall soon find to our sorrow, that we have allowed them to even rob us of our lands, for if they can take the water they thus deprive us of the use of our lands. Very soon we shall have to go to them to buy our water, and then they will charge us "All the trade will bear" . . .⁶³

He finished this topic by urging pressure upon the legislators. Governor Pitkin sensed this wide-spread interest in irrigation legislation and suggested action in his biennial message.⁶⁴

Appointed chairman of the Senate irrigation committee, Senator James M. Freeman more than fulfilled his campaign pledge by introducing into the third State legislature three irrigation bills which when enacted into law would form with the legislation of 1879 a comprehensive water code for Colorado. He was greatly assisted in the drafting of these bills by John S. Stanger, Ledru R. Rhodes, Bryant S. LaGrange, and Henry P. H. Bromwell. The first two were members of Freeman's committee. Rhodes in this legislature changed from opposition to support of the evolving Colorado System and became one of its creators. Farmer LaGrange spent most of the legislative session in Denver and helped in many ways to father this legislation.

⁶¹Denver Tribune, January 7, 1881; Rocky Mountain News, January 7, 1881; Greeley Tribune, January 19, 1881.

⁶²Certificates of Domestic Incorporation, I, 246-248, VII, 265-267 (ms. in the Division of State Archives of Colorado); *Platte River, Colo., Wyo., and Nebr.*, (73 Congress 2 Session, House Document 197, serial 9826, Washington, 1934) 123, 131; Greeley Tribune, May 11, 1881.

⁶³Rocky Mountain News, January 13, 1881.

⁶⁴Colorado, General Assembly, *House Journal*, 1881, 31; Colorado, General Assembly, *Senate Journal*, 1881, 27-28.

Freeman delayed the introduction of his bills until the Supreme Court had decided the lawsuit which the Greeley irrigators had brought against Judge Elliott. The decision was given on January 20, 1881, in favor of the latter, and on the same day Freeman introduced a bill to amend the legislation of 1879 regarding priorities. It was entitled Senate Bill No. 93, "a bill for an act to make further provisions for settling the priority of rights to the use of water . . ." It met the objections of the lawyers by having the proceedings initiated by a lawsuit and the defendants notified by personal summonses. Henry P. H. Bromwell, who had formulated the previous procedure, assisted in the drafting of this bill, but the provision for the registry of water titles showed the influence of L. R. Rhodes.⁶⁵ This measure passed the Senate unanimously, but in the House it was again opposed by the representatives from the Spanish-American communities. J. L. Brush, buttressed by a petition in its favor from Weld County, championed it. He was ably assisted by Henry Lee of Jefferson County, and the bill passed by a vote of 36 to 10.⁶⁶

The previous legislature, it will be remembered, had refused to provide the irrigators with a State commissioner of irrigation and with some legislation for the measurement of the streams. Freeman's second bill sought to supply these important institutions. It provided for a State hydraulic engineer to measure the irrigable streams. This measure was much influenced by the experience of California, where the office of State engineer had been created three years earlier.⁶⁷ It was supported by the *Rocky Mountain News* as well as by the *Denver Tribune*.⁶⁸ It had one feature, however, which was a considerable improvement over the California law; it provided that prior to the taking of testimony in an adjudication suit, the State engineer should measure the capacities of the stream and the ditches, and present his measurements as evidence in the suit. Unfortunately, this provision was stricken from the bill by the Senate irrigation committee; had it remained it would have prevented the exaggerated decrees which constituted the major weakness of the Colorado System. Moreover, it would have prevented several decades of Western controversy because in the end procedures similar to this were incorporated into the water codes of most of the seventeen Western States. This bill had another new feature; it provided for the creation of three water divisions larger than the water districts and conterminous with the South Platte, Arkansas, and Rio Grande basins. This feature had been proposed in the Den-

⁶⁵Colorado Sun, January 22, 1881; Fort Collins Courier, May 20, 1880; Denver Tribune, January 21, 1881.

⁶⁶Colorado, *Senate Journal*, 1881, 369; *House Journal*, 1881, 669-670; Denver Tribune, February 10, 1881; *Rocky Mountain News*, February 10, 1881; Denver Daily Times, February 10, 1881.

⁶⁷California, *Statutes*, 1877-78, 634-636.

⁶⁸Rocky Mountain News, January 23, 1881; Denver Tribune, February 8, 1881.

ver convention of 1878 and more recently had been presented by B. S. LaGrange to the farmer's institute. When this somewhat emasculated Senate Bill No. 124 became law on March 5, 1881, the South Platte valley became Water Division No. 1, the Arkansas Water Division No. 2, and the Rio Grande Water Division No. 3.⁶⁹ Six years later, each of the water divisions, which now number seven, was provided with a superintendent.⁷⁰

Since the days of the Pike's Peak gold rush, miners and irrigators had acquired rights to the waters of a stream by posting a notice, digging a ditch, and putting the water to beneficial use. Since this method did not provide for a public record of the appropriation, Senator Freeman's third bill sought to improve it by providing for a record in the county clerk's office. It required that one seeking to appropriate water must file with the county clerk, within ninety days after the commencement of the ditch, a description and a map of the project. This measure likewise passed the legislature and became part of the Colorado System.⁷¹

Coloradans did not delay the transformation of these laws into institutions. Shortly after the adjournment of the legislature a petition was circulated in the Cache la Poudre Valley urging Governor Pitkin to appoint E. S. Nettleton as the first State engineer, but at that time this gentleman was in the employ of the English company and many opposed his appointment. The opponents of Nettleton favored the State auditor, Eugene K. Stimson, whom the governor appointed as the first incumbent of the new office. Stimson, a veteran of the Civil War, had attended West Point and had worked as civil engineer on the construction of the Kansas Pacific Railroad.⁷² The summer following his assumption of office, he established measuring gauges in the Cache la Poudre and the Big Thompson rivers.⁷³

In June, the Larimer and Weld Irrigation Company and the Greeley farmers petitioned Judge Elliott to proceed with the adjudication of water rights in Water District No. 3 and on June 28, 1881, he appointed Henry P. H. Bromwell as referee.⁷⁴ The new referee utilized the records collected by Harry Haynes, but in addition took testimony in Greeley and Fort Collins in November-

⁶⁹Colorado, *Session Laws*, 1881, 119-122; Colorado State Engineer, *First Biennial Report*, 1881-1882, 8-16; S.B. 124, Bill for an act to provide for the appointment of a State engineer and to define his duties and regulate his pay and for the appointment of his assistants, and the establishment of Water Divisions, 1881 (ms. in the Division of State Archives of Colorado).

⁷⁰Colorado, *Session Laws*, 1887, 295-300.

⁷¹Colorado, *Session Laws*, 1881, 161-162. This act was declared unconstitutional by the Colorado Supreme Court in *Lamar Canal Co. v. Amity Land and Irrigation Co.*, (26 Colorado Reports, 1899, 370-380). A similar measure, enacted in 1903, reduced the time to 60 days and provided that maps and description be filed with the State engineer (Colorado, *Session Laws*, 1903, 289-292).

⁷²Colorado, *Sun*, February 19, 1881, March 5, 12, 1881; *Fort Collins Courier*, February 24, 1881, March 3, 1881; *Larimer County Express*, March 17, 1881.

⁷³Colorado State Engineer, *First Biennial Report*, 1881-1882, 16-19.

⁷⁴*Proceedings Concerning Adjudication of Priorities under Irrigation Act of 1881, in Water District No. 3*, 1-3.

December, 1881. He filed his report on March 20, 1882, and on April 11, 1882, Judge Elliott issued a decree determining the prior rights to the use of the waters of the Cache la Poudre—the first adjudication decree granted under the Colorado System. At last the farmers of the Poudre valley had records of their water rights somewhat comparable to those of their rights in land.⁷⁵

The first right to the use of the river was awarded to the Yeager Ditch, the first recorded diversion. This water right was recorded in the following manner:

No. 1 First—that Ditch numbered 1, named The Yeager Ditch,

J. H. Yeager claimant in this matter having been found in manner aforesaid to be a Ditch used for irrigation of lands.....and taking its supply of water from the Cache la Poudre River, and divided into two branches, called respectively the upper Ditch and the lower Ditch and with main headgate on a slough of said River, and situated on the N.E. 1/4 of S.E. 1/4 of Sec. No. 24, T. 8 N., of R. No. 70 W., and entitled by two several appropriations to use of water from said River, to two several priorities, to wit: Priority No. 1 by construction of the lower branch thereof; and Priority No. 8, by construction of the upper branch thereof, being in effect an enlargement thereof, and thereby to the several quantities of water with the number and dates of the priority of each appropriation thereof, hereinafter mentioned, for the use aforesaid for the benefit of the party or parties lawfully entitled thereto; it is hereby adjudged and decreed, that these be allowed to flow into said Ditch from said River, for use aforesaid, and for the benefit of the party or parties aforesaid under and by virtue of said appropriation by construction—Priority No. 1, so much water as will flow in said lower branch, on a grade or fall of one half inch to the rod, or 13 1/3 feet to the mile, with width on bottom of two feet and six inches—slopes of banks one to one, with depth of water flow of eighteen inches—computed at 1488 cubic feet of water per minute of time; the appropriation of water took effect on, and said priority thereof dates from the first day of June, A.D. 1860; and that there be further allowed to flow into said Ditch from said River for the use aforesaid, and for the benefit of the party or parties aforesaid under and by virtue of said appropriation by construction of said upper branch—Priority No. 8, so much additional water from said River, for the use and benefit aforesaid, as will supply the increased flow thereof as enlarged, (on a grade or fall of two feet per mile; with width on bottom of two feet—slopes of banks one to one—with depth of water flow of eighteen (18) inches) computed at 522 cubic feet of water per minute of time, the appropriation of which last mentioned water took effect on, and the said Priority thereof No. 8, dates from the first . . . Day of June A.D. 1863.⁷⁶

Nor did the St. Vrain and Boulder valleys postpone action in this matter. On October 21, 1881, Judge Chester C. Carpenter of the

⁷⁵First Adjudication Proceedings in Water District No. 3, Book III, 597-672, Book VI, 1-30.

⁷⁶Ibid. Book VIII, 7-8.

First Judicial District appointed Thomas R. Owen Jr. as referee for the St. Vrain Valley and the latter acted so quickly that the former was able to issue a decree on June 2, 1882.⁷⁷ On the same day, Judge Carpenter also signed a decree allocating the waters of Boulder Creek in District No. 6.⁷⁸ The adjudication suit along with the administrative system had become an operating part of the Colorado System.

This new system of the public control of water rights, along with windmills, dry farming, sod houses, grazing, and the Doctrine of Prior Appropriation, was one of the major adjustments which the people from the humid East made to their new environment in the arid West. In much of this region irrigation was necessary for agriculture, and a new property right developed which needed regulation and protection. As has been related, the Colorado pioneers through nearly a decade of discussion, formulation, and legislation created institutions for the acquisition, adjudication, and administration of these rights. Their achievement was not one of adaptation of existing institutions, but one of invention of new ones. Starting with the ideas and techniques of ditch regulation, they developed institutions of stream regulation which had no counterpart in the humid East. Although they received suggestions from California and Italy, they fashioned, spurred on by several seasonal droughts, these new offices and procedures out of their own needs and experiences in the arid West.

Moreover, the institutions which they created have had wide influence. As other western communities faced similar problems, their leaders turned to Colorado for guidance. Eventually, most of the seventeen Western States adopted with modifications Colorado's centralized administrative system. Although a few states have followed Wyoming in providing for the adjudication of their water rights by administrative boards, most of them have followed Colorado in delegating that task to the courts. Nor did Colorado's influence end at the borders of the United States. The water institutions of both Australia and Canada were in some measure patterned after those of Colorado. As Elwood Mead wrote: "To Colorado belongs the credit of having been the first State to enact a code of laws for the public administration of streams, and these laws have directly and indirectly influenced more people than those of any other commonwealth."⁷⁹

⁷⁷Record of Water Decrees, Water Districts Nos. 4 and 5, Judgement Book No. 7, 100-134 (ms. in the Boulder County Courthouse, Boulder, Colo.).

⁷⁸Record of Water Decrees, Water District No. 6, Judgement Book No. 8, 2-20 (ms. in the Boulder County Courthouse, Boulder, Colo.).

⁷⁹Mead, *op. cit.*, 143.

The Early Activities of the Guggenheims in Colorado

DONALD FREMONT POPHAM*

The story of the Guggenheim family in Colorado is closely related to the development of the smelting industry of the state. It is an epic of concerted family endeavor; it is a study of influence—fluence of family and of industrial development, each upon the other, and of both upon the state. This article will trace only the early activities of the Guggenheims in Colorado.

The Guggenheims came originally from Switzerland. For almost two hundred years the family had lived in the little town of Lengnau, in the Canton of Aragau. Before Meyer Guggenheim came to America, anti-Semitic laws flared up throughout the greater part of Europe with malignant force, curtailing the life, labor, and movement of the Jews.¹

Meyer Guggenheim grew up in the Lengnau ghetto. He had a meager schooling and was apprenticed to learn the tailor's trade. He was ambitious and soon persuaded his father, Simon, to sell the little property they had and to quit unfriendly Switzerland forever. Thus in 1847 Simon Guggenheim, his son Meyer and his three daughters, with Rachel Meyers, Simon's second wife, and her seven daughters by her first marriage, set sail for America.²

The emigrants landed penniless in Philadelphia with only a meager command of the English language. The Guggenheims were not long in establishing themselves. Simon shouldered a pack and went forth to sell household necessities, and Meyer secured work as a tailor.

For the first four years of his life in America, Meyer followed the tailor's trade. In 1850, he married Barbara Myers, his step sister. In 1852 he went into business with his brother-in-law, Leman Myers, who was engaged in making an essence of coffee. It was not long before Meyer expanded his business activities. He began to make a stove polish, following a formula prepared for him by a refugee chemist friend at Bethlehem, Pennsylvania. As the profits from his polish and essence mounted, Meyer tried his hand at other businesses.

He formed a partnership with S. Dreifuss and Jacob Loeb, the firm becoming known as Guggenheim, Dreifuss and Loeb. They opened a store in Philadelphia and dealt in general merchandise, specializing in stove polish and coffee essence. Picking up an option

*Mr. Popham, our Assistant Archivist, took his Master's Degree in History at the University of Denver in 1949. This article is a summary of a section of his Master's thesis.—Ed.

¹Harvey O'Connor, *The Guggenheims* (New York: Covici-Friede, 1937), 1-25.

²Isaac Marcossen, *Metal Magic* (New York: Straus and Company, 1949), 13-25.

from England on a caustic alkali, Meyer started manufacturing soap under the firm name of the American Concentrated Lye Company. In competition with the Pennsylvania Salt Company, which had a virtual monopoly on lye in America, he produced soap more cheaply than his competitor. The salt company eventually bought out Meyer's company at a fine profit to the owner.³

By 1881, Meyer Guggenheim had accumulated a comfortable fortune and had established a large family which was to control many varied business activities. The only parallel of this family dynasty, both in origin and rise, is the Rothschild hierarchy in Europe. Whereas Anselm Rothschild had five sons, Meyer Guggenheim was the father of seven. Isaac, the first son of Meyer and Barbara Guggenheim, was born in 1854; then came Daniel in 1856, Murray in 1858, Solomon in 1861, Benjamin in 1865, Simon in 1867, and William in 1868. Interspersed along with the sons were three daughters.⁴

The fortune of Meyer Guggenheim was enhanced in the early "eighties" by shrewd market operations in railroad stocks and by importations of East Indian spices and Swiss embroidered lace.⁵

The various financial maneuvers through which Meyer became involved in mining at Leadville, Colorado, are somewhat complicated. The great silver-lead discoveries of 1879 received world-wide attention. Of all the fabulous camps in the colorful history of western mining, none was more spectacular than Leadville in those mad days when the washed-out gold town called Oro City suddenly found itself the greatest silver city on the face of the earth.

