

# NEVADA Historical Society Quarterly



Spring • 1976

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# NEVADA Historical Society Quarterly

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EDITOR

JOHN M. TOWNLEY

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*A critical view of America's railroad industry, 1903*

# **Francis G. Newlands and the National Incorporation of the Railroads**

by Richard S. Carnell

I have been told by many intelligent men that these plans are indeed ideal, but that they are ahead of the times. When I came to Congress, a few years ago, to advocate a national irrigation act, I was met by the same comment.

You may vote this measure up or vote it down—you may even brush it aside with indifference, refusing to pay it the earnest tribute of discussion—but you will not thereby destroy the principles upon which it is based, nor will you ever settle the railroad question until those principles shall have been embodied in the law of the land.

—Francis G. Newlands, 1906.

FRANCIS GRIFFITH NEWLANDS entered public life as a robber baron's apprentice; he left it as a respected and reformist U.S. Senator. In the course of his career, he played a major role in the progressive conservation movement and in the establishment of the Federal Trade Commission—and his achievements in these areas are well-known to historians. But Newlands' bold plan for restructuring the American railway system through federal charters, although recognized as "a measure of considerable originality" by one modern scholar, has received scant notice. Yet Newlands, a man of wide interests, held high hopes for this proposal and worked energetically on its behalf. Through it he sought nothing less than a model pattern of regulation, "the germ of a scientific solution of the larger problem of industrial monopoly."<sup>1</sup> This essay will sketch roots of the national incorporation concept in Newlands' experience, then focus on the plan itself and its author's continued advocacy of the idea.

The first thirty years of Newlands' life were marked by a rise from "genteel poverty" to wealth and power—and by a corresponding inner

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change. Born during 1848 in Natchez, Mississippi, the fourth child of Scottish immigrants, Newlands grew up in Illinois and Washington, D.C. At Yale he demonstrated intellectual ability but also a clear preference for people instead of books (a friend recalled him as "absent-minded, easy-going, deliciously genial"). Forced to withdraw from college by his family's financial difficulties (1866), he returned home to Washington. He worked by day (at "distasteful employment" in the Post Office) and attended law school at night until his admission to the bar three years later. Loathing his penury, Newlands longed for a better life—and was determined to get it. He set out to seek a new beginning in San Francisco. There he worked his way up arduously from a clerkship to a modestly successful civil practice. The young attorney—handsome, charming and sophisticated—was, however, an astonishing and virtually instantaneous success with the city's social elite. In 1874 he married the daughter of William Sharon, the "King of the Comstock," one of the richest and most powerful men in California. A "small man with dark and intense eyes," Sharon was known for his defiant indifference to the public. He was bold, imaginative, energetic and remorseless. Newlands welcomed the connection and plunged eagerly into his father-in-law's service. For several years the principal focus of his energies was the ruthless manipulation of Sharon's "corner" on the water supply of San Francisco. He was full of plans to maximize power and profit and seemed wholly unconcerned whether he hurt other individuals or an entire city in the process. Working hand-in-hand with Sharon he had gained enormous influence at the price of moral corruption.<sup>2</sup>

The convictions Newlands held about government regulation of private enterprise—which meshed neatly with his activities on Sharon's behalf—were the crux of a far-reaching transformation of his attitudes. He manifested an implacable political, legal and economic conservatism. He rigidly insisted on the sanctity of private property and tended to judge issues solely by their effect on possessions. Convinced that the primary aim of government was to protect "self-interest" (i.e., property), he stridently opposed any attempt to abridge the rights of ownership. He called politicians who thought otherwise "demagogues and charlatans" and dismissed the "populace" as incapable of fairness towards wealth. When public indignation against Sharon spawned a movement for municipal control of the water monopoly in 1877, the ensuing struggle became, in turn, a personal crisis for Newlands: the villification of Sharon confronted him with the gulf between what he wanted to be—a constructive, honorable, responsible gentleman—and what he had done in the preceding years. His consternation led to a mental and physical collapse. After his recovery he showed a new openness to political change. His old fear of public control was allayed by success in extracting favorable rulings from a presumably hostile Board of Supervisors. Newlands now stressed the social responsibilities—rather than the property rights—of the individual, who, he declared, "lives, moves and acts with the consent of or

by the sufferance of society." Even after a subsequently-elected Board slashed water rates in 1883, Newlands averred that regulation was essential to the public interest because "the power of corporations and of aggregated wealth" threatened "to control our institutions and destroy the life of the state." Regulation should, however, be conducted not by an elective panel but by an appointive, long-term commission which would act only after a fair and impartial inquiry. This emphasis on the political dangers of "aggregated wealth," the fairness and efficacy of commission regulation and the primacy of the public interest were to be hallmarks of Newlands' later work.<sup>3</sup>

Newlands' new outlook drew him toward politics, where he believed he could find the "honorable" and "constructive" career he desired. His appointment in 1885 by his dying father-in-law as trustee of the Sharon estate made him a wealthy man, with ample means to advance his own projects and ambitions, and he set his eyes on the U.S. Senate. In 1887 he called for San Francisco to turn from stopgap measures to "a broad and comprehensive plan of municipal development" he had prepared. Newlands hoped to make a name for himself as an able individual at work for the good of all. In the same year, however, the estate's legal difficulties forced him to leave California in order to prevent its division. He grew interested in Nevada, whose free-wheeling politics would facilitate his rapidly securing both recognition and a base of support, and whose second-largest property (the Comstock mines) belonged to the estate.<sup>4</sup>

Newlands moved to Reno in 1889. He sought to establish himself in Nevada by offering a practical solution to the state's aridity and backwardness. He aimed at creating an "enduring civilization" based on agriculture in place of the rough, "evanescent" life of the mines. The challenge was so immense that fragmented efforts would be unavailing, but Newlands was certain it could be overcome if the state's water and land resources were mobilized and coordinated. Surrounding himself with geophysicists, irrigation engineers and water law specialists, Newlands fashioned a complex program of regional development. This scheme, centered on the reclamation of arid lands through irrigation, extended to electric power, education and urban beautification. Unfortunately, the project foundered on the financial crisis of the 1890's. Newlands, unable to oust incumbents, failed in his first attempt to win a place in Congress but rode the Populist tide of 1892 into the House of Representatives. However, regarding Populism as irresponsible and unrealistic, he helped organize Nevada's Silver Party, and for several years was caught up in the quest for bimetallism.<sup>5</sup>

When the silver issue began to subside in the later 1890's, Congressman Newlands devoted more and more energy to irrigation. (The consultations which led to his plan for Nevada not only manifested at an early date that respect for expertise which was to characterize Progressivism, but had put Newlands in contact with the vanguard of the emerging conservation movement.) His own project in the Sagebrush State had



failed but, he believed, under federal sponsorship irrigation could begin to transform the West. Again in consultation with experts, Newlands drew up the bill which—backed by a potent alliance of Western farmers, Eastern businessmen, transcontinental railroads, and the new President, Theodore Roosevelt—became the National Reclamation act of 1902. The Act created an arid land reclamation fund independent of regular appropriations and under the direct control of the Secretary of the Interior. It brushed aside traditional claims of private enterprise and states' rights and consolidated power over irrigation in a single agency of the federal government. It also gave Newlands a national reputation and assured his election to the Senate as a Democrat in 1903.<sup>6</sup>

For Newlands the Reclamation Act was an intellectual watershed. He found it "full of suggestion as to the nationalization of other great projects." He believed that it would show Americans that the national government could best accomplish many tasks that had hitherto been left to private enterprise. It would, for example, demonstrate "the effectiveness of the government in taking hold of public utilities." Thus federal irrigation could mean the gradual adoption in America of all that was good in socialism, resulting in "the destruction of private monopoly by a wise compromise between individualism and collectivism." This was Newlands' hope, a hope expressed for several years only in private, lest the administration of irrigation "be wrecked or its repeal accomplished by the alarmed monopolistic element of the Republican Party."<sup>7</sup> He set out to attack other national problems with the principle of government intervention to achieve efficient organization and development.

Regulation of the railroads was one of the most pressing issues in American life during the early years of the twentieth century. Traffic over the nation's 297,000 miles of track was so important that one economist called it "the Barometer of Commerce." According to financial analyst John Moody, the great consolidated rail systems alone had over nine billion dollars of stocks and bonds outstanding in 1904, a sum substantially larger than the capitalization of all "industrial trusts," both large and small.<sup>8</sup>

For years the railroads had given special preferences to large shippers, often in violation of the law. But as a wave of consolidation swallowed up smaller lines, which had often safeguarded local interests, small businessmen and independent manufacturers grew angry. They claimed to see systematic discrimination by the newly-merged railroads in favor of other "trusts." Indeed, the whole nation looked on indignantly as John D. Rockefeller used rebates wrested from the railroads to build his petroleum monopoly. Dissatisfaction with the railroads was further increased when the general level of freight rates rose steadily after years of decline, as consolidation put an end to ruinous competition among the railroads. This was cause for all shippers to be alarmed. Thus the concern

of retailers and industrialists was joined to the long-smouldering discontent of farmers and the reform impulses of the country as a whole.

Although he had little prior knowledge of transportation questions, Newlands—a member of the Senate's Committee on Interstate Commerce—wanted to help America find a constructive and lasting solution to the "railroad problem." It was a fortunate circumstance that the economics of railroad operation were, in fact, a good object of study for a mind steeped in multiple-purpose resource development. For just as water was a single resource of many potential uses, so too a railroad produced different kinds of transportation (e.g., of passengers, of various types of freight) from "a single great plant simultaneously at joint and indistinguishable cost." This fact held major implications for regulation and management. One could not judge the fairness of a given rate by itself, since it was impossible to separate the costs of transporting a particular item from the overall expense of maintaining roadbed, equipment, and buildings, financing debt, paying administrative overhead, and compensating employees.<sup>9</sup> Thus regulation had to take into account the larger picture, the overall level of charges. Since rates were interdependent, all interests would benefit from a system of control which ensured that railroads would be organized and operated—in sum, developed—as efficiently as possible. Newlands sought to devise such a system.

The failure of the 1903 Elkins Act to halt rebating by the railroads generated demands for effective reform. Spurred by shipper agitation, rates and control over the railroads themselves became national issues. Looking ahead to the elections in the fall of 1904, Newlands suggested to William Jennings Bryan, leader of the Democratic Party, that the best solution might be to require railroads engaged in interstate commerce to reincorporate under Congressional charter. This arrangement would definitively establish the federal government's regulatory power and facilitate effective, comprehensive supervision. Bryan objected that its centralizing tendencies were likely to exacerbate the problem of trusts: freed from state interference in the area of rail transportation, they would try even more vigorously to control the national government. Newlands, however, continued to ponder the idea. The issue of regulation grew more pressing after President Roosevelt, reelected in November 1904, sent his annual message to Congress early the following month, in which he called for legislation to empower the Interstate Commerce Commission (ICC) to revise railroad rates upon complaint by a shipper. An eighteen-month struggle ensued, culminating in the Hepburn Act of 1906, which embodied Roosevelt's proposal.<sup>10</sup>

On December 16, 1904, while questioning a witness before the Committee on Interstate Commerce, Newlands for the first time publicly outlined his plan: interstate railroads would be incorporated according to federal law; in the interest of greater efficiency, consolidation would be

encouraged but capitalization would be limited to prevent abuses such as "watered stock"; in lieu of all existing taxes, nationally-chartered lines would pay a certain percentage of their gross receipts to the federal government, which would distribute the proceeds to the states; a "proper" return on invested capital would be fixed, and the ICC (without interference from state commissions) would set rates accordingly.<sup>11</sup> Newlands hoped through this unprecedented scheme to solve the railroad question once and for all. His task was clear: to fashion a detailed, workable proposal and to build support among his fellow legislators, the people, and the private interests concerned (railroads, shippers, and the business community at large) by convincing them of its advantages.

The plan provoked wide comment in the press ranging from admiring support to hysterical opposition, but generally the reaction was negative. Editors tended to admire its innovative nature but questioned its practicability and concluded that its passage was unlikely. In early January 1905 Newlands introduced a joint resolution creating a special commission to frame a national incorporation act for the railroads. Although he fought energetically against the disapproval of the Republican majority and the apathy and misgivings of his Democratic colleagues, the most Newlands could obtain was the referral of his proposal to the Interstate Commerce Commission. He went before the ICC in May and was questioned at length about his ideas, but there is no evidence that the Commission perused federal incorporation any further. At Newlands' request, President Roosevelt directed Herbert Knox Smith of the Bureau of Corporations to aid in drafting a national incorporation bill.<sup>12</sup>

By the time Congress reconvened in December 1905, Roosevelt had succeeded in arousing a popular groundswell for rate regulation, thereby forcing many stand-patters to support some change. Newlands, who had been actively propagating his own reform plan, immediately introduced measures for national incorporation. Unable once again to get action in the Senate, he repeatedly admonished his associates, during debates on related subjects, that the railroad problem could be adequately (that is, comprehensively) dealt with only through a national incorporation act.<sup>13</sup>

Newlands believed railroad abuses had occurred in three phases. In the first, construction syndicates reaped exorbitant profits, while in the second, corrupt managers were "the worst enemies of the stockholders." Yet these eras had given way to "an era of rebates, preferences and discriminations, part of which have been deliberately promoted by the railway managers in the interest of certain communities and of certain large corporations interested through their stockholders in the ownership of such railroads, and part of which have been forced upon them by the sharp competition between railways, which has made it impossible for human nature to resist the advantage of securing a monopoly of a large traffic by reducing the rates of, or making preferential arrangements with favored shippers." "This system," asserted Newlands, "has been the

source and strength of the great combinations and trusts of the country, and has done more to establish an enormous concentration of wealth in the hands of the few than any other agency." Thus he contended that controlling monopoly in transportation was an essential first step toward solving the problem of trusts.<sup>14</sup>

The railroads also posed a more direct threat to a democratic society, according to Newlands: "The overshadowing evil arising from unrestricted railroad monopoly is corporate manipulation of politics. This evil has already gone so far that it is an expression of no idle fear to say that this government may indeed become a government of organized dollars rather than of organized men."<sup>15</sup>

Several solutions to the "railroad problem" had been proposed but Newlands found none of them satisfactory. "The great financiers and railroad operators are opposed to any public regulation. They believe the problems should be left to the practical and experienced men who have brought the transportation system to its present state of efficiency." But this was unacceptable since "the power to fix rates of transportation is the power to affect the cost of everything which enters into common consumption, and, thus, in great measure, to regulate the standard of living of our people. Such tremendous power cannot safely be left, without restraint, in private hands." Nor should traffic agreements be legalized, especially if the organization and combination of railroad corporations remained inadequately controlled.<sup>16</sup>

Newlands maintained that the Hepburn Act, providing for revision of rates by the ICC upon complaint, would prove to be a disappointment, especially because it was unsystematic. Taxation was left to the whim of the states and localities. Overcapitalization and the political activities of the railroads were untouched. He was disturbed that Congress had left the ICC with neither a definition of what constituted a reasonable return nor a valuation of railroad properties to aid in setting rates. The grant of vast discretionary power to politically-motivated nominees of the President might, he feared, "bring upon the American people a brood of evils infinitely worse than those from which we are seeking to emancipate them." It could make the Presidency "the greatest prize for the conquest of which the forces of graft and cunning, the influence of bosses and the power of political machines, were ever enlisted in the history of the world." Responsible democracy might become impossible as a cataclysmic struggle unfolded between plutocracy and demagoguery. Instead of putting an end to railroad intrusions into politics, such regulation might only make them more menacing.<sup>17</sup>

Another possible solution was outright ownership of the railroads by the federal government. Newlands found its simplicity and comprehensive scope attractive. He noted the success of the federally-operated Post Office and of national railroads around the world, and concluded that "Government ownership presents no difficulties, either constitutional or practical." Nevertheless, he regarded it as fraught with insoluble prob-

lems. It would tend toward bureaucracy and unbusinesslike management. Worst of all, ". . . it would interject 1,300,000 employees into the political patronage and render it difficult to drive from power the party controlling this vast influence, however desirable a change of administration might be." Yet Newlands feared that ". . . the country will certainly drift to it unless the existing abuses of uncontrolled monopoly, of overcapitalization, of accomplished union between the producing and transportation interests of the country, and of unjust preferences and discriminations are done away with." A comprehensive solution to the railroad problem, compatible with the best interests of a democratic society, was therefore urgently needed.<sup>18</sup>

Newlands insisted that any such solution had to recognize the consolidation which had taken place among America's railroads. Approximately 2,000 railroad corporations were controlled by about 600 operating companies, which were in turn managed by six ownership groups. The "steady trend toward consolidation" was, he believed, "the outcome of forces which cannot be controlled or appreciably impeded by legislation." Although in recent years grave doubt had been raised about the efficiency of corporate mergers and trusts, Newlands was convinced that consolidated systems, if not burdened by overcapitalization, were more efficient and better administered. He asserted that a railroad is a "natural monopoly" and that "instead of trying to destroy monopoly in channels where monopoly is inevitable and where it makes for the best efficiency . . . we should frankly accept monopoly, civilize it, and make it bear the burdens of mankind."<sup>19</sup>

In order to attain this lofty goal, Newlands contended that it was essential to legalize desirable consolidations. By making even advantageous unions illegal, the existing system precluded public regulation of them, so that a few wealthy and powerful individuals, motivated by private gain, determined which combinations would take place. The source of abuses, declared Newlands, was not "the fact of combination but the methods of combination, unrestrained by adequate laws and fruitful of over-capitalization, frauds on stockholders, and impositions on shippers." He explained that railroads began as short lines operating entirely within the state that chartered them. Problems of control arose as the bulk of America's commerce became interstate (75% in 1887), and small lines were welded into huge regional systems while incorporation by a single state continued to be the norm. Practical consolidation was achieved through intricate systems of leasing, traffic and trackage arrangements, holding companies and communities of interest. The complexity of these methods was not only inefficient but made the railroads difficult to regulate and encouraged fraud.<sup>20</sup>

Control of capitalization was impeded by the diversity of state laws, according to Newlands. Avoiding the states which tried to regulate them adequately, corporations resorted to "the States of the least public virtue" for their powers, so that the tendency was ". . . to liberalize the



laws of all the other States and to pattern after the example of New Jersey." In short, the existing system allowed a single state to issue "letters of marque to particular corporations to prey upon the people of other States."<sup>21</sup>

Newlands pointed out that although a railroad corporation could be chartered by a state or by the nation, the railroad was used for both state and interstate commerce. This meant that "if it is created by the State, then the National Government uses a State agency in the exercise of its powers over interstate commerce. If it is created by the National Government, then the State uses a national agency in the exercise of its powers over intrastate commerce." Because of the growth of interstate commerce and the persistence of dangerous abuses, Newlands maintained that railroads engaged in interstate commerce should be "the creation of the Government whose jurisdiction is as broad as interstate commerce itself and whose sovereignty rests on every foot of American soil." He proposed to require all such railroads to reincorporate according to federal law (under the threat of being banned from interstate commerce), although compulsion would probably not be needed since "the railroads themselves must be desirous of getting rid of the present complexity."<sup>22</sup>

To prevent overcapitalization, which he believed was the root of many corporate evils, Newlands provided that a nationally-chartered railroad "... shall issue only such amount of bonds and stock as may be necessary for the construction, purchase, and equipment of the railroads constructed or acquired" and that "no bonds or stock shall be issued except for money paid or for property acquired at its actual value." In order to ensure compliance with these restrictions, the approval of the ICC (after a public hearing) would be required each time securities were issued.<sup>23</sup>

The next step, Newlands explained, was to make a just valuation of railroad property. He preferred the appraisal "exhibited in a fair capitalization" under the strict controls outlined above, "... so that whenever the question of the regulation of rates comes up ... the factor of value would be omnipresent in the capitalization of the roads in stocks and bonds." However, when the recapitalization of an existing railroad was not feasible, he advocated valuation by the ICC (based on expert surveys) according to the rule laid down by the Supreme Court: that "... the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, [and] the probable earning capacity ... are all matters for consideration, and are to be given weight as may be just and right in each case." Once determined, the valuation would be changed only to reflect acquisitions and sales. Yet because increases in traffic would surely make existing properties worth more, Newlands held that the initial valuation should be generous.<sup>24</sup>

