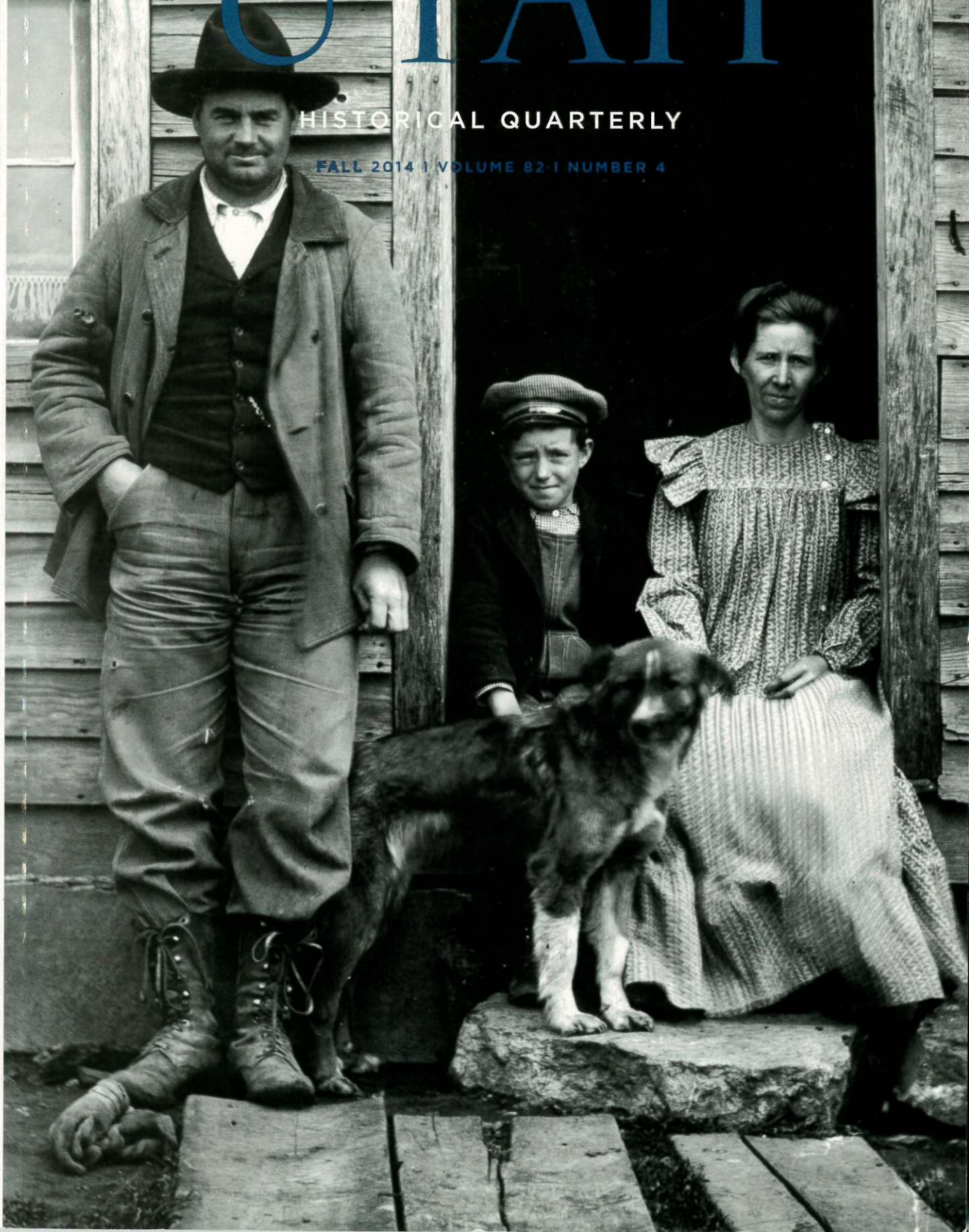