Charles H. Graham, who ran a grocery store and bought lye from the Guggenheim firm, hurried west as soon as the Leadville strikes became known. Samuel Harsh, another Philadelphian, purchased an interest in two lead-silver mines in California Gulch, just outside Leadville. One was the A. Y., the other, the Minnie.

The A. Y. mine was the oldest claim in California Gulch. The property was originally located October 20, 1869, by five prospectors looking for gold.⁶ Discouraged, four of the five gave up the claim to A. Y. Corman, the fifth. Undiscouraged, Corman staked out another claim immediately above the original and named it the Minnie, in honor of his faithful wife. In 1879, only a few months after the great strikes, Corman, almost down to his last cent, sold out to Harsh and George Work, another Philadelphian. Work, who was a friend of Graham, interested him in the properties as well as a third individual named Thomas Weir. Graham bought an interest but paid only in part for his share. Work and Weir gave

³Ibid., 25-28.

⁴O'Connor, *op. cit.*, 25-38.

⁵Marcosson, *op. cit.*, 25-34.

⁶Leadville County Clerk and Recorders Office, *Abstract of Title of A. Y. and Minnie Claim*, 1.

notes to Harsh for their interests. When the notes fell due, they lacked the money with which to take them up. They turned to Graham for help, and Graham turned to his friend, Meyer Guggenheim, to borrow the money.

Meyer Guggenheim, always seeking new avenues for his restless energy, bought the shares of Work and Weir and carried Graham's debt without interest. In this manner and with an outlay of only five thousand dollars, Meyer acquired a half interest in the mines, of which Graham and Harsh owned the other half. Meyer went out to Leadville to look over the ground. Finding the two mines flooded, he engaged a Denver engineer, Charles Hill, as superintendent.

Two months later, when Meyer was back in Philadelphia, the strike was made. Hill wired to Meyer, "Struck rich ore in A. Y. Shaft Number One. You have a Bonanza."⁷ A second telegram informed him that the strike ran fifteen ounces of silver and sixty percent lead to the ton.⁸

By 1882, the A. Y. and Minnie were yielding two thousand dollars a day in silver. Meyer Guggenheim soon found it impossible to keep his restless sons in school. In 1882 Benjamin Guggenheim entered Columbia University, but he soon persuaded his father to let him go west and plunge into practical mining and metallurgy by managing the A. Y. and Minnie. Simon, after completing his studies in Spain, followed his brother. In 1889 William, graduated from the University of Pennsylvania in metallurgy, also headed west.

By 1887, the two Guggenheim mines had produced nine million ounces of silver and 86,000 tons of lead. They were averaging over one million dollars gross every two years. In 1890, the two mines were estimated to be worth \$14,556,000.⁹ In 1893, when the price of silver dropped precipitously, Meyer Guggenheim refused an offer by an English company to sell the mines for six million dollars.

The A. Y. and Minnie remained one of the greatest bonanza properties and the longest producer in Leadville history. Until Meyer's death in 1905, the mines continued to produce a fat monthly check for the old man. After his demise, the sons turned the property over to lessees who continued to work the mines even though the ore output declined in value.

By 1888, Meyer Guggenheim and his sons were ready to formulate larger plans. In Leadville, Meyer met Edward R. Holden, promoter of the Holden Smelting and Refining Company which later was acquired by the Globe Smelting and Refining Company.

⁷Marcosson, *op. cit.*, 39.

⁸O'Connor, *op. cit.*, 55.

⁹Ibid., 61.

Meyer invested eighty thousand dollars in the Holden smelter at Denver, and Simon and Benjamin were given jobs in the plant.

In January, 1888, Holden retired from the active management of his plant, and was succeeded by Dennis Sheedy, an Irish-born pioneer in western wagon-trading and a Denver financier. Backed by the resources of the Guggenheims, on January 13, Holden organized the Denver Smelting and Refining Company, with a capital stock of \$500,000.¹⁰ Holden reported to the press that the new plant to be erected would be the most complete of its kind in the United States. It would have six stacks, and the entire plant would be capable of treating 400 tons of ore a day. The probable cost of the establishment Holden figured at \$200,000.¹¹

Denver, Leadville, Colorado Springs, and Pueblo were considered as sites for the new smelter. Denver was too far from the coal, coke and lime supplies so necessary for the life of a smelter. Leadville suffered too much from high railway rates, high labor costs and lack of a balanced ore supply.¹² Pueblo looked better. As a smelting point, Pueblo was centrally located at the foot of the Rockies, and the ores from Leadville and other mountain mining camps could roll down the Arkansas Valley. Pueblo was also on the through railroad lines north and south, east and west, and was in a position to handle the ores of the Southwest and Mexico. Labor costs in Pueblo were low and hence, Pueblo was the most economical place for the construction of smelters.¹³

On March 7, 1888, Edward Holden and Benjamin Guggenheim returned to Denver from a visit to Pueblo, visibly impressed. Asked by the press if they had definitely decided upon a site for the proposed smelter they answered, "Not positively, but it will not be Denver."¹⁴

Guggenheim and Holden returned to Pueblo on March 27, and submitted a proposition to the directors of the Pueblo Board of Trade. The proposition was that if the city would furnish the land and the citizens would put up a bonus of \$25,000 cash, work on the smelter would be commenced at Pueblo within one week.¹⁵ While the facts of the proposition were not immediately made public, speculation ran riot in Pueblo. On March 28, the Pueblo Board of Trade decided to call a mass meeting of the citizens at De Remer's Opera House on the morning of March 29 for the purpose of taking action on the Holden-Guggenheim offer.¹⁶ The mass meeting was

¹⁰Secretary of State of Colorado, *Domestic Incorporation Records*, Book 16, p. 371.

¹¹*Engineering and Mining Journal*, Jan. 21, 1888, p. 58.

¹²O'Connor, *op. cit.*, 78.

¹³*Pueblo Daily Chieftain*, Jan. 22, 1888.

¹⁴*Denver Republican*, Mar. 8, 1888.

¹⁵*Engineering and Mining Journal*, April 7, 1888, p. 257.

¹⁶*Pueblo Daily Chieftain*, March 29, 1888.

called to order at 10:30, Thursday morning, March 29. A letter from Holden was read which contained the Holden-Guggenheim offer.

A committee was immediately appointed to solicit funds from every one in the opera house. Among the many contributors was Governor Alva Adams, who gave \$500.

Another mass meeting was held on Saturday, March 31. All but \$2,000 of the sum requested had been raised in the preceding days. Earnest speeches were made urging that the balance of the money be raised at once. A local band enlivened the proceedings. By the time the meeting adjourned, the money had been collected and a telegram was sent to Holden informing him that the bonus was ready.¹⁷

On Tuesday, April 10, Holden, in company with Benjamin Guggenheim, stated in an interview to the press that all matters had been settled and that the new smelter would be located at Pueblo.¹⁸ Because of the rivalry in civic pride between the citizens of Pueblo and Denver, the name of the Guggenheim company was changed from Denver Smelting Company to the Philadelphia Smelting and Refining Company, in honor of the city in which Meyer Guggenheim got his start in this country.¹⁹

The furnaces of the Philadelphia Smelting and Refining Company were fired up on the tenth of December, 1888. The citizens of Pueblo were very proud of the new addition to their industrial family. The smelter comprised a collection of buildings which covered about ten acres of ground on the outskirts of Pueblo. The cost of the plant was a trifle over \$300,000 and was said to be the most modern of its kind in the world.

The Philadelphia smelter was soon to become one of the leading smelting concerns in Colorado, and hence, of the nation. In 1889, Murray Guggenheim was dispatched to Pueblo as president of the Philadelphia Smelting and Refining Company, replacing Holden. Benjamin Guggenheim was elevated from treasurer to general manager. William Guggenheim was appointed assistant superintendent of the smelting works. Simon Guggenheim was given the job of scouting for ore up and down the Rockies for the furnaces of the smelter. Solomon Guggenheim remained in New York as salesman for the plant's metals. The brothers bound themselves together in a partnership—"M. Guggenheim's Sons"—to carry on the financial responsibility for the smelter.²⁰

¹⁷*Ibid.*, April 1, 1888.

¹⁸*Colorado Chieftain*, April 12, 1888.

¹⁹Secretary of State of Colorado, *Domestic Incorporation Records*, Book 17, p. 251.

²⁰O'Connor, *op. cit.*, 82-87.

In 1889, Simon Guggenheim secured a contract to treat the ores of the Sierra Mojada mining district in Mexico. This was the first time a Pueblo smelter had negotiated a big Mexican contract.²¹

In 1893, when the bottom dropped out of the price of silver, all the Pueblo smelting plants except the Philadelphia allowed many of their furnaces to shut down in July and August.²² The price of metals, it was thought, prevented the profitable smelting of ores.



SIMON GUGGENHEIM

However, the Guggenheim plant remained in full blast, handling all the ore it could purchase. Because of the volume of business it was now handling, the Guggenheims thought the headquarters of their business should be removed to a more centrally located city in the state. Thus in the last week of December, 1893, it was announced that the general office of the Philadelphia smelter would be removed from Pueblo to Denver. The new offices were fitted up

²¹Engineering and Mining Journal, July 6, 1889, p. 13.

²²Rocky Mountain News, Jan. 1, 1894.

in the northeast corner of the ground floor of the Equitable building, and were occupied on February 1, 1894.²³

In 1895, smelting charges and freight rates in Colorado were greatly reduced, thus permitting a great number of silver mines which had closed, during the panic of '93 to reopen. Keen competition developed among the smelters, and improvements effected in the manner of treating ores resulted in a considerable reduction in the cost of treating ores. The production of the amazing new Cripple Creek gold camp greatly favored the strategically located Philadelphia smelter.²⁴

During 1900, ore was received at the Philadelphia smelter not only from Colorado and the West, but also from foreign countries, with one large shipment being sent from Chile. Of the 2,500 men employed by the smelters at Pueblo, nearly 900 of them worked for the Guggenheims.²⁵

During the period from 1888, the year the Philadelphia smelter was erected, until the formation in 1899 of the national smelter trust, which took over nearly all the large independent smelters in Colorado, except the Guggenheim plant, the average production value of Colorado ores at the Guggenheim plant was \$4,279,637 yearly, or 11.1 percent of the annual value of the precious metals mined in Colorado.

When the smelting trust was formed in 1899, the Guggenheims refused to join it, or to have anything to do with it. Even several years previous to the formation of the trust, the Guggenheims refused to join with the other smelter barons of Colorado, who formed a smelting association which divided the state into districts, and assigned each smelter an area for its sphere of operations.

In 1901, however, the Guggenheims reversed their position, and joined the national trust setup. This ended the early activities of the Guggenheims in Colorado.

²³Denver Republican, Feb. 1, 1894.

²⁴Ibid., Jan. 1, 1896.

²⁵Ibid., Jan. 1, 1901.

Mormon Colonization in the San Luis Valley

NICHOLAS G. MORGAN*

The settlement in the San Luis Valley by Mormon converts who emigrated from Georgia, Alabama, and Tennessee between 1877 and 1883, constitutes one of the most interesting historical dramas in the saga of the Centennial State.

*Mr. Morgan, a prominent business man of Salt Lake City, is a son of the principal promoter of the Mormon colonization of southern Colorado.—Ed.

These Southerners had but recently passed through a devastating war. General Sherman and his Union Army had almost destroyed their economy and the future was, to them, anything but pleasant to contemplate.

It is paradoxical that John Morgan, the Mormon Elder, who had most to do with the conversion of these Southern people to Mormonism, was one of Sherman's officers; a man ardently devoted to the Union cause and one who took a very active part in the destruction of the Confederacy.

The War was over, this same man, now a convert to Mormonism and laboring as a missionary for his Church, went among the very people he had so vigorously fought; converted many and, as their leader, led them as the first sizeable body of Anglo Saxons to the Conejos and San Antonio Rivers area of the San Luis Valley.

Their settlement in this Valley was accomplished under many hardships. The lands, which they selected as their future home, were over 7500 feet above sea level. The summer was short and the winters were long and cold.

These people, however, were possessed with great faith and perseverance. The land to which they were being taken, to them, was a "promised land," and theirs was an absolute confidence that the Almighty would watch over them; temper the climate and aid them in their effort to convert this area into a land of plenty.

It is the purpose of this article to delineate only the pioneer period of the settlement of the San Luis Valley by the Mormons, from the latter part of 1877 to the spring of 1883. The historical facts contained herein have been taken from authentic sources in Mormon Church records and from diaries and letters on file in the L.D.S. Church Library, in Salt Lake City. These include the daily journals of Elder John Morgan; his original letters written during the period of colonization, letters written by various parties connected with the colonization, and printed reports in the *Deseret News* at Salt Lake City.

Our story really starts in the northern settlements of Georgia and Alabama in the year 1877. A young Mormon Missionary, John Morgan, was busily and successfully engaged in teaching and converting to his Faith many of the Southern people.

A native of Indiana, he had moved in early manhood to Mattoon, Illinois, and there enlisted in the 123rd Regiment of Illinois Infantry. Until the close of the Civil War he served with the Union Army in the western theater of the War.

On receiving his honorable discharge in 1865, he went to Poughkeepsie, New York, where he became a student in the Eastman's Commercial College, from which he graduated in the spring of 1866.

A month or so later, in company with a former soldier "buddy," he contracted with a Wm. Jennings to drive a herd of Texas cattle from Kansas City to the Salt Lake Valley.

This herd of longhorns is believed to be the first Texas cattle driven westward from the Missouri River to the Rocky Mountains.

After his arrival in the "City of the Saints" in December, 1866, young Morgan became enamored with the location and the people and decided to open a business college in Salt Lake City.

In the ensuing seven years, he developed into one of the most highly respected educators of Utah, and the Morgan College was the most patronized of the higher schools of education in the Territory. He joined the Mormon Church in 1867; in 1868 he married into the prominent and well-to-do Nicholas Groesbeck family, and in 1875 accepted a call to serve as a missionary for his Church in the Southern States.

In the summer of 1877, he wrote to President Brigham Young advising him that many of the new converts to the faith were desirous of migrating to the Rocky Mountains and to the Body of the Church, and asked to be advised as to a suitable location for them to settle.

On June 28, 1877, President Young answered:

As Zion is constantly growing, so must we extend our settlements, and we are of the opinion that it would be well for the Saints gathering from Georgia and the other Southern States to locate in some favorable spot in the western portion of Texas or in New Mexico; which of these two regions you may decide on, will, perhaps, depend on the means of transportation you have at your command. Your company may be able to bring a few wagons and some harness with them, and we imagine could purchase, near the end of the railroad tract, Spanish mules at very low rates. With these, they could move slowly forward until a suitable location was discovered. In choosing such a one, there are several considerations that should be entertained. It is very desirable that the spot selected should be a healthy one, with abundant supply of water which can be taken out, at little cost, for irrigation purposes.

It would please us if it were situated near the homes of some of the tribes of the Lamanites [Indians] over whom our brethren and sisters could wield an influence for good, and to whom they could teach the ways of life eternal as well as the arts and industries of this life. The friendship and cooperation of these people would also be found of great advantage to the new settlers through their knowledge of the country and its productions.

We should be pleased to have you more fully acquaint us with your intentions; the probable number of your company and the date you intend to start.

The counsel thus given in this letter of instructions to John Morgan clearly indicates the policy adhered to by Brigham Young and the Mormon people in their settlement of the Indian lands of the Rocky Mountains and the west. It was one of the primary reasons for their success.

