

WILLIAM T. GOODMAN
ALAN GOODMAN
RICK BOLLAR
NICOLE L. ARBOGAST

LAW OFFICE
Goodman and Bollar

CHARTERED
717 7TH STREET
BOX D
RUPERT, IDAHO 83350-0020

AREA CODE 208
TELEPHONE NO.
436-4774
FAX
(208) 436-4837

February 10, 2003

RECEIVED

FEB 12 2003

Department of Water Resources

Office of the Attorney General
Water Resources Unit
1301 North Orchard Street
Boise, ID 83706-2237

Attn: Garrick Baxter, Esquire

Re: Michael Nicholson Water Right Case 43-4173

Dear Mr. Baxter:

Enclosed you will find photocopies of several pages from a Historic Resources Study at the City of Rocks National Reserve. The original of this Book is on file with the National Reserve.

I call your attention to page 56 indicating that water was used on the Nicholson Property as early as 1860 and on page 62, which shows that George W. Lunsford a homesteader and predecessor in interest on the Nicholson ranch claimed irrigable land along Circle Creek and the right to water therein as early as 1882.

We would appreciate your appraisal of this information concerning the priority date claimed by Nicholsons.

Very truly yours,

GOODMAN & BOLLAR



William T. Goodman

WTG:KH

Encl.

cc: Ms. Pamela Wascher
Mr. Michael Nicholson

HISTORIC RESOURCES STUDY
City of Rocks National Reserve
Southcentral Idaho

Contract Number 1443-CX9000-93-031

Prepared for



National Park Service
Pacific West Field Area
Columbia-Cascade System Support Office
Seattle, Washington

by



Missoula, Montana

and

Amphion
Oakland, California

March 1996

native bunchgrass (*agropyrum spicatum*), white sage (*artemisia cana*), buckbrush (Antelope Bitterbrush; *purshia tridentata*) and shadscale (*Atriplex Confertifolia*).¹³¹ By the 1850s, the captive and inflated market of the California mining camps had attracted eastern stockmen, who drove their herds of Texas longhorns and (less often) sheep to the Sacramento Valley by one of three routes: the Gila and Old Spanish trails through Arizona and southern California and the Northern Trail, along the emigrant trail through the City of Rocks.¹³²

As Richard Dana and the other California boosters had promised, the Golden State's agricultural potential was enormous. When in the 1860s the West's gold camps shifted from the Sacramento Valley to Idaho, Nevada, and Montana, California ranchers were ready to herd their cattle "east." Here they competed with the Texas ranchers for a share of the Boise Basin, Pierce, and Virginia City markets.¹³³ The California stock drives traveled from Junction Valley to the Raft River Valley along Trail Creek, through the City of Rocks; Texas drives passed just east, through the Raft River Valley.

By the 1870s, cattle competed with sheep on these eastward drives. California sheepmen most commonly trailed their bands on one of three routes: along Goose Creek (west) through Oakley; along the California Trail through the City of Rocks, and east along the Salt Lake Alternate.¹³⁴

"Cattle Dealer" James Q. Shirley was the first non-Indian to use the City of Rocks as a home base. In 1869, Shirley and his "hired man" trailed 13,000 head of Texas longhorns to "a place called the City of Rocks." Here they "made camp," raising a garden and utilizing "The Cove" below Graham Peak as a natural corral. When the census taker knocked in the spring of 1880, Shirley shared the City of Rocks camp with seven "stockherders." The Keogh brothers purchased Shirley's cattle and landholdings in 1881, forming the Keogh Ranch.¹³⁵

¹³¹ Lind, "History of John, Emma, and Alex Lind's settlement south of Almo," p. 67.

¹³² Little, "A Historical Overview of Livestock Use in the Area of City of Rocks National Reserve From Introduction to 1907," pp. 5-5A; Minidoka National Forest Personnel, "History of the Minidoka National Forest," p. 4, Supervisor's Office Sawtooth National Forest; "The Trip to California, 1860, Martha Missouri Moore," *Covered Wagon Women*, pp. 259-261, excerpt provided by City of Rocks National Reserve.

¹³³ Little, "A Historical Overview of Livestock Use in the Area of City of Rocks National Reserve From Introduction to 1907," pp. 1-2.

¹³⁴ *Ibid.*, p. 12.

¹³⁵ Cottle, "Sketches of Malta and the Raft River Valley," p. 1; *A Pause for Reflection*, p. 615; U.S. Bureau of the Census, "Cassia County, Marsh Basin Enumeration District," *10th Census of Population, 1900*, National Archives Micro-film Laboratory.