Newlands urged that the ICC be empowered to set rates and control freight classifications on nationally-chartered railroads. Although he had originally hoped to exempt those roads from all state regulation, he decided for reasons of constitutionality and expediency to leave state control over intrastate rates unimpaired. He insisted that since rate regulation would limit the profits of the railroads, fairness demanded "the concession of compensating advantages." Thus "when the public limits the dividends upon a given investment, the public ought to secure them." Accordingly, the ICC should be required by law to set rates which would produce dividends of 5% on the official valuation. No national railroad could pay out more than a 5% dividend during any year. If its income exceeded that amount, half the excess would be deposited in "a guaranty fund in the Treasury of the United States for future dividends in case of a slackening of business" and half would be paid into the employees' accident and insurance fund. Anticipating that the railroads would need huge infusions of capital for expansion, Newlands classified all betterments as expenses. This departure from generally-accepted accounting principles (under which improvements are financed through new securities or out of profits retained in the business) ensured that no matter how much the railroads expanded or improved their facilities, dividends would remain secure. It would, he hoped, guarantee that the country would always have a transportation system sufficient for its needs.<sup>25</sup>

Newlands believed that these provisions, by minimizing risk, would make railroad securities "almost as good as government bonds." The 5% return on stock might not interest the "great promoters" who in the past had made huge fortunes by investing in the railroads but it would satisfy "the real investors"—insurance firms, banks, trust companies and pension funds—and that would be enough. Railroads would also be able to sell bonds at a lower interest rate. Newlands hoped that stabilizing the railroads in this way would not stultify the "initiative" of the managers but would actually be beneficial. They might acquire the professionalism of the scientific branches of the Federal Civil Service: "the highest standard of efficiency and energy, accompanied by a public spirit which seems to elevate their action above that of men not employed in the public service."<sup>26</sup>

Noting the "constant warfare" between the railroads and their employees over liability for injuries, Newlands called for a recognition of such liabilities as an unavoidable—if unfortunate—part of railroad transportation. Nationally-chartered roads would pay into a special fund in the Treasury 1% of each year's gross receipts. The ICC would supervise the investment of the fund, and its proceeds would be used to aid employees hurt on the job and to provide pensions to those disqualified from active service because of age. The annual assessment, he explained, "... would not be taken from the profits of the stockholders, but would be imposed upon the commerce of the country [through higher rates] as part

of the operating expenses of the companies. In this way we would do much to relieve the present hostility between the corporations and their employees . . . [and] to protect the men who are engaged in this public service of an extra hazardous character."<sup>27</sup>

Then, as now, each state had its own system of taxing railroads. These methods included impositions on real property, gross receipts, franchises and capital stock. "There is no uniformity, no permanency," complained Newlands, and "since the amount of taxes paid is one of the vital factors in determining the net earnings of the property, there can be no scientific basis for fixing dividends while this crude and chaotic system prevails." He advocated that Congress levy a 3% tax on the gross receipts of the railroads it chartered. This would yield approximately what the railroads were paying in taxes at the time. However, as there was "a movement towards the increase of such taxes upon the assumption that railroad property is not subject to the same tax burthen as other property," he suggested that the rate be increased 0.2% each year until it reached 5%: "In this way, ultimate justice will be realized without violent readjustment of the finances of existing railroads."<sup>28</sup>

Newlands maintained that "this tax should be in lieu of all other taxes, whether upon the property of the railroads or on their stock and bonds in the hands of private individuals" since "such taxation constitutes double taxation and the public interest requires that the bonds and stock of the national railroads should be made a certain investment . . ." The taxes collected by the federal government would be divided among the states according to miles of track and density of traffic so that ". . . the states would receive approximately what they now receive, and the increase of percentage in the future would yield them a still larger revenue. They would have none of the expense connected with the assessment or the collection of such taxes, and their financial condition would be unaffected." Thus Newlands was convinced that this pre-emption of railroad taxation by Congress—the most radical of his "thorough systems"—would be advantageous to all concerned.<sup>29</sup>

Newlands argued that, caught "between the upper mill-stone of the taxing power [local assessors] and the nether mill-stone of the rate-regulating power [state commissions]," the railroads found it "utterly impossible to refrain from political manipulation." Perhaps recalling his own experience with Sharon's water monopoly, he declared that if the railroads ". . . exercised no political power, they were likely to be held up by the blackmailer or injured or attacked by the demagogue, or prostrated by storms of popular violence." For "how can we expect \$10,000,000,000 to keep out of politics," he asked rhetorically, "when that \$10,000,000,000 is completely subject to political control in every State of the Union?" With an army of lawyers, traffic managers, influential agents throughout the country and 1,200,000 employees, the railroads had all the makings of a powerful—and dangerous—political machine. Moreover, because they went into politics "as they go into everything

else, in a systematic and businesslike way," they sought to extend their influence by following "the lines of least resistance," which often resulted in "an alliance with or control of the worst political elements in every community." Indeed, after gaining political control they tended to employ it not merely to protect themselves against unjust assaults but to "promote extortion and monopoly." It was therefore essential to get the railroads out of politics by taking away their interest in politics. Newlands believed that the certainty about taxes and dividends provided by his program would accomplish this.<sup>30</sup>

Newlands vigorously defended the constitutionality of his proposal. He grounded it not only on the Congressional authority "to regulate Commerce with foreign Nations, and among the several states" but on the power to "provide for the common Defence and general Welfare of the United States" and to "establish Post Offices and post Roads." A fervent Hamiltonian, he interpreted these clauses broadly. He objected to narrow construction of the word "regulate" in the commerce clause; extending beyond merely prescribing the rule, it had been held to sanction absolute prohibitions of interstate commerce (in the case of lotteries), as well as its promotion (Pacific railroads; Panama Canal). Likewise, "establishing" post offices and post roads encompassed construction, ownership and operation.<sup>31</sup>

Newlands contended that "if the National Government should construct railroads for the purpose of carrying out its granted powers, such railroads would be exempt from State taxation, just as post-offices and customs-houses are, and just as post roads would be if built." If Congress entrusted this work to a corporation it had created and explicitly designated a national instrumentality, it might also prohibit state taxation or prescribe the form it must take. Newlands claimed that the relevant Supreme Court decisions contained no direct contradiction and much support.<sup>32</sup>

Many aspects of the national incorporation proposal—from basic assumptions about the efficiency of consolidation and the evils of overcapitalization, to specific remedies such as physical evaluation and rate-setting by the Interstate Commerce Commission—were already widely-held among contemporary progressives. But Newlands brought in many ideas which had not achieved broad currency at the time, some of which proved remarkably far-sighted. Social welfare measures akin to the federal pension and accident fund were still years away in the United States. The national levy on gross receipts, with proceeds to be distributed to the states, anticipated federal revenue-sharing. The concept of a limited but assured return on invested capital, in the context of other controls, approximated modern regulatory practice for public utilities. The most important feature of the Newlands' plan was, however, its attempt at a comprehensive resolution of railroad questions. It set forth the goal of an extensive, thoroughly modern national transportation system, operating

at maximum efficiency in order to carry America's commerce reliably and at the lowest possible cost. In place of what he viewed as piecemeal schemes of regulation (such as merely limiting maximum rates), Newlands had created a "thorough system" of control and long-term development.

Newlands was occasionally accused of having secret connections with the railroads. Such allegations seem, however, to have sprung from prior distrust assisted by circumstance (such as the possible benefits of national incorporation for the railroads), rather than from knowledge of facts hidden from the public. Although a close friend and former law partner was an important official of the Southern Pacific, and although the Sharon estate may have had ties with that railroad, Newlands frequently excoriated its political activities and opposed legislation vital to its interests. In any case, his political decisions do not seem to have been motivated by financial self-interest. He assailed Nevada's dependence on mining even though the estate had sizeable investments in mines—and no one claimed that his advocacy of bimetallism arose out of concern for those holdings. As William Lilley observes, Newlands was fascinated with planning but rather indifferent to mere possession.<sup>33</sup>

The inadequacy of the Hepburn Act, a conscious compromise, became apparent soon after its passage. The authority of the ICC to set maximum "reasonable" rates was tightly circumscribed: it could review a given rate only after a shipper had complained; its directives were subject to broad judicial review and could be held in abeyance pending appeal; it lacked power to control freight classification, so that ample opportunities remained for rebating and other tariff abuses. By failing to provide guidelines or a physical evaluation, Congress had left the definition of "reasonableness" to the whim of the courts. Railroads could still demand more for a short haul than for a long one over the same line (the notorious "back-haul" charge, greatly resented in Nevada), and the unrealistic prohibition of pooling continued on the statute books.<sup>34</sup>

As pressure mounted for further legislation, public attention turned to Theodore Roosevelt. The President's personal prestige, the power of his office and the crucial role he had played in Congressional action on rate regulation made him an obvious choice as arbiter between competing proposals and conflicting interests. Newlands sought Roosevelt's support for national incorporation and succeeded in arousing his attention: they exchanged correspondence on the subject, conferred together once in person, and Roosevelt sent Newlands' plan to the Secretary of the ICC for study. By early May 1907, Newlands was convinced that the President was among "the friends of national incorporation" and that he would "expedite effective and practical legislation" once questions of detail were resolved. Although Roosevelt had doubts about the constitutionality of Newlands' tax scheme, he was impressed by a letter from



Judge Edgar H. Farrar, a Southern Democrat, which asserted that there was "full power in the Constitution of the United States, as now written and interpreted, to take full, absolute and exclusive control" of the railroad question through the post-roads clause. On May 30, in a speech at Indianapolis, Roosevelt proposed national incorporation as well as government control of railroad securities and physical valuation.<sup>35</sup>

Roosevelt's espousal of federal charters for the railroads was a partial vindication for Newlands. Once "a huge joke" in Congress "just because he was so persistent" on the issue, he was now admired for his foresight. One newspaper observed that his fellow Senators, "who used to desert the chamber the moment he rose," were not only falling in line with his views but reading up on the speeches they had once deemed to ignore. Newlands stressed the need for a "constructive" policy toward the railroads and the concomitant danger of attempting to retaliate for past misdeeds; punitive attitudes were responsible for the loss of confidence in railroad securities which had helped bring on the current recession. After several months of work with the Inland Waterways Commission he extended his national incorporation program to navigation lines, so as to make it even more constructive. He asserted that effective organization and coordination of rail and water transport was the best answer to the crisis caused by freight volume outstripping the railroads' capacity to handle it. Moreover, such measures would be a decisive step forward since, he explained, "a perfect transportation system involved, as much as possible, one control from shipper to consignee, and this can be accomplished by great transportation lines operating regardless of state or national boundaries, which will utilize the railways, the rivers, and the ocean, by methods of carriage adapted to each." Newlands now made clear the type of railroad consolidation he had in mind: instead of grouping lines by region, he would encourage non-parallel roads (such as the New York Central and the Northern Pacific) to form extensive transcontinental systems.<sup>36</sup>

Although national incorporation gained new prominence and a respectability it had previously lacked, Newlands' bill again died in committee. The plan had the liability of constitutional and economic innovation without the compensating asset of firm support from an influential pressure group. It tampered with the vital interests of railroads, shippers, and state and local governments. Even though it was calculated ultimately to benefit all concerned, it carried no immediate and compelling advantage to any particular group which could have acted as a driving force for its enactment. Moreover, the interests affected did not want to risk what they already—or still—had. State legislatures, which still elected U.S. Senators, were jealous of their chartering and taxing prerogatives. Shippers had benefited from the Hepburn Act and did not want to lose the upper hand over the railroads. Squeezed between state and federal regulation, the railroads were beginning to ponder the advantages of national incorporation but they still hoped for relief through more con-

ventional means such as rate hikes and legalized pooling. Nor did the precedent federal incorporation would set for similar intervention in other industries (insurance companies and interstate utilities, for example) enhance its chances of approval. For the standpat Republicans who dominated both houses of Congress, Newlands' program was "socialistic" and outrageously unconstitutional. National incorporation fared no better among the disunited Democratic minority. The infringement on "states' rights" and the centralization of power it entailed made it anathema to the old-line Southerners who formed the party's backbone in Congress. Populists like Bryan were opposed to protecting the railroads from the new wave of state efforts at reform and reprisal. The potential base of support which remained for Newlands' plan—"progressives" with Hamiltonian inclinations—was badly outnumbered and split between parties, and thus without an organization or the prospect of gaining one. National incorporation was too abstract to arouse support in the electorate which, coupled with White House endorsement, might overcome the existing legislative obstacles—and in the absence of strong popular or special interest backing it was doomed. Newlands remarked to Roosevelt that it was ". . . amazing what a colossal wall of ignorance and prejudice has been aroused against intelligent action on this subject." Although after this setback he remained firmly convinced of the merit of his proposal, he propounded it more out of dogged persistence—and a desire to keep it in view until the political climate became more receptive—than from a realistic hope of its approval.<sup>37</sup>

Despite Congressional inaction the railroad problem continued to be very much alive. Shippers feared that the carriers would appeal decisions of the ICC merely to delay their implementation, thus weakening the control established by the Hepburn Act. The railroads, in turn, wanted the legalization of rate agreements and protection from harassment by the state. In the 1908 campaign the Democratic Party endorsed expanded control over rates by the ICC, and Bryan, its nominee, even called for government ownership of interstate railroads. The victorious Republican candidate, William Howard Taft, endorsed Roosevelt's proposed reforms (although he wavered about valuation), and urged the creation of a special Commerce Court to speed the disposition of rate appeals. Newlands, himself overwhelmingly reelected, agreed that the ICC should be authorized to supervise the issuance of railroad securities and to "stay any increase in rates until an inquiry into their reasonableness" could be made. The Administration-backed Mann-Elkins bill empowered the ICC to initiate rate-changes and required the railroads to prove that a given charge should be raised. In its final form, the bill was a hodge-podge which resulted from an elaborate compromise involving unrelated issues. Newlands, defeated in attempts to amend several objectionable provisions, voted against this "reform" measure which he concluded would be ineffective at best. Again and again, he argued that national incorporation was the only satisfactory solution. He reintroduced his 1907 bill, but

the Republican leadership precluded any serious consideration of the question by having the bill referred to the Judiciary Committee "where it was certain to languish."<sup>38</sup>

Newlands sharply admonished the members of his own party who, in keeping with the states' rights tradition, regarded his proposal as an unconstitutional centralization, that "should the Democratic party deny the right of the Union to act upon such questions, it will proclaim its feebleness and impotency as a national party, and will meet a deserved defeat." Yet in an attempt to conciliate and gain support from opponents of centralization, Newlands had already begun to describe federal incorporation as "unionization." He asserted that "the exercise of the granted powers of the Constitution," including the regulation of interstate commerce, "does not involve the centralization of power. It involves simply the unionizing of the forces of the entire people of the country in matters clearly intrusted to the Union of States." "Unionization" emphasized that the states acted through the federal government on matters of common concern.<sup>39</sup>

During the 1910 campaign Newlands hammered at the way in which special interests tried to conceal themselves in what Roosevelt had called the "twilight zone," that constitutional "domain of obscurity where it is doubtful whether the national power or the state power controls," and called for coordinated action. In the new Congress he sought supporters for the "unionization" of state-incorporated railroads through federally-chartered holding companies. Like its predecessors this national incorporation idea did not even receive a hearing in committee. Newlands observed that since most of his Democratic colleagues remained obdurate, the party's gains in the past election (it controlled the House and was considerably stronger in the Senate) had further diminished the chances of such a proposal. He then turned his energies toward the promotion of an Interstate Trade Commission, which might extend comprehensive, coordinated regulation to all interstate corporations.<sup>40</sup>

After the victory of Woodrow Wilson and the Democratic Party in the 1912 election, Newlands sat for the first time on the majority side of the Senate. As chairman of the Committee on Interstate Commerce, he proposed successfully that the Senate direct the Committee to consider the formation of national railroad holding companies and the realignment of the ICC into boards of transportation, trade and exchange. This restructuring plan was a forerunner of the Federal Trade Commission Act of 1914, which Newlands helped draft and which he sponsored in the Senate. In June 1914, with the President's major antitrust measures (the Clayton bill defining unfair trade practices, the Rayburn bill to give the ICC control over railroad securities, and the F.T.C.) approved by the House and pending in the Senate, Newlands for the last time offered his plan to federally charter railroads and navigation companies. He cited the Rayburn bill and the Supreme Court's decision in the *Shreveport Case*

(that while Congress does not have the authority to regulate the internal commerce of a state, "it does possess the power to foster and protect interstate commerce, and to take all measures necessary and appropriate to that end, although intrastate transactions of interstate carriers may thereby be controlled"), as evidence of a trend toward the "absorption of all the powers over commerce" by the federal government through the commerce clause. He declared that the closer the nation came to assuming "entire jurisdiction" over interstate companies, the more essential it was that they be created under national law. National incorporation was, however, already a secondary concern for Newlands. He raised the issue to reaffirm that the proposal which others had brushed aside was, in his judgment, as valid and necessary as ever. Aware that it was better suited to the New Nationalism of Theodore Roosevelt than to Wilson's New Freedom, he made no serious effort to win its passage. Throughout the landmark Sixty-Third Congress, Newlands stood firmly against ineffective administration and the fragmentation of industry. He held out for a strong Federal Trade Commission and opposed the rigid enforcement of the Sherman Act on railroad combinations.<sup>41</sup>

Newlands was soon caught up in the attempt to ease the predicament of the railroads, trapped between rising wage demands and the Interstate Commerce Commission's refusal to grant them adequate rate increases. He cooperated closely with Wilson to prevent a nationwide strike in 1915 (the Newlands Arbitration Act was the capstone of the settlement) and during the crisis of the following year over the introduction of the eight-hour workday. A staunch backer of the President's drive to give the carriers rate relief sufficient to meet higher costs and make needed expansions, he supported the nomination of the conservative Winthrop Daniels to the ICC, as well as Wilson's proposal to increase the Commission's membership. In late 1915 he introduced a resolution providing for investigation of transportation problems by a joint subcommittee of the House and Senate interstate commerce committees. He explained that the scope and seriousness of the problem, coupled with the multiplicity of suggested remedies, made a coordinated, comprehensive examination essential. Federal incorporation was listed as only one of the proposals which the committee should consider.<sup>42</sup>

The resolution was approved in July 1916 and the "Newlands Committee" began hearings the following November. Although railroad representatives argued vigorously for national incorporation in order to be freed from crippling state legislation, Newlands, who was preoccupied with other matters and frequently absent, mentioned his brainchild only occasionally and made no attempt to press it on the committee. He had no qualms about advocating a "visionary" course of action as an individual senator but, as chairman of an important committee facing an increasingly more critical situation, he realized that he could not afford to distract his colleagues from devising politically practicable solutions to the nation's problems. After the hearings had dragged on inconclusively

for over a year, he adjourned the committee in December, 1917, subject to recall at some future date. But by that time, the demands of a wartime economy had swamped the railroads and Wilson was intent on federal intervention. Again in close consultation with the President, Newlands labored to prepare enabling legislation. On the afternoon of Christmas Eve he suffered a heart attack in his office and died that night, leaving on his desk a nearly-completed draft of the act which governed the nationalization of the railroads.<sup>43</sup>

Several elements of Newlands' federal incorporation proposal became law through the Transportation Act of 1920, which returned the railroads to private hands. Congress instructed the Interstate Commerce Commission to draw up a national plan of railroad consolidation and to permit mergers or acquisitions that accorded with the plan. The Act declared the promotion of water transportation, in coordination with the railroads, to be a national policy, and provided for the efficient interchange of freight between rail and water carriers. Congress also empowered the Commission to regulate the issuance of stocks and bonds by the railroads and to prescribe uniform accounting procedures. Most importantly, the Act adopted the principle of fair return on fair value. The ICC was directed to set rates which would enable the railroads, "under honest, efficient and economical management," to earn a "fair return" (initially 5.5-6.0%) on the value of their property. Profits in excess of the permissible return would be split between a reserve fund for the railroad itself and a general railroad loan fund administered by the Commission. According to I.L. Sharfman, the Act represented a "shift of emphasis from the mere enforcement of restrictive safeguards to the deliberate promotion of public ends." One contemporary economist termed the Act "radically constructive" and suggested that it had solved most of the railroads' problems. It should be noted, however, that the Act omitted crucial provisions of the Newlands plan, such as exclusive federal chartering, the treatment of all betterments as expenses, and a single national tax on gross receipts.<sup>44</sup>

The Act of 1920 failed to yield a permanent, constructive settlement of railroad affairs. This denouement resulted in part from massive changes in the economic structure of transportation. The Act assumed that the railroads would continue to enjoy a near monopoly on intercity traffic when, in fact, they faced increasingly sharp competition from trucks, barges, buses, airplanes and automobiles. Moreover, as Newlands would have pointed out, the Act itself was faulty: its means were inadequate for its ends. Instead of a coherent system of incorporation, taxation and control, the railroads still had to contend with the confusing and often contradictory rate and tax policies of the various states and the federal government. With their financial stability in doubt, the railroads could not attract the capital needed to upgrade and expand their facilities. They



contented themselves with maintaining the status quo, which further impaired their ability to meet the challenge of intermodal competition.<sup>45</sup>

The Transportation Act, regardless of its deficiencies, also faced problems of implementation that would have been equally applicable to a federal incorporation act. Fundamental to Newlands' plan was the conviction, fortified by the widely-acknowledged success of the Reclamation Act, that after careful study an impartial, expert administrator could discern the public good amid the claims of competing private interests, then formulate appropriate policies and implement them with vigor and dispatch. Yet it was one thing to manage selected natural resources in a limited area when there was a fairly broad consensus on what needed to be done, and quite another to attempt "scientific" administration of a vast and complex railroad network, itself entwined with every aspect of the national economy. The relatively narrow question of consolidation illustrates the problems involved. Despite the mandate embodied in the Act of 1920, the Interstate Commerce Commission found itself unable to devise an overall plan for railway consolidation. Any given proposal involved a choice between competing interests—a choice the Commissioners were unwilling to make. Thus plagued by indecision, their first consolidation proposal did not appear until after the market crash of 1929, which for all practical purposes rendered it moot.<sup>46</sup> Even with expanded powers the Commission, for which Newlands held great hopes, not only failed to exercise leadership in promoting energetic management and efficient operation of the railroads but actually had a deadening effect.