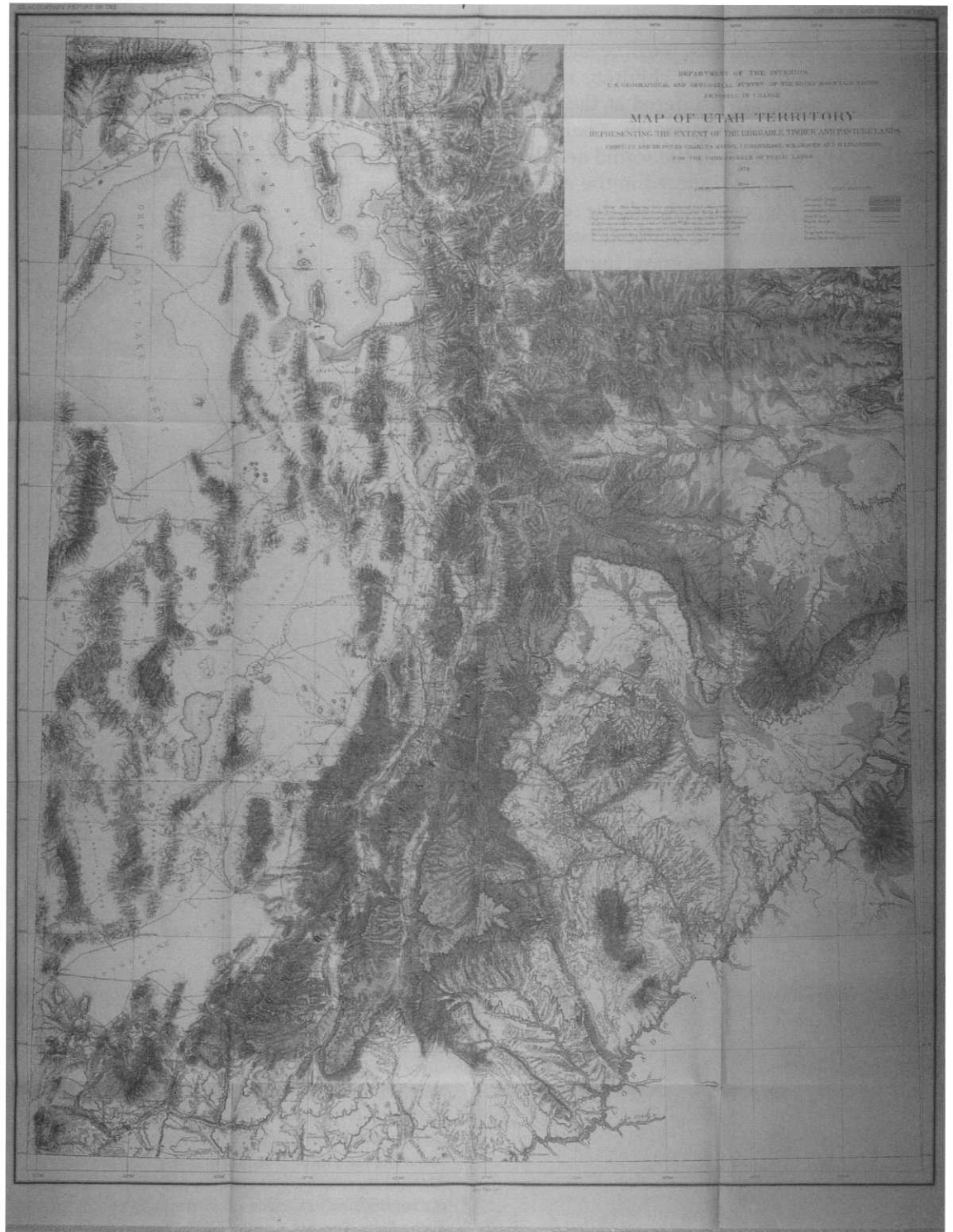