In a letter written to President Brigham Young, dated August 30, 1877, the day following his death (notice of which had not as yet been received), Morgan advised that he had concluded to take the first group of emigrants, about one hundred in number, to Pueblo, Colorado, via Memphis and St. Louis. From Pueblo, he wrote, he intended taking the group over the Rio Grande Narrow Gauge Railway to the end of the tract at Garland, Colorado, where the Company would disembark and travel overland southward into New Mexico.

He further advised that the Company would endeavor to take with them their own teams and wagons, although, he thought, live-stock would be inexpensive at the railroad terminus and, perhaps, could be purchased there.

He said he had instructed the people to take with them all kinds of seeds and grains; garden and flower seed. Further, that if the freight rates were not too high, they would also take a circular saw, the necessary tools for mining and a cotton gin.

On November 21, 1877, in a letter addressed to President John Taylor, who had succeeded Brigham Young as President of the Church, he advised that the Saints from Alabama and Georgia would embark at Scottsboro, Alabama, on the 19th inst. and proceed by railway to Pueblo.

There we expect to disembark and either procure conveyance by the purchase of wagons, or hiring, and go on into New Mexico, though we may winter at or near Pueblo and go on in the spring; in the meantime sending a few men on ahead to seek out a location. I am endeavoring to pick out the strongest of the Saints and take them this Fall to open up the way and leave the rest to follow in the spring or as soon as possible.

It has been impossible for me to obtain definite information as regards the situation at Pueblo; whether work can be obtained—whether stock and wagons can be bought, or not, or whether the weather in that latitude will admit of our traveling at this season of the year—but we thought best to make the effort, trusting that God would control all things for our good and open up the way before us.

The brethren will not be flush with means; they are generally a poor people and may not be able to provide themselves with teams and wagons sufficient or suitable for a long journey into the Interior. We shall be able to take tools of almost every kind and workmen to use them in all branches necessary for our comfort; also seeds of every description.

I have made arrangements with the railroad companies from here to Pueblo to get through tickets from our starting point to the terminus at Pueblo for \$29.80; children under 12 years—one-half fare.

Many of the Saints are making preparations to emigrate the coming spring and doubtless a large emigration from this part of the south will occur at that time.

I am just informed that one of the railroad companies expects to extend its line south from Southern Colorado, and thought that a way might be opened up for employment for the Brethren during the winter if that course met with your approval.

On the afternoon of November 17, 1877, John Morgan arrived at Scottsboro, Alabama. There was some delay in the arrival of Saints and they entrained on November 21st. On the evening of the 24th they arrived in Pueblo and were permitted to sleep in the cars overnight.

Sunday morning, November 25th, they disembarked from the train. It was extremely cold. For five days and nights they had been traveling without the comfort of sleeping in beds and when the seventy-two men, women and children arrived in Pueblo they, naturally, were very train-weary and dirty, but their spirits were high and they made the best of their situation. After that, through the efforts of Elder Morgan, they found temporary shelter at the old Thespian Theater, the oldest showhouse in Pueblo, and here, until December 1, 1877, they lived, ate, and slept. This theater, originally called "Conley Hall," was erected in 1869 by Lewis



Drawing of Mormon Barracks on Island in bend of Arkansas River where twelve families lived during winter, 1877-78. Nos. 1 and 14 were kitchens and dining room. People lived under the United Order.

Conley and was located on 7th Street. Later it took the name "Thespian Theater," then "Montgomery Opera House." It went out of service in 1889.¹

On November 26th, Morgan located a doctor friend who took him and one or two of the group to South Pueblo where they looked the area over and decided to erect barracks where they could live during the winter. On the evening of this day, at a meeting in the Theater, Elder Morgan advised the Saints to throw all their means together into a communal arrangement known as the United Order.

On November 27th, they examined a secluded island in the Arkansas River that was well shaded by trees which would break the winds and temper the cold, and they decided to build here their temporary winter quarters. That afternoon, they purchased suffi-

¹L. R. Hafen, *Colorado and Its People*, II, 451.

cient lumber at \$16.00 per 1,000 feet and nails at 4c per pound with which to build their barracks. For the ceiling inside the structure they secured a patent roofing paper.

They spent the remainder of the day getting their building material on location and, at a meeting in the evening, John Morgan organized them into the United Order, with Daniel R. Sellers as President. Under this Order all of the money which the group had was to be paid into the common treasury. On the morning of November 28, 1877, after prayer in camp, Elder Morgan laid his hands on Elder Daniel R. Sellers and set him apart as President of the United Order of Pueblo and also as Treasurer. As such, the following heads of families paid to Treasurer Sellers the amounts of money set opposite their names:

Daniel R. Sellers	\$161.15	James A. Cox	\$30.00
William Jones	8.00	Bird J. Kirtland	89.45
Hugh Lee Sellers	22.00	A. G. Bagwell	10.00
Milton H. Evans	10.80	George W. Wilson	50.00
Thomas W. Chandler	1.25	W. L. Marshall	7.65
Francis M. Weldon	4.35	Samuel S. Sellers	1.28
Patrick C. Haynie	13.36	Wm. R. Sellers	.55
Total \$409.84			

From this sum all purchases were thereafter made by the President; all ate at the same table and all lived as one large family. The ones who did not join the Order were: F. B. Moyer and family; Francis M. Weldon and family; James A. Cox and family; George W. Wilson and family; W. L. Marshall and family. They each rented houses for their individual use and moved into them—not far from the Barracks.

The morning of the 29th found all of the men actively engaged in the erection of the Barracks. The building was 100 feet long and fifteen feet wide and was planned to provide ten rooms, 10 feet by 15 feet each. There were ten families and each family was to have a private room for itself. Then on each end was to be built an additional room which would serve as a kitchen and dining hall to be used jointly by six families. Contiguous to the building was a clear stream of running water, of excellent quality, that was utilized for culinary purposes.

During the following two days the men worked vigorously in the erection of the building and on the evening of December 1st they moved the women and children from the Thespian Theater to their new quarters. While at the Theater, although they slept on improvised beds, yet they had large rooms and good stoves and the stay there was quite comfortable.

Due to lack of space in the Barracks, several of the unmarried men lived together or slept on improvised beds in the kitchens. Due to this crowded condition there were some difficulties and mis-

understandings that were bound to arise and did occur, but later in the spring of the next year when Elder Morgan returned, these differences were cleared away and when the people moved on into their new locations in the San Luis Valley, there was a splendid unity and brotherhood among the various families. This continued to characterize the development of their settlements.

December 2, 1877, was Sunday, and a beautiful day. An improvised Sunday School was held in the forenoon for the children and in the afternoon, Sacrament Meeting was held with quite a number of visitors present. Elder Morgan preached to them, emphasizing the necessity of preserving absolute unity and good-fellowship in their group and observing the rules of order and cleanliness at all times. On December 3rd, the kitchen and dining room on the west end was erected, and the necessary stove, tables, and chairs were installed. It turned very cold in the afternoon and most of the remainder of the day was spent in hugging the stove to keep warm.

December 4th was a bad day. The wind blew a hurricane and the air was full of dust. A number of the camp became ill and John Morgan, assisted by Daniel R. Sellers, went among them administering to them and otherwise caring for them.

On December 5th, after seeing his people all located in their winter quarters and as comfortable as they could be under the circumstances, John Morgan bade the people goodbye; went to South Pueblo and took the train for Denver.

The names of the families and the quarters assigned to each, are as follows:

No. 2:

Daniel R. Sellers
Mary A. Banister Sellers, his wife
Hugh Lee Sellers
Wm. Robert Sellers
Reuben Daniel Sellers
Martha E. Sellers
Dora Lucinda Sellers
Ester Lucinda Sellers

No. 3:

Bird Jackson Kirtland
Mary Ann Sellers Kirtland, wife
Mary Ann Delilah Sellers Kirtland
Minerva Jane Sellers Kirtland
Minta Ellen Sellers Kirtland
Daniel Jackson Sellers Kirtland
Albert Addison Sellers Kirtland
Victoria Frances Sellers Kirtland

No. 4:

Hugh Lee Sellers
Missouri Mahala Sellers, wife
James Robert Sellers
Mary Ellen Sellers

No. 5:

Samuel Surratt Sellers
Martha E. Harton Sellers, wife
John Lincoln Sellers
Elizabeth Jane Sellers
Robert Preston Sellers
Rhoda DeLain Sellers
May Tennessee Sellers
Wm. Riley Sellers
Florence R. Sellers
Omer Ellen Sellers

No. 6:

Milton Evans
 Mrs. Milton H. Evans, wife
 Angeline Evans
 Mary Elizabeth Evans
 James Thomas Evans
 Margaret Lucinda Evans
 Joseph Evans

No. 8:

Patrick C. Haynie
 Henrietta Bagwell Haynie, wife

No. 10:

Wm. Anderson Jones
 Palestine Horton Jones, wife
 Orange Jones
 Arthur Jones
 John Jones
 Preston Jones
 Martha Jones
 Elizabeth Jones
 Zoie Jones

No. 7:

Thomas Chandler
 Mrs. Thomas Chandler, wife
 Thomas Chandler, Jr.

No. 9:

A. G. Bagwell
 Carlyn M. Bagwell
 Henrietta Bagwell
 Albert (Toby) Bagwell

Near to the barracks, about equi-distant from the camp and town, a Pennsylvania Company was erecting a large mill and John Morgan, prior to his departure, had been able to make the acquaintance of the Superintendent in charge, who agreed to employ the men at the Barracks as rapidly as the necessities of the business demanded. Then, too, arrangements were made for employment for the men in getting out timber for ties for the railroad being built southward toward New Mexico. Wages paid at that time averaged from \$1.50 to \$2.00 per day. Among the group were some carpenters, a blacksmith, a brick mason, a stone mason, a shoemaker and the remainder were farmers.

During the winter of 1877-78, this colony, of about seventy-two people, lived and got along reasonably well, considering the conditions under which they were compelled to live. Daniel R. Sellers, the President of the United Order Organization and General Business Agent, purchased, from the common fund, all the provisions and necessities for the entire group. As money was earned in one way or another by various members, it, too, was turned over to the Treasurer.

One half of the people cooked and ate in one end of the barracks and the other half did the same at the other end. The children played together, and, according to Mrs. Victoria Kirtland Hunnicutt, who but recently passed away and was buried in Manassa Cemetery, and who at that time was a little girl of eight years, living with her parents, who were members of the colony, there appeared to be harmony and kindly feelings among the group.

During their residence in the Barracks, the people had sufficient to eat and their health was generally good, with the exception of Bird Jackson Kirtland. While a soldier in the Confederate Army, he had been severely wounded and since that time had not been strong. He died on February 1, 1878, and was buried in the Pueblo Cemetery. This was the only death of any of the men or women, of the colony, during their stay in Pueblo; but the baby daughter of Samuel and Mariha Sellers passed away there.

John Morgan had returned to Salt Lake City on December 7, 1877, after an absence of more than two years on his first mission. On December 11, he called at the office of the President of the Church and made his report concerning his mission and especially concerning the Saints from the South then stationed at the Barracks at Pueblo. Up to this time, it was Morgan's intention to locate this colony at some favorable place in New Mexico.

On January 21, 1878, he was again called to continue his missionary work in the Southern States. At the County Courthouse at Salt Lake City on February 16, Morgan met with Bishop Isaac M. Stewart of Draper, relative to Bishop Stewart's son, James Z. Stewart, who had served as a missionary in Mexico and could talk Spanish fluently, going on a short mission to Colorado to assist the emigrants, wintering at Pueblo, in locating some place as their permanent location in New Mexico. Elder Stewart consented to go on this mission, but it was agreed that he should await word from Elder Morgan before leaving.

On the 4th day of March, 1878, John Morgan left Salt Lake City and on March 6 arrived in Pueblo, where he found the colony in good spirits and anxious to continue the journey to their place of settlement. He found that they had been able to live reasonably well during the winter, but unable to save any money; that they had trusted too much to the honesty of other people and had been defrauded of some of their means.

Immediately on his arrival at Pueblo, Morgan wrote to A. C. Hunt, a former Territorial Governor of Colorado, who was one of the main promoters of the extension of the Denver and Rio Grande Railroad into the San Luis Valley. In his letter to Governor Hunt, who was in Fort Garland, the then terminus of the Railroad, he advised that it was the intention of his people at Pueblo to continue on their journey, but that they were desirous of obtaining employment on the railroad to assist them. On receiving this letter, Governor Hunt immediately telegraphed John Morgan that he would be pleased to talk with him relative to the subject matter of his letter.

John Morgan and Daniel R. Sellers took the train for Garland on March 12. The following day they met Governor Hunt who gave

them all the information he could of the country, and recommended very highly certain lands located in the southern end of the San Luis Valley near the Conejos and Antonio Rivers.

After his interview with Governor Hunt, John Morgan wrote to John Taylor, President of the Mormon Church:

The country is well recommended and if the land is in a position to be obtained, it will be a desirable location for a settlement. It is near the mouth of the Conejos and San Antonio Rivers, Conejos County, Colorado, immediately on the line of the extension of the Denver and Rio Grande Railroad south to Santa Fe and Wingate. Governor Hunt stated to me that they expected to continue the road from Alamosa during the summer into New Mexico, which, of course, would furnish employment for all our people who could labor.

This is the first time, apparently, in the mind of John Morgan, that an exact area was determined upon for locating the colony of southern people then wintering at Pueblo. Prior to leaving Salt Lake City he had, at the request of President John Taylor, addressed a letter on December 17, 1877, to Elder Lawrence M. Peterson, requesting him to give such information as he might have to the Church Authorities who were desirous of establishing a colony somewhere on the headwaters of the Rio Grande River or its tributaries. Lawrence M. Peterson, a member of the Church, who had been converted and baptized in the summer of 1875 by Erastus Snow while visiting in Manti, Utah, and who, for some time had now resided with his wife, a Spanish lady, at a little Spanish settlement known as Savolla in New Mexico, had previously recommended the Conejos River Area to Erastus Snow as a suitable place for the Mormon people to settle. He had stated, however, that the elevation was high, the winters long, and the growing period of the year quite short. Subsequent to his joining the Church, Lawrence M. Peterson had resided at Los Cerritos, Conejos County, and had done some effective missionary work there.

It was now arranged that he would be asked to return to Los Cerritos to assist the Southern emigrants and to keep in communication with John Morgan. Morgan's purpose in going to Garland and interviewing Governor Hunt, was to ascertain from him the availability of the lands for settlement purposes in the event said area was selected, inasmuch as a lot of it was owned by the State of Colorado. Then he wanted to make sure that the railroad was to be extended southerly through the San Luis Valley, thus providing employment for the men folk of the colony; and finally, to ascertain whether it was a location that would prove suitable for Anglo Saxon people. All these questions were satisfactorily answered by Governor Hunt, and in addition the Governor, being an astute businessman, gave the country a glowing endorsement because he wanted the country built up to furnish business for the railroad in which he was interested. On March 13, Elder Morgan

returned to Pueblo and in a letter written to President John Taylor, dated March 14, 1878, stated that he had not yet heard from Lawrence M. Peterson. On March 8 he had written Elder James Z. Stewart to come immediately to Pueblo where he would be joined by three of the men in the colony and the four of them could proceed to Los Cerritos to make selection of the most desirable lands and to plow and plant early garden vegetables.