Whatever the shortcomings of Newlands' ideas, his work was important in the modernization of American political attitudes during the early decades of this century. Newlands sought through governmental action to rationalize and coordinate aspects of economic activity. He was convinced that through "thorough systems," through vigorous, comprehensive, scientific administration, the nation could make maximum use of its material and human resources, and thus create a better life for each of its members. To him, a "progressive" idea was one which promoted the greatest possible efficiency<sup>47</sup> (in essence, the public interest) while compatible with democracy and equitable to all private interests affected, a prescription amply filled by his proposal for national incorporation of the railroads.

### Notes

1. The scholar is Laurance C. Lee, "Francis G. Newlands," in "The Reader's Encyclopedia of the American West," ed. Howard Lamar (unpublished); quote is from William E. Smythe, *Constructive Democracy: The Economics of a Square Deal* (New York: Macmillan, 1905), dedication page. Smythe, a publicist, was a close associate of Newlands'.
2. William Lilley III, "The Early Career of Francis G. Newlands, 1848-1897," unpublished dissertation (Yale, 1965), 1, 3, 10-13, 15-16, 18, 20, 22-23, 26, 28, 30, 44, 45, 70.
3. *Ibid.*, 74-75, 117, 120-121, 128, 137, 146, 147.
4. *Ibid.*, 166, 182-184, 188, 194.

5. *Ibid.*, 198–205, 211, 212, 214–215, 227–229, 234, 258; Gilman M. Ostrander, *Nevada: The Great Rotten Borough, 1859–1964* (New York: Alfred A. Knopf, 1966), 116–119.
6. Samuel P. Hays, *Conservation and the Gospel of Efficiency: The Progressive Conservation Movement, 1890–1920* (New York: Atheneum, 1974), 2, 10; Arthur B. Darling, *The Public Papers of Francis G. Newlands* (Boston: Houghton Mifflin, 1932), volume I, 301; Lilley, "The Early Career of Francis G. Newlands," 323–325.
7. Newlands to Dent H. Robert, September 17, 1904, in *The Papers of Francis G. Newlands*, Yale University Library (hereafter designated as the "Newlands Papers"); cf. Newlands to Leslie M. Shaw, January 20, 1906, *Newlands Papers*, as well as Newlands' public expression of his views in "National Irrigation as a Social Problem," *Pacific Monthly*, XVI (September 1906), 297, 298.
8. Mileage statistics from U.S. Interstate Commerce Commission, *Seventeenth Annual Report on the Statistics of Railways in the United States for the Year Ending June 30, 1904* (Washington, D.C., 1905), 14; George Sherwood Hodgins, "Railroad Activity, the Barometer of Commerce," *American Industries*, XII, no. 8, 15–16; Moody, *The Truth About The Trusts* (New York: Moody, 1904), 477. Moody computed the total capitalization of industrial trusts at \$7,246,342,533, of all trusts (including great railroad groups) at \$20,379,162,511 (*Ibid.*).
9. Hays, *Conservation and the Gospel of Efficiency*, 6; joint cost theory of economist Frank W. Taussig, expounded in William Z. Ripley, *Railroads: Rates and Regulation* (New York: Longmans, Green, 1912), 67, 78. Ripley even calculated that approximately two-thirds of the total expenses (and one-half of the operating expenses) of a railroad were independent of the volume of traffic (*Ibid.*, 55).
10. George E. Mowry, *The Era of Theodore Roosevelt and the Birth of Modern America, 1900–1912* (New York: Harper & Row, 1962), 198; Gabriel Kolko, *Railroads and Regulation, 1877–1916* (Princeton: Princeton, 1965), 102; Darling, *Public Papers*, I, 311; Theodore Roosevelt, *State Papers as Governor and President, 1899–1909* (New York: Charles Scribner's Sons, 1925), 262–263.
11. U.S. Senate, Committee on Interstate Commerce, *Regulation of Railway Rates, Hearings before the Committee on Interstate Commerce, Senate of the United States, December 16, 1904–May 23, 1905*, 59th Congress, 1st Session, I, 12–13. On December 12, a few days before the committee hearing, during Senate debate on financing construction of a railroad in the newly-acquired Philippines, Newlands analysed the dangers of private control and expounded on the constructive possibilities of government ownership. On December 14 he offered suggestions aimed at making a privately-owned railroad operate as honestly and efficiently as possible. Careful study of railroad conditions in the United States was evident in Newlands' remarks, and he expressed many of the same concerns that informed his plan for national incorporation of domestic railroads (*Congressional Record*, 58th Congress, 3rd Session, 1904, XXXIX, 130–134, 274–275). Newlands' efforts in the Committee on Interstate Commerce on behalf of national incorporation are recorded in *Regulation of Railway Rates, Hearings*, cited above, I, 182–183, II, 776–786, 872–873, 986–1003, 1522–1524, IV, 2104–2110, 2150–2151, 3720–3734.
12. Cf. *New York Journal of Commerce*, January 5, 1905; *St. Paul Globe*, January 6, 1905; *Boston Transcript*, January 14, 1905; *Knoxville Sentinel*, January 23, 1905; *New York Sun*, January 9, 1905; *St. Louis Globe-Democrat*, January 9, 1905; *Brooklyn Eagle*, April 27, 1905; *Philadelphia Public Ledger*, January 6, 1905. Handwritten draft of the resolution in *Newlands Papers*; statement of FGN before the Interstate Commerce Commission in regard to National Incorporation, May 29, 1905, *Newlands Papers*; Newlands to Theodore Roosevelt, May 29, 1905, and January 3, 1906, *Newlands Papers*; Herbert Knox Smith to Newlands, December 2 and December 18, 1905, January 26 and April 3, 1906, *Newlands Papers*; Newlands to James Garfield, March 29, 1906, *Newlands Papers*. *Congressional Record*, 58th Congress, 3rd Session, 1905, XXIX, 440, 678–686, 1863–1864, 2968, 3857. Attitude of Senate GOP noted in *St. Paul Pioneer Press*, January 14, 1905.
13. Newlands' resolution of December 6 (*Congressional Record*, 59th Congress, 1st Session, 1905, XXXX, 152–153) directed the ICC to draft a national incorporation act and

specified certain provisions, while a bill he introduced on February 15, 1906 gave a similar charge to a special commission. Newlands wanted the drafting done by experts in order to avoid a host of objections to details which would block consideration of the main ideas (*Ibid.*, 1906, p. 2588). The bill he introduced on May 25 was drawn up under the aegis of Herbert Knox Smith. Newlands' admonitions about national incorporation are found in the *Congressional Record*, 59th Congress, 1st Session, 1906, XXXX, 1365–1370, 1744–1746, 4445–4446, 5293, 6804, 7086–7087, and in "Railroad-Rate Legislation: Views of Mr. Tillman and of Mr. Newlands," *Senate Reports*, 59th Congress, 1st Session, March 15, 1906, Report 1242, 12–24.

14. "Views of Senator Newlands Regarding the Appointment of a Commission to Frame a National Incorporation Act for the Railroads," press release, January 1905, Newlands Papers.

15. Draft of a speech by FGN based on an editorial in the *New York World*, December 6, 1905, entitled "Prussianizing of the Republic," Newlands Papers.

16. FGN, "Common Sense of the Railroad Question," *North American Review*, CLXXX (April 1905); *Congressional Record*, 61st Congress, 2nd Session, 1910, XL, 5204.

17. FGN, "Prussianizing of the Republic" speech.

18. FGN, "Common Sense of the Railroad Question"; *Congressional Record*, 59th Congress, 1st Session, 1906, XXXX, 4771.

19. FGN, "Common Sense of the Railroad Question"; "Prussianizing of the Republic" speech; *Congressional Record*, 59th Congress, 1st Session, 1906, XXXX, 1366.

20. Press release, October 25, 1907, Newlands Papers; FGN, "Common Sense of the Railroad Question"; *Congressional Record*, 59th Congress, 1st Session, 1906, XXXX, 4718, 4725.

21. Press release, March 1906, Newlands Papers; FGN, quoted in the *San Francisco Bulletin*, February 5, 1905; *Congressional Record*, 59th Congress, 1st Session, 1906, XXXX, 1366.

22. *Ibid.*, 4717; FGN, "Common Sense of the Railroad Question"; "A Bill to Provide for the Regulation, Taxation and Incorporation of Inter-State Railways," Newlands Papers; Statement prepared for insertion in the *Congressional Record*, dated April 17, 1905, Newlands Papers.

23. *Congressional Record*, 59th Congress, 1st Session, 1906, XXXX, 4730, 4765–4766; FGN "Prussianizing of the Republic" speech.

24. *Congressional Record*, 1st Session, 1906, XXXX, 4718; the guidelines for an evaluation were set forth by the Supreme Court in *Smyth v. Ames* (169 U.S. 346); FGN, "Common Sense of the Railroad Question." The reason the valuation would not be changed (that a fixed return was essential in order to get the railroads out of politics) will be clarified below.

25. "Views of Senator Newlands"; FGN, "Common Sense of the Railroad Question"; *Congressional Record*, 59th Congress, 1st Session, 1906, XXXX, 4730.

26. FGN, "Prussianizing of the Republic" speech; *Congressional Record*, 59th Congress, 1st Session, 1906, XXXX, 4719, 4720. The idea that the "real investors" in the railroads were insurance companies, thrift institutions and pension funds, representing millions of individuals of modest means, was advanced during the hearings of the Committee on Interstate Commerce by Daniel Davenport of the Association for the Protection of Property Rights. Davenport contended, in his case against any regulation of railway rates, that such regulation, by hurting the railroads, would hurt the American people (*Regulation of Railway Rates, Hearings before the Committee on Interstate Commerce, Senate of the United States*, I, 170; cf. Smythe, *Constructive Democracy*, 115). Newlands turned Davenport's point around and incorporated it in his national incorporation proposal. He argued that his scheme would allow a desirable rate of return, while making the investments of these institutions (and thus of the people) highly secure.

27. *Congressional Record*, 59th Congress, 1st Session, 1906, XXXX, 4724.

28. FGN, "Common Sense of the Railroad Question"; "Views of Senator Newlands". In the years preceding Newlands' proposal state regulatory authorities had begun to pay more

and more attention to the possibilities of a levy on gross receipts. See, for example, the call of the National Association of Railway Commissioners for the ICC to prescribe uniform accounting procedures for railroads in order to facilitate the collection of such a tax (*Proceedings of the Thirteenth Annual Convention*, 1901, 46–48). Newlands' proposal brought the idea, in a refined form, to the federal level.

29. The ferocious opposition aroused by these provisions led Newlands, by the time he offered his idea as a bill in 1906, to restate them so that the states retained the power to tax the equipment and real property of national railroads but not any intangible aspects. The rate could be no higher than that prevailing for other property in the state (FGN, "Bill for the National Incorporation of the Railroads," 1906, Newlands Papers).

30. FGN, "National Incorporation and Control of the Railways," draft of a speech presented to the Beacon Society, Boston, Massachusetts, January 28, 1905, Newlands Papers; "Views of Senator Newlands"; *Congressional Record*, 59th Congress, 1st Session, 1906, XXXX, 4720. Newlands insisted that, despite strikes and other manifestations of hostility, railroad workers "... always stand with the railroads when the common fund from which wages and dividends are paid is in danger" (*Ibid.*).

31. "Additional Statement of Sen. Newlands," prepared for the *Congressional Record*, April 17, 1905, Newlands Papers.

32. *Congressional Record*, 59th Congress, 1st Session, 1906, XXXX, 4721–4723. Although somewhat defensive about *McCulloch v. Maryland* (4 Wheat. 485) and *Railroad Company v. Peniston* (18 Wall. 5), Newlands found support in *Thompson v. Pacific R.R.* (9 Wall. 579), *Van Brocklin v. Tennessee* (117 U.S. 151), *California v. Central Pacific R.R.* (127 U.S. 1), *Reagan v. Mercantile Trust Co.* (154 U.S. 125), and *Van Allen v. The Assessors* (3 Wall., 70 U.S. 573).

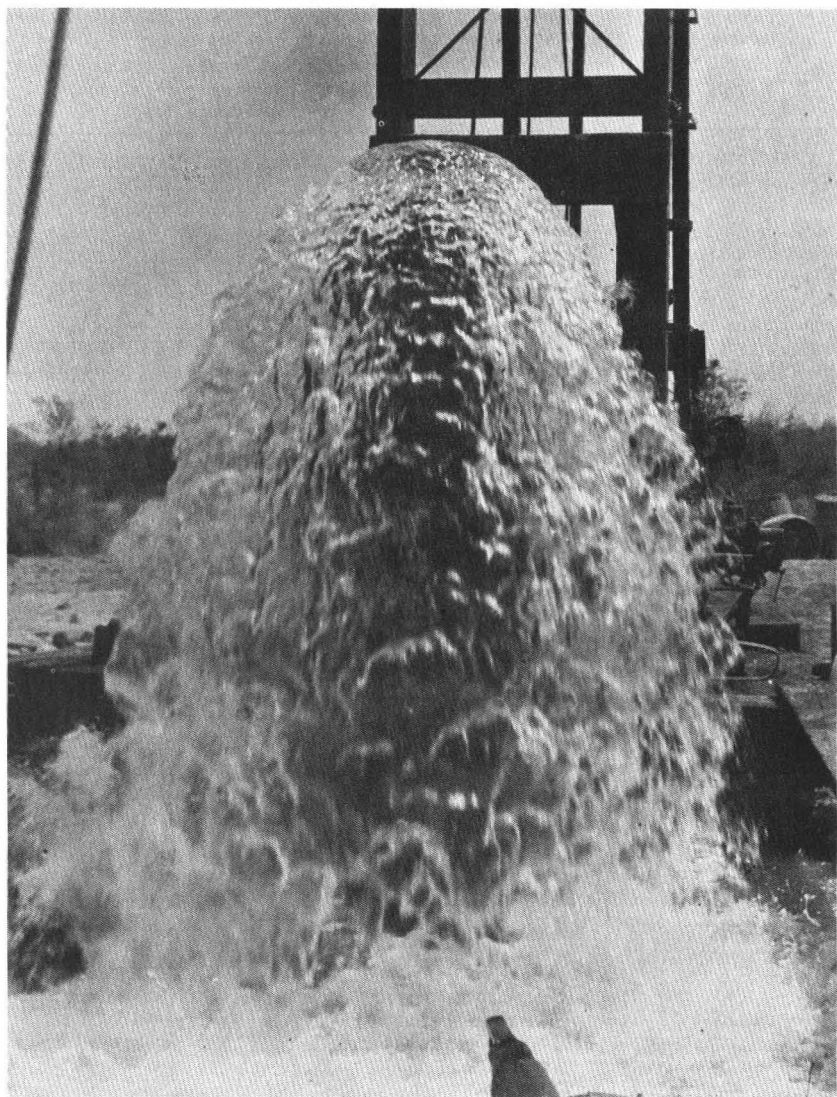
33. Charges of complicity with the railroads were implied in the *Omaha Daily Bee*, March 28, 1907, and overtly stated in "Address of the Hon. Sam Platt of Nevada, Republican Candidate for United States Senator," October 1, 1914, Carson City. Platt tried to depict Newlands' vote against the Mann-Elkins bill, which included relief from the back-haul charge, as railroad-inspired opposition to the vital interests of Nevada. During debate on the bill, however, Newlands had predicted with accuracy that the long- and short-haul clause would have no practical effect (*Congressional Record*, 61st Congress, 2nd Session, 1910, VL, 8370). The friend mentioned above was William F. Herrin, chief counsel and later vice-president of the Southern Pacific. Herrin corresponded with Newlands on national incorporation only after Newlands had proposed it in the Senate chamber. Although Herrin indicated his support for the idea, there is no evidence that he played a part in Newlands' espousal of it (January 23, 1905, WFH to FGN; February 1, FGN to WFH; February 8, WFH to FGN, all in Newlands Papers). Attacks on the Southern Pacific by Newlands included: Speech in the Carson City Opera House, January 18, 1899, transcript in the Newlands Papers; 1904 Nevada Silver Party Platform, draft in the Newlands Papers; interview with the *Nevada State Journal*, September 10, 1910; "Popular Rule in Nevada," October 5, 1910, draft in the Newlands Papers. Lilley, "The Early Career of Francis G. Newlands," 201. Ostrander, *Nevada: The Great Rotten Borough*, 115–125. But note also Newlands' working relationship with Harriman, Herrin and other officials of the Southern Pacific: FGN to E.H. Harriman, January 17, 1904; FGN to WFH, January 18, 1904; FGN to John C. Kirkpatrick, May 3, 1906; FGN to EHH, March 10, 1906; William Sproule to FGN, January 5, 1912, all in Newlands Papers.

34. Mowry, *The Era of Theodore Roosevelt*, 205; Kolko, *Railroads and Regulation*, 169.

35. FGN to Edward Moseley, May 16, 1907, Newlands Papers; FGN to Theodore Roosevelt, May 11, May 20, October 8, 1907; *Washington Times*, May 10, 1907; Mowry, *The Era of Theodore Roosevelt*, 206. Newlands' reaction to the President's speech was quoted in the *Nevada State Journal*, June 2, 1907. Roosevelt stated in Indianapolis that national charters had been good for banks and that the government should "do something analogous" for the railroads (*Ibid.*, May 31). He later resolved this vagueness by declaring at Provincetown: "I believe in a national incorporation act for corporations engaged in interstate business" (*Ibid.*, August 21). Edgar H. Farrar to TR, April 2, 1907, typed copy in Newlands Papers.