UTAH

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U.S. Geological Survey, Map of Utah Territory Representing the
Extent of the Irrigable, Timber and Pasture Lands (1878), detail.

U.S. GEOLOGICAL SURVEY

WATER LAW ON THE EVE OF STATEHOOD

Israel Bennion and a Conflict in Vernon, 1893–1896

BY JOHN BENNION

The life of Israel Bennion, a second-generation Utah Mormon, was shaped by his desire to establish a Zion community in an arid land.¹ His journals from 1893 to 1896 describe his efforts to resolve a local conflict over water—a type of conflict common where water is precious and streamflows vary during the year—in Vernon, a Mormon village at the south end of Rush Valley in Utah Territory. Bennion believed water ought to be administered according to the pattern established by the first settlers—through church and community channels, with water theoretically distributed according to the needs of all users. Others in Vernon chafed at communal administration and subscribed to a government-based system of prior appropriation, where water could be bought and sold as if it were private property. This practice became codified into law when Utah became a state. The squabble in Vernon illuminates two ideological positions as Utah shifted from communal to capitalistic management of water.

Several trends combined to create conflicts in Mormon villages in Utah in the 1890s: economic development required stable and permanent sources of water that could be transported to where industries needed it; new settlers, which by now included non-Mormons, hoped to gain water rights not mediated by LDS church authorities; and many residents of Utah Territory sought to become a part of the economic fabric of the United States. Even as the former attitudes toward water eroded, replaced gradually by new beliefs that were manifested in water code, Bennion

¹ For Mormons, Zion was both a physical location and a state of righteous community. In his revelations, Joseph Smith designated Missouri as the place of Zion, but the term also came to mean Mormon settlements in the Great Basin, including Bennion's home village of Vernon.

and many other Mormon water users subverted the new laws because they continued to believe in a community approach to water distribution.

As Vernon and other Mormon communities worked through these transitions in the cultural and legal landscape, they had to make decisions concerning what M. Catherine Miller refers to as a core attribute of water law: management of the tension between the rights of individuals and of the community to water access. According to Miller, people who value community more than individual rights resolve conflict differently than those who value individual freedom more than solidarity with their neighbors. The law is perceived either as an instrument of the majority or of the "weak" for protection against the "powerful."² Those engaged in the conflicts over water in Vernon viewed law in both these ways, as a means of maintaining communal or majority control and as a means for protecting individual rights. Water scarcity in the community exacerbated the tension between these two perspectives.

John Wesley Powell was among the first to predict problems concerning water use in the arid West. At the beginning of Powell's career, contemporary thought postulated that rain would follow the plow, that the West had the potential to join the Midwest as America's Garden of the World, and that the Great American Desert would sustain millions of people in fulfillment of manifest destiny.³ Instead of relying on entrenched fantasy, Powell measured water and rainfall, mapped the land, and observed the practices of the West's residents. He determined that "the extent of irrigable land is dependent upon the volume of water carried by the streams."⁴ He estimated that in Utah Terri-

tory only 2.8 percent of the total area could be cultivated through using the water available in streams to irrigate it.⁵ He knew the West was unique, and he sought to set this region on the path of developing land and water to facilitate human habitation.

However, Powell's ideas did not always influence practice. Wallace Stegner writes that "western history is a series of lessons in consequences," primarily that of farmers "trying to impose on a dry country the habits that have been formed in a wet one."⁶ This was certainly true of the people of Vernon. There and elsewhere in Utah Territory, adaptation to a land of insufficient rainfall occurred in a tangled context: the web of traditional law designed for wetter landscapes, a patchwork political system, an atmosphere of tension among political parties and factions and between public and private interest, and the "stubborn and incredibly long-lived forces of tradition, inertia, folklore, ignorance, and regional dependency."⁷ As these forces played out over the decades, they have resulted in massive dam and water delivery systems throughout the West. The historian Donald Worster described the arid West as a "hydraulic society," implying that westerners have been overly dependent on developed water.⁸ Still the predominant view is that large-scale water development was necessary. As political scientist Daniel McCool writes, westerners are subject to "hydrological deter-

be returned to the channel after use, would not work for mining and irrigation. After studying the practices of the Mormons, who had been farming in the area for thirty years, Powell suggested that development of water would require cooperation to build the necessary superstructure of canals, dams, and reservoirs that irrigation required. For this reason he recommended that groups of people gather by common consent and form irrigation districts that had to be recognized by the federal land surveys, thus locating much decision making on the local level but within the context of general laws that would prohibit monopoly by wealthy interests. He said that a water right must be connected to ownership of land, because if the two are separated, speculators with capital could gain ownership of the water and render the land useless.