On March 21, 1878, he went by train to Denver where he called on Mr. Dodge of the Denver and Rio Grande Railroad and arranged for rail rates from Pueblo to Fort Garland. That evening he met James Z. Stewart, who had just arrived from Salt Lake City. On the 23rd they returned to Pueblo. On March 25th James Z. Stewart and three members from the Barracks, Jesse Wilson, Milton H. Evans, and A. G. Bagwell, entrained for their exploration trip to the Los Cerritos country. On arriving at Garland, the then terminus of the Railroad, they traveled on foot, camping wherever night overtook them, part of the time in snow, rain and mud, until March 28th, when they came to the Rio Grande where they arranged with a Mexican freighter to take them across the River and that night they stayed with a Mr. William Stewart. From him they received considerable information concerning the Conejos area. They then continued their journey and walked to Los Cerritos. They had provided themselves with rations for twenty days, as well as axes, spades, and firearms. On their arrival at Los Cerritos they secured a team and plow and immediately proceeded to prepare certain tracts of the best land they found for planting and cultivation.

In a letter to President John Taylor, Elder J. Z. Stewart described the country they found as follows:

Conejos is situated a few miles north, perhaps about five or six, from the New Mexico line in the State of Colorado. Its altitude, I should judge, is nearly 7,000 feet above the sea. The snowfall is light, but the climate is cold and the growing season short.

There are three or four nice large streams flowing through the country, along which are nice bottoms of meadow and farming land and river bottoms are grown up or covered with cottonwood trees and large willows among which are wild currants. The bottom land is rich as a general thing, but the bench land is very gravelly; yet it is farmed by the Mexicans far more exclusively than the bottomland and produces good crops. The natural growth of the country is similar to that of Utah.

There is land enough in the immediate section to accommodate a good-sized settlement; say, for instance, one hundred families. A few miles below there is another strip of land that would accommodate a similar number. It is about six miles west of the Rio Grande River which, I think, forms the eastern county boundary line. Across the Rio Grande and about ten miles north, a stream of water empties into the Rio Grande called the Trinchera. This flows through Gilpin Grant, a portion of which is very good land; the climate rather colder than at Conejos. The man claiming this grant (which is 12 miles square) offers it for sale. He also offers to allow persons to settle on it now and allow them to pay the Government price, in the event his claim is recognized at the Land Office; but if his grant is not recognized by

the Government, then these parties can secure the land from the Government.

I think that small grain and potatoes, roots, etc. would do well here. Timber is handy and the range is good. I have enclosed a sketch which, perhaps, may give you a little idea of the appearance of the place. I have marked the little Mexican Village of Los Cerretos "X". The water is good, the climate is healthy, game tolerably plenty, some fish and a Mexican population.

Trusting that this imperfect description will assist you in obtaining a knowledge of this section of the county, I am most respectfully, your brother in the Gospel,

J. Z. STEWART

By May 24th, they had sown "seven acres of wheat, over an acre of potatoes, and a considerable variety of vegetables."

On May 15, 1878, Elder Stewart wrote President Taylor at Salt Lake as follows:

Dear Brother: I received your favor of April 17th enclosing an order on Brother Lot Smith, who is now settling our people on the Little Colorado in Arizona, for cattle for which we feel very thankful.

I wrote to Brother Smith immediately, explaining the contents of your letter and suggested to him that it might be best for him to sell the cattle, if he has them, and can spare them, as cattle are much cheaper here than there, I think, and the money derived from the sale could be sent to us without cost . . .

Brother Lawrence M. Peterson and Trujia arrived yesterday, May 14th, with their families to locate with the Saints and we are expecting Brother Blair from Bear Lake Country to arrive today with his family. He is coming from Sanpete via the San Juan country over the old Spanish Trail.

There is a great deal of unoccupied land in this country and it is very good land. The southern people who are being brought here are poor and unable to purchase but little of the land, so that, should steps not be taken to secure the title to these lands by the Saints in Utah, these Southern people will soon be surrounded, I fear, by an element that will be very objectionable. The Denver & Rio Grande Railroad is being run through this Valley from one end to the other and this will make the land valuable and will greatly increase the population. The people, at the present, consist of Mexicans, and I have every reason to believe that Conejos County will be the most likely place to start opening up the Gospel to the Mexican people.

The seed sown by brother Lawrence W. Peterson previously, has taken root. He has translated the Articles of Faith, from Brother Orson Pratt's Pamphlets, into Spanish and now wishes to get them published. I told him I would suggest it to you.

The southern people, at Pueblo, are quite anxious that twenty or thirty families come down from Utah to join them; people who are better posted on the principles of the Gospel and better acquainted with cultivating the soil; and Brother Lawrence Peterson expressed himself likewise.

A great portion of the land is owned by the State and if it is advisable that the Saints come into possession of it, it can be obtained from the State cheaper than from those who are likely to buy it from the State for speculation purposes. The State Officers are quite anxious for Mormon emigration into Colorado—they so expressed themselves to me. We can buy quarter sections or 160 acres with plenty of water and good Mexican houses already built on them at from \$30.00 to \$54.00. The houses cost several hundred dollars to build.

I hope to hear from you soon and that you will give us such instruction as you think best for the course.

Sincerely your brother in the Gospel.
J. Z. STEWART

Elder Stewart returned from Conejos County to Pueblo about May 13, 1877, for the purpose of taking part of the Saints from Pueblo to the lands he had selected. But he returned to Los Cerritos shortly afterward because he was unable to get reduced railway fare for part only of the Pueblo Saints to travel to Conejos. Before leaving Pueblo, however, he wrote to Mr. D. C. Dodge, General Passenger Agent of the Denver & Rio Grande Railway Company at Denver, relative to the Pueblo emigrants being permitted to travel in two groups from Pueblo to Garland at the rates previously promised Elder John Morgan, namely, \$1.25 for each person over 20 years of age. This request was later granted.

In the meantime, however, James Z. Stewart had returned to Conejos, but before leaving he had authorized Daniel R. Sellers to take his family and Mary A. Kirtland (widow) and her family; also Mrs. Carolyn M. Bagwell and Patrick C. Haynie and wife, to Los Cerritos.

Consequently, on May 16, 1878, this group left Pueblo by rail and arrived at Garland at 9 P.M. the same day. The Daniel R. Sellers and Mary A. Kirtland families arrived at their destination May 19, 1878, about midnight, while Mrs. Carolyn Bagwell and Patrick Haynie and wife arrived on May 22. Alonzo G. Blair and family arrived from Bear Lake, Utah, a few days later.

The following interesting account of the journey of the Daniel R. Sellers party from Pueblo to Los Cerritos is taken from the Memoirs of Victoria Kirtland Hunnicutt, who was one of the party. Although she was but a young girl, at the time, yet the incidents in connection with the trip remained crystal clear in her memory until her recent death.

On May 17, 1878, Daniel R. Sellers, together with his mother, Jane Surratt Sellers; his wife, Mary A. Banister Sellers; and three children, Martha E., age 5; Dora Lucinda, age 3; and Ester, age 1 year; left the Pueblo Barracks. In his company Mr. Sellers also had Mary Ann Sellers Kirtland, his widowed niece, whose husband, Bird Jackson Kirtland, had died a few months before at the Barracks, to which reference has heretofore been made. With Mary Ann Sellers Kirtland was her family, consisting of Mary Ann Kirtland, age 24; Minerva Jane Kirtland, age 22; Minta Ellen Kirtland, age 15; Daniel Jackson Kirtland, age 12; Albert Addison Kirtland, age 10; and Victoria Frances Kirtland, age 7. These were the first of the Pueblo Colony to make the journey to the Los Cerritos area for the purpose of building homes and establishing there a permanent residence.

On arriving at Fort Garland, Daniel R. Sellers employed an old Mexican with a decrepit, ancient-looking wagon and a span of Mexican ponies, the best he could hire, to take them from Fort

Garland to the proposed settlement. After getting all their baggage together and heaping it up and tying it on the wagon, it made a very odd appearing picture. Then Grandma Sellers was placed on top of the load and so tied on that she would not fall. After everything was in readiness and the caravan started, the little Mexican drove his team up on the railroad grade to cross the track when one of the wagon wheels broke under the heavy load at a time when the train was expected along. Everyone, including Grandmother



Daniel R. Sellers and Family. Standing, left to right: John, Hugh, Dora. Sitting: Nellie, Mary B. (wife), Joseph, Daniel R. and Ella.

Sellers, who came nearly taking a spill, got busy and helped unload the wagon just in time to get it off the track before the train came by.

Within a short time, the determined little Mexican had secured another wagon and again everything was loaded and Grandma, again, was perched on top. By this time a fierce cold wind had come up which filled the baggage and wagon with sand and stung the faces of the travelers. Due to flying sand and dust, one could scarcely see twenty feet ahead.

Such were the auspicious circumstances under which the first Mormon settlers commenced their overland journey into the San Luis Valley.

It was a long two days' journey from Fort Garland, via the Trinchera River, to Los Cerritos on the Conejos River and, with the exception of Grandma Sellers, everyone in the party walked or was carried the entire distance. At the end of their first day's journey, they stopped and slept at an abandoned ranch house near the Rio Grande. Early the next morning, they started again, crossed the "ferry" near where the Trinchera stream flows into the Rio Grande and then followed up the Conejos River to Los Cerritos. The second day's journey was a long and tedious one and the emigrants did not reach their destination until midnight on the 19th day of May, 1878.

Fortunately for Daniel R. Sellers and his families, they found on their arrival at the Mexican settlement of Los Cerritos that Lawrence M. Peterson and his wife had arrived from their home in Savolla, New Mexico, about three days before and although the Peterson temporary residence consisted of but two or three small rooms, the entire Sellers and Kirtland families were taken in and furnished food and sleeping accommodations. On the following day the Sellers and Kirtland families moved into a two-room house located one mile east of Los Cerritos, where each family was quartered in separate rooms.

Up to this time, Daniel R. Sellers continued to act as the Presiding Elder of the Los Cerritos group, although the United Order was not practiced after the arrival of the first emigrants at their new home. Religious services were held in various homes every Sunday and a Sunday School was organized, but due to Elder Seller's unfamiliarity with Sunday School organization, he appointed Sister Blair, the wife of Alonzo Blair, the Superintendent of the first Sabbath School in the San Luis Valley.

Shortly after their arrival, Daniel R. Sellers secured an ox team and plowed up some land on the Pat Ree Ranch, where he planted a few potatoes. He also used the oxen to drive to Fort Garland to purchase groceries, etc.

On one occasion when there were only provisions sufficient to last the Sellers and Kirtland families for two days, "Uncle Daniel" left for Garland to secure additional provisions. He was gone for five days. His oxen strayed away and it required three days to find them. In the meantime there was a group of hungry mouths and empty stomachs in the Sellers and Kirtland cabin at Los Cerritos. All the food they had was a few marble-sized potatoes and salt. In the meantime, young Bob Sellers and Dan Kirtland, each about 13 years of age, decided to go in search of food. Several hours later

they returned, bringing with them two quarts of coarse cracked grain and peas which, when cooked into bread was greatly enjoyed, although it was black and very hard. About one o'clock A.M. on the night of his fifth day away from home, Daniel R. Sellers arrived back with his provisions and the entire family was awakened; a good meal was cooked and all members of both families sat down to plenty of good food for the first time in three days.

To give an idea of the value of the lands which James Z. Stewart selected along the Conejos River and how they were obtained, reference is made to a certain transaction by which he purchased 160 acres. In a letter dated September 2, 1878, addressed to President John Taylor, after his return to his home in Draper, Utah, he stated:

While I was at Conejos, I purchased a house and claim upon 160 acres of land, agreeing to pay \$30.00 for it on the 1st day of October, 1878, giving my note for that amount at that time. Former Governor Head of Colorado endorsed the note for me. I did this because I thought the Saints would be able to pay for it by that time and in view of the fact that they would have to have a place in which to live and would require the land, I now fear that they will not be able to redeem the note, and rather than that there should be a failure and by that means a loss of confidence, I would pay the note out of my own pocket, which at the present time I am not in circumstances to do without being rather pinched.

I did the purchasing considering it for the best, and I am yet convinced that it was the best thing to be done under the circumstances. I do not like to ask the Church to pay it, but yet I would be pleased if such could be the case.

Please inform me about the matter as soon as practicable in order that I may not be behind in redeeming the note.

J. Z. STEWART

The Church paid the note.

James Z. Stewart assisted the new arrivals in getting located in certain Mexican houses which he had previously secured. He then called on a wealthy Mexican rancher some miles away and explained to him that he had brought colonists in the country and had located them near Los Cerritos and that they needed some cows to milk and asked him if he had any to spare. The next day this rancher brought a number of milk cows with their young calves which provided milk, butter and cheese for the new arrivals. Elder Stewart, likewise, arranged for yarn in order that the women folk could knit stockings, mittens and caps. He also assisted in securing employment for the men folk of the group.

Then, after completing his plowing and planting and finishing the other work he was sent to do, Elder Stewart was released. He left Los Cerritos June 17, 1878, for home.

On October 1, 1878, Milton H. Evans, Samuel S. Sellers, Wm. A. Jones, Thomas Wm. Chandler, Hugh L. Sellers and their families left the Barracks at Pueblo and arrived by train at Alamosa.

The town was just five months old. On July 4th the first train had crossed the bridge spanning the Rio Grande and had entered the new town, carrying on flat cars most of the City of Garland, including the Occidental Hotel and Broadwell House and a saloon.

Wagons had been sent from Los Cerritos to Alamosa to meet the emigrants from Pueblo and the new arrivals were soon on their way to their new home in "the Valley." Thomas W. Chandler walked from Pueblo to Los Cerritos the entire distance and drove a cow as a pack animal.

At a Quarterly Conference of the Sanpete Stake of Zion, held August 18, 1878, at Manti, Utah, Bishop Hans Jensen, of Manti, was called to take charge of the Conejos Branch of the Church, with Elders John H. Haugaard of Manti and Soren C. Berthelsen of Fountain Green; John Allen and his two sons, John and Peter Allen, of Richfield, Sevier County, Utah; and William A. Cox as missionaries in said Branch. With the exception of John H. Haugaard, these men left Manti early in September 1878, for the Conejos settlement. They traveled by way of Salina, Castle Valley, Green River, Grand River, the Uncompahgre River; then crossed the mountains by way of Lake City and came into the San Luis Valley at Del Norte, reaching Los Cerritos on October 6, 1878, all well and having completed the journey without serious incident. Thirty-three days were spent in making the journey from Manti to Los Cerritos.

They immediately acquainted themselves with the Southern States Saints, practically all of whom were now located at Los Cerritos. On October 12, 1878, a Priesthood meeting was held at the home of Lawrence M. Peterson which was located one-half mile south of Los Cerritos. The meeting included the Brethren who had arrived from Manti, Utah, six days before; the Southern brethren who had arrived from Pueblo nine days before, and Daniel R. Sellers and the brethren who arrived with him on May 19th, preceding.

At this meeting, Bishop Jensen presided. He stated that the purpose of the meeting was to organize a Branch of the Church in the San Luis Valley and he read a part of the instructions he had received from the Church Authorities concerning that matter. He then proceeded to effect the Branch organization by choosing John Allen and Soren C. Berthelsen as his Counselors. Lawrence M. Peterson was chosen Branch Clerk and Recorder. Daniel R. Sellers and Wm. Cox were selected as the head teachers. All actions were unanimously approved.

On the following day, Sunday, October 13, 1878, all the Brethren chosen were unanimously sustained in their respective positions.

On August 11, 1878, a son was born to church members Juan de Deos Trujillo (father-in-law of Lawrence M. Peterson) and his wife Marina Laiz Trujillo at Los Cerritos. This child, Samuel Trujillo, was the first Latter-day Saint child born in the San Luis Valley.

Freezing weather came early in the fall of 1878. For the southern settlers, recently from deep South, it required faith to carry on during the winter period. In addition to the severity of the weather, the men folk were unable to secure employment with the railroad, and there was but very little money with which to buy food at Fort Garland or Alamosa. The snow was deep and drifted high and it was almost impossible to keep the paths open for the children to get to and from the little cabin where school was held and where Peter Allen was the teacher. The one room log schoolhouse was also used as a church on Sundays and it was there that all the meetings were held.