36. Washington *Times*, November 4, 1907, and January 31, 1908; Press release, October 25, 1907, Newlands Papers. See FGN, "The Use and Development of American Waterways," *Annals of the American Academy*, XXI (January 1908), 48–66, which explicitly links conservation, waterways and federally-chartered railroads; FGN, "A Billion-dollar Waterway Improvement Scheme," *Leslie's Weekly*, CVI (March 5, 1908), 232; FGN, "The Development of American Waterways," *North American Review*, CLXXXVII (June 1908), 873–879; FGN to Henry C. Adams, September 2, 1907, Newlands Papers.
37. FGN to William F. Herrin, February 1, 1905, Newlands Papers; Mowry, *The Era of Theodore Roosevelt*, 115–119; Bryan quoted in Nevada State *Journal*, August 25, 1907; FGN to Theodore Roosevelt, May 20, 1907. Cf. FGN to E.H. Harriman, February 12, 1905, Newlands Papers.
38. Kolko, *Railroads and Regulation*, 178–179; Darling, *Public Papers*, I, 346–347; Mowry, *The Era of Theodore Roosevelt*, 229, 260–261; Nevada State *Journal*, April 24, 1909; *Congressional Record*, 61st Congress, 2nd Session, 1910, VL, 5399, 5440–5441, 5549–5559, 6962–6965, 7359. Newlands' objections to the Mann-Elkins Act included the lack of a provision for valuation, the creation of a Commerce Court (which could only get enough work to survive by welcoming suits against the ICC), and the transfer of the ICC's defense in rate cases to the Attorney General.
39. Speech draft, undated but cited in the Boston *Journal*, June 13, 1910, Newlands Papers; Darling, *Public Papers*, II, 209. See also FGN to William Howard Taft, June 12, 1910, Newlands Papers.
40. FGN, speeches at Tonopah (October 26) and Goldfield (October 28), Nevada, transcripts in Newlands Papers; FGN, "Suggested Legislation: A Modus Vivendi," *The Commoner*, February 3, 1911; *Legislative Program of the First Session of the Sixty-Second Congress: Letter of Hon. Francis G. Newlands of Nevada to Hon. Champ Clark*, March 5, 1911 (Washington, D.C., 1911); U.S., *Index of Congressional Committee Hearings* (Washington, D.C., 1935), 920–927; Darling, *Public Papers*, I, 410. Newlands' interest in national incorporation seems to have fallen off drastically in 1911. The subject virtually disappears from his correspondence (Newlands Papers). Principles of Interstate Trade Commission bill outlined in Herbert Knox Smith to FGN, August 18, 1911, Newlands Papers.
41. *Congressional Record*, 63rd Congress, 1st Session, 1913, L, 16–17; Arthur S. Link, *Wilson: The New Freedom* (Princeton: Princeton, 1967), 425–426; *Congressional Record*, 63rd Congress, 2nd Session, 1914, LI, 10513–10514, 12647; *Houston, East and West Texas Ry. v. United States* (234 U.S. 342). An indication of Newlands' loss of interest in national incorporation is the absence of any mention of the idea in a ninety-five page pamphlet issued for his 1914 campaign (Millard F. Hudson, *Senator Francis G. Newlands: His Work*, Washington, D.C., 1914), particularly since the 1908 edition of the pamphlet gave close attention to his efforts on behalf of that idea (*Ibid.*, Carson City, Nevada, Appeal, 1908, 51–52, 58–60).
42. Martin, *Enterprise Denied*, 314, 318, 340–341; *Congressional Record*, 64th Congress, 1st Session, 1916, LIII, 1248–1249, 1432–1434, 2632, 9168–9170; New York *Times*, August 27, 1916.
43. Darling, *Public Papers*, II, 374–377, 380–385, 400–404; Martin, *Enterprise Denied*, 340–345, 350–351; New York *Call*, May 17 and December 14, 1917; New York *Times*, December 26, 1917; Lilley, "The Early Career of Francis G. Newlands," 331–332.
44. *Transportation Act, 1920* (Boston: Old Colony Trust Co., 1920), 41–42, 51–54, 58, 60–61, 66–67; I.L. Sharfman, *The Interstate Commerce Commission: A Study in Administrative Law and Procedure* (New York: Commonwealth, 1931), I, 177; Edgar J. Rich, "The Transportation Act of 1920," *American Economic Review*, X (September 1920), 527.
45. Norton, *Modern Transportation Economics*, 193–195, 350.
46. *Ibid.*, 367–368.
47. Note the context of "progressive" in Lilley, "The Early Career of Francis G. Newlands," 324. See also the treatment of efficiency in William D. Rowley, "Francis G. Newlands: A Westerner's Search for a Progressive and White America," *Nevada Historical Society Quarterly*, XVII, No. 2 (Summer 1974), 69–70.





*Water at the wellhead*



# ***A History of Water Rights in Nevada: Part II***

by John Bird

THE CREATION of the Office of State Engineer and the legislation concerning the appropriation of water in 1903 was a beginning of the appropriation procedure as we know it today.<sup>1</sup> The act was prompted, in part, by the federal government's regulations for reclamation projects, specifically the proposed Newlands Project. It listed only a few general requirements concerning appropriation of water and provided a limited method for appropriating water through county recorders, county clerks, and the State Engineer. The water act of 1903 was amended in 1905 when the State Board of Irrigation was directed to divide the State of Nevada into water districts and to appoint waters of streams according to priority of rights.<sup>2</sup> Persons intending to appropriate water were to obtain permission to do so from the State Engineer. If unappropriated waters were available, the State Engineer was to issue a permit to appropriate and refuse the permit otherwise.

In 1907 a further amendment to the water act of 1903 again declared that all natural water courses and natural lakes belong to the state and are subject to appropriation for beneficial uses.<sup>3</sup> It was further stated that all existing rights to the use of water, whether acquired by appropriation or otherwise, shall be respected and preserved. The only right to be acquired was a usufructuary right, and no waste of water should be permitted. A usufructuary right is the right of enjoying a thing, the property of which is vested in another (the state), and to draw from the same all the profit, utility, and advantage which it may produce, provided it can be done without altering the substance of the thing (the water).<sup>4</sup> A maximum limit of three acre-feet per acre for diversion for irrigation was imposed, and the State Engineer was to make a list of all appropriators for all streams in the state. All previous water acts in conflict with this amended act were repealed.

In 1909 the state legislature passed a law allowing the State Engineer to

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hold hearings on applications to appropriate water if there is a protest to that application and, at his discretion, to hear evidence.<sup>5</sup> Vested rights were named with the provision that they shall not be lost. There were now two rights—vested and appropriated. The vested rights were those that had been in existence before the water law was passed, and they were to be protected, while appropriative rights were those that were acquired in compliance with the statutes.

In an act related to the Carey Act, the legislature in 1909 provided that the water rights acquired under the provisions of this act shall attach to and become appurtenant to the lands as soon as title passes from the United States to the state. These laws were parts of a water code, but left much to be desired in different areas.

A major revision of the Nevada Statutes, adopted in 1913, provided a complete water code and provided for the adjudication of water rights—their distribution and regulation.<sup>6</sup> This act was followed, in the same year, by three suits attacking the constitutionality of the act.<sup>7</sup> Johannes Anderson and others brought suit to restrain the State Engineer from determining rights of complainants to appropriations of waters of the Humboldt River and its tributaries, claiming that sections eighteen through fifty-eight of the act of 1913 were unconstitutional. In a split decision, sections eighteen through fifty-one of the act were declared unconstitutional. Judge Norcross upheld the act as written; Judge Talbot held the act valid for administrative reasons and unconstitutional for the granting of the right to the State Engineer to issue final decrees. Judge McCarran declared the act unconstitutional in part because it conferred judicial powers upon the State Engineer; and it divested the district court of original jurisdiction to try cases of title or possession of real estate (the water right). Judge McCarran also said that the act deprived claimants of rights without due process of law. The entire act was not affected since each section of the law had been declared to be independent by the legislature when passing the act.

The lawsuits were a result of two divergent beliefs concerning the methods to be used to settle a water rights problem. One side believed that the only way to settle a water rights dispute was by trial in the court system. The other belief held the court system was too slow and costly, and that the water rights should be determined by an administrative office, with right of appeal to the courts. An example of the problem of depending upon the courts to determine all water rights may be illustrated by considering four water-users (A, B, C, and D) on a stream. A law suit between A and B will determine their respective rights, but will not include the rights of A and C, or A and D, or B and C, or B and D. Thus, either all parties would have to be included, or the suit would have to be repeated for each party. Then, should another person make a claim on the stream-flow another series of suits would be required to determine the fifth person's rights.

Acts from Wyoming, Oregon, and Nebraska had been studied, and the

act of 1913 had been copied from the acts of those three states. Actions in those states had resulted in judgments declaring that the acts were constitutional, and that the State Engineer was acting administratively and not judicially in those respective states. The Nevada Constitution, however, is sufficiently different from the other three state constitutions that a different interpretation of the act resulted in the decision that it was unconstitutional. The 1915 amendment provided that when the State Engineer completed an order of determination it should not be operated as a decree, but should be filed in district court for a judicial determination of the rights.<sup>8</sup> In 1915, legislation also subjected all ground water, except percolating water, to the requirements of the statutory appropriation system. The act was again challenged in court and Judge Farrington held that the act was constitutional<sup>9</sup> since the State Engineer exercises no judicial powers. In another case concerning proceedings on the Salmon River and tributaries in Elko County, the act was again upheld by Judge Coleman.<sup>10</sup>

The legislature amended the water law in 1917 to provide for the existing policy of the state.<sup>11</sup> Section eight of the act was amended to read, "rights to the use of water shall be limited and restricted to so much thereof as may be necessary, when reasonably and economically used for irrigation and other beneficial purposes. . . ." The act was upheld in 1918 in an Elko County suit concerning water rights on the Salmon River. Extensive corrections were made again in 1919 when the State Engineer was directed to assemble proofs, and make a preliminary order of determination after hearings.<sup>12</sup> Procedures were outlined for contesting the findings of the State Engineer in district court, where the court decree is final. In 1921, however, the State Supreme Court held that sections twenty-nine, thirty, and thirty-one were unconstitutional due to the provisions for contests of rights before the State Engineer. This case considered claims of vested rights on the Humboldt River stream system.<sup>13</sup>

The Act of 1913 was amended again in 1921, providing that, "after proofs have been taken, the State Engineer shall make and certify an abstract of claims, and shall at the same time prepare a preliminary order of determination, setting up the relative rights of the users of the stream system, the abstract of claims, together with the preliminary order of determination, to be served upon all users and claimants upon the stream system."<sup>14</sup> This was attacked in court on the basis that interested parties were denied the due process of law, but the State Supreme Court held that the act was constitutional.<sup>15</sup>

The next major revision to the water law was the 1929 amendment that provided that it is the duty of the State Engineer to divide the flow of streams and ditches, etc., and to control headgates and reservoirs.<sup>16</sup> A far-reaching decision was handed down in 1931 when the Supreme Court held that beneficial use shall be the basis for the perfection of a water right, and not the diversion of water.<sup>17</sup> In some states an appropriation is

not perfected until the water has actually been diverted from the streambed. This decision was the result of a case in which a company appropriated water for stock watering purposes where the cattle were to drink from the stream. In a previous case it had been held that "there must be an actual appropriation of water by artificial means," but this limitation was not held to prevent an instream (with no diversion) use of water if that was the most appropriate method and if it had developed into a well-established custom.<sup>18</sup> This decision allowed a later appropriation of water for the protection of fish and fish hatcheries. This was followed by the 1935 amendment requiring the Engineer to control artesian wells.<sup>19</sup> The major legislation for ground water, however, was enacted in 1939.<sup>20</sup> In that act the legislature said that all underground waters within the boundaries of the state belong to the public, and, subject to all existing rights, those waters are subject to appropriation for beneficial use under the laws of the state relating to appropriation. The act is to be administered by the State Engineer, and does not apply to water for domestic purposes. Any person desiring a well must apply to the State Engineer for a permit to drill the well before any work is begun. Any ground water withdrawal from either artesian or definable aquifer, if commenced after March 22, 1913, is subject to regulation by the State Engineer. The act also provides that the State Engineer is to regulate the withdrawals of ground water from percolating waters if such withdrawals commenced after March 25, 1939. There is no presumption that ground water is of one class or another—such a determination is to be made by the State Engineer.

The amount of water that could be appropriated was modified in 1945 to be limited to such water as shall reasonably be required for the beneficial use to be served.<sup>21</sup> The State Engineer now had the duty to consider the growing season, type of culture, transmission losses, and other factors. Additional duties were given the State Engineer in 1947, when the legislature provided that a District Court may direct the State Engineer to take charge of diversion and distribution of water if one or more users so desire and all water rights on the stream have been determined.<sup>22</sup> The State Engineer was also allowed to require flow-measuring devices to be installed, with head gates that could be closed and locked.

An amendment in 1949 provided that the failure to use water for five successive years shall be deemed as having abandoned the water right.<sup>23</sup> This occurred just after the decision that no water right could be acquired by adverse possession.<sup>24</sup> Since water rights were closely allied with real property, it was felt by many people that a water right could be acquired by adverse possession against the real owner in the same manner that an adverse possessor could acquire a property right against a property owner. In Eureka County a water right was vested prior to 1903; and in 1933 another man, Dan, started to take some of the water without legal right. This was done in an open manner and under color of right but was

resisted by the true owner in a lawsuit. The Supreme Court held that while a right to acquire a water right might be acquired by adverse use prior to the enactment of the water law, adverse use is wholly unwarranted, unnecessary and clearly dangerous to the appropriation and distributions of public property. In 1951 the State Legislature of Nevada declared that it is against the public policy to use or transfer water from Nevada.<sup>25</sup> A necessary amendment of the ground water act in 1955 provided that the State Engineer shall conduct investigations in any basin, in whole or in part, where it appears that the average annual replenishment to the ground water supply may not be adequate for the needs of all permittees and all vested-rights claimants. If the investigation indicates that the rate of withdrawal exceeds the average annual replenishment, the State Engineer may order that withdrawal be restricted to conform to priority rights. By this method the legislature declared that it is the policy of the state to limit ground water withdrawals to the average annual replenishment of a basin. Thus no basin should be pumped dry. Furthermore, within an area that has been designated by the State Engineer, where ground water is being depleted, the State Engineer in his administrative capacity is empowered to make rules, regulations, and orders as are deemed essential for the welfare of the area involved. The State Engineer is also authorized to designate preferred uses of water in designated areas. To meet the temporary needs of water-short areas the State Engineer may issue temporary permits to appropriate ground water, which can be limited as to time and which may be revoked if and when water can be furnished by an entity such as a water district. He may also deny applications to appropriate ground water for any purpose in areas served by an entity such as a water district.

There was a general revision of the Nevada Statutes in 1957, and the water laws were placed in Chapters 533 and 534. It should be noted that while the water law provisions for appropriation have been in effect since 1903, there have been cases as late as 1962 where vested rights that pre-date the water law have been claimed, proven, and awarded.<sup>25</sup> In 1967 the forfeiture provision was rewritten to provide that failure for five successive years shall work a forfeiture of both determined and undetermined rights to the use of such water to the extent of such non-use.<sup>27</sup>

The legislature, in 1969, recognized changes in Nevada life-styles, provided that the use of water for any recreational purpose is a beneficial use, and also required the State Engineer to develop a comprehensive water resource plan for the State of Nevada.<sup>28</sup> Another amendment in 1971 provided that effluent discharge from the point of final treatment of a sewage treatment plant shall be considered to be water, subject to appropriation for beneficial uses, under the reservoir-secondary permit procedure.<sup>29</sup> Other parts of the water act provide for rotation of water use, and limit that right to irrigation waste water. The right to irrigation waste water is limited to its capture and use and such water is not subject

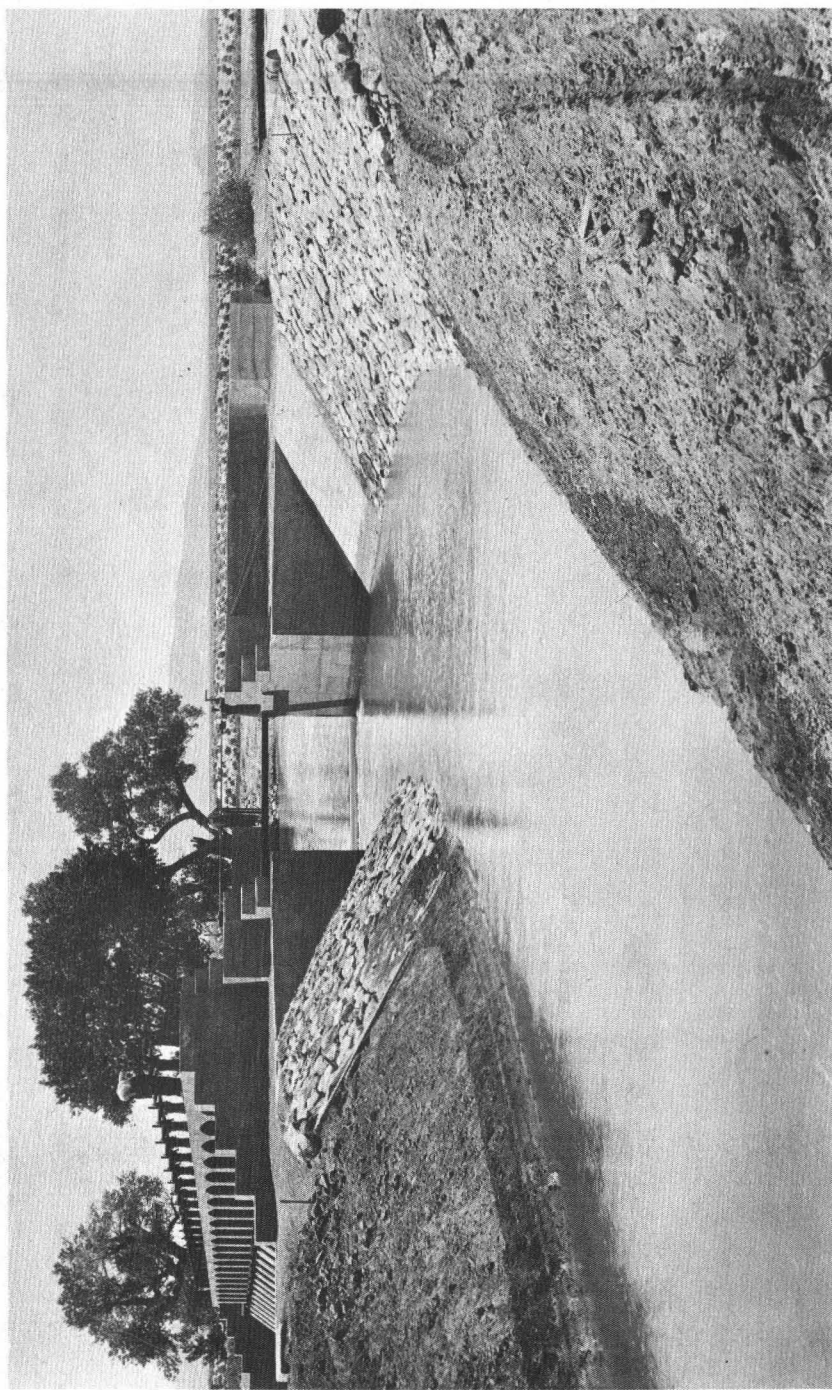
to appropriation under the statutory procedure, which, if allowed, could result in the need to waste water to satisfy a right.

Thus the right to appropriate water has been evoked through a common law right (1865), and a statutory right (1903) with many problems, to the improved and workable statutory way of handling water rights that is used at present.