Neighboring cattle ranches included the Emery Ranch in the Raft River Valley, A. D. Norton and M. G. Robinson's outfit along the Snake River at Rock Creek, and the Shoe Sole and Winecup ranches located in the Goose Creek Valley west of the City of Rocks. (By 1882, the Winecup ranch alone had 175,000 cattle ranging from the Goose Creek Mountains (Albion Mountains) on the east to the Bruneau River on the west.) These operations used the City of Rocks region as summer range for their cattle and ranch horses, constructing stock ponds, corrals, and the "line cabins" that provided food and shelter to herders.¹³⁶

By the 1880s, the Raft River Valley, with its abundant plantings of alfalfa hay, "became known as the best place in the west to winter sheep... There were free open range privileges and the general area was safe for the bands." Sheepmen, primarily headquartered in northern Utah, also relied upon the Goose Creek Range and the City of Rocks as summer range.¹³⁷

Stock trails historically included that from Junction Valley to the Raft River Valley, along Trail Creek; a trail up the Raft River Valley to Starrh's Ferry, on the Snake River north of present Burley (from which cattle and sheep were shipped to the Wood River Mining District near Hailey); and a trail roughly following the Kelton Road, leading to shipping points on the Union Pacific Railroad.¹³⁸

The drought of 1886-1891 and the endless winters of 1882, 1886, and 1889 brought "years of continual overgrazing" and winter range use to a screeching halt.¹³⁹ The "old time cowmen" reported losses of 50 to 90 percent during the winter of 1882. The Winecup, which branded 38,000 calves in 1885, branded 68 in 1891; the nascent local sheep industry was similarly devastated.¹⁴⁰ In one of the West's great ironies, the fenced fields of the settlers — anathema of the free range cowboy — saved the Idaho stock industry:

¹³⁶ Kathleen Durfee, compiler, "Cowboys of the Early Cattle Days of Idaho," nd., p. 3, excerpt provided by City of Rocks National Reserve; *A Pause for Reflection*, p. 71. As late as the 1960s, small log "line cabins" constructed to provide shelter for range cowboys, remained visible from the road between Oakley and Emory Canyon, just west of the City of Rocks.

¹³⁷ John Mortenson, "History of the Range Lands of the Albion Mountain Division and the Surrounding Territory," October 22, 1935, File: Contacts and other Historical Data, Records of Minidoka National Forest (1924-1938), Supervisor's Office, Sawtooth National Forest, Twin Falls, Idaho; Kathleen Durfee, compiler, "Cowboys of the Early Cattle Days of Idaho," nd., p. 4, excerpt provided by City of Rocks National Reserve.

¹³⁸ "Idaho Range Cattle Industry, Early Cattle Days in Idaho," (Handwritten notation indicates: written by Professor C. W. Hodgson, Animal Husbandry Department, University of Idaho, ca. 1948), Vertical File: Cattle History, IHS, p. 4.

¹³⁹ Andrew Jensen, compiler, "Almo Ward History," in *Almo Ward, Cassia East Stake, Historical Records and Minutes, 1882-1971*, Manuscript #LR10590 2, Church of Jesus Christ of Latter-Day Saints Historical Department, Salt Lake City, Utah.

¹⁴⁰ Ibid.; Hodgson, "Idaho Range Cattle Industry, Early Cattle Days in Idaho," pp. 8-10.

Land now encompassed by the City of Rocks National Reserve, sandwiched between the productive Almo Creek and the promising Junction Valley, is conspicuously absent in Cahoon's account — yet validated Jensen's warning; only limited pockets of land within what is now the reserve were claimed in the first wave of settlement.

In 1882, Iowa farmer George W. Lunsford claimed irrigable land along Circle Creek and the right to the water therein; in 1901 he sold his developed tract to William Tracy who developed the Circle Ranch on this and adjoining land. George Davis filed claim to the upstream tract ten years later. In 1901, Mary Ann Tracy claimed 160 "Desert" acres downstream from Lunsford's original claim, testifying that this land would not, "without artificial irrigation, produce an agricultural crop of any kind in amount reasonably remunerative ... the same is essentially dry and arid land." Construction of storage reservoirs along intermittent North and South Circle creeks ultimately allowed successful cultivation of oats, barley, and alfalfa; the remaining acreage was relegated to spring and summer range for the Tracys' cattle. Margaret Hansen also filed a Desert Land Act claim in 1909, irrigating her fields of alfalfa, wheat, and rye with water conveyed by reservoir and ditch from South Circle Creek. In a delayed conclusion to the first phase of area settlement, Eugene Durfee¹⁶³ patented 160 acres at the eastern gateway to the City of Rocks in 1919. This land was reportedly planted in water-intensive corn, beets, potatoes, and alfalfa suggesting that Durfee had constructed an irrigation system.¹⁶⁴

The big event was when the threshers came to thresh Dad's grain [ca. 1910]. It was a huge machine. It took about 8 teams to turn it. The teams were placed in a big circle with a man sitting in the middle to drive. He used a bull whip to pop them if they didn't pull evenly. It took 2 men on the stack to feed the machine, 2 men to catch the grain, and 2 men to haul [sic] the grain to the granary. Dave Durfee owned the thresher. He took his pay in grain. Neighbor helped neighbor. They worked from sun-up till sun-down. Mother had to have help to cook for the crew. ...