On December 5, 1878, a Relief Society was organized with Mrs. Agnes Allen, President.

On Sunday, February 2, 1879, William Robert Sellers and Alice Robertson were married by Bishop Hans Jensen. This was the first marriage of Latter-day Saints in the San Luis Valley.

The Mormon people then living at Los Cerritos held a meeting in the little schoolhouse on February 3, 1879, and decided to locate a settlement a short distance north of Los Cerritos and to give it the name of Manassa; this name being selected in honor of Manassa, the son of Joseph, of ancient Israel.

On March 28, 1879, President John Morgan, now President of the Southern States Mission, arrived at Alamosa with another company of Saints from Georgia and Alabama. They were met by the President of the Branch, Hans Jensen, and others, and were conveyed by wagons to Los Cerritos, where they were given temporary accommodations in the homes of the settlers. This was John Morgan's first visit to this area, and as he wrote in his Journal: "It is one of the finest valleys I have ever seen."

The spring of 1879 finally arrived. To feel the frost leave the ground and see the buds on the trees unfold, brought joy to those southern people.

On May 26, 1879, while living in the little Mexican adobe house at Los Cerritos, Mrs. Daniel R. Sellers gave birth to the first Anglo-American Mormon baby born in the San Luis Valley. The new babe was given the name, John Morgan Sellers.

Bishop Hans Jensen, Lawrence M. Peterson, and John Allen, the Committee appointed to purchase the land where the town of Manassa was to be located, made application to the State Land

Board in the Spring of 1879 for the purchase of two sections, containing 1280 acres; a payment of \$300.00 on same having been sent to the Committee by President John Taylor of Salt Lake City. These lands were located a short distance northerly from Los Cerritos. It was on the west section they planned to build the city; the east section was to be divided into farming lots to be purchased by the respective settlers.

In the early summer of 1879, the east half of the Manassa section was surveyed by John H. Hougaard into thirty-two blocks of ten acres each, including streets, and each block was divided into four lots of two and one-half ($2\frac{1}{2}$) acres each. A short time later the west half of this section was surveyed, which made the town of Manassa one mile square.



MANASSA'S FIRST LOG CABIN CHURCH AND SCHOOL HOUSE

With the last group of southern people brought in by President Morgan, there was a population of over one hundred and fifty of the immigrants alone. Then, there were others gradually migrating from Utah and Arizona. As soon as the Manassa survey was completed, many of the men made their selection of lots and went to the mountains to cut logs with which to build their homes for their wives and children.

The Georgia and Alabama people were especially well qualified for this kind of work and it was but a short time before logs were being hauled to location ready for house construction. It is thought that the first home to be reared in Manassa was that built by Patrick Calhoun Haynie and his brother, Robert Miligan Haynie from

Armuchie, Georgia. The father of the Haynie family had died previously, but the mother, in the spring of 1879, came to Los Cerritos with her family, but died there a short time later. Patrick was the only one of the family to live in the Barracks at Pueblo and it will be remembered that it was he to whom Elder John Morgan married the young Henrietta Bagwell in the Barracks on March 25, 1878. Henrietta who was but thirteen years of age at the time, reared a large and honorable family by Pack Haynie.

Log cabin homes rapidly made their appearance on the various building lots purchased by the settlers.

The first place for assembly for church purposes was patterned after the old bowery erected by the Utah Pioneers in the Salt Lake Valley. Posts were set in the ground with poles tied across the top and then brush of all kinds placed thereon to keep the sun out.

No sooner, however, had their log cabin homes been completed and their families made as comfortable as conditions permitted, than the men folk undertook the erection of a log cabin structure sufficiently large to accommodate day school during the week and religious services on Sunday and in the evenings.

At the time of its completion, it was regarded by the townspeople with much pride and in the years to come was to play a most interesting part in the historical drama of this unique but very stable community. Alva Adams, an enterprising merchant at Alamosa, presented the people with large and very ornate kerosene lamps to light the log cabin auditorium and in these the Manassa people also took much pride. In 1896, this same Alva Adams was to be elected Governor of the State of Colorado.

President John Morgan, accompanied by Apostle Erastus Snow, arrived at Alamosa on August 23rd and they were taken by wagon to Manassa. They met the Saints in Conference in the Bowery. On August 26th, they met at the Conejos River and baptized fifteen persons.

This, the first Conference held in the San Luis Valley and the first occasion when one of the Apostles or other General Authorities of the Church were present, occurred on August 24, 25 and 26, 1879. It was a most eventful occasion and one that had a very salutary effect upon, not only the settlers of the Valley, but the strangers who were visiting in the community. All meetings were held in the Bowery at Manassa.

In a letter dated September 3, 1879, J. H. Arnold, a non-Mormon, supplied the following correspondence that was published in the *Missouri Statesman*:

It may not be known to many of your readers that there is a Mormon Colony established near Conejos, the county seat of Conejos County, Colorado.

The first members arrived here about sixteen months ago, coming both from Utah and the Southern States. The colony, at present, numbers about fifty families.

Those who came from the South are mostly converts added to the Church of the "Latter-Day Saints" under the ministrations of Elder John Morgan, a talented and eloquent divine from Salt Lake City.

It is a peculiarity of this people, that they work together; no dissensions, no petty jealousies, no animosities are tolerated—everything of the kind is settled by the proper authority in its incipiency. Many of their improvements and crops are owned in common—they teaching and practicing that "in unity there is strength."

The colony was visited a week ago by Elder John Morgan and Erastus Snow, one of the twelve Apostles of the Church. I had the pleasure of hearing Erastus Snow preach, once, during his stay of three days. He spoke for three hours—mostly on practical matters and concerning the temporal affairs of the Colony; the conduct of the members toward each other; their business relations among themselves and the outside world.

It was an eminently practical sermon—the reflections and advice of a sensible and observing man, of fifty years or more of varied experience. Indeed, his address could hardly be termed a sermon, as he hardly touched upon points of doctrine or religious questions.

The reflection occurs to me, that the fact that the Mormon Church is founding a colony in our midst, with the hopes and intentions entertained, will be an eventful circumstance for Colorado.

The year 1879 was a very eventful one in the history of the development of Mormon settlements in the San Luis Valley. On the 24th day of November, 1879, a company of one hundred ten people arrived at Alamosa in charge of President John Morgan. This represented the third company to be brought to the Valley by him in that year with a total of about 400 people.

Bishop Berthelsen was waiting at the depot for their arrival with wagons sufficient to convey the entire company the twenty miles to Manassa. On arrival of each new company, the newcomers were made welcome, taken into the homes of those already located and made to feel at home. Many were old friends from the South or relatives; the reunions were often joyful indeed.

Because of the feelings thus created among the people, there was to be found in this unique and interesting colony an atmosphere of friendship and brotherly affection.

The winter of 1879-1880 was spent by the people of Manassa in bettering their living conditions in their homes and farms. A general good feeling prevailed as much as could be expected in such a large number of inexperienced people thrown together as they were. It was becoming very apparent that the more experienced help of people from Utah was necessary in the development of the settlement and President Morgan had written to President Taylor asking for such assistance.

The first company of Saints from the Southern States for the year 1880 were brought to Manassa on March 27th.

The railroad had now been extended south from Alamosa and was only three miles west of Manassa. The emigrants were met at the railroad by the brethren from Manassa and taken to comfortable temporary quarters.

In a letter dated April 2, 1880, President Morgan wrote President Taylor advising that between 300 and 350 additional Saints would be brought to the San Luis Valley in that year and again urged the necessity of sending families from Utah, to locate in the new Colorado settlement, who would be acquainted with opening up new country; in getting timber from the canyons; making ditches and otherwise sustaining the brethren who had been called to preside.

Due to an epidemic of measles, the company of Saints that arrived March 27th were only about one-half of the group that had planned to migrate. Consequently, President Morgan returned to the South in April, 1880; organized a company of the Saints, and assisted them in their journey to Manassa, arriving there April 17, 1880.

Only one member of the Church had become discouraged and returned to his home in the South. A group of Saints who had migrated from the settlements on the Little Colorado in Arizona appeared to be happy in the possibilities of the San Luis settlements and spoke in high terms of the superior advantages of their new homes in Manassa and Ephraim.



Mormon Pioneer Settlers of Manassa, Colorado, taken about 1886. Included in group were Apostles John Henry Smith and Heber J. Grant.

As a result of the excellent missionary work of Elders Henry W. Barnett and Mathias F. Cowley in the State of Virginia, those two missionaries were successful in bringing into the Church about 120 persons; 80 of whom emigrated to the San Luis Valley in 1880. Among these were Mr. and Mrs. John Dempsey, who lived in Manassa many years. Here was born their son "Jack," who later became internationally known as the World Boxing Champion.

As soon as the people had gotten located in Manassa, a post office was established there; the Postmaster receiving 60 per cent of the stamp cancellations for his services. A mail route to Conejos, the County seat, was also established, and the mail carrier received 40 per cent of the stamp cancellations for his services. Mail was received and sent three times a week and, at first, the mail carrier from Conejos made the journey of about six miles by foot.

As soon as their homes and their schoolhouse and house of worship were completed and their crops planted, the people, following the instructions of President Morgan and Apostle Erastus Snow, established a cooperative store, tannery, and flour mill. Everyone's welfare, even to the least important, was the concern of all, and as a result those who, because of circumstances, had no food were supplied, and those who were sick were ministered unto. Had not this policy of joint enterprise been adhered to, the Mormon settlements in the San Luis Valley would never have succeeded. The reasons for their success are the underlying reasons for the success of other difficult colonization projects undertaken by the L.D.S. Church in other western States. As more people came from Utah in the early 1880s, bringing with them well-bred stock, the cattle owned by the colonists and which had been purchased from the natives, were much improved and gradually built up until today the Mormon settlements are noted for the excellence of their cattle breed.

During the first two years in which the San Luis settlements were being organized and peopled by Mormon migration, encouragement was received from every source. There was some slight interference on the part of the Spanish-Mexican people at Conejos and Los Cerritos, but that was soon adjusted and friendly intercourse between all factions was soon established.

In the year 1880, however, several Colorado newspapers became much exercised over the colonization of the Conejos country by the "Mormons" and printed virulent articles against them. A newspaper published in Rico predicted that, before long, the Mormons would hold the balance of power in the politics of Conejos County which would result in political ruin for that part of the State.

Another Colorado paper, the *Great West*, took a more rational view:

Seventeen Mormon Elders have been sent to the Southern States to make converts to bring into Colorado. The Mormons are as welcome in Colorado as are those who belong to or who do not belong to other Churches, providing they are good workers, industrious citizens and mind their own business. One Mormon who lives by labor is worth more to the State than 216 growlers and gabblers.

The *Alamosa Independent*, published only twenty miles north of Manassa, said:

The Mormon Colony at Manassa is expecting an addition soon of some thirty-five families. If they are of the same honest, industrious class as our friends who have lived there for the last year or two, they are welcome to the country. This colony has taken an apparently barren section of the county, and, by irrigation and hard work, have raised good crops and are making a garden spot of this place. There is room for a large number of them at Manassa and Ephraim and they will make the southern part of the county as flourishing as their predecessors did in the then unpromising looking Salt Lake Valley of Utah.

The year of 1881 was important to the Mormon settlements in San Luis Valley because of the arrival of Saints from Utah, who soon were to play very important parts in the development of this area.

President John Morgan spent the first three months of the year at his home in Salt Lake with his family, but left on March 31, 1881, to return to his Missionary labors in the Southern States. He did not return to Manassa until November 15, 1881, and his company of emigrants then consisted of but thirty members.

In a letter addressed to the *Deseret News* from Manassa on November 23, 1881, President Morgan gave an excellent report on conditions at that settlement.

During the few days that duty has permitted us to remain in the Valley, we have been enabled to visit with the Saints and learn something of their spiritual and temporal welfare. The town of Manassa has grown much since our last visit, and many Saints, who eighteen months ago were scattered throughout the Valley in Mexican Plazas, have now been enabled to build homes in town and reside among the Saints.

The houses are composed chiefly of hewn logs, either pine or cottonwood and covered Mexican fashion with planks and two or three inches of dirt on top; a few shingle roofs can be seen and the manufacture of shingles during the coming winter promises to become quite an item of business as the temporal progress of the Saints will soon permit them to erect better and more substantial homes.

Two Stores now provide the people with merchandise of every class at figures that compare favorably with Salt Lake City and the East. Wages during the summer have been remunerative and, even at this dull season, labor is in fair demand.

Some three miles from Manassa, the town of Ephraim has been located and though scarcely one year old, has some thirteen families and is growing steadily.

The two towns have 1,500 acres of land enclosed in two fields with irrigation ditches made so as to water the entire area.

The quality of wheat and oats produced this last year was very good; the wheat often weighing from 60 to 63 pounds to the bushel, and making a very fine article of flour.

We saw turnips that weighed nine pounds and cabbage that weighed sixteen pounds; rutabagas that weighed fourteen pounds and onions between three and four inches in diameter, raised in the gardens of the Saints; all of which demonstrates conclusively that the San Luis Valley will produce the necessities of life.

Writing of the reception he and his thirty Saints received on their arrival at Manassa on November 15, 1881, he writes:

The Saints of Manassa received and welcomed us with genuine hospitality; the emigrants were soon cared for around warm, comfortable firesides and supplied with an abundance of good food; everything going to show that the spirit of generosity so proverbial of Southern people, had not changed or altered by their being transferred to the Valleys in the tops of the mountains.

The winter of 1881-1882 was mild and the people of Manassa generally, enjoyed good health. The homes of the Saints were comfortable and their cattle were given good care.

On March 27, 1882, President Morgan arrived with another group of emigrants from the Southern States numbering about one hundred people.

The settlements had so increased in population by March, 1882, that there were three Sabbath Schools established and an equal number of day schools, with Sacrament meetings being held regularly and with quorums of the Priesthood all properly organized and in good working order. The relations of the Saints with their Mexican and American neighbors still appeared pleasant and agreeable and the State Authorities, in land and other matters, had acted kindly and without prejudice.

On November 16, 1882, President Morgan, having again assembled two car loads of emigrants from the Southern States, left Chattanooga, Tennessee, for Colorado.

On Sunday, June 10, 1883, the Conejos Stake of Zion was organized. The local authorities selected were:

Silas S. Smith, President of San Luis Stake; Richard C. Camp and Wm. Christensen, counselors.

Manassa Bishopric: John C. Dalton, Bishop; Silas S. Smith, Jr. and Samuel S. Sellers, counselors.

Ephraim Bishopric: Peter Rasmussen, Bishop; Howard K. Coray and Jordan Brady, counselors.

Richfield Bishopric: Thomas N. Peterson, Bishop; Milton W. Evans and Jens Jensen, counselors.

Los Cerritos Branch: L. M. Peterson, Presiding Priest.

Stake Clerk and Recorder: Albert R. Smith.

High Council: Wm. F. O. Behamann, H. C. Heizelt, D. H. Ellidge, Daniel R. Sellers, S. C. Berthelsen, John A. Smith, Martin Christiansen, John D. Hawkins, David Boise, James H. Jack, John B. Daniels, and Albion Haygard.

Thus ended what may be called the pioneer period of the settlement of the San Luis Valley by the Mormon people; a period characterized by the achievements of courageous men and women who faced difficulties and discouragements and achieved their high resolve in the establishment of homes and settlements in the valley of San Luis.