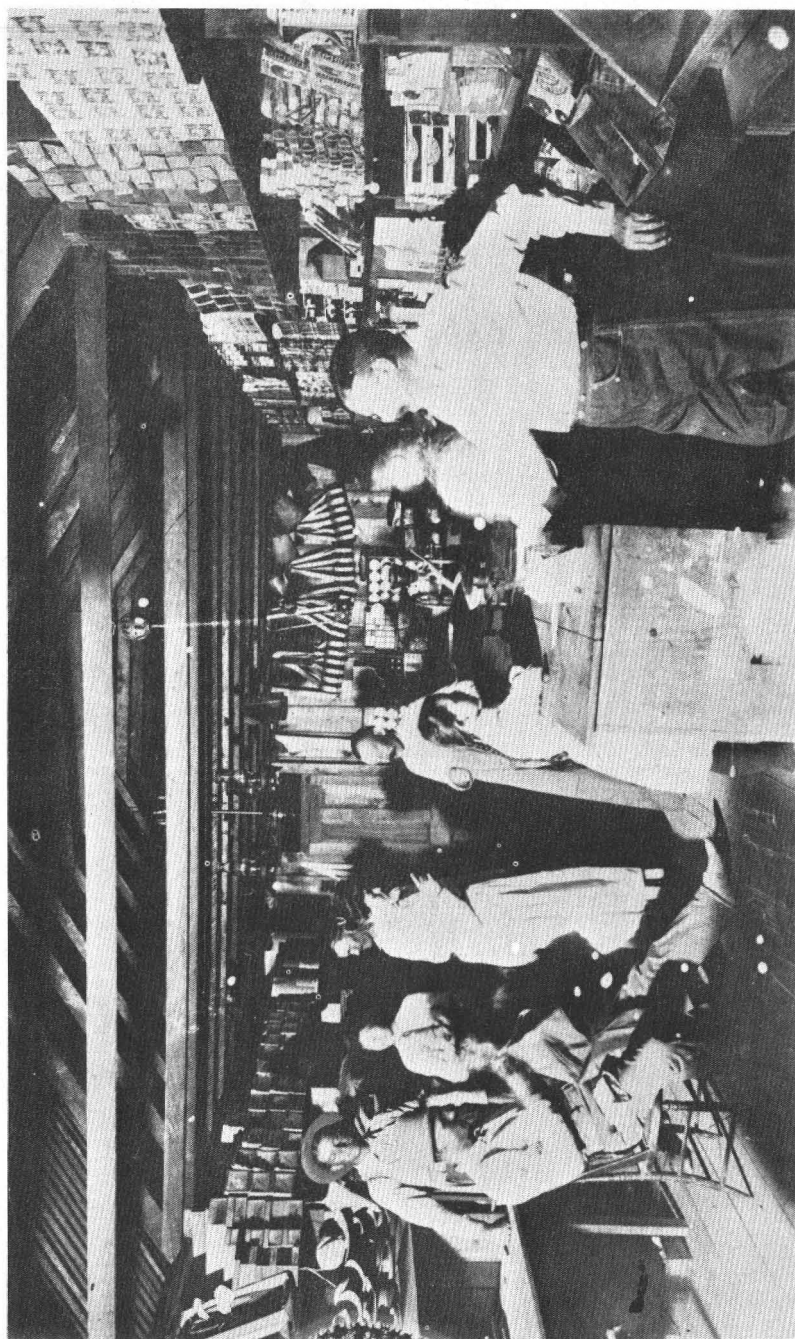
### Notes

1. *Statutes of Nevada*, Twenty-First Session, Chap. 4, Sec. 3, Approved February 16, 1903.
2. *Statutes of Nevada*, Twenty-Second Session, Chap. 10, Sec. 3, Approved March 16, 1905.
3. *Statutes of Nevada*, Twenty-Third Session, Chap. 18, Sec. 1, Approved February 26, 1907.
4. *Black's Law Dictionary*, 4th ed., West Publishing Co.
5. *Statutes of Nevada*, Twenty-Fourth Session, Chap. 31, Approved Feb. 20, 1909.
6. *Statutes of Nevada*, Twenty-Sixth Session, Chap. 140, Approved March 22, 1913.
7. *Anderson, et. al. v. Kearney*, 37 Nev. 314 (1914); *Ormsby County v. Kearney*, 37 Nev. 314 (1914); *Knox v. Kearney*, 37 Nev. 393 (1914).
8. *Statutes of Nevada*, Twenty-Seventh Session, Chap. 253, Approved March 25, 1915.
9. *Bergman v. Kearney*, 241 Fed. 884 (1917).
10. *Vineyard Land and Stock Co. v. District Court*, 42 Nev. 1 (1918).
11. *Statutes of Nevada*, Twenty-Eighth Session, Chap. 190, Sec. 8, Approved March 24, 1917.
12. *Statutes of Nevada*, Twenty-Ninth Session, Chap. 59, Approved March 15, 1919.
13. *Pitt v. Scrugham*, 44 Nev. 418 (1921).
14. *Statutes of Nevada*, Thirtieth Session, Chap. 106, Approved March 16, 1921.
15. *Humboldt Land and Cattle Co. v. Sixth Judicial District Court*, 47 Nev. 396 (1924).
16. *Statutes of Nevada*, Thirty-Fourth Session, Chap. 176, Approved March 29, 1929.
17. *Steptoe Livestock Co. v. Gulley, et al.*, 5 Nev. 163 (1931).
18. *Walsh v. Wallace*, 26 Nev. 229 (1902).
19. *Statutes of Nevada*, Thirty-Seventh Session, Chap. 184, Approved April 1, 1935.
20. *Statutes of Nevada*, Thirty-Ninth Session, Chap. 178, Approved March 25, 1939.
21. *Statutes of Nevada*, Forty-Second Session, Chap. 56, Sec. 11, Approved March 9, 1945.
22. *Statutes of Nevada*, Forty-Third Session, Chap. 159, Approved March 27, 1947.
23. *Statutes of Nevada*, Forty-Fourth Session, Chap. 83, Sec. 8, Approved March 17, 1949.
24. *Application of Filippini*, 66 Nev. 17, 26-27.
25. *Statutes of Nevada*, Forty-Fifth Session, Chap. 325, Approved March 15, 1951.
26. *Robinson v. Bate*, 78 Nev. 50 (1962).
27. *Statutes of Nevada*, Fifty-Fourth Session, Chap. 383, Approved April 15, 1967.
28. *Statutes of Nevada*, Fifty-Fifth Session, Chap. 111, Approved March 11, 1969.
29. *Statutes of Nevada*, Fifty-Sixth Session, Chap. 511, Approved April 24, 1971.





*Lahontan Dam, Truckee-Carson Project*



*A general store in Searchlight*

# **Reminiscences of Searchlight, 1908–1915**

by Bob Kirwin

RECORDED HISTORY passed Searchlight by like an old discarded tire beside a highway, an odd circumstance but a true one. It is much too late to rely on old timers to fill this need, for they aren't here any longer, and they've taken history with them. There are, however, a few yet living who were children in Searchlight when the town was at its peak and while it was declining. It is from them that a little early history may be gleaned. It must be remembered that these recollections will be seen through the eyes and mind of a teenager between the years 1908 and 1915, one whose interests then centered around fun for today, and not history for tomorrow.

## **Homes & Buildings**

The material used in construction of homes was usually corrugated sheet metal, the cheapest and most conveniently obtained. All of the better homes and several of the lesser ones were made of lumber. Some of the homes of wood and sheet metal were still standing, and in use, after sixty-five years and more. No remembrance of rock houses or the den-like abodes cut back into hillsides, common types found in many old mining towns throughout the west. The price and scarcity of building material accounted for the smallness of the buildings. The material used in the business buildings was about equally divided between wood and sheet metal.

## **Mines & Mills**

A historical marker set up in Searchlight states the first mining claim recorded in the area was made in May, 1897, by G. F. Colton. His Duplex mine on a hillside south of town has been considered the discovery mine. The type of mining was hard rock, as opposed to placer and hydraulic

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**Bob Kirwin** was born in Fairhaven, Washington, and lived in Searchlight, Nevada, from 1908 to 1915; he graduated from Searchlight Grammar School in 1915, and then moved to Southern California. He served in World War I, and from 1925 until his retirement in 1955 worked for the U.S. Postal Service. Currently Mr. Kirwin lives in Las Vegas.

mining, and the principal metal was gold, but some copper, silver and traces of other metals were present.

It was understood a smelter was in operation on the Colorado River east of Searchlight for a time until sufficient water was obtained in the deeper mines. With an adequate water supply, stamp mills and cyanide processing plants were built. The Quartette mine had the larger mill, and the one at the New York was second in size.

Due to many faults and fractures of the rock formation, the area had what are considered pocket type deposits of ore, which means the leads or veins of ore were usually broken off by these faults and fractures, and most often never again found.

The Quartette, Duplex, New York, Cyrus Noble and Blossom mines are the only names I now recall.

### **Business Establishments**

The Brown-Gosney Mercantile Co., also known as the Searchlight Mercantile Store, was the "supermarket" of the town. It featured everything needed for man or beast. It was situated in about the center of the area. The Pendergast Store, at the lower end of Main street, stocked general merchandise. It was operated by young Pendergast after his father died. The Austin Store was also located in the center of the business area, but on the opposite side of the street from Brown-Gosney. It offered a few groceries, stocked sundry and variety items, and after the drugstore went out of business took over many of the non-prescription drugs. It featured ice cream, and side dishes such as ice cream sodas, parfaits and ice cream sundaes. The latter were quite often made from canned fruits.

The Wheatly House was the deluxe rooming house in town; it had a small lobby with a piano, and someone to play it, and was the gathering place for society. It had eight or so rooms. It was located in the center of the business area on Main Street. A second rooming house, a block below the Wheatly House, had a large lobby, once used for a preliminary hearing room when Rose O'Connor, accused of murder, was bound over for trial in Las Vegas and there found not guilty as charged. I do not recall the name and number of rooms. Near the lower end of Main street a Mrs. Reed ran a small two-story rooming house with perhaps four or five rooms. Her son's name was Walter.

The Searchlight Hotel, at the upper end of Main street, was the largest edifice in town—it was two stories high. Across the front of the ground floor was a small but dignified lobby with a saloon adjoining. The dining room took out the center portion while the kitchen was across the rear. The second floor was all rooms, about a dozen or so. A fifth rooming house, on a side street, contained six or seven rooms and was run by a Mrs. Lewis (not the school teacher, Mrs. Mary Lewis). Buckmaster, a white haired, skeleton of a fellow, offered a few rooms in the rear of Emerson's blacksmith shop, and a bit to the east.

The Wheatly house maintained a large dining room, and served three meals a day family style. It was quite popular because women did the cooking. A restaurant several doors up Main Street from the Wheatly House served family style except breakfast, which was short order. (I do not recall the name or owner.) Across the street, on the saloon side, a small restaurant served short orders over a counter which accommodated five or six. Two tables would serve four each. The style of service in the Searchlight Hotel is unknown to me, since I never ate in the place. No doubt it, too, served family style. After the decline had well set in, Mrs. Elizabeth Lund, in the residential section, served lunch and dinner in her home.

The one and only blacksmith shop, except those maintained by the mines for their use, was situated just off Main Street. It was owned and operated by John Emerson, who offered all sort of smithery. He was once mayor of the town, and operated a stage line between Searchlight and Nipton.

Directly across the street from Emerson's blacksmith shop was Jim Cashman's Garage. He provided general services for automobiles and dispensed gasoline and oil. He was also skilled at maintaining other types of wheeled vehicles.

Ed Perkins, with the assistance of his school-age son, published the *Searchlight Enterprise*. He also did general job printing. He sold out when he realized the town was not going to recover.

An old fellow named Glenn ran a shoe repair shop. Half-soleing and hob-nailing shoes was his principal output, but he also did all harness and leather repair and maintenance.

A sheet metal or tin shop, located on a side street, was busy long after others had departed. The proprietor's name is not recalled.

In the southeast part of town, and across a street from the school house, a woodyard occupied at least a quarter of a block. It stocked many cords of juniper wood. This commodity was in high demand and the business may have been about the last one to close out. The pungent, spicy fragrance of the juniper was ever-present throughout the town. It was especially noticeable to newcomers and those not constant residents of the place.

A dairy was maintained by a Mr. Booth northeast of town, until it was no longer profitable. He then turned to raising alfalfa, which always had a ready market, since horse and mule power were still the predominate energy sources.

The only person to serve as Postmaster, as far as my memory serves, was Gus Mann. He was removed years later due to conduct not becoming a person in that position. He stated in a letter that he had been caught with his hand in the till, and was a guest of the state.

The assay office—that place of high hopes, beautiful dreams, and disappointing reports—was doing business along with the last hangers-on.



The drug store near the post office held on stubbornly but eventually gave up. Many of its non-prescription items were taken over by the Austin Store.

A fellow whose name seems like Martin, and who was supposed to be skilled in law, was the attorney for a time. The kids knew he was skilled at drawing pictures, especially profiles of beautiful girls' faces. When done on the backs and seats of the street benches, he could, and did, with the use of his pocket knife, carve them deeply and permanently into the wood.

There was a man in Searchlight said to be versed in medicine, but he is not to be confused with Doc Warring—they are different persons. His presence was known because he saved the life of a rattlesnake victim brought to town by Will Kirwin. I have no recollection of having seen this "medic," nor do I remember his name.

A jerkline freight service of four, six, or eight horses with one or two huge wagons was operated by Bill Sherwood. He also offered boarding and care of livestock. He did general hauling and dray service to Nipton, on the railroad, and also to Nelson-Eldorado Canyon and elsewhere when called for. He had general knowledge of veterinary service. He was proud of his teams, and the intelligence of these animals gave proof of his concern for them. He was one of the pillars of the town, well liked by most, especially the kids, to whom he gave rides on the least pretext.

The Walbrights owned and operated the water, electricity and ice plant. Water was generally piped to most homes, and to all businesses. Electricity was supplied to most homes and all businesses. Many homes, however, used kerosene lamps, and a scant few resorted to the large miner's candles for light. The ice supply went, for the most part, to the business concerns. A few people had boxes and would get a piece of ice, then wrap it in paper to preserve it, while the food spoiled.

It appeared all the business establishments had phones, and a few of the affluent families also. A line went to Nipton and one to Las Vegas but it is not known if one went to the Nelson-Eldorado Canyon area. The telephone office was housed on the closed-in porch of a house on lower Main Street, and was once operated by Jim Cashman.

The meat market existed the longest with its original owner, a hunchback little fellow named Shultz. He was still in business in the same building on Main Street as late as 1935. His meat supply came to Searchlight via ice refrigerated railroad cars from Los Angeles to Goffs, then over the Barnwell-Lanfair spur of the Santa Fe railroad.

One barber shop is recalled. It was on the saloon side of Main Street beside the short order cafe.

The fire department consisted of a single hose cart with, perhaps, a hundred feet of hose when first started. The hose had been patched and repaired so many times that it was not long enough, in most cases, to reach from hydrant to burning structure. This accounted for the demise of many homes. The cart was kept in a small shed under the fire bell



tower. When a fire broke out, the first person to know of it raced to the tower and rang the bell. Men, boys, and dogs sprinted with the car to the fire hydrant nearest the fire. The hose connected to the hydrant, then the cart and hose was rushed toward the fire, with everyone always being hopeful the hose would reach the fire, but it often didn't. Thus another less building in Searchlight.

The red-light district was clustered a short distance back of Brown-Gosney's store. The residents of this place kept very much to themselves. They never attempted to mix in social affairs. Their scope of operation was in the saloons.

### **Transportation**

The means of moving around and going from place to place was with horse and mule team, or saddle horses, privately-owned, rented from Sherwood, or borrowed from an owner.

Emerson's stage line consisting of two Overland touring cars provided transportation between Searchlight and Nipton, California, and connected with the Salt Lake, Los Angeles and San Pedro Railroad, later the Union Pacific. A morning and evening service was scheduled, and to other places as desired.

A spur line of the Santa Fe Railroad, known as the Barnwell-Lanfair spur, connected Searchlight at Goffs, California, to the main line of the Santa Fe running between Los Angeles and Needles, and all points east. Passenger connections to Los Angeles were much better over the S.L.-L.A. & S.P. at Nipton. The train arrived in Searchlight at 11:00 a.m. and left at 2:00 p.m. each day except Sunday. Later the trips were cut to three a week, and still later to once a week.

Bill Sherwood's freight line served in any direction, anytime. He'd haul freight, and people also, if they desired.

Privately-owned automobiles would render service in time of need, either for pleasure or for those in distress. Owners and cars I recall are Charles Huff, who owned a Studebaker touring car; John Emerson, with a two-cylinder Tourist two-seater and two Overlands on the stage line; Mr. Ray (Rusty's uncle) had a Ford touring car; someone with an E.M.F. touring car; a huge Thomas Flyer stored in a shed and cannibalized for its parts; and much later a Buick touring car owned by Will Kirwin (stored because he never learned to drive it, and he allowed no one to wear it out).

### **Entertainment**

Entertainment was self-produced with the aid of a few gramophones and records. A few homes had pianos. Some people had string instruments, but it seemed no one played them. Most saloons had a piano.

There were frequent dances in Nelson, but none in Searchlight, an odd thing. The regular dance set in Searchlight never missed a session. The

long trip was made by automobile caravan. It left for Nelson at 1:00 p.m. at which time most all were in high spirits (both kinds), and returned anytime Sunday afternoon, weary and worn out, but all had a grand time, they said.

Life in the saloons was for men only and was so observed, except by the prostitutes, and by Rose O'Connor, a miner woman who rarely came to town, and who lived twenty miles south of Searchlight. When she did, and needed to see someone in a saloon, she bulldozed through the swinging doors, announced herself and who she was looking for, and would belt down a couple, and then settle down to business at hand, it is said.

The kids found entertainment in many ways. The entire kid population gathered nightly, weather permitting, in front of the Emerson home to play all the games they knew or thought up. Emerson sat out front, an unseen and unheard chaperon. When he knocked the ash from his pipe it was the end of the night's play.

The boys had games in season like marbles, top spinning, kites, baseball, hoop rolling and swimming at the New York mine after it closed and water was pumped from the mine for that particular purpose. Rabbits were hunted by the older boys. Catching and trying to ride the wild and half wild burro herd was a challenge for the daring and foolish.

Christmas, New Years, and the Fourth of July were never merely observed in the town, but were celebrated to the fullest. The Fourth of July featured contests of all sorts for children and adults alike. There were races, ball throwing, tugs-o-war between mines, and teams of horses against mules; single- and doublejack rock drilling contests; and now and then a baseball game between the miners and the merchants,



usually called after four or five innings because it would require until next day to play nine innings.

The greatest Fourth of July celebration west of the Mississippi River took place the year Jim Jeffries defended his world's boxing title against Jack Johnson in Reno. Ed Burdick was given credit, it is said, for arranging a direct phone hookup to Searchlight to report the fight round by round and blow by blow. A ring was set up on Main Street and in their corners sat two boxers waiting for the bell. As the report was read, each boxer tried to reenact the fight in Reno. It was declared the next best to having ringside seats.

Hill climbing contests became popular with many after a few automobiles came on the scene. Only the daring, brave, and foolish took part in such doings. Huff and Emerson refused to participate. Their regard for the money invested and concern for bodily injury or their lives out-balanced the fame and glory, they said.

### **The Colorado River**

Because of insufficient water in Searchlight to process ore from the mines there, a processing plant was set up and operated on the Colorado River. The ore was transported over a mine-type railroad to the plant. Later when water was in abundance in the deeper mines, the plant was abandoned and stamp mills and cyanide processors built in Searchlight.

Three farms existed on the Nevada side of the Colorado River, and one on the Arizona side. Nevada owners included Al and Elinore Bley (the farm was later taken over by Fred and Alma Wertz); a ranch owned by the Weaver family, which was all but self-supporting, and from their fields and orchard a small amount of non-perishable produce was delivered to Searchlight. The third ranch belonged to a family with a German name, and I no longer remember the name. The Hall family ran a large ranch on the Arizona side of the river.

Very little farm produce was offered in Searchlight due to the long sixteen to twenty mile uphill haul by horse team, with no way to keep the produce cool. Further, the stores were not prepared to refresh wilted produce. However, alfalfa hay had a ready market for every bale brought to town.

### **Religion, Education, and Saloons**

Searchlight may have, without knowledge or intent, established a precedent among early western boom towns regarding citizen behavior. It was never a rowdy, violent place like many in those days. Those in the cemetery east of town arrived there by natural causes or industrial accident. The orderly conduct of its citizenry could never have been influenced by the presence of religious institutions for Searchlight had none.

The first such institution was a non-denominational Sunday School set in motion by a group from Los Angeles in 1913 or 1914. Because it was

aimed at the children, the officiating personnel were selected from the seventh grade, consisting of Bob Kirwin, Superintendent; Rusty Griffith, treasurer; and June Huff, Secretary and Organist. The parents, of course, hovered in the background. The Sunday School lasted for six or seven weeks. Somehow, it seemed Searchlight had gotten along without spiritual guidance, and the idea was not taking hold now.

Searchlight in its heyday had a two-room schoolhouse to accommodate its school age children. However, by 1908, one room and one teacher was sufficient to handle the fifteen or so pupils. Mrs. Mary E. Lewis, a sister of Elizabeth Emerson, and a widow with two sons, did the teaching of a few grades up to the eighth.

Searchlight supported seven saloons. The ratio of seven saloons to three grocery stores was, in the minds of some people, supposed to reflect a moral condition of some sort, but because the town went peacefully on without violence regardless of the ratio, this may have been a lesson in human behavior worthy of praise. The names I recall are the Gem, Wellington, Yellowstone, Palace, and Searchlight Hotel saloons; and Ed Burdick is the only name to come to mind as an owner.

### **Anecdotes and People of Searchlight**

#### **Jim Cashman**

Because Jim Cashman, an early resident of Searchlight, had an unquenchable thirst for the up-and-coming automobile age, he used a lot of his time tinkering with and fine tuning his pet car, a four-cylinder Hudson speedster, one of those jobs with its gasoline tank and an oil compartment in the one unit, directly back of the seat. In fact, the tank was a support for the seat back.

It was Jim's constant hope to drive his "Green Dragon" to the impossible and ridiculous speed of fifty miles per hour. His test track was the Eldorado Dry Lake bed just south of present day Boulder City and about twenty-five miles north of Searchlight.

Lucky was the boy Jim invited to accompany him on a test run. Rusty Griffith, a popular boy in town, had been on a few of these trial runs. That gave him some status among the other boys.

Jim had driven the "Green Dragon" to the speed of forty miles an hour, but not to the hoped-for fifty. It was still the challenge. On one of these occasions he invited Rusty and his closest friend, Bob Kirwin, to go along. The trip took close to an hour to reach the Eldorado Dry Lake, a stretch of dry, hard, dead-level, bare desert floor. Jim said he felt it in his bones this was the day he'd make it.

After a final adjustment or two, he tossed a coin to determine which boy would take the first run; Rusty won. The speedster was taken a mile or so out in the expanse of floor-level dry lake bed. It was turned around to take advantage of a tail wind. To Bob it was a small object at that

distance. Soon a small dust column indicated the car was moving. The dust spread thrown up by the car grew wider and wider, the car became larger and larger, and it was coming faster and faster.