By 1909, the agricultural zone watered by Circle, Almo, Grape, Edwards, Cassia, Marsh, Basin and Circle creeks consisted of almost 12,000 acres of irrigated farmlands, surrounding the communities of Almo, Ward, Elba, Basin and Albion.¹⁶⁵ These lands supported primary crops of hay (native, timothy, or alfalfa) and grain (barley, oats, and wheat). The hay, barley, and oats provided winter feed for ranchers' sheep and cattle; sold to Hailey's Kelton-Boise stage company, the hay also served as an important cash crop. Wheat provided flour and a medium of exchange for "other necessities."

Fruit and vegetables were also successfully grown, primarily for home use due to limits to the transportation infrastructure. Potatoes were an exception — easily transported to the mining communities of Wood River (Hailey) and Boise Basin, they served as one of the few non-grain crops

¹⁶³ Durfee's first name is spelled "Eugene" in the final testimony of claimant files, however his family indicates that he preferred to spell his name "Eugene," the convention that is used throughout this document.

¹⁶⁴ Mary Ann Tracy patent file #567,7/1905, National Archives, Suitland, Maryland.

¹⁶⁵ McCoy, "Report for Forest Atlas, Minidoka National Forest Idaho-Utah," p. 1.

readily converted to cash. Pigs, chickens, and dairy cattle provided additional subsistence and additional assets with which to barter in the local economy: By the 1920s, cheese factories and creameries in Albion, Almo, Burley, Oakley, and Winnemucca, Nevada provided a market for milk and cream; longtime resident Jake Bruesch recalled in a 1974 interview that, circa 1920 "Albert Tracy brought in a herd of Wisconsin cows, Holstein cows, ... and a bunch of us bought 'em — five or ten or fifteen each ... and started to milk 'em and bought separators and separated milk and sold the cream for a good many years." By the 1940s, local resident Bernus Ward reported that, aside from those few ranchers with large cattle herds, "the chief income of the farmers here comes from their milch cows."¹⁶⁶

In his 1888 testimony for final patent of his homestead, George Lunsford claimed ownership of a wagon, a plow, a harrow, a shovel, a hoe, and little more. With these rudimentary tools, he had cleared and planted 20 acres in wheat, oats, barley and potatoes.¹⁶⁷ He most likely harvested this first oat and barley crop with a cradle or a horse-drawn dropper, and then gathered and bound the grain by hand; if he was lucky, he or a neighbor had a "self-rake reaper" to cut and rake the grain.

... I remember [a] ... time when Art and Fred had me straddle a neck yoke tied to the derrick cable. They played like I was a load of hay. They were the horses and would pull me to the top of the derrick and then let me down. It was fun to be up in the air 30 or 40 feet, just dangling. I felt like a bird. I was thoroughly enjoying it, laughing and yelling when Dad heard me and came to investigate. When he saw me at the top of the derrick he let out a yell. Fred and Art let go of the cable like a hot potato and headed for the top of the field where they were safe... I got the swat and was sent to the house. [Life Story of Bertha T. Kimber, n.d., City of Rocks National Reserve.]

By 1909, years after Lunsford had left the area, "two or three individuals" in Almo purchased horse-drawn binders; "during harvest season they went from farm to farm binding grain."¹⁶⁸ The threshing process followed a similar technological evolution:

The first threshing was done by the tramping of horses' feet. In a short time, however, the threshing machine was brought in. It was run by horse power and had belts to carry off the straw. It was not until the last two decades [ca. 1925-1945] that the "blower" was used to eliminate the straw. In the last three decades gasoline engines have replaced the horse power.¹⁶⁹ (Figure 10)

¹⁶⁶ Ibid., p. 7; Elba Ward, *Cassia Stake, Historical Records and Minutes, 1881-1904*, Manuscript #LR2566 23, Church of Jesus Christ of Latter-Day Saints Historical Department, Salt Lake City, Utah; B. Ward, "History of Almo," n.p.; Jake and Ida Bruesch, interviewed by A.W. Dawson, Oral History #180, p. 16.

¹⁶⁷ George Lunsford, Patent File #136, 11/1888, National Archives.

¹⁶⁸ B. Ward, "History of Almo," n.p.

¹⁶⁹ Ibid. See also Lind, "History of John, Emma, and Alex Lind's Settlement south of Almo," p. 39; John Fairchild, "History of the Basin," 3/12/1935, reprinted in *The Oakley News*, 2/26/1968, p. 5; Ellen Sarah Ballingham Betteridge, interviewed by Verna Richardson, October 10, 1974, Grouse Creek Cultural Survey, Fife Folklore Society, Utah State University, Logan, Utah, p. 6.