Trials and Judgments of the People's Courts of Denver

FRANCIS S. WILLIAMS*

Frequent reference by newspapers and magazines to the early trials and executions by the people of the Wild West, suggest that the "early days" were really "the times that tried men's souls." In general, the traditional stories that are told are very inaccurate; the doings of "Judge Lynch" are vastly exaggerated and the victims of his court greatly multiplied. It is a regrettable fact that prominent actors in the glory of those days took pleasure later on in enlarging upon the doings of the people's courts. It seems that they wished to paint history bloodier than it was; to astonish the newcomer with the statement that it was the common thing to have "a man for breakfast" each day.

So it was also of early Denver. In this paper will be given an account of the judgments of capital punishment, and the executions by the people's court in Denver, previous to the organization of the Territory of Colorado and the establishment of lawful courts. It is true that there were other executions more or less secret, by real or pretended vigilance committees, for horse- or cattle-stealing, but these seem to be not numerous. There were the examinations by county courts, city courts, and provisional courts, all lawfully established. Quite often the decisions that were made in these were severely condemned by the public.

The first murder committed in the vicinity of Denver, or, at least, the first of which there is definite record, was by John Stofel. Among the few people who came to the Cherry Creek gold fields in 1858 was an elderly German named Biencroft. He was accompanied by three sons, and a son-in-law named Stofel. The group established themselves on Vasquez Fork (now Clear Creek), just above the mouth of Ralston Creek. Here they lived in a cabin or "dug-out," and mined on the point of a high bar between the two creeks, just this side of present-day Arvada. On April 7, 1859, the old man and two of his boys went to look for their strayed cattle. When they returned that evening, the other son was missing. The son-in-law acted so strangely that the suspicions of the family were aroused, and some of their neighbors became interested. A search was instituted, and young Biencroft was found dead, shot through the head. The body had been dragged some distance into the timber and thrown behind a log away from the usually traveled path.¹

*Mr. Williams, who has contributed previously to this magazine, is a teacher of history at the Florence, Colorado, High School.—Ed.
¹*Rocky Mountain News*, April 23, 1859.

Stofel was arrested and taken to Auraria (West Denver). The next day, April 8, he was examined before Judge Wagoner, and committed for trial. Stofel freely admitted his crime, saying that he followed his brother-in-law all the way from the States for the purpose of killing him. However, there was no place for his safe-keeping and no regular court for his trial, nor was there any doubt of his guilt. The people then took the matter into their own hands, held an informal deliberation and decided to hang him. A wagon and yoke of oxen were soon procured; Stofel was placed in the wagon and escorted by the entire population to a large cottonwood that stood just north of the present intersection of Market and Tenth Streets, where he was hanged. "Noisy Tom," a well-known character around Denver at the time, acted as executioner.² The tree was soon after cut down. This was the only hanging ever done by the people of Denver, as a people, upon a tree.

At two o'clock in the afternoon of March 12, 1860, William West was shot and killed by Moses Young. The murder was committed in front of West's house, on the west bank of Cherry Creek, about two hundred feet below the present west end of the Larimer Street bridge. Young put away his gun, crossed over the creek, walked unconcernedly along Larimer Street, and disappeared. After the first rush to where West lay dead, everybody set out to look for Young. The town was searched, and the country explored for miles in all directions. About sundown he was found covered by a pile of harness in the loft of Stag Hall, a liquor store at about what is now 1424 Blake Street, occupied at that time by "Ki" Harrison. Denver Hall, an immense gambling house with bar and restaurant in connection, stood directly across the street. Young was taken there, and a strong guard detailed to watch him over night. At nine o'clock the next morning, the people assembled in Denver Hall and organized a court in the form which was afterwards followed in other cases. There was a President, or Chief Judge, and two Associate Judges; a Secretary, Sheriff, and twelve jurors, all nominated and elected by the people present at the time.³ A person so chosen could be excused for cause, if the people deemed the cause a sufficient excuse. Trial proceeded under rulings of the Judge; the case then went to the jury, which brought in a verdict of guilty. The people were asked if they approved the verdict, and a responsive "aye" answered. The Chief Judge then pronounced sentence, that the condemned be hanged the next afternoon, between the hours of three and six, until dead. The people were again asked if they approved the sentence, and again "aye" came in response. A strong guard was maintained during the night. The next morning a scaffold was erected exactly over the pool of blood that yet marked the

²*Rocky Mountain News*, April 23, 1859.

³*Ibid.*, March 14, 1860.

spot where West was shot down and died. The Jefferson Rangers, armed and mounted, appeared on guard, and at three o'clock escorted the condemned man from Denver Hall to the place of execution. The trap fell, and Moses Young was launched into eternity at 4:21 p. m., March 14, 1860.⁴

On June 12, 1860, Jacob Roeder with his wife and child, Marcus Gredler and Frank Pampuch, passed through Denver en route for South Park. They were all Germans, and came from Leavenworth, Kansas. They took the road for Bradford (near Morrison), and about seven miles from Denver camped on the brow of a bluff this side of Bear Creek. When going into camp, Gredler, who was driving a team, either mistook or disregarded an order of Roeder in regard to where he should drive, and a brief quarrel ensued. About nine o'clock that evening Roeder went some steps away from camp when Gredler surprised him. With a blow from an ax, Gredler almost severed Roeder's head from his body. Gredler then went to the wagon, took out a pistol and fired a couple of shots. As the others gathered about, Gredler explained that Roeder had attacked and shot at him, so Gredler had been forced to kill him in self-defense. Gredler then buried the body by the roadside in a very shallow grave. The next morning the party moved on, Gredler intimidating the others so that they were afraid to give any alarm. But suspicion developed, and at the foot of Bradford hill (near Morrison) the party was stopped. After a few questions, the party was induced to start back to Denver. On the way Gredler went to where the body was buried, and dug it up himself.⁵

At ten o'clock the following morning (June 14) the people organized a court for his trial in Apollo Hall, at about present 1425 Larimer Street. Because of the warmth of the day, the people soon moved their court under the trees between Blake Street and Platte River. Here Wm. M. Slaughter was chosen Chief Judge, and John W. Kerr and C. P. Marion, Associate Judges. John H. Kehler was appointed Sheriff, and George A. Gaunt, L. Mayer, A. J. Dury, James Arthur, L. McLaughlin, James O'Banyon, J. H. Berry, J. B. Ashard, A. Kimball, O. M. Hollister, James Perry, and W. H. Grafton were the jurors. W. P. McClure appeared as attorney for the people, while N. G. Wyatt defended the prisoner. The trial was concluded that day, the accused was found guilty and sentenced to death. The finding and the sentence were both approved and confirmed by the people. The next day (June 15) at three p. m. Gredler was hanged on a scaffold at the foot of the bluff near where Curtis Street enters Cherry Creek, on the east side.⁶

⁴*Rocky Mountain News*, March 21, 1860.

⁵*Rocky Mountain News*, June 20, 1860.

⁶*Ibid.*

Five days after the trial and conviction of Gredler, another killing shocked the people of Denver. On June 20, 1860, a train of freight wagons, having discharged their loads at Golden City, passed through Denver en route for the "States." Three and a half or four miles down the Platte, the train went into camp. In corraling the wagons, one of the drivers, J. B. Card, drove his wagon on the wrong side of the wagon in front of him. Another driver, Wm. F. Hadley, cursed and abused Card. A scuffle ensued, in which Hadley stabbed Card with a butcher knife, the effects of which caused Card to die the following day. Some people camped near by, knowing the facts and interested in the trainmen, arrested Hadley and brought him to Denver June 22. The next day a court for his trial was organized in the usual manner. William Person, George Wynkoop, and A. B. Babcock were chosen judges, while H. S. Merrick, George Turner, J. N. Hutchins, A. Stine, J. P. McKinney, S. H. Hough, I. Wheeler, John B. Rogers, Charles Robison, J. T. White, W. Elexander, and L. N. Tappan were jurors. H. R. Hunt and John L. Sherman conducted the prosecution, while G. W. Purkins appeared for the defense. This court was organized and the trial conducted under a group of cottonwoods that then stood on Sixteenth Street, below Wazee.

In the defense a somewhat singular phase developed. One Dr. Bolby had been examined in the forenoon relative to the wound and death of Card and the character of Hadley. He gave the latter an excellent recommendation, saying that he had known him from childhood. In the afternoon Bolby was recalled, the object being to impeach the credibility of Captain Boyd, conductor of the train, whose testimony had been very explicit regarding the abusive language of Hadley and the homicide. The wagon-master was also recalled, and swore that he would not believe Boyd under oath. It was evident that an underrcurrent was at work. The trial was concluded the same day. The prisoner was found guilty and sentenced to be hanged the following Monday, June 25, between the hours of two and five in the afternoon. Upon the question of the approval of the verdict and the confirmation of the sentence by the people, there was a single "no."

A guard of two men was placed in charge of the condemned, and he was moved to a house on Ferry (Eleventh) Street, near the intersection with Stout. The prisoner was in a jovial mood, laughing and talking with his friends, and was heard to remark, "Plenty of time between now and Monday afternoon." The next morning he was gone. The men on guard, John W. Schlagle and Charles Johnson, Deputy Sheriffs, reported that one of them went to sleep. About midnight someone came to the other and said: "You take a nap while I watch the prisoner." The second guard took the nap, and awoke later to find the prisoner and his volunteer jailer

gone. It was rumored afterwards that someone had received a bribe of three hundred dollars. William F. Hadley was the only prisoner that ever escaped from the people.⁷

Almost a month later, on July 20, 1860, James A. Gordon shot and killed Jacob Gantz. Gordon was subject to periodical sprees, in which he became perfectly wild and desperate. Upon this occasion he had been upon such a spree for three days. Two days before, on the eighteenth, he had shot and wounded Frank O'Neill, but the shot was not fatal. Gordon had fired his pistol in bar-rooms, and had driven all the inmates out of some houses that he invaded. On the night of the twentieth he entered a saloon on the lower side of the Blake Street bridge, near its westerly end. Gantz was sitting on a keg in the corner when Gordon entered. Gordon asked him to drink, but Gantz thanked him and declined. This procedure was repeated two or three times, when suddenly Gordon seized Gantz and pulled him to the counter. Then taking Gantz by the hair of the head with his left hand, Gordon, with his right, placed his pistol to Gantz's head and blew his brains out. In the darkness, Gordon escaped and left town.⁸ He was subsequently tracked to Fort Lupton, and an effort was made to capture him there. However, mounted on a fleet horse, he dashed through the guard and past the posse, and outdistanced them on the plain.⁹

Weeks passed before he was heard of again, and then it was at Fort Wise (afterward old Fort Lyon) on the Arkansas River. The pursuit was renewed by Acting Sheriff Middaugh, who took the stagecoach east. He made his way to the southern border of Kansas, where he captured his man within sight of the line of the Indian Territory. Gordon evidently knew that he was being followed, for at the time of his capture, he was lying in the grass beside the trail, holding his horse by the bridle and allowing him to clip grass while he rested. Sheriff Middaugh had to return through Leavenworth. There he found a crowd of people assembled who seized Gordon with the intention of hanging him. The authorities of Leavenworth prevented this, but then refused to surrender the prisoner to the sheriff.¹⁰ The officer returned to Denver, where he procured all the authority possible, together with letters to prominent citizens of Leavenworth.¹¹ Thus armed, Sheriff Middaugh went back to Leavenworth where, after tedious delay and strong persuasion, Gordon was again delivered into his hands.¹²

It was September twenty-eighth, over two months after the murder, when Sheriff Middaugh delivered his prisoner in Denver.

⁷*Rocky Mountain News*, June 27, 1860.

⁸*Rocky Mountain News*, July 25, 1860.

⁹*Ibid.*, August 1, 1860.

¹⁰*Ibid.*, August 29, 1860.

¹¹*Rocky Mountain News*, September 12, 1860.

¹²*Ibid.*, September 26, 1860.

The stagecoach arrived Friday morning, and in the afternoon a court was organized in the usual manner. The meeting was held in the bottoms below Blake Street, not far from where the Hadley trial took place. For some reason the court selected did not strike the mass of people favorably, and, without proceeding further than the organization, the court adjourned until nine o'clock Saturday morning. Gordon was placed in charge of a strong guard, who conducted him to a room in the Bayaud Block, a rambling row of cheap frame houses on the northeast side of Sixteenth Street, between Larimer and Market Streets. During the night an attempt was made to rescue him. One of the guards was overpowered and disarmed, and, but for the timely arrival of reinforcements, the effort would have succeeded.¹³ Saturday morning at the appointed time, the court re-assembled in the river bottom. The judges elected the previous day resigned, whereupon A. C. Hunt was chosen Presiding Judge, with William Larimer, Jr., and William Person, Associate Judges. John Hughes was elected Sheriff. The entire forenoon was spent in selecting the jury of W. S. Bond, John Wanless, A. B. More, William Dunn, Jacob Harris, A. C. Elithorpe, T. C. Elithorpe, S. M. Davidson, O. M. Vinton, S. Reed, T. R. Forrest, and T. Lincoln. Attorneys H. P. Bennet, James T. Coleman, and Jacob Downing appeared for the people, while J. H. Sherman, H. R. Hunt, S. W. Wagoner, W. P. McClure, and John C. Moore defended the prisoner. Hardly had this been done when a wind and dust-storm sprang up, so court was adjourned to William Dunn's store-room, next door to the Tremont House on Front (Thirteenth) Street, opposite Blake Street in West Denver. The crowd re-assembled at two that afternoon, and the trial began.¹⁴ The testimony was very voluminous, and the examination lasted until late in the night, when an adjournment was made until nine o'clock Sunday morning. A few more witnesses were then examined, the case closed and the attorneys proceeded to sum up.¹⁵ After a long speech by each of the eight attorneys, the case was given to the jury who promptly returned a verdict of guilty. By this time an immense crowd of people had assembled. Thousands had come down from the mountains and in from the surrounding country. The Judges announced the verdict from the balcony of the Tremont House, and asked it to be approved. A thunderous "aye" was the response. Sentence was then pronounced, that the condemned be hanged on the following Saturday, October 6, between the hours of three and six p. m. The long delay was asked to enable Gordon to settle his business affairs. The vast throng that filled the streets confirmed the sentence without a dissenting voice.¹⁶ The prisoner was taken to a little brick building

¹³*Ibid.*, September 29, 1860.

¹⁴*Rocky Mountain News*, September 29, 1860.

¹⁵*Ibid.*, October 1, 1860.

¹⁶*Ibid.*, October 2, 1860.

on the south side of Larimer Street, between Tenth and Eleventh, and placed under a double guard day and night. Soon began the circulation of petitions for a reprieve. Great efforts were made to create sympathy for the young man.¹⁷ After two or three days rumor had it that a desperate effort was planned for his rescue. Then, just in the dusk of evening, he was placed in a close carriage and taken to the corner of Fifteenth and Holladay (Market) Streets, where, in the third story of a building occupied by Gerrish and Company, he was kept until the hour of execution. Very few knew his whereabouts. On the sixth of October another scaffold was erected on the edge of Cherry Creek bottom, where Gredler's had stood. A strong guard was enrolled, mounted and on foot, for it was expected that any sign of weakness would precipitate an attempt to save Gordon at the foot of the gallows. At the appointed hour the solemn procession moved up Fifteenth Street and across vacant lots to the place of execution. A double cordon of armed men, with loaded and cocked guns, formed a wide circle around the gallows. The awesome spectacle was concluded without a murmur, in almost the stillness of death itself. No vast crowd ever before or since lined and covered the face and crest of the bluff to watch such an incident.¹⁸

This was the most remarkable of all the executions in the land that was to become Colorado. The long pursuit, the capture, the rescue, the surrender, the transportation of the criminal through a wilderness for more than a thousand miles by one man, the long and sharply contested trial, and the orderly execution by an isolated community just struggling into existence has, probably, no parallel in history. Such things are easily possible now, with the machinery of law and its myriad officers, backed by powerful States acting in concert and harmony, but under such circumstances as surrounded this case, they seem incredible.