The Green Dragon and its forward-leaning passengers were almost a blur when it passed about a hundred feet from Bob. It was the fastest moving object he had ever seen except a shooting star zipping across the night sky. Bob was sure Jim had attained his ultimate hope of fifty miles an hour.

Jim stated, and Rusty agreed, that they had gotten it up to forty-two miles per hour. Jim was jubilant. After another tuning, he was ready for another try. On the way to the starting point, Bob was atingle with goose pimples. He could imagine nothing greater than to be aboard the "Green Dragon" when it hit fifty miles an hour, and it just might.

Jim explained to Bob the purpose of and method of operating the oil pump with his right hand to send oil to the engine's bearings, while he hung on with his left hand. He was to pump oil when Jim called for it.

The "Green Dragon" was turned around with its back to a light but steady wind out of the west. With its mighty four-cylinder engine rumbling out its power, the car began to roll out—faster, faster, faster. The wind began to whistle past Bob's ears. The front wheels spurted out dust fans on either side. Jim called for oil, and he got it. Jim leaned forward as though urging the car onward. Bob leaned forward to lend his power.

Bob took his eyes from straight ahead to glance down at the blur of ground beside the car streaking past. The goose pimples rose once more. Jim called out, "Forty miles." Then came forty-two. At forty-three miles Bob glanced at the speed indicator. It was trembling and shaking upward to forty-four miles an hour. He looked at Jim, who was hunched over the wheel, staring straight ahead, and then giving a quick glance at the speed indicator.

"Forty-five miles," Jim shouted. A cold realization crept up over Bob. He had heard it said several times by the local wits that should Jim ever get his car up to fifty an hour, his life would be sucked right out of him at such terrific speed. If that would happen to Jim it could happen to him also. He had heard of dead heroes and live cowards, and was in the depth of pondering. He felt the car suddenly slow. Jim had taken his foot off the gas feed. Bob heard Jim's voice tinged with disappointment say, "Nope, not this time, but by golly, she's coming up."

Jim, Rusty, and Bob lived to know fifty miles per hour was a normal cruising speed for the average pleasure car. And none of them had his life sucked from his body.

### **Roy Conners**

Roy Conners was a miner with a sense of humor. He lived each day for what it had to offer. It appeared he had no worries or enemies. He was well liked by most everyone.

He shall live always in my memory. It was he who welcomed a boy tenderfoot into Searchlight, a day after his arrival. With his thumbs hooked under his suspender, Bob Kirwin was taking in the length and breadth of Main Street that morning while he waited for his parents. This was a far different place than the ice and snowbound ranch in northeastern Washington he had left several days before.

Bob's dad had told him a few men in Searchlight still wore guns. In fact he had seen one the day before. Of course he had read many stories of guntoters and gunslingers. He believed he was capable of coping with any of them. He knew how to recognize the dangerous ones, the real killers. They always advertised their reputation by the manner of dress. It was a warning not to trifle with them or anger them. The killers dressed in black—black hat, shirt, gloves, pants and shoes. He'd know one the very instant he saw one. All he had to do was mind his own business and they would attend to theirs. Simple!

Bob and his family were staying at the Wheatly House, directly across the street from the Brown-Gosney Mercantile Store. While he was waiting out front, his wandering eyes fell upon a gunman coming out of the store door across the street. He was dressed in black!

Bob was electrified! The gunman paused for a moment while he quickly scanned Main Street. When his gaze fell upon Bob, he half crouched as he peered from under the brim of his hat pulled low over his eyes. Bob was frozen solid in his tracks, and gaped with his mouth partly open.

With measured, determined steps, his hands but inches above the butts of two guns tied down to his legs, Texas style, he approached Bob, who didn't move because he couldn't.

At less than ten paces, instinct for survival loosened Bob's muscles. He started to turn to seek protective cover—any kind of cover! The gunman yanked out both guns, and in a voice as cold as ice water, snapped out, "Hold it, stranger. I want to talk to you!"

With a desperate effort, Bob spun around to flee, and ran head-on into his dad who, unobserved by Bob, had walked up behind him. The gunman's voice rang out once more, but without the ice water, "Hello, Will, good to see you again. Who is the tenderfoot you are protecting, your boy?"

The gunman offered his hand to Bob, and said, "I'm Roy Conners, glad to meet you, and welcome to Searchlight. Me and your dad are good friends. How about that, Will?"

For the next seven years that Bob lived in Searchlight, Roy never permitted him to forget their first meeting.

### **John Emerson**

John Emerson was one of the "Pillars of the Town." He owned and ran the blacksmith shop, doing all sorts of smithery. He was once mayor of



the place. He also owned and operated the stage line between Searchlight and Nipton, just over the line into California, a whistle stop on the Salt Lake, Los Angeles and San Pedro railroad, later taken over by the Union Pacific. John was far too busy hammering out his "Anvil Chorus" to drive the stage—he hired a driver. The only driver I recall was a handsome grammar school graduate named Rod Morrison. Rod was regarded by the younger kids as a successful man because he had a paying job.

It is doubtful John missed participating in major decisions regarding the town's management. Had there been Boy Scouts in Searchlight, he most likely would have been Scoutmaster. He performed a similar activity as host to all the kids in town.

From early spring till late autumn, weather permitting, it was the nightly custom of the kids to gather in front of the Emerson home for an evening of games. Hide and Seek, Run, Sheep, Run, Dare Base, Pick Up Sticks, or whatever else they would create were indulged in with spirit and sheer fun.

Out front John would sit in an old easy chair, one his wife insisted was not good enough to use in her sitting room, and too good to dispose of. There he puffed away on an old beat-up and battered pipe that, if the wind was right, would overpower and overcome the delightful fragrance endlessly permeating the area from the many cords of juniper wood just across the street. It was plain to see John was not around, as far as the kids were concerned, nor were the kids there as far as John was concerned. He never corrected nor interfered with them.

Should the feelings of a participator be ruffled too much, he might retreat to the side of John for solace. John would remove his pipe, and place his rough gnarled hand of a blacksmith on the head or shoulder of the offended one. After a private exchange of words, the ruffled one would soon return to the fray.

It was when, and only when, John knocked the ash from his pipe that his presence would come to the apparent attention of the kids. It was the wordless call to end the play for the evening. If one listened intently enough he just might overhear a soft, "Ah heck." No complaint was ever made. The parents had advised their kids of the good fortune to have a person like John Emerson who would put up with their racket evening after evening. He was a saint!

Many years later John was surprised to discover one of these kids was the letter carrier to his home in Burbank, California.

### **Rose O'Connor**

Rose O'Connor was a miner woman who lived twenty miles south of Searchlight at the mouth of Cottonwood Canyon on the west side of what was known as the Spirit Mountains. Today's map indicates they are the Newberry Mountains.

Had this person's life been recorded in a biography or autobiography,

it could have been a classic. As usual, many rumors and gossip yarns have been told of her, but very, very little is known of the real Rose O'Connor.

Perhaps two hundred or more Cottonwood Canyons may be in Nevada. The one Rose lay undisputed claim to was the site of her comfortable home. It had water piped right into the tin sink in the kitchen. This was a bit ahead of its time. The home also had a piano and a library, from which a person could borrow a few books, read and return them. The book, *Alice in Wonderland* — ugh — was never finished. I never determined whether it was too far out or too far behind.

It was on the first visit there that I discovered the divine taste of fresh apricot cobbler. What a heavenly treat to a teenager who lived in the nearby Chiquita hills, and whose diet consisted of beans, bacon and ham, canned tomatoes and corn, flapjacks, dried fruit, corn flakes and grape nuts with canned milk, and occasionally a cottontail or jackrabbit.

Rose had an abundance of water to operate a small stamp mill and cyanide processing plant where she milled all her ore; then she as a rule sold it in Searchlight. She also had an orchard of fruit trees and a garden plot. Here was indeed a Shangri-La, the likes of which were few and far between in Southern Nevada, or most anywhere else for that matter.

Searchlight was electrified from its monotonous existence the day Rose delivered to the deputy sheriff the body of a dead man and another fellow badly wounded. She admitted she shot the two when she found them high-grading in her Homestake mine. She was aware someone was taking out the high grade ore so she returned to see about it.

She surprised the two men, who were armed and working her mine. She did not bother to challenge them. She decided to shoot and talk later. She was prepared to stand trial, she said, if it was necessary. She was restricted to town without bail.

Legend tells of a super-rich mine at the south end of the Spirit Mountains discovered by and first worked by the padres who traveled the Old Spanish trails of the Southwest. From time to time others worked the mine. Because no processing means were within hundreds of miles of the place, only the highest grade, free gold ore was taken. Years later Rose took possession, and retained the mine under laws of the day and time.

In due time she had set up her mill and home at Cottonwood Canyon where she lived and processed her ore. She had two daughters who were kept in school in Los Angeles where they would receive an education, and thus be prepared to fare better than their mother. When she discovered her mine was being high-graded, she went into action as any red-blooded American would have done to protect her property and welfare in a remote and unpoliced area.

A preliminary hearing was held in Searchlight, to the delight and excitement of the townspeople. She was bound over for trial in Las Vegas for murder, but the jury found her not guilty as charged, since she was but protecting her property under a rule referred to as the "unwritten law."

She returned to her Cottonwood Canyon home where she lived and mined and attended to her own business. Later she married a fellow named McDonold. When visited in 1935 she let it be known she had milled ore for Will Kirwin who had overlooked paying her for the processing.

### **Doc Warring**

Doc Warring was a bit of a mystery to some nosey people, those who had to have every fine detail of one's life. Doc never offered the information concerning where he came from or why he came to Searchlight. And, in keeping with the custom of those early days, no one risked asking; it'd do him no good anyway.

He was addressed as Doc, but none knew the meaning of it. It was rumored he once was a medical doctor, but something happened and he may have been disbarred, or whatever is done to doctors, and came west. Others gossiped he may have been wealthy through some means and skipped out to become lost out west. The real sharpies insisted he may have become involved in some affair and came west to live out his life incognito. At any rate, Doc never bothered to either affirm or deny the opinions. He went on being liked by most everyone; he liked it that way.

He was a hands-down favorite with most of the kids. He was adviser, assister, listener, protector, and in some cases, provider. It was he who suggested to Rusty, Bob and Monte that carbolic acid be added to the axle grease they used on the cut ankles (lacerated and sometimes infected) of the burros whose feet became caught inside old tin cans.

It was he who loaned Bob a double-barrel shotgun to use as long as he wanted it. Upon request it was to be brought back to Doc for his inspection to determine if Bob was worthy of its keep.

It was he who provided Rusty with field glasses when Rusty wished he had a spy glass to use while he and Bob hunted for the supposed herd of pronghorn antelope who grazed in the desert out toward Nipton or Nelson or some other place.

Once Doc interceded for a drifter caught redhanded behind the steering wheel of a supposedly stolen automobile. Walbright left his car running while he went into a store. He believed it was too difficult, as well as dangerous, to start his car each time he was not using it. When he came out of the store, his car was gone. As he looked up and down the street for the car, he believed he saw it pass from sight as it rounded a knoll at the lower end of Main Street. It then continued on to the depot a mile or so out of town. With the assistance of a friend and his car, Walbright overtook his car, which had a stranger at the wheel apparently driving it. The stranger was turned over to the deputy sheriff, and placed in jail to be held charged with stealing Walbright's car.

As soon as Doc learned of the stranger's plight, he explained to the sheriff that as he was leaving the post office he saw Walbright's car

passing from his view without a driver. At that point he saw a man walking up the road who apparently grasped the situation and climbed into the driverless car and attempted to control it. Because the man had no knowledge whatsoever of handling an automobile, he tried only to steer it along the roadway until he could somehow stop it.

It was Doc who solved an unsurmountable problem for Bob, who had accepted the honor of preaching a funeral service for a deceased kitten. When Bob explained the predicament he had unwittingly let himself in for, Doc provided a delightful and unimpeachable way out. He wrote a simple and sincere sermon. Bob was to place it inside the Bible he was to hold while he gave the eulogy. He would open the Bible at the spot the sermon was placed, and read it slowly, solemnly and with sincerity. Bob preached an outstanding funeral service that day.

Doc's true identity may have puzzled many adults, but the kids knew him for what he was to them—their strength in time of need.

# **In Memoriam: Charles Lewis Camp**

by Carl Briggs

PALEONTOLOGIST AND HISTORIAN Charles Lewis Camp, the man largely responsible for Nevada's noted ichthyosaur fossil display and state park in the Shoshone Mountains of Nye County, died last August at San Jose, California, at the age of 82.

During his lifetime, Dr. Camp contributed significantly and in many ways to the development of Nevada's historical and cultural heritage in the disparate fields of science and letters.

He was born in Jamestown, North Dakota, and spent his boyhood in southern California, where he developed lifelong scientific interests through study with the great naturalist Joseph Grinnell. Frequent visits to John C. Merriam's fossil beds at Rancho La Brea further stimulated his curiosity and set the course of his career.

Dr. Camp attended Throop Academy (Cal Tech), then earned his A.B. in zoology at Berkeley in 1915, and his Masters and Ph.D. at Columbia University.

After a term as assistant at the American Museum of Natural History, he returned to Berkeley.

His association with the University of California commenced in 1922 and spanned more than forty years. During this time he was chairman of the Department of Paleontology from 1939 to 1949, director of the renowned Museum of Paleontology from 1930 to 1949, director of the university's African Expedition in 1947-48, and a globe-traveling scholar under a Guggenheim Foundation Fellowship in 1935-36.

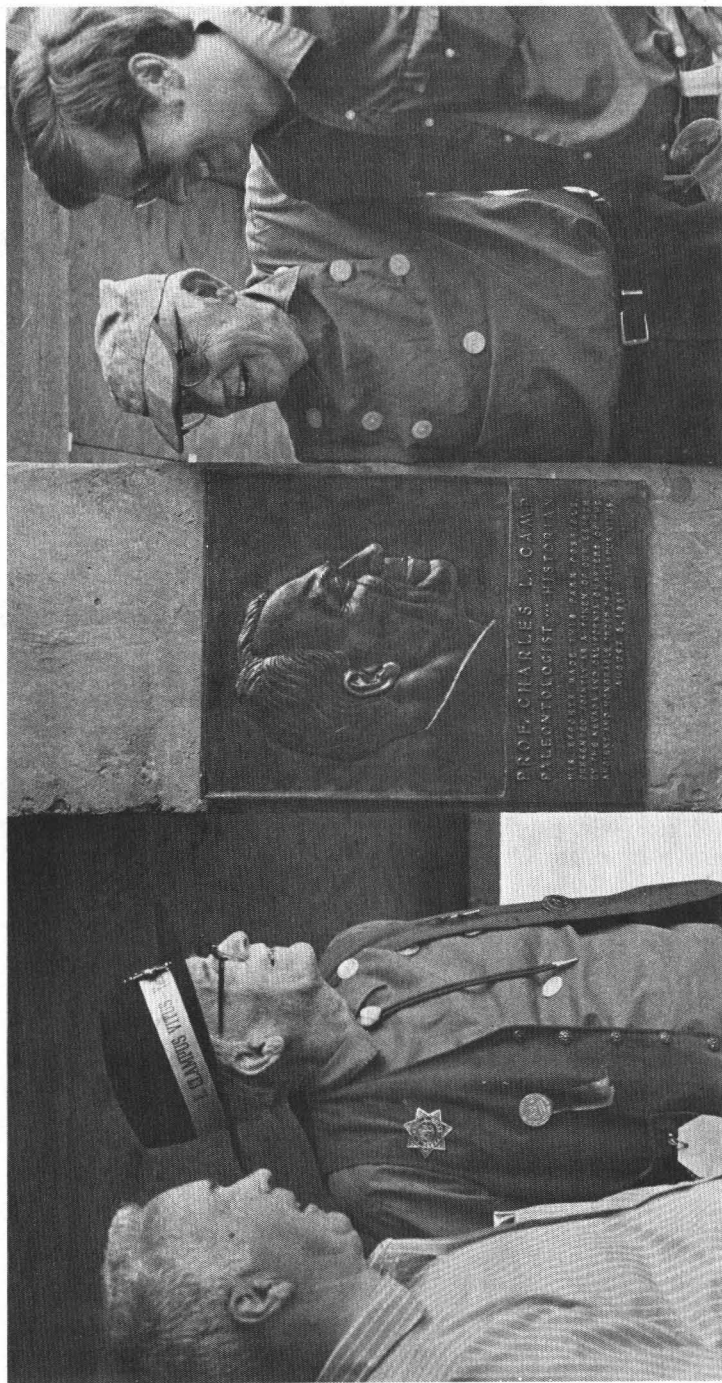
He conducted many paleontologic expeditions in New Mexico, Arizona, Nevada and California.

Dr. Camp's nine-volume world *Bibliography of Fossil Vertebrates, 1928-1972* is a standard reference everywhere.

Extensive published works also include *California Mosasaurs*, *Methods in Paleontology*, the popular *Stories of Fossils*, and the widely read *Earth Song, A Prelude to History*. The latter is a remarkable blend of

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**Carl Briggs** is a former editor of the *Tahoe Daily Tribune*, South Lake Tahoe, and *Sierra Sun-Bonanza* at Truckee. He is presently Public Information Officer for the Nevada Employment Security Department, Carson City. His articles on Nevada and California history — including several stories about Berlin-Ichthyosaur and Dr. Camp — were published frequently in Tahoe area newspapers for many years. He continues to write a fortnightly column under the title "Sierra Observer," often exploring historical themes.



*Dr. Charles L. Camp, second from left, prime developer of the ichthyosaur fossil beds in Nye County, was honored on May 12, 1973, when a plaque bearing his likeness was belatedly mounted and dedicated by members of E Clampus Vitus. Also in attendance were, from left, Secretary of State William Swackhamer, sculptor William Gordon Huff and Attorney General Robert List. The bronze tablet was cast in 1961 and twice before dedicated by the fun-loving Clampers but had to wait for a permanent mounting base.*

*(Carl Briggs photo)*



hard science, literary expertise, and poetic beauty, which tells the story of Nevada and western America since the dawn of time.

From 1954 to 1957, Dr. Camp along with one of his protégés, Dr. Samuel P. Welles, and a crew of paleontology students from Berkeley developed the Triassic marine limestone fossil beds at Nevada's remote Berlin-Ichthyosaur State Park, excavating and classifying petrified skeletons of the gigantic fish-lizards that lived there as long ago as 170 million years.

"Fish bones" were first discovered and noted in the region by miners in the 1860s. The area is part of the old Union Mining District, near the former boom towns of Berlin and Grantsville.

Simeon Muller of Stanford University recognized the fossils as ichthyosaurs in 1928. Historian Margaret Wheat of Fallon further publicized the beds in the early 1950s and helped persuade the state to develop and preserve the site.

During his work there, Dr. Camp lived for much of the time at the fossil site, even braving half of one winter in a crude shack until his water supply froze.

He was a fellow of the American Association for the Advancement of Science, the Geological Society of America and the California Academy of Science.

Dr. Camp's "other life" as a historian reached a wide readership and is well known to students of exploration and settlement in the American West. Indeed, his name appears faithfully in all the knowledgeable bibliographies.

The most frequent reference is to *James Clyman, American Frontiersman*, written by Dr. Camp in the early 1920s.

Clyman, as a result of Dr. Camp's work, has become a key figure in an era that began with Gen. William Henry Ashley and his American fur trappers and ended in the pastoral Napa Valley of the 1880s.

Historian Bernard DeVoto called Clyman America's "man of culture," an obscure figure always where history was being made and always influencing it. Dr. Camp stripped away Clyman's shroud of obscurity and, with his book, put him into his deserved and prominent place in the story of the west.

DeVoto said, "I owe more to *James Clyman* than any other single book. No more careful work has ever been done in American history."

The Clyman book, one of the great documents of America's westward movement, established Dr. Camp's stature as an authority and set the young professor upon an unwavering trail of historical truth that he followed until the day he died.

The trail led to succeeding works on pioneer George C. Yount, Kit Carson, William Alexander Trubody, Jedediah Smith, Philo White, the Donner Party, John Doble, John C. Frémont, the Simpson Survey, Nicholas Dawson, Alexis Godey and others identified with western exploration, expansion and settlement.

He knew the mountain men and explorers and thoroughly understood their significance. As a historian who walked the actual trails, interviewed next of kin and direct descendants and studied letters, journals and photographs, he represented a level of historical experience and accomplishment that died with him and his contemporaries. Everything from now on is second hand.