5 Ibid., 19.

6 Stegner, "Introduction," in Powell, *Report on the Lands*, xiv. Powell predicted that Vernon Creek could irrigate 1,200 acres. Powell, *Report on the Lands*, 125, 140.

7 Stegner, "Introduction," in Powell, *Report on the Lands*, xii.

8 Miller, *Flooding the Courtrooms*, 5.

2 M. Catherine Miller, *Flooding the Courtrooms: Law and Water in the Far West* (Lincoln: University of Nebraska Press, 1993), 39–40.

3 Wallace Stegner, *Beyond the Hundredth Meridian: John Wesley Powell and the Second Opening of the West* (Boston: Houghton Mifflin, 1954), 1–8.

4 John Wesley Powell, *Report on the Lands of the Arid Region of the United States: With a More Detailed Account of the Lands of Utah*, ed. Wallace Stegner (Cambridge, MA: Harvard University Press, 1962), 17. Powell also made some significant observations concerning development and management of water in the West, which would have simplified water law and practice if they had been observed when Utah became a state. He wrote that common water law, which required water to



Detail of the 1878 Map of Utah Territory, with shaded areas in the valleys representing irrigable lands. Vernon is located at the bottom left-hand corner of the map at the south end of Rush Valley.

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U.S. GEOLOGICAL SURVEY

minism.”⁹ The people of Vernon, a town founded at the convergence of several creeks that flow from the sickle-shaped Sheeprock Range, believed that their destinies depended on the development of water. For them, like other settlers in the West, water had a mythic power that enabled, distorted, and amplified the ways they viewed it and the land it flowed—or did not flow—across.¹⁰

Despite the Mormon tradition of responding to difficulties communally, the scarcity of water eventually caused conflicts in Vernon

and among many of the settlers of Utah Territory, and they would need recourse to law and mediation to resolve those conflicts. For the historian Donald J. Pisani, the development of water law in the West reflected the transition from local agriculture to mining, commercial agriculture, and other industries as the primary means of economic activity and from viewing water as available to all the members of a community to seeing it as transportable property, using prior appropriation as a guide to rights.¹¹

⁹ Daniel C. McCool, *Waters of Zion: The Politics of Water in Utah* (Salt Lake City: University of Utah Press, 1995), 3.

¹⁰ *Ibid.*, 3.

¹¹ Donald Pisani, *To Reclaim a Divided West: Water, Law, and Public Policy, 1848–1902* (Albuquerque: University of New Mexico Press, 1992). According to Gordon Morris Bakken, the first historians of water law in the West based their analyses on Frederick Jackson Turner’s 1893 thesis that the frontier had absolute effect; rather than relying on precedent, settlers codified

FOR THE PEOPLE OF VERNON, WATER HAD A MYTHIC POWER THAT ENABLED, DISTORTED, AND AMPLIFIED THE WAYS THEY VIEWED IT AND THE LAND IT FLOWED—OR DID NOT FLOW—ACROSS.

Mining camps, often located far from a water source, required fixed and secure water rights—what John Leshy refers to as a “harsher and sharper-edged set of principles” than riparian water law.¹² According to Pisani, for both agriculture and mining in the West “the chronological priority of a use transcended the value of a use” and “rights to water were exclusive and absolute.”¹³ This was distinct from the riparian water system, which depended on the direct proximity of the land to a stream of water. Westerners considered owning and consolidating water to be necessary for

water law based on their frontier experiences. “Turner and the Law: Historiography,” *The Development of Law on the Rocky Mountain Frontier: Civil Law and Society, 1850–1912* (Westport, CT: Greenwood Press, 1983), 9–20. This kind of thinking by historians and water users has led to viewing current practice as inevitable and not based on enduring human tradition. However, most contemporary historians see the creation of water law in the West as dynamic and dependent on a network of causes. See Bakken, *Development of Law*, 3, 7; Miller, *Flooding the Courtrooms*, 5; McCool, *Waters of Zion*, 4; and Kurt Vedder, “Water Development in Salt Lake Valley: 1847–1885,” in McCool, *Waters of Zion*, 28–52.