Two months later, on December 7, 1860, Thomas R. Freeman was killed by Patrick Waters. Freeman lived alone, a couple of miles south of Denver, and was one of the few who attempted farming so early. He had little or no means, doing his work himself, and selling his produce in Denver. During the winter he speculated in hay, buying where he could, hauling it to Denver, and trying to make wages for himself and his team. Waters seemed to be a good-for-nothing fellow, who was in the habit of staying about Freeman's cabin much of the time.

Early in December of 1860, Freeman started down the Platte River to buy hay. Waters accompanied him on this journey. Freeman had a light wagon with two horses, some blankets, and a double-barreled shot-gun. The first night out they camped near

¹⁷*Rocky Mountain News*, October 5, 1860.

¹⁸*Ibid.*, October 6, 1860.

Fort Lupton. The next day they crossed the river, visited some hay ranches, and returned to their camp for the night. The third day as they started out, Waters took his place in the back of the wagon, sitting on some hay. After they had gone but a short distance, Waters placed the shot-gun at the back of Freeman's head, and pulled the trigger. Waters then drove the wagon off the road about three hundred feet into a thicket of willows. He seemed to have no fear of being discovered, although he was within three or four hundreds yard of a house. Waters calmly rifled the pockets of the dead man, took off some of the clothing, and threw the body in the willows. He then drove back to the road and down it four miles, where he unhitched the team, and ran the wagon down a bluff into the river bottom. He then mounted one horse, and leading the other, started for the States. Two or three days later, M. C. Fisher's freight train, coming up the river, camped near where the wagon was abandoned. Some of the men found the wagon, smeared with blood. They trailed it behind their wagons and brought it to Denver, where it was quickly recognized as belonging to Freeman.¹⁹ Search was made, and the fact that Freeman and Waters had gone down the river together soon developed. Sheriff W. T. Shortridge was dispatched in pursuit of Waters. He had no trouble trailing him, and at Cottonwood Springs, Nebraska, captured him in bed. Waters was brought back on the next coach, and arrived in Denver on Saturday, December 15. Sunday evening a committee of twelve or fourteen started down the river with Waters to make another search for Freeman's body, the first search having failed.²⁰ The weather was clear and very cold, with three inches of snow on the ground. At two o'clock Monday morning the party reached Fort Lupton, where they thawed out and had breakfast. Just as the sun rose they started again for the point where the bloody wagon was found, six miles below. An exhaustive search was made through the woods and in the river. Waters still denied his guilt and any knowledge whatever of Freeman's fate. As a last resort, he was threatened with hanging, to which he seemed as indifferent as before. A lariat was thrown over a limb, and a noose tied in one end. Seeing this, Waters asked permission to pray, and a reprieve of ten minutes was given him. With one man to guard him, Waters walked into the woods, saying that he wanted to get out of the sight of "them men." At length, after going into the woods about seventy-five or a hundred yards, he was told that he would not be allowed to proceed any further. He knelt down beside a large cottonwood tree, and began his prayer, which was protracted to an extraordinary length. Since everyone was suffering with the cold, his devotions had to be stopped. He was marched back to the dangling rope, still maintain-

¹⁹*Rocky Mountain News*, December 10, 1860.

²⁰*Ibid.*, December 17, 1860.

ing his innocence as firmly as ever. His feet were tied together with a handkerchief, his arms pinioned behind his back in the same way, and his coat and shirt unbuttoned and rolled down from his neck. Waters never flinched until the rope dropped upon his naked shoulders. Then he wilted like a rag, and had to be supported. After a convulsive shudder he gasped out: "I'll tell! Oh! I'll tell everything!" Being placed in one of the carriages, he led the party back up the river to Freeman's body.²¹ The murderer and his victim were brought back to Denver that day. On Wednesday, December 19, a court convened at ten a. m. for his trial. It was organized in Larimer Street, but since the weather was cold, it adjourned to the "Criterion," a variety theater on Larimer, between Fifteenth and Sixteenth Streets. William Person, General Marshall, and E. H. Hart were elected Judges, with H. Murat, M. A. Hines, William Clayton, L. N. Greenleaf, George T. Clark, C. H. McLaughlin, George Wakely, J. B. Carter, E. McLaughlin, John Hernan, James Steward, and J. S. Travilla as jurors. H. P. Bennet, J. Bright Smith, and General L. L. Bowen appeared as counsel for the people, with C. P. Happ and C. C. Carpenter defending the prisoner. The following written statement was made by the prosecution, the first time such a formality was indulged in:

"THE PEOPLE OF THE PIKE'S PEAK GOLD REGION

versus

PATRICK WATERS.

—The People of the Pike's Peak Gold Region, assembled at the City of Denver, the 19th day of December, A. D. 1860, at the said Pike's Peak Gold Region, one Patrick Waters did make a felonious assault on one Thomas R. Freeman, then and there being, and him the said Thomas R. Freeman, with premeditated malice did murder and slay, contrary to all laws of God and man."

The prisoner was found guilty, and sentenced to be hanged on Friday, December 21, between the hours of ten a. m. and five p. m. The verdict and sentence were approved by the people, as usual. Before the day of execution Waters made a full confession of his guilt. A gallows was erected on the northwest side of the river, where the further end of Fifteenth Street bridge now stands, and from it Waters was hanged, on the day appointed, a little before three o'clock.²²

This was the last execution by the People of this part of Colorado. The war began the following spring, and there was no further rush to this part of the country. The Territory of Colorado was organized in the spring of 1861, and regular law was established.

²¹*Rocky Mountain News*, December 18 and 20, 1860.

²²*Rocky Mountain News*, December 21, 1860.

John W. Powell's Colorado Expedition of 1867

THE COLORADO EXPEDITIONS OF MAJ.
JOHN WESLEY POWELL IN 1867 AND 1868

Part I: The 1867 Expedition

ELMO SCOTT WATSON*

In the summer of 1867 the Territory of Colorado was the scene of an epochal event in both the history of American exploration and of higher education in the United States. On July 6 a party of 11 men and one woman arrived in Denver to "explore regions not hitherto canvassed fully by naturalists but which are known to be rich in materials and specimens, especially in the departments of geology, paleontology, etc."¹ Leader of the expedition was Maj. John Wesley Powell, who had become professor of natural science at Illinois Wesleyan University, Bloomington, Illinois, soon after his discharge from the Union army in 1865, and who had been appointed curator of the Illinois Natural History Society's museum at Illinois State Normal University in the adjoining town of Normal early in 1867.²

During his two years at Wesleyan, Powell had often taken his science students on field trips in the region around Bloomington to supplement their classroom and laboratory work. His expedition to Colorado in 1867 was not only an extension of that practice but it was also the first of its kind in American college history and it marked the beginning of large-scale student field trips to distant places.³

Because of the historic importance of this expedition and because what little has been published about it has been erroneous in many respects, including its personnel, it seems worthwhile to record here the names of those who accompanied the future explorer of the Grand Canyon of the Colorado on his first trip into the West.⁴ Of

*Mr. Watson, an authority on Sioux Indians, formerly of the Medill School of Journalism at Northwestern University, is now Chairman of the School of Journalism at the University of Denver.—Ed.

¹Statement of Powell to the Illinois State Board of Education, *Proceedings, Board of Education*, March 26, 1867.

²Powell had been offered the curatorship the previous month but did not accept until the March 26 meeting, at which he announced his plans for the Colorado expedition. Two months later the Illinois Wesleyan trustees granted him a year's leave of absence from his duties at that institution but continued to carry his name on the faculty roll until his resignation in June, 1868. *Illinois Wesleyan Trustees Proceedings*, June, 1867; June, 1868.

³"In 1867 Powell visited the mountains of Colorado with his class for the purpose of studying geology and so began a practice that has been continued by eminent teachers elsewhere."—*Appleton's Cyclopedia of American Biography*, V. 95. "Major Powell was the first to introduce field work into the colleges of the United States."—From a report of a lecture by Prof. Alva W. Dragoon of Illinois State Normal University before the McLean County Academy of Science, *Bloomington Daily Pantagraph*, November 11, 1937.

⁴For the list of the personnel of the 1867 expedition I am indebted to Mr. William Culp Darrah of Medford, Mass., an authority on Powell's career, who states that "the stories—so often quoted—that there were about '25 students' are without foundation."

the 12 members of the party five were graduates of, or students in, the two universities mentioned above. The Wesleyanites were Leonidas H. Kerrick, a recent graduate and Powell's faculty colleague as principal of the Model School for Boys, who had the post of mineralogist; Joseph C. Hartzell, a senior, and Francis Marion Bishop,⁵ a sophomore, as zoologists; and Milton A. Titterington, a junior, as herpetologist. T. J. Burrill, a graduate of Normal who was then principal of the Urbana (Ill.) schools, was botanist; and the other members were the professor's wife, Emma Dean Powell, who was assistant geologist (Powell himself was the geologist); his brother-in-law, Almon H. Thompson,⁶ superintendent of schools in Bloomington, entomologist; S. H. Huse of Evanston, Ill., assistant ornithologist; and Rev. William E. Spencer, entomologist; Edward W. Spencer, ornithologist; and George D. Platte, artist; all of Rock Island, Ill.

Powell's original intention was to explore the Bad Lands in southwestern Dakota and then proceed to the mountain parks of Colorado. But while the party was being organized and outfitted at Council Bluffs, Iowa, the major received a warning from General Sherman, commander-in-chief of the army, that there was danger of encountering hostile Indians in Dakota, so he changed his plans to visit the Bad Lands. Instead, the party, mounted on horseback and in mule-drawn covered wagons, followed the Oregon Trail across Nebraska, then headed directly for Denver. Even this much-travelled route was not without its dangers, for Milton Titterington later recorded:

After travelling several days without seeing any Indians or white men, we came to where there was a running gear of a wagon on the side of the road. When investigating we could see blood and hair on the forewheel where a man had been killed and scalped and was buried near without a stick or stone to mark the grave. From this time on to Denver at night we stood guard, careful not to let our animals out of our sight. Within a short time we found where four men had built a sod house and commenced to ranch. One day they were attacked by Indians . . . two more unmarked graves, maybe two got away alive. It is estimated that there were about 2,000 unmarked graves along the old trail.

We spent a month in the Indian country as we had to make our collections as we went along. We reached Fort McPherson on the 17th. of June . . . where we found Gen. W. T. Sherman and Gen. George A. Custer with six companies of soldiers on a drive against the Indians.

⁵Bishop served with Powell in three subsequent expeditions—a land exploration of southern Utah and northern Arizona in 1870, the second Colorado River expedition in 1871, and another exploration of southern Utah and northern Arizona in 1872. For a biography of Bishop, and his journal from August 15, 1870, to June 3, 1872, see *Utah Historical Quarterly*, XV, 155-238.

⁶During Powell's first Colorado River expedition in 1869, he left the museum at Normal in charge of Thompson, assisted by Dr. Joseph Sewall.—Cook and McHugh, *History of Illinois State Normal University*. In 1870 Powell engaged Thompson as chief topographer and set him to preparing a base map of the Colorado River in preparation for the expedition of 1871. Thereafter Thompson played an important role in Powell's subsequent expeditions and that of 1872 was known as the "Powell and Thompson Colorado Exploring Expedition"—H. C. DeMotte in the *Illinois Wesleyan Alumni Journal*, November, 1873. For a biography of Thompson and his diary, see *Utah Historical Quarterly*, VII, 107 et seq.

Late in the day General Custer with the soldiers left the fort going west 13 miles to a fort across the Platte where he was to meet another company from Julesburg and the combined force was to go against the Indians.

On July 6 we reached Denver, where we got our first mail and ordered our mail forwarded to Fairplay, Colo., 150 miles into the mountains. Found no food for our stock and had to pay 10 cents per pound for corn. So we moved on to Pikes Peak.⁷

While the party was camped in Bergen's Park, Hartzell wrote a letter back to the "home town paper," the *Bloomington Pantagraph*, which affords an interesting commentary on the reaction of these early-day tourists to mountain travel. Dated "Bergen's Park, Colo., July 26, 1867," it read as follows:

We left our camp at Jackson's Creek, and in early morning set out for our first day's real mountain travel. Hitherto we had driven along the foothills or the valleys at their base, and only ventured into the mountains proper with mules and ponies, or clambered up their rugged sides on foot. Difficult as we had often found this, a new experience awaited us, which has made our former trials sink into insignificant details or commonplace affairs.

When we left Denver, our proposed route to Pike's Peak was by the beaten prairie road, by way of Colorado City, a round-about distance of eighty miles, but learning that it was possible to reach the Peak by a nearer way, over the mountains into a valley known as Bergen's Park, down which courses one of the tributaries of the Platte, and whose headwaters take their rise a short distance from the base of the mountain itself, forming a road along its entire length of easy travel, we changed our course, determined to make the experiment. This we more readily concluded to do from the fact that it would give us a better chance to examine the mountains and their natural resources than we had previously had the opportunity of doing. The only difficulty was to reach the valley, twenty miles away over a mountain range, averaging 1,500 feet above the base, and exceedingly rough and broken. Only one wagon had ever traversed it—this a year before for the purpose of carrying provisions to herders who had driven their cattle across to winter upon the fine pastureage of the valley. The wagons never returned, having been accidentally burned. They had, however, blazed the trees, cut down some that could not be passed, and partially cleared the road of brush and logs; but having an ox-team and a stout wagon they crowded through the thick undergrowth of pine, poplar, and scrub oak and bumped over logs and rocks in a manner surely more characteristic than comfortable. Their trail, for it could be called nothing more, was a wild one for us; but our explorers having passed over it with the ponies pronounced it barely practicable for the wagons, so, imitating Bonaparte when about to cross the Alps, we said "Let us set forward."

During the first three miles in a tortuous course toward all points of the compass, uphill, downhill, and sidehill, an ascent was made of fully 1,500 feet. Putting six mules on a wagon with 1,000 pounds of freight and packing six more mules and ponies with 100 lbs. apiece, we left one of the wagons with about 1,200 lbs. for a second trip, and started upon the hazardous, crooked road. It was so inclined in places

⁷From a manuscript, "Carving an Empire out of the West in 1867," written by Milton A. Titterington in 1932 and now in the possession of his nieces, Miss Anne Titterington of Kansas City, Mo., and Mrs. Minnie G. McMeekin of Rock Island, Ill. Titterington states that "a party of twelve, organized at Illinois Wesleyan University at Bloomington, Ill., to go to Colorado for the purpose of collecting specimens for museums, started from Council Bluffs, Iowa, with mule teams" but does not give the names of the twelve. The presence of Generals Sherman and Custer at Fort McPherson, Neb., during the week of June 17, 1867, as recorded in this narrative, is confirmed in Custer's *My Life on the Plains, or Personal Experiences with the Indians*.

that to our prairie-accustomed eyes ascent and descent in safety seemed wholly impossible. Often, had not our baggage been securely fastened with ropes, it would have slid endwise from the wagon, and sometimes it seemed that nails instead of hoofs could only accomplish the journey.

All hands were at work—some ahead clearing the way and acting as pilots, others behind “chocking”—that is, following with large pieces of wood to block the wheels when at rest. Sometimes the mules could gain but a few feet when, with locked and blocked wheels, the wagons were held till a new start could be made. Nothing could exceed the faithfulness of our animals as they toiled up and down mountain steeps. Prejudiced as any one may be with the stubbornness of the mule, I am certain an experience such as ours in the long journey from the Missouri River and especially the mountainous part of it, would change his feelings to admiration of their patient faithfulness and hardy endurance. Slow in gait, awkward in appearance, and unmusical in voice, they have, nevertheless, proved themselves our best friends and devoted servants, far exceeding for our purpose the possibilities of the finest Arabians or the fleetest coursers. “Honor to whom honor is due,” if he does bray and have long ears.