A fourth edition of his monumental bibliography of western literature, *The Plains and The Rockies*, written with the late Henry R. Wagner, is due shortly from the press. Publisher Warren Howell of San Francisco calls it Dr. Camp's "magnum opus" that will grace library shelves for decades to come.

To the late Sierra Nevada historian Francis P. Farquhar, Dr. Camp was revered as the "Biographer of the West."

For several years Dr. Camp served as a director of the California Historical Society and editor of its publications. He earned the society's prestigious Henry Raup Wagner Memorial Award, named after his late colleague, for his contributions to American history.

He was a strong supporter of "The Friends of the Bancroft Library," and participated frequently in its campaign to preserve historical documents for posterity.

And for achieving eminence in two major fields, science and history, Dr. Camp received in 1968 an honorary doctorate from the University of California—a pinnacle which few men scale.

His research work in western history also led him to assist in the resurrection during the early 1930s of a miner's fraternal organization founded in the gold rush days, the whimsical Ancient and Honorable Order of E Clampus Vitus.

He served as its highest officer, Sublime Noble Grand Humbug, in 1969, helping to restore the history-oriented group to its present vigorous state of twenty-eight chapters and thousands of members in California and Nevada.

A bronze tablet bearing Dr. Camp's profile is mounted at the entrance to the fossil display at Berlin-Ichthyosaur State Park, placed there and dedicated in 1973 by members of E Clampus Vitus.

Dr. Camp, at the age of eighty, attended that celebration, accompanied by William Gordon Huff, the artist who executed the remarkable life-size frieze of a sixty-foot ichthyosaur at the park and also sculpted Dr. Camp's likeness on the plaque.

Huff, an associate of forty years, said that Dr. Camp regarded the roisterous, redshirted Clampers as an extension of the frontier, a living link with the colorful past, and it was a link he recognized and loved.

That was Dr. Camp's last visit to the ichthyosaur site and his last journey through Nevada.

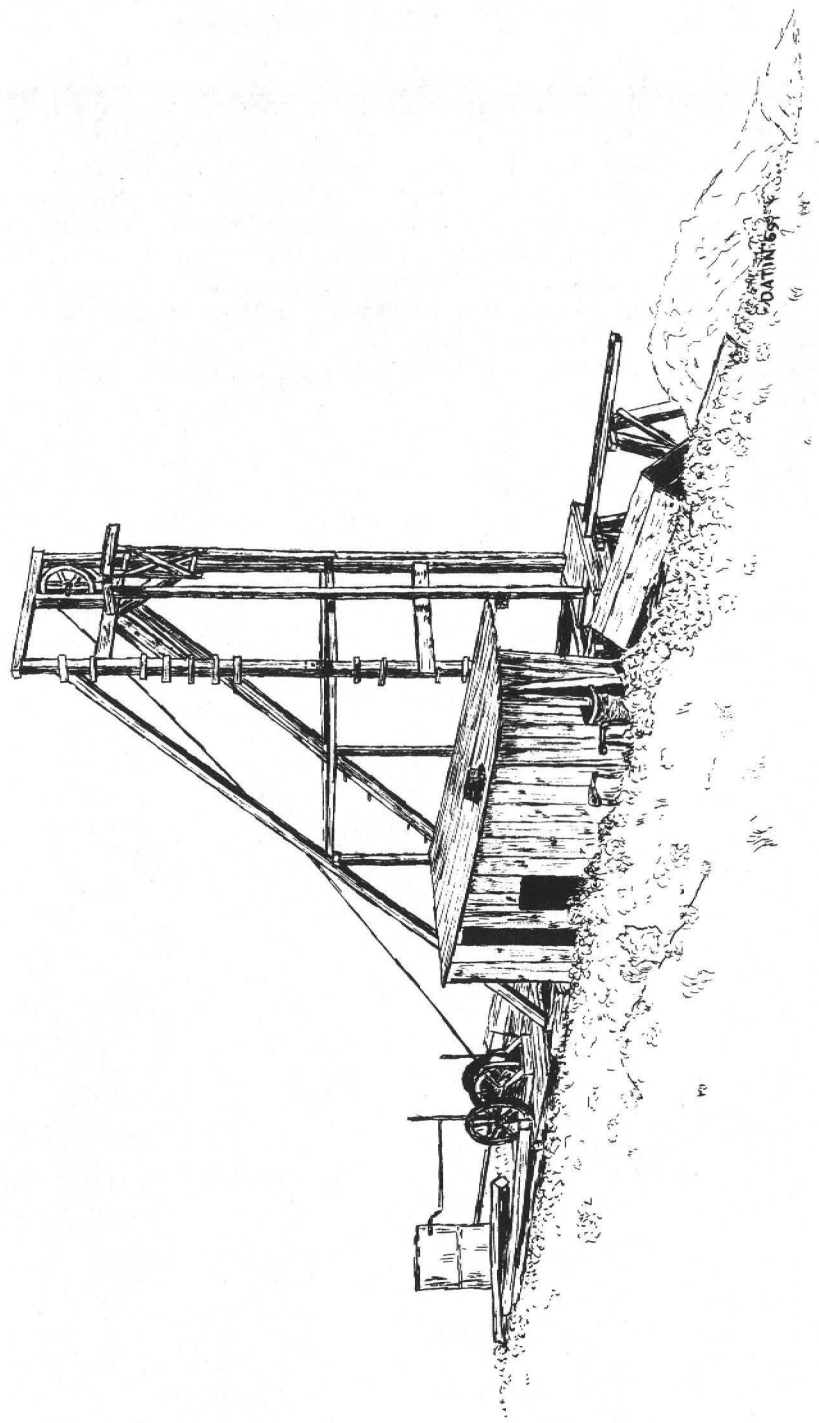
Huff describes Dr. Camp's knowledge of Nevada as endless and his love for it as boundless as the great expanses of mountain and desert.

He leaves a grand legacy and wide spectrum of accumulated and recorded knowledge. In his energy and devotion to history, even in his last days, he was amazing. In his personal associations, measured by the love of all who knew him, he was incomparable.

The closing lines of his *James Clyman* book are simple and eloquent:

"On the night of December 27, 1881, another visitor enters and silently departs, bearing the old frontiersman away, over new trails, to join his comrades of the mountains — Ashley, Jedediah Smith, Fitzpatrick, Black Harris, Hugh Glass, the Sublettes, Andrew Henry, and Jim Bridger . . ."

On August 14, 1975, Charles Lewis Camp joined his comrades in the mountains.



*Courtesy of Richard Datin, Field Service Officer of the Nevada Historical Society.*

## ***From Our Library Collection***

### **MURBARGER COLLECTION**

Mrs. Nell Murbarger, internationally recognized author and historian, has donated her entire collection of museum and library materials to the NHS. The collection contains ghost town relics and artifacts, maps, photographs collected and taken by Mrs. Murbarger, books, and extensive runs of magazines and other periodicals, all of which are the result of her travelling over 250,000 miles and bringing together these materials from Nevada, California, Utah, Arizona, Colorado, New Mexico, Oklahoma, Oregon, and Montana.

Mrs. Murbarger has also included manuscript copies of her hundreds of feature articles which have been translated and published in several languages, correspondence with her publishers and colleagues, and copies of manuscripts for her several books, including *Ghosts of the Glory Trail*, which is now in its 7th edition.

### **REESE COLLECTION**

The records and papers of John and Enoch Reese, founders of the first permanent white settlement in Nevada, have begun arriving at the NHS. Long thought to have been lost or destroyed, the materials have been preserved by the members of the Reese family, now living in California, Montana, and Utah. The Reese brothers first became merchants in their home state of New York in the 1830's, and moved to Utah in 1849. John Reese went to the Carson Valley in 1851 where he established their branch store at what was to become Genoa, Nevada. When Brigham Young recalled all of the members of the Church in 1857, John Reese sold his holdings and returned to Salt Lake City where the brothers resumed their enterprises.

In 1859, John Reese acted as a guide for Captain James H. Simpson in locating a new trail from Salt Lake City to Genoa through central Nevada. On this expedition, Simpson named Reese River and the Reese River Valley in honor of his guide. John is also credited with having named the Ruby Mountains.

The collection, brought together and donated by Enoch's grandson, John Heber Reese, of Salt Lake City, relate to the stores in New York, Iowa, and Salt Lake City. Additionally, family photographs, genealogi-

cal data, and papers dealing with Enoch's terms in the Utah Territorial Legislature and the provisional government of the State of Deseret are included. The search goes on for the records from Mormon Station (Genoa).

### **BENTLEY COLLECTION**

Helen Delich Bentley, widely recognized journalist, Chairman of the U.S. Federal Maritime Commission, and native Nevadan, has begun sending her papers to the Society. Mrs. Bentley was appointed to the Chairmanship of the Maritime Commission in 1969 by President Nixon because of her extensive knowledge and experience with shipping and its effects on American commerce and trade. Prior to that time, she was a journalist with the *Baltimore Sun* where she came at odds with the Johnson Administration for her stand on American policy in Viet Nam, where she had spent four months.

When finally assembled, Mrs. Bentley's collection will contain her correspondence, speeches, clipping files, photographs, and mss. copies of her stories.

L. JAMES HIGGINS, JR.



## **What's Being Written**

*Walker River Paiutes: A Tribal History.* By Edward C. Johnson. (Salt Lake City, Utah, University of Utah Printing Service, 1975. 201 pp., maps, illustrations; \$8.00)

IN THE CENTURIES before the arrival of the whites, the Walker Lake Paiutes evolved a finely balanced adaptation to an extremely hostile environment. In this adaptation the line between extinction and survival was a very fragile one, often challenged by natural forces. Over the years the Indians were able to survive the natural challenges; the intrusion of the whites, which began with the trappers in the 1820's, posed a more formidable threat to their way of life. The initial penetration by the trappers caused little immediate disruption, but unfortunately for the Indians, Nevada was the bridge to California gold and what had been a thin stream of trespassers became, in the 1850's, a veritable army of intruders. The discovery of the Comstock Lode in June, 1859, complicated the problem by bringing thousands of permanent settlers. In a few years the white intrusion almost completely destroyed the balanced adaptation of the Indians and offered no adequate solution to the problems created.

Shortly after the beginning of the Comstock rush, Indian agent Frederick Dodge, recognizing the problem posed by leaving the Indians in the paths of the whites, recommended that the Northern Paiutes be placed on two reservations, one at Pyramid Lake and the other at Walker Lake. The reservations were intended to give the Indians not only physical security, but a promise of economic security as well. Unfortunately, the system was neither operated efficiently nor honestly; and decisions concerning the Indians were based, not on the legal or moral rights of the Indians, but upon the needs and demands, fancied or otherwise, of the whites. The latter paid little attention to the fact that the reservation had been set aside in 1859 for "Indian purposes" and almost from that date began encroachments on reservation lands. In the resulting conflict between the Indians and the white trespassers, the latter with political and economic power on their side were easy victors and gained not only land but valuable water rights as well. Later, when miners fostered the idea that rich mineral deposits lay within the reservation and that they should have the right to exploit them, the Federal government not only opened the area to the miners, but as Johnson emphasizes, devised a plan for the allotment of the Walker River Reservation with the land being

broken up into twenty-acre parcels for tribal members and with the remaining lands thrown open to public settlement and mineral exploitation. This plan was the brainchild of Senator William M. Stewart who succeeded in attaching it as an amendment to the 1902 Interior Appropriation bill. Although many Nevada politicians were involved over the years in the machinations against the Indians, no one played a more important role than Senator Stewart and, as author Johnson points out, the allotment plan was the culmination of some fifteen years of activity on the part of Stewart against the best interests of the Indians.

Stewart became interested in the Walker River Paiutes as an attorney for the Carson and Colorado railroad when that company attempted to break an agreement of 1882 with the Indians which had given the railroad a right of way through the reservation in return for an agreement by the company to furnish free transportation for the Indians and "their fish, game and products to and from all points on the road operated by said company." Stewart's solution to avoid carrying out the letter of the agreement was to move all of the Walker River Paiutes to the Pyramid Lake Reservation. Legislation to that effect was introduced into Congress in 1892 by Senator Stewart, but ultimately the Indians of both reservations, with the help of Albert K. Smiley, a member of the U.S. Board of Indian Commissioners, were able to thwart the plan. Yet, as noted above, Stewart was able, just a few years later, to bring about a partial opening of the Walker River Reservation. It is an irony of Nevada history that Senator Stewart should be considered during his lifetime and after as a great friend of the Indian and to have a Nevada Indian school named after him.

It should be emphasized that Mr. Johnson's history is much more than a documentation of white wrongs against the Indians. It is the story of a People and their struggle to survive, told in a simple, straightforward manner by one of its members. Included here is not just the daily struggle to live, but the political and legal struggles carried on to maintain their identity as a People. Separate chapters on "Changing Life-Styles," "Sports and Recreation," and "The Ghost Dance Prophets," give emphasis to the fact that the book is more than just an economic or political recitation of facts.

The book's use as a reference work is marred by the failure to include an index and a formal bibliography. The latter is somewhat overcome by the profusion of footnotes, but the lack of an index is unfortunate. In the opinion of this reviewer, the book would have been improved by placing the last chapter, "The Walker Lake Sea Serpent," at the beginning and putting in its place a concluding chapter. A listing of the maps in the Table of Contents also would be useful. In spite of these few flaws, the author and those responsible for the publication of this work should be congratulated for presenting a well-documented, easily read volume on the

Walker River Paiutes and thereby filling one of the many voids in the history of Nevada.

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Reno

*Gold and Silver Colossus: William Morris Stewart and his Southern Bride.* By Ruth Hermann. (Sparks, Nevada, Dave's Press, 1975. 430 pp., illustrations, index, \$11.50)

WILLIAM MORRIS STEWART came West with the Gold Rush, read law in California, and came to Nevada Territory as a miner and lawyer. He helped create the State of Nevada, and his guiding hand is still seen in the state constitution. He was one of Nevada's first U.S. Senators and wrote the existing U.S. Mining Laws. No study of Nevada history would be complete without considering the work of Bill Stewart.

Several new biographical studies of Stewart have been in the works for a number of years. This is the first of the current group to come out in print. Mrs. Hermann had the advantage of access to family material other researchers have not seen, and to discussion with family members. As a result, this volume will be valuable for this new material.

However well researched it may be, the volume is lacking in too many other ways to make it a Nevada classic. There is no sign of serious editing. Sentences roam to illegible length. Extraneous observations, properly relegated to footnote mention, are instead incorporated in the text. Attributive footnotes are used only for the most obvious material, as though the author did not want to share sources. Conflicting statements, separated by a dozen or so pages, confuse the reader.

It can be accepted that this is not a critical biography. The author admittedly gleaned material from the subject's own *Reminiscences*, and from descendants of Bill Stewart. But to accept the autobiographical *Reminiscences* as totally accurate and true, and to base an entire book on that earlier volume, is a disservice to Stewart himself. The author's adulation of Stewart creates of him a Paul Bunyan of the West. One wonders how the state came to be named Nevada instead of Stewart.

*Colossus* is a great disappointment. We hope the next author to present a biography on this noted early Westerner will attempt to present a more balanced view.

BOB STEWART

*Whereby We Thrive: A History of American Farming, 1607–1972.* By John T. Schlebecker. (Ames, The Iowa State University Press, 1975. 342 pp., \$12.95)

*Whereby We Thrive* goes a long way toward filling a serious and long overlooked gap in the history of the United States, and, indeed, in the history of the world. In spite of the importance of agricultural productivity to our nation's prosperity and power, there has been no comprehensive history of American farming. John T. Schlebecker, the Curator for Agriculture and Mining at the Smithsonian Institution and author of works on cattle raising, journalism and the very helpful *Bibliography of Books and Pamphlets on the History of Agriculture in the United States, 1607–1967*, has produced the first book length general history of American farming. The book is remarkably successful in spite of the magnitude and complexity of the topic and the relatively compact size of the book. Through five chronological segments (1607–1783, 1783–1861, 1861–1914, 1914–1945, and 1945–1972), land policies, market structures and the science and technology of agriculture are followed and related to relevant non-agricultural government policies and technological advances. Throughout, Dr. Schlebecker provides his reader with concise explanations of intricate land laws, shifting governmental policies, changing marketing conditions and transportation facilities. He gives superlative coverage to technological developments as they affect all phases of agriculture and agricultural products.

In most respects *Whereby We Thrive* is an important, even indispensable, book for those who seek to understand or to teach about the American experience. Based primarily upon a comprehensive review of secondary writing, it shows the shortcomings as well as the strengths of contemporary work in the history of agriculture. In the preface, Dr. Schlebecker explains that the study is a history of commercial farming and is thus necessarily a kind of economic and technological history, but, since it "deals mainly with the work of ordinary people doing everyday tasks it becomes basically a social history." Well and good. But upon reading, it becomes clear that it is almost wholly economic and technological in its orientation, and moreover presents a fundamentally uncritical account of American commercial agriculture.

Social themes are largely omitted or undeveloped. Farm labor and laborers, with the exception of slave labor, go virtually unmentioned. Migrant labor is mentioned, in passing, on only two pages. The ethnic composition of the American farming community remains unexplored. Did the ethnic composition of the farm community change, as one might expect, with the flood of European immigrants during the nineteenth century? Only two ethnic groups are mentioned for their contributions to U.S. agriculture, the Russian-German Mennonites who introduced Turkey Red wheat to the U.S. in 1873, and the early nineteenth century German and Dutch immigrant farmers noted for wintering their cattle in

stables. Did religion play a large part in the lives of American farmers? How did fundamentally agricultural religious communities such as the Amish and the Shakers fit into the agricultural economy of the United States? Did they have any lasting influence on American agriculture? Questions about labor, ethnicity or the influence of religion are not addressed in this history.

There is also disappointingly little material about agricultural protest movements and dissent. There is very much more information about how the government and its agencies responded to farmers' problems. The treatment of the Granger movement, for example, is centered on the responses of governmental institutions, railroads and retail food outlets to the Grange, rather than on the criticisms the Grangers were making. One would like to find a more direct account of farmers' criticisms of the institutions with which they had to deal.

Likewise there is insufficient explanation of another major American farm phenomenon—farm failure. We are informed of the steadily declining absolute numbers and percentages of farmers in America throughout its history, but there is scant explanation of the reasons why so few farmers remain. Was it because of monotony, hard work, not enough contact with other humans, the lure of the city, simple laziness, economic exploitation by railroads (and others), alternate opportunities, bad weather, incompetence or combinations of the above? This is a difficult problem, and, in terms of numbers quite a significant one. Was it not treated because agricultural historians have been concentrating on the American success story and ignoring the probably more numerous failures and dropouts?

These shortcomings reflect more the state of agricultural history than any fault of the author. Dr. Schlebecker's admiration for science and technology runs away with him in his treatment of recent critiques of commercial farming techniques by ecologists. Ecologists are called variously "alarmists" or persons who demonstrate "an inability to understand the present." Snide references to "A well-fed generation of rebels" who "put ecology above economy" reveal an unwillingness to understand or to sympathize with the concerns of ecologists, which are much more serious and based on science than Schlebecker seems to realize.

Schlebecker's attitudes toward insecticides and herbicides serve also to illustrate an anti-ecologist bias. Instead of describing the uncontrolled, long-term use of pesticides as a disaster for human health and the life-support system upon which all life depends and only as an, at best, short-term cure for infestation problems, as a way to buy time until less dangerous methods can be developed, he chooses to ignore the very real and great dangers posed by pesticides and to emphasize their short run benefits. His discussion of Silbesterol, a remarkable, and incidentally carcinogenic, growth hormone illustrates an "agribusiness" point of view. Because of the government's 1972 prohibition of the use of Silbes-

terol he implies that "severe meat shortages quickly ensued." Meat prices did go up annoyingly, but there have probably never been severe meat shortages in the United States, and certainly not during recent years. Figures on U.S. meat consumption elsewhere in the book make that startlingly clear.

In spite of the above criticisms, this is an overwhelmingly important and useful book about the economic and technological history of American farming. It demonstrates clearly just how momentous agriculture and agricultural development has been for the United States' economy and position in world trade. It shows how successful Americans have been in putting machines to work for them to increase agricultural efficiency. It is not, however, a social history of American agriculture except in the most indirect of ways.

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*The American West in the Twentieth Century.* By Gerald D. Nash. (Englewood Cliffs, N.J., Prentice-Hall, 1973. viii 312 pp.)

IT IS A RARE pleasure in these days of increasingly specialized monographs to read an attempt at historical synthesis. In *The American West in the Twentieth Century*, Professor Gerald Nash has made an important contribution to recent American history. Indeed, Nash's book is a significant achievement, both historiographically and analytically.