12 John Leshy, “Prior Appropriation Doctrine of Water Law in the West: An Emperor with Few Clothes,” *Journal of the West* 29, no. 3 (1990), 5–7.

13 Donald Pisani, *Water, Land, and Law in the West: The Limits of Public Policy, 1850–1920* (Lawrence: University of Kansas Press, 1996), 23.

economic development. The problem with prior appropriation was that it did not recognize public interest in how water was used and that it was not correlative to other users other than by right of priority.¹⁴

In *Mormon Country*, Stegner claims that Mormons settled and made decisions in unified groups, which was quite different from the way most of the West was colonized. “The American Dream as historians define it did not fit these whiskered zealots,” Stegner writes. “Theirs was a group dream, not an individual one; a dream of Millennium, not of quick fortune.”¹⁵ Mormons valued the concept of Zion, a community where all the righteous could dwell in peace. Brigham Young taught his people to bind themselves to other members of their community socially, economically, and spiritually.¹⁶ They manifested their idea in practical ways, by building towns patterned after the Heavenly City, where cooperation was more important than individualism.¹⁷ Consequently Mormons did not think of water rights the way most western immigrants did; for them, water was not viewed as property. Young’s 1848 pronouncement prohibiting “private ownership of the streams that come out of the canyons” echoed the English common law view that “rivers were part of God’s plan as revealed in nature.”¹⁸

14 Ibid., 2.

15 Wallace Stegner, *Mormon Country* (Lincoln: Bison Book, 1981), 63.

16 Ibid., 25. The Doctrine and Covenants and the Pearl of Great Price, Mormon scriptures, have much to say about that kind of community: “They that remain, and are pure in heart, shall return, and come to their inheritances, they and their children, with songs of everlasting joy, to build up the waste places of Zion” (Doctrine and Covenants 101:18), and “The Lord called his people Zion, because they were of one heart and one mind” (Moses 7:18–19).

17 Stegner, *Mormon Country*, 28.

18 Pisani, *To Reclaim a Divided West*, 48; Pisani, *Water, Land, Law in the West*, 9. He records that William Blackstone described water as “a moving wandering thing,” not easily made into property. According to Gordon Bakken, Mormons created a tradition that combined distributive administration and individual appropriation. Whether this method of management was authoritarian or communal depends on the historian: Bakken suggests management was hierarchical. *The Development of Law on the Rocky Mountain Frontier*, 32, 36. Thomas O’Dea wrote that water management followed “the general outlines of their economic ethic of co-operation and their strong conception of the public aspects of property.” *The Mormons* (Chicago: University

The provisional State of Deseret's first legislation sustained this communal approach to water: individuals did not have the right to appropriate water, and the church granted the use of water to communities, leaders, and public officials to administer to others.¹⁹ Leonard Arrington writes that "dams and ditches were constructed on a community basis, rights to use the water were associated with the utilization of land, and a public authority was appointed to supervise the appropriation of water for culinary, industrial, and agricultural purposes."²⁰ Settlers assigned water masters and worked together to build irrigation systems.²¹ Church organization and water associations were not distinct. Users earned proportions of water by their labor and kept the right through continued "beneficial use."²² George Thomas finds that economic cooperation during this pre-territorial period kept settlers from acquiring more land and water than they could practically use.²³ Working together also made development possible, because farmers were too poor to construct an irrigation superstructure without community support. This cooperative venture constituted "one of the greatest and most successful community or cooperative undertakings in the history of America."²⁴

of Chicago Press, 1957), 202. Thomas Alexander wrote that before 1852 administration was through common consent. "Interdependence and Change: Mutual Irrigation Companies in Utah's Wasatch Oasis in an Age of Modernization, 1870-1930," *Utah Historical Quarterly* 71, no. 4 (Fall 2003): 293. This conflict of interpretation among historians reflects the people they studied, who lived inside the tension between authority and individual right.