The method of descent would be, perhaps, most novel to an Illinoisian. Locking the wheels so they could not turn, log chains were fastened about the rim in such a way as to slide under the wheel cutting deep into the ground or catching the bushes and rocks, thus retarding the velocity of the descent. Now add (to) this obstruction to the law of gravitation the force of half a dozen men holding back with all their power, by a long rope hitched to the axletree, the driver tugging at the reins, the mules settled back on their haunches, plowing the dirt with their feet, and you have the picture for your imagination to fill up.

But I must omit further details. It took the entire day to make the two trips, thus gaining three miles by twelve long hours of severe labor for man and beast. That night we camped upon the top of the ridge in a thick forest of pine and fir trees. The view was the finest we had had. Below and eastward stretched a lovely landscape of hill and valley and plain, dotted by groves and checkered by belts of timber; far away over the dividing ridge of the Platte and the Arkansas, we looked with admiring gaze, and only turned away from the boundless expanse of beauty with a feeling of regret that such scenes come so seldom in a life time. To the south rose in stately snow-capped and cloud-capped majesty the celebrated Mountain Knob, toward which we were traveling. The western horizon glimmered with the snowy crests of the higher range beyond us, while between them and ourselves, to the south-west, shot up the snowy pillars of Craggy Peak, in the range we were then upon. The north was lost in forests deep, impenetrable and gloomy; they yet had their attractions and perfected scenes. At night we cut boughs from the pine trees, and, spreading them carefully upon the ground in the tent or open air, threw our blankets over them, and for the first time since we started with the teams, slept upon a soft bed, luxury indeed.

Having gained the top of the mountain range, our journey the next day was about equally uphill and downhill, winding as before, sometimes going far to the right from a direct course to avoid a deep chasm, and as far to the left immediately afterward to pass around huge masses of granite rocks, great boulders, weighing thousands of tons, piled one upon another for nature's pastime.

We took the whole load most of the way and advanced during the day fifteen miles, measured upon the road. Camping again in the mountains, we quietly rested till morning. The next day was Sabbath, which we had confidently expected to pass in the Park as a day of rest; but were then seven mountainous miles away. Since starting, our animals had fared poorly upon the scanty grass and here it was no

better. We were obliged to move on. Weary with much labor, we reached our haven of rest about noon, having traveled more than a Sabbath-day's journey over a country far more broken than did the followers of Moses when the law was first proclaimed.

The grandeur of the Rocky Mountains is in their snowy heights and their towering peaks, but the beauty of them is in their numerous parks or enclosed valleys. A few of the most noted of these are laid down upon the maps, and have been written about by those who have seen them; but nestled among the hills, repose in beauty and fertility hundreds of lesser parks of which but little is known.

The mountains are usually thought to be ridges of rocks, barren and worthless, save for their mineral productions, but nothing can be more erroneous. The valley in which I am now writing is twenty miles long and from half a mile to three miles wide, then, opening into this upon the sides, are numerous others, each with its sparkling streams of purest water, its groves of trees, and broad acres of pasture land. Perhaps not less than forty thousand acres of available pasture is here spread out invitingly, as rich as can be found in its natural state in the famous Mississippi valley. It is not so good for agriculture. The climate is too cool for corn—only the small, early varieties can be raised at all; the small grains on selected spots do finely, while potatoes flourish beyond parallel in the States. No irrigation is needed. During the summer light showers occur almost daily and at night, contrary to the general belief, a heavy dew falls. We wear our woolen clothes with comfort, and at night sleep soundly under warm covering. I am informed that the winters are mild and pleasant, cattle are often driven from the plains to winter in these valleys, subsisting entirely upon grass.

With these advantages and more, the Rocky Mountains must yet become a source of national wealth far greater than the golden sands have yielded or ever can. The land is secured by preemption, or a full title acquired under the provisions of the Homestead Law. Grazing is wealth, an income without expense, and many there be who are profiting thereby; still there is room.

Tomorrow, we start for the ascent of Pike's Peak.⁸

Not all of Powell's party made the attempt to scale Colorado's most famous mountain, but among the eight who did was his wife, Emma Dean Powell, who thereby won the distinction of being the fourth woman to accomplish that feat.⁹ Hartzell's next letter to the *Pantagraph*, dated “South Park, Colorado. August 8, 1867,” tells the story of the ascent as follows:

Long before daylight on the morning of the 27th. of July, our camp in the quiet valley from which I last wrote you, told of busy preparations for the arduous task of the coming day. The lofty summit of Pike's Peak, whose bold and whitened head, defying age, rears itself heavenward, piercing the clouds, unshaken and unalarmed amid the terrific gales of thunder and lightning as they chase each other in the wild convulsions of the elements, or rising gradually magnifi-

⁸Bloomington Daily *Pantagraph*, August 19, 1867. This, the first of two letters to the *Pantagraph*, was signed with the initial “J.” hence the assumption that they were written by Joseph C. Hartzell. Except for Powell, he was the only member of the party whose first name began with that letter and internal evidence seems to rule out the possibility that Powell might have written these dispatches.

⁹The first woman to reach the summit of Pikes Peak was Mrs. Julia Archibald Holmes of Kansas, who made the ascent on August 5, 1858. Two years later a party which included two women—Mrs. Mark L. Blunt and Miss Addie M. Smith of Golden City—climbed to the top, hence the statement that Mrs. Powell was the fourth to accomplish that feat. See *A Bloomer Girl on Pikes Peak, 1858*, edited by Agnes Wright Spring (Western History Department, Denver Public Library, 1949).

cent above the storm into the mild sunlight, calm and majestic; the same stern, unyielding rock-ribbed and rock-robed mountain, though monarch itself, was that day to be trodden, under foot of man, to assert here, as elsewhere, his still higher dominion. Anxiously we watched for the coming day, speculating upon the chance of storm or sunshine, for it is only during the fairest weather that the ascent is either desirable or feasible. Even under the most favorable circumstances it is a hard, toilsome undertaking, and the adventurer is always liable, with but a few moments' notice, to be caught in angry tempestuous storms of rain and hail. Scarcely a day during the summer months passes without them, sunlight one moment, storm the next.

Eight of our party had determined to make the trial, among whom was Mrs. Powell. She has uniformly borne the hardships of the trip with a courage and fortitude far beyond that usually attributed to her sex, but now endurance and fearlessness was to be put to the test, and I hasten on beyond the order of the narrative to say that the triumph was complete. Mounted, as usual, when marching, upon her white-eyed Indian pony which evidently is accustomed to mountain travel, she kept pace with the rest, dismounted and climbed when necessary, and in the end bore the fatigue with hardly an equal. Few indeed of the "weaker vessels" have ever accomplished the feat, and few ever will till society ceases to forfend them hearty, health-giving exercise. Now to my story:

We were probably seven miles in a direct line from the summit, which, rising above the intervening ranges, was constantly in view.

But no direct course could be traversed, and winding about over fallen timber—the result of fires—and jagged rocks, through a thick undergrowth of brush and young trees, up and down precipitous slopes or crossing miry sloughs at the bottom of the narrow ravines, we lengthened out the distance to nearly triple its direct course making besides due allowance for the excessively difficult travel.

The mountains here consist of a broad tableland, over which courses at least three distinct ranges, while between them, at an average elevation of a few hundred feet above the plains in the parks, the surface is broken into deep winding ravines and irregular mountain ridges. The latter are—in altitude rather than anything else—the highways of travel, for the valleys are usually filled with fallen timber and huge boulders which have rolled from the slopes above, or are compressed within the limits of narrow gorges, known here as canons, through which the mountain torrents find an outlet, their rough granite walls rising almost perpendicularly from the water's edge.

The morning light came clear and rosy from the east, and having partaken of our hearty though simple breakfast and filled our saddle-bags with cold meat and hardtack for dinner, we cantered gaily away, full of lively anticipation of the prospect before us.

Reaching the foot of the first ridge, whose declivities were very steep, we dismounted, and leading our animals, toiled up the rugged ascent. We were nine thousand feet above the sea, where the air becomes rarefied to such a degree that breathing during exertion of muscle is exceedingly difficult, so we were obliged to pause a few moments very often, then pushing on again.

Gaining the top of the ridge, we rode along its height as far as possible, then descended to climb another, and so on we pursued the serpentine, uneven way till about eleven o'clock, when we halted for a lunch for ourselves and to bait the animals upon the fine grass of a pleasant little valley. We were now at the foot of one of the spurs of the Peak itself, still, however, between two and three direct miles from the summit. We stopped but a few moments, for the day was rapidly passing away. We pressed on, hoping to eat our dinner upon the summit, and had not misfortune happened to us, such would doubtless

have been the case; but climbing nearly to the top of one of the peaks from which the main route could be reached we encountered what had been a great slide of rocks, lying then upon the inclined mountain-side in rough, unstable irregularity.

An attempt to cross, mules stepping or jumping from rock to rock like goats, falls and bruises for both men and beast, the snow (fields) reached but rocks continued, the attempt abandoned and a perilous descent began, firm footing at length gained in comparative safety, and a new place selected for the ascent—all this consumed time and muscle, but no enthusiasm, and halting by a snow bank hidden in the recesses of the rock we ate our simple fare, mounted and were away again.

This time we prospered, and at half-past 2 o'clock picketed our animals upon the flat top of a high mountain, from which the snowy crest above us could be readily gained. This was the upper limit of the timber; a few dwarfed pines, the highest upon the mountains, furnished our camp with fuel. The snow in the northern ravines and sheltered places extended far below us, but here we found good grass and numerous flowers. Above us, five hundred feet, extended larger rocks and snow, relieved only by an occasional light bright-colored flower or patches of moss.

We found that we should have to pass the night upon the mountains contrary to our expectations and preparations. Plenty of blankets and ponchos had been taken, but insufficient food; a little, however, remained and all determined to scale the summit, doing the best we could for the night's and morning's repast. Leaving everything and starting on foot, the ascent began. The day was beautifully clear, and we felt favored and grateful for so rare an occurrence was ours to enjoy.

Among those grand old monuments of the ages, with a picturesque landscape of hundreds of miles in extent spread out beneath us, the clear, blue arch of heaven above, no wonder that it seemed to our rapt vision something like enchantment. Surely the Creator intended the grandeur and beauty of the world was a foretaste of the hereafter. What a prediction of the unknown! Eternity itself may easily seem short!¹⁰

Although more specific details of the final climb to the summit might have been more interesting to some readers than Hartzell's rhapsodie description of the view therefrom, we can, at least, be grateful to him for these two letters, for they seem to be the only contemporary account of the Powell expedition of 1867, written by a member of the party, that is now available. Kerrick kept a diary of his experiences that summer but unfortunately, it disappeared before a transcript was ever made.¹¹ The following winter, after Powell had returned to Illinois, he gave a public lecture, based upon his experiences, under the title of "Peaks, Parks and Plains," but thus far I have been unable to locate a copy of the text of this lecture.¹²

Soon after the Pikes Peak climb, Powell led his party up the South Platte to its headwaters, camped in Lincoln Park near Lin-

¹⁰Bloomington Daily Pantagraph, August 26, 1867.

¹¹Information from Kerrick's daughter, Mrs. Charles A. Ewing of Decatur, Ill., who states that the diary was in her possession for many years but that it disappeared after the death of a cousin to whom she had lent it.

¹²The first lecture was given in Bloomington on January 6, 1868, and repeated in Normal on February 25, 1868. Bloomington Daily Pantagraph, January 7 and February 26, 1868.

coln Mountain, which they also scaled, then headed again for Denver via Central City, where they added to their collections of gold and silver ore and many geological specimens. Upon their return to the Colorado capital early in September, the expedition disbanded and the teachers and students returned to their classroom duties in Illinois.¹³ Powell and his wife, however, remained in Colorado and during September and part of October, accompanied by several mountaineers, they visited Middle Park and explored the headwaters of the Colorado River.

They were back in Denver in November, sorting and packing the specimens they had collected, and the next month returned to Illinois to attend two important meetings. One was the regular session of the State Board of Education and the other was the annual meeting of the Illinois Natural History society, at both of which Powell gave a report on the accomplishments of his expedition.¹⁴

Soon afterwards the collections made in the Rockies arrived in Normal and for the next few weeks Powell, as curator of the museum, was busy labelling, cataloging and arranging them. The editor of the *Pantagraph*, who visited the museum, expressed his "surprise at the amount of material there collected and the work being done. Huge boxes of minerals, fossils, birds, mammals, insects, reptiles, shells and plants were piled here and there while the Professor and four assistants were busy unpacking and preparing the various specimens for the cases. The Professor is emphatically 'master of the situation' and everything seems to be going on like clockwork . . . The additions made last year exceed in number and value all the previous collections. Some of the specimens are very rare . . . Too much credit can not be given to Professor Powell. He works sixteen hours a day and pays his assistants out of his own meager salary."¹⁵

At the meeting of the State Board of Education, President Richard Edwards of Illinois State Normal University, reporting that Powell had "returned from his trip to the Rocky Mountains and entered vigorously upon his work in the Museum," declared that "in the exploration of the country and the collections he was successful beyond expectations. In the prosecution of this enterprise Professor Powell has exhibited indomitable energy and rare skill. The money appropriated by the legislature for this object has been

¹³Bloomington Daily *Pantagraph*, September 2, 1867. "The Rocky Mountain Expedition has been recently heard from. They expect to arrive home on the 16th of September."

¹⁴Board of Education Proceedings, December 17 and 18, 1867.

¹⁵Daily *Pantagraph*, January 25, 1868.

most judiciously expended. It has been efficiently used in the cause of science and education."¹⁶

In thus referring to "the cause of science and education," Edwards was uttering an unconscious prophecy of the significance of this expedition in both fields. Its significance to education has already been pointed out at the beginning of this paper. Much more important, however, was its significance to science and exploration. For the State Board of Education put the seal of its approval on Powell's work by appropriating \$600 to help finance another expedition to Colorado¹⁷ and, as it turned out, this 1868 expedition received not only the endorsement but the assistance of the Smithsonian Institution with the eventual result that Powell became the founder and first director of that institution's Bureau of American Ethnology.

But most important of all, perhaps, was the fact that during the two months the Powells spent on the headwaters of the Colorado River, there was "kindled a desire to explore the canyons of the Grand, Green and Colorado rivers"¹⁸ which, two years later, would result in the major's epic voyage through the Grand Canyon and his taking his place in the ranks of the truly great American explorers and scientists.

¹⁶Board of Education Proceedings, op. cit. The State Board of Education had given Powell \$500 from funds appropriated by the legislature for the museum. From the trustees of the newly-founded Illinois Industrial University (now the University of Illinois) he had obtained another \$500 by promising to send the university duplicates of all natural history specimens the party collected, as well as duplicates from his own "cabinet"; and from the Chicago Academy of Sciences he got \$100, besides tools and other materials. This total of \$1,100 was less than half the actual cash outlay for the expedition which Powell reported had been \$2,138. The remaining \$1,038 had been provided by Powell from his own funds. Before starting on the expedition Powell had gone to Washington to get assistance from the War Department and from his Civil War friend, U. S. Grant, now General of the Army, he had secured the promise of a military escort from Fort Laramie to the Bad Lands and return (which was made unnecessary when he changed his plans) and permission to draw rations from army posts in the regions the party would visit. He had also applied for and obtained passes over several railroads for his party and from the express companies free transportation of shipments of specimens. Powell estimated that this aid given by the War Department, the railroads and the express companies saved him at least \$3,000.

¹⁷Board of Education Proceedings, op. cit.

¹⁸Powell, *Canyons of the Colorado*, 117.