Historiographically, the book breaks new ground by synthesizing recent western history. Western historiography has traditionally consisted of two phases: the frontier phase in which the debate over the Turner thesis provided scholars with sophisticated analytical parameters; and the post-frontier phase, which has been dominated by hundreds of specialized monographs lacking any general frame of reference. Professor Nash has transcended this shortcoming in post-frontier western history by imposing an original frame of reference to guide historical debate.

Analytically, Nash looks at recent western history from the perspectives of geography, technology, and economics. He divides the region into the Dry West and the Wet West, arguing that geographical factors controlled the development of the area in the twentieth century. The Dry West includes those sparsely-populated, economically underdeveloped states of the western plains, greater southwest, and intermountain region where annual rainfall usually averages less than twelve inches. The Wet West, enjoying twenty-four to thirty inches of rainfall a year, consists of the more heavily-populated, prosperous states of the Pacific Coast and



the western watershed of the Mississippi River. Through the technologies of water management, the two wests gradually integrated into a series of urban oases dependent on the existence of exploitable water resources. Nash argues convincingly that the recent American West was not a rural, frontier society but a series of urban complexes isolated amidst the vast open spaces of the trans-Mississippi Valley and the Pacific Coast. Between 1898 and 1941, as the technological linkage between the two wests developed, the entire region remained a dependent cultural and economic colony of the more sophisticated East. But after World War II, as the union of the Dry and Wet West completed itself, the colonial status vanished and the West assumed its contemporary cultural and economic superiority.

To be sure, the book is marked by minor flaws. The contention that the West is culturally superior to the East is at least debatable. Also, Nash overemphasizes the role California played in the development of the entire West. Finally, the book is at times too ambitious, lapsing into an encyclopedic attempt to cover every aspect of western development. Nevertheless, by outlining important developments and by providing historians with new analytical tools to approach the study of the American West, Professor Nash has made a lasting contribution to United States history.

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*Essays on the American West, 1973–1974.* Edited by Thomas G. Alexander. (Charles Redd Monographs in Western History, No. 5; Provo, Brigham Young University Press, 1975. 131 pp.)

THIS VOLUME, the fifth in a series, contains six essays originally presented as the Charles Redd Lectures on the American West at Brigham Young University during 1973–74. The book is printed by the offset method, a relatively inexpensive process allowing publication of research which might not otherwise see the light of day. It is a technique that could be used more extensively for publication of valuable scholarly or regional history for a limited audience.

The essays all treat aspects of Great Basin history. Two — Leroy R. Hafen, "The Opening and Development of the First Route from the Rockies to the Pacific," and Ted J. Warner, "The Significance of the Domínguez-Vélez de Escalante Expedition" — offer contrasting interpretations of early exploration. Hafen provides a traditional account of the "Escalante party," but Warner refurbishes the reputation of Father Francisco Domínguez as the primary leader of the expedition.

Three of the articles relate to topics of current interest—Indians, women, and the environment. S. Lyman Tyler in "The Recent Urbanization of the American Indian," surveys the recent accelerated movement of the Indian from the reservation, suggests demographic trends among urban Indians, and discusses efforts to extend federal programs to non-reservation Indians. Not all would agree with Tyler's optimism for the future of urban Indians based on self-help or federal programs, and most will question his assertion that the occupations of Alcatraz, Bureau of Indian Affairs headquarters, and Wounded Knee represented the use of "peaceful but so-called militant methods" (p. 54).

"Woman's Place Is In the Constitution: The Struggle for Equal Rights in Utah in 1895" by Jean Bickmore White traces the fight in the Utah constitutional convention over woman suffrage. Although she recounts the debate in some detail, her conclusion is that it was all a pro-forma affair as the vote for women in Utah was an issue decided during the territorial period. As Professor White notes, although she passes quickly over the point, "woman suffrage had already been tried in Utah for seventeen years and the territory had survived the experience" (p. 100). The story of the earlier fight has been admirably told by T. A. Larson in an article in the January, 1972, issue of *The Western Historical Quarterly*.

Perhaps the most significant contribution comes from geographer Richard H. Jackson in "Righteousness and Environmental Change: The Mormons and the Environment." It is generally accepted that Brigham Young did not select the Salt Lake Valley as the home of the Saints in one dramatic, inspired moment, but that the decision had been carefully made prior to departure from Nauvoo. Jackson adds substantive detail to this interpretation. He indicates that the Mormon leadership studied irrigation projects prior to the move; he shows that early Mormon assessments of soil, vegetation, and climate in the Salt Lake area were generally favorable. But Jackson also argues that the Mormons were less optimistic than other nineteenth-century frontiersmen that negative aspects of the environment would change as a natural consequence of settlement. The Mormons did not believe "rain follows the plow," but assumed from the start that they would need to work to overcome negative aspects and take advantage of positive features of the Great Basin environment.

The final selection is a biographical sketch of Charles Redd by Karl E. Young, a professor of Elizabethan literature. Perhaps the analogy that Young draws between Redd's career in Utah in the late nineteenth and first half of the twentieth centuries and that of Elizabethan adventurers is carried too far, but Redd emerges as a vivid personality as well as an eminently successful western businessman. A more appropriate analogy might characterize Redd as the John D. Rockefeller or Andrew Carnegie of southeastern Utah.

Although the purpose of the book is sound, to bring together articles "dealing with various aspects of Western development . . . from authors

representing various disciplines," one can question if the final product was worth the effort. The essays, with the exception of Jackson's and that on Redd, either recount well-known material or are ephemeral. Hopefully other university presses and state historical societies will initiate efforts similar in format but superior in result.

KENT D. RICHARDS

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*Ghost Trails to California.* By Thomas H. Hunt; photographs by Thomas H. Hunt and Robert V. H. Adams. (Images of America Series, Palo Alto, American West Publishing Company, 1974. 264 pp., maps, illustrations, index. \$20.00)

IN THE PREFACE to this beautiful book Thomas Hunt informs us that he and photographer Robert Adams spent the leisure time of more than six years backpacking to "some of the least known and seldom visited regions of our country," and covered at least 20,000 miles by driving and hiking in order to trace the great paths to California. Moreover, they took pictures at the same seasons of the year as the emigrants witnessed the scenes, and they tried to catch views that were devoid of all signs of modern civilization. Such dedication to a high standard, such an absorbing labor of love, has paid off handsomely. The result of their endeavors is a splendid book whose quality as well as beauty sets it apart and far above the usual run of "coffee table" books.

The first eighty pages consist of a brief Preface, an "Introduction to the California Trail," and an essay pleading for conservation entitled "The Heritage of the California Trail." Subheadings of the Introduction are "The Emigrants," "The Indians," "The Land," and "The Trail." Interspersed in this section are sketches made on the Trail by one J. Goldsborough Bruff in 1849.

Of special merit in the Introduction are the descriptions of the Great Basin (really several basins); the importance of the Humboldt River (or, as the emigrants called it, the Humbug River); the essay on the emigrants, tougher than their animals and accepting the challenge of a journey that promised death to the loser; the description of the Digger Indians and their lives spent in harmony with nature; and the explanation of the California Trail from the Raft River in southern Idaho to the Humboldt Sink, and its splicing into several trails over the Sierra.

The clarity of the presentation is so good that the reader is well prepared for the main part of the book, "A Pictorial Journey" (pp. 81-256). Even here there is a logical sequence: "The Raft River Approach," "The Hastings Cutoff," "The Humboldt River Route," "The

Applegate-Lassen Route," "The Mormon-Carson Route," "The Stevens-Donner Route," "The Sonora Route," "The Nobles Route," and "The Beckwourth Route." Narration is by way of introductory statements and quotations from the journals of the emigrants, and the choices of these are excellent. The photographs, most of which are in color, are all good and some are of breathtaking beauty.

There is still more. An Appendix contains biographical sketches of every emigrant whose narration is quoted. This is followed by a "Portfolio of Maps," twenty-eight of them not including the one at the front of the book, which show segments of the trails with modern roads, political boundaries, and major landmarks indicated. And there is a good Index.

The author acknowledges his indebtedness to Professor George Stewart whose book, *The California Trail*, is the best historical survey of the subject, and thanks Professor Stewart for reading critically the manuscript. This adds an assurance of accuracy which the reader nevertheless feels, for everything about this fine book reflects care and thoroughness.

No four-wheel-drive explorer, backpacker, or tourist just out to savor the 49'er experience should begin such a project without reading this book. For the armchair pioneer also it brings the challenge of the deserts, canyons, and precipitous mountains into reality. The emigrants referred to California as "the elephant" and the Sierra as "the elephant's backbone." Reading this book, feasting on its photographs, the trail of 125 years ago in pursuit of the elephant comes once again to life.

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*Peter Skene Ogden and the Hudson's Bay Company.* By Gloria Griffen Cline. (Norman: University of Oklahoma Press, 1974. 217 pp., illustrations, notes, bibliography, index, \$8.95).

Many beaver skins were needed to make hats. Only part of a pelt could be used. When the beaver skin came from the trader, it was generally rough, greasy, and covered with coarse brown hair; underneath was the soft, fine, rich fur (wool) that is generally associated with this animal. The first step in hat making, then, was to shave both hair and wool from the skin. The wool and hair were separated by a blowing process, and the bare skin was sold to glue makers. Now the soft, loose wool could be transformed into felt. A suction device pulled it against a revolving perforated copper cone, after which the hood was removed from the cone and placed in a mold, where it was shaped and shellacked. To give it additional pile, more fine fur was added; then, to develop greater luster, brushes, irons, and sandpaper were used to add

the finishing touches to the exquisite hat known as the beaver. By the time Peter Skene Ogden had become a highly respected fur trader, more than 100,000 beaver pelts a year were consumed by the hat-making industry alone. (p. 11)

Peter Skene Ogden (1794–1854) earned a legend for himself in the American and Canadian West as a leader in the fur trade. He was an explorer and trader in the new regions of the west for the Northwest Company of Montreal and later for the Hudson's Bay Company. His name ranks with Jedidiah Smith, Jim Bridger, David Jackson, and William Sublette as an important figure in the far western fur trade during its short-lived zenith from 1820–1840.

During one of several so-called "Snake River Country Expeditions" ordered by the Hudson's Bay Company, Ogden was trapping beaver on the "Unknown River," or "Mary's River," later to be named the Humboldt, as early as 1828. In 1829 and 1830 he moved south from the Humboldt to traverse present-day Nevada from north to south. The murky waters of the Colorado led him to the Gulf of California and from there he turned back northward through California to reach the Hudson's Bay Northwest headquarters at Fort Vancouver on the Columbia.

During his years in the Great Basin he had almost come into conflict with American trappers near the Great Salt Lake in 1825; he had discovered the existence of a stream, the Humboldt, moving from east to west across the Basin; and he had engaged in skirmishes with the Indians, but he had found no great riches in furs.

Gloria Griffen Cline presents in this book a well-researched and readable account of Ogden's life spanning his rough and tough years with the Northwest Company, his services to the Hudson's Bay Company, and finally his later years as a Canadian representative in the negotiations leading to a settlement of the Oregon Country boundary in 1846. A less detailed and less scholarly work on the life of Ogden appeared in 1967 by Archie Binns entitled *Peter Skene Ogden, Fur Trader*. Both works rely heavily on the surviving Snake Country Journals kept by Ogden from 1824 to 1831. The Nevada portion of Ogden's career in the West is of special interest to Cline since she spent some of her early life on a ranch near the Humboldt River, graduated from the University of Nevada, and later produced a work, *Exploring the Great Basin* (1963).

Unfortunately Gloria Griffen Cline died in 1973, making this her final written contribution to the history of Nevada and the West. But in the new wing of the Gatchell Library on the University of Nevada's Reno campus, presently under construction, her parents are furnishing a room and a collection of works on the history of the Great Basin and the American West in memory of their daughter.

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*Early Arizona: Prehistory to Civil War.* By Jay J. Wagoner. (Tucson, University of Arizona Press, 1975. Pp. xvi + 547. \$14.95)

DESPITE THE TITLE of this book, the bulk of the pages are devoted to the period from 1821 to 1863, and most of it comes from American rather than Spanish or Mexican sources. Until the archive kept at the presidios of Tubac and Tucson are found in Mexico, little can be added to what already has been written about this era. Moreover, in the American era of Arizona's colorful history, this book offers little that has not long since been in print. However, it is a most useful summary and synthesis.

For this effort Jay J. Wagoner likely will win few accolades. The writing of state history seems to be the most dangerous game in town these days. Most departments of history at state colleges and universities are filled with intellectuals who look down their academic noses at laborers who plod in the field of the local past; often professors in more arcane and prestigious fields refer to such efforts as "cow-chip history," especially if it is written by someone who does not possess the doctorate of philosophy. Naturally these academic snobs are doing little publishing themselves, for they are too busy contemplating the world situation.

Jay J. Wagoner thus has violated two taboos: he has written regional history, and he is not a professor. A high school teacher in Phoenix, he now has completed two-thirds of a trilogy on the history of the forty-eighth state; earlier he published *Arizona Territory, 1863-1912*. It will be easy for those professors teaching Arizona history at the three state universities to carp at this present effort: errors of fact mar the text, curious omissions are in the bibliography, and the footnotes are at the end of the book rather than at the bottom of each page. Nor is there any real conclusion in it; it simply closes with one brief sentence to the effect that "The Territory of Arizona, which was to last until statehood was achieved in 1912, had been established in the name of the Union" (p. 479).

Yet for this effort Wagoner deserves much credit, high praise, and more thanks than he will receive. Professors teaching state history at the University of Arizona, Arizona State University, and Northern Arizona University—with their research money, light work loads, and library resources—have done too little publishing to appreciate those who do, although they have reserved the right to criticize. Wagoner, who doubtless spent many nights and weekends on this project, along with money from his own pocket, has performed yeoman service by his research and writing. This is the most comprehensive study of Arizona to 1863, and it deserves a wide audience.

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*A Biography of Ezra Thompson Clark.* By Annie Clark Tanner. (Salt Lake City, University of Utah Library, 1975. 82 pp., illustrations, index. \$8.50)

*Twelve Mormon Homes Visited in Succession on a Journey through Utah to Arizona.* By Elizabeth Wood Kane. (Salt Lake City, University of Utah Library, 1974. 149 pp., illustrations, map, index. \$12.00)

THE SHORT biography of Ezra Thompson Clark by his daughter, Annie Clark Tanner, provides only limited interest for the average reader. It is entirely devoted to the life and character of a man who may have been a pillar of the early LDS church, but who was otherwise unremarkable.

In her narrative, Annie Tanner bypasses important historical events and presents a rather simplistic and biased view of early Utah and Mormon history. Those historical facts which are used by the author are done so to provide a background for the main purpose of the book, which is to eulogize her father.

Mormon ideals and customs are stated rather than discussed, and the platitudes used by Mrs. Tanner serve poorly to inform the interested reader. The subject of polygamy is a case in point. Annie Tanner tells us that, "among members of the Church at that time, there was a deep-seated religious conviction that polygamy was ordained of God for man's salvation in the world beyond," and that it was a teaching of the Church, "that only by practising plural marriage could the highest exaltation in God's kingdom be obtained." One who is interested in knowing the source of the advocacy of polygamy in Mormon doctrine needs to look elsewhere.

According to Annie Tanner, "acceptance" was a way of life among Mormons in the days of her father. Wives adjusted to conditions of plural marriage and the idea of male superiority. Ezra Thompson Clark strongly believed in the inequality of the sexes, an idea which his daughter shows signs of questioning. Unfortunately, in this book, Annie Clark Tanner does not pursue her own beliefs, which undoubtedly would have proven more interesting. Instead, she remains true to her subject who she, perhaps unknowingly, portrays as a very practical and not very humble patriarch. Ezra Thompson Clark emerges as a strong father figure, revered and apparently loved by his wives and children. "His motive," wrote his daughter, "was to keep the mastery, not solely to gratify personal ambition but because of his own awareness of superior judgment which he felt was sufficient for all his family."

Books such as these provide pleasant keepsakes for family and friends, but their contribution to history is questionable.

*Twelve Mormon Homes* by Elizabeth Wood Kane is fourth in the series *Utah, the Mormons and the West*, just as the preceding book is the fifth. In letters to her father, which he published in book form, Elizabeth Kane

recounts a journey through Utah during the winter of 1872-73 with a group of Mormons headed by Brigham Young. The author's husband, Thomas L. Kane, was a "friend to the Mormons," and the Kane family had been invited to join the Young party on its annual inspection tour of Mormon settlements from Great Salt Lake to the Arizona border.

A major portion of the narrative is devoted to an intimate portrayal of well-to-do Mormon home life in the 1870's. The author-guest reacted to all the details a nineteenth-century housewife would be expected to notice, such as clean rooms, attractive furnishings, appetizing food and warm hospitality.

As a Gentile, Elizabeth Kane was disturbed, yet curious, about the Mormon custom of polygamy, and her forthright investigation of this controversial institution provides some of the most interesting material in the book. Mrs. Kane put the question to the Mormon women themselves, and was told by two "sister-wives" in one household that they considered each other intimate friends and valued their relationships and role since they lightened "the labors and duties of the household." She was impressed by the attitude of the Mormon women she visited toward each other's children, who were seemingly cared for and loved by all. Considering the loneliness of the western frontier and the nineteenth-century attitude toward the sexual role of women, these attitudes are not difficult to understand, although it should be remembered that Elizabeth Kane heard the testimony of financially secure women who were well cared for. Other accounts of plural marriages are far from idyllic.

Elizabeth Kane questioned many of the Mormon women she visited about their family roles, and asked them if they would be satisfied if their unions were legalized but future polygamous marriages prohibited. The question was then before Congress, and was quite possibly the reason why women were permitted to vote in the Utah Territory in 1870. Those who replied to Mrs. Kane seemed reluctant to pass judgment on an institution their men had sanctioned and which they believed to be God's will. As to their ability to vote, Elizabeth Kane observed, this "infeminine proceeding" was approved by fathers, husbands, brothers and the clergy: and the matter on which their vote was required might decide whether "you were your husband's wife and your children legitimate."

The polygamous ways of Mormons did not win Elizabeth Kane over, but her observations on this short and unique role for American women provide some thoughtful material in a growing literature of women in history. In addition, this simple, straightforward narrative is pleasant reading.

The footnotes provided are helpful and informative since Mrs. Kane's geography is not always accurate. The editor, Everett L. Cooley, has also added some additional historical information and has supplied the correct names for the families visited by the Young party, since the author chose to change original names in her narrative.

LENORE M. KOSSO  
*Reno, Nv.*

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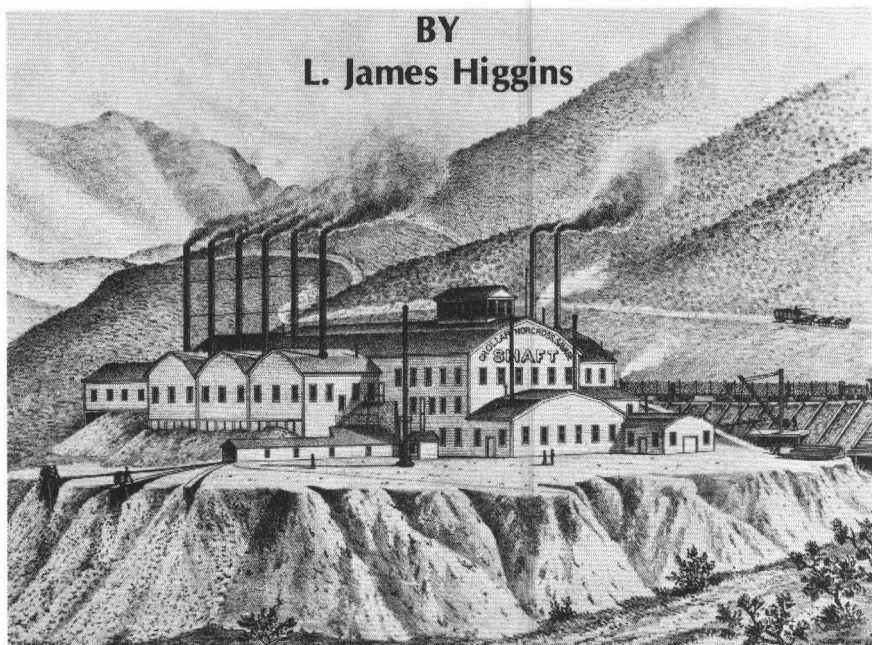
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# A GUIDE TO THE MANUSCRIPT COLLECTIONS AT THE NEVADA HISTORICAL SOCIETY

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