19 Wells A. Hutchins, *The Utah Law of Water Rights*, State Engineer of Utah and Natural Resource Economics Division, Economic Research Service, USDA, 1965, 8. See also Hutchins, *Water Rights Laws in the Nineteen Western States: Volume I*, Miscellaneous Publication No. 1206, Natural Resource Economics Division, Economic Research Service, USDA, 285.

20 Leonard J. Arrington, *Great Basin Kingdom: An Economic History of the Latter-day Saints, 1830-1900* (Urbana and Chicago: University of Illinois Press, 2005), 53. See also George Thomas, *The Development of Institutions under Irrigation* (New York: MacMillan, 1920), 19-20.

21 Arrington, *Great Basin Kingdom*, 53; O'Dea, *Mormons*, 201.

22 O'Dea, *Mormons*, 201-202; Arrington, *Great Basin Kingdom*, 53.

23 Thomas, *Development of Institutions*; Hutchings, *Utah Law of Water Rights*, 12.

24 Thomas, *Development of Institutions*, 27.

Young and other leaders encouraged agricultural production and warned against mining and outside, non-Mormon funding of industry.²⁵ Continuing that tradition, the territorial legislature passed an 1852 law codifying the tradition that water rights would remain tied to land. The legislature assigned county courts to control water privileges, though the Mormon church largely continued to manage and control water development in the territory, claiming to do so in the interest of communities.²⁶ A Mormon bishop—or someone appointed by him—generally settled arguments over water. If this arbitration failed to solve the problem, bishop or high council courts levied judgments.²⁷

In 1865 the territorial legislature formally authorized communities to organize irrigation districts.²⁸ Member landholders still had the same communally managed rights to the water. The LDS church continued to supply the money and manpower needed for irrigation projects. From 1865 to statehood, the federal government had limited but gradually expanding involvement in Utah water law and practice. Even though the 1877 Desert Land Act declared that "bona-fide prior appropriation" was the standard for water rights, this system was not often followed in Utah.²⁹ Mormons and federal officials mistrusted each other. Mormons protected their resources from non-Mormons immigrating into the state. Non-Mormons, meanwhile, had to deal with exclusivist Mormon communities in their efforts to gain access to land and water.³⁰

25 Pisani, *To Reclaim a Divided West*, 47.

26 O'Dea, *Mormons*, 203; Hutchins, *Water Rights Laws*, 285-86; Thomas, *Development of Institutions*, 44-45. Thomas G. Alexander, *Utah, the Right Place* (Salt Lake City: Gibbs Smith, 2003), 222.

27 Pisani, *To Reclaim a Divided West*, 48.

28 Arrington, *Great Basin Kingdom*, 53; O'Dea, *Mormons*, 203; Thomas, *Development of Institutions*, 117; Alexander, *Utah, The Right Place*, 222.

29 Pisani, *Water, Land, Law in the West*, 12.

30 As might be expected, historians have interpreted differently the practice of managing water conflicts through the Mormon-controlled probate courts. Bakken writes that keeping power in these courts prevented decisions from being made by the non-Mormon Supreme Court and that giving authority to irrigation companies made sure that the Mormon majority would have power over water: Bakken, *Development of Law*, 36-38. But Thomas praises this system of management because it focused on community welfare without



This vista of the southern end of Rush Valley shows the expanse of arid ground that the streams of water from Main, Bennion, and Harker Canyons had to cross to get to Vernon.

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C. RILEY NELSON

In 1880, the Utah Supreme Court declared in *Monroe v. Ivie* that the power of irrigation companies had become too strong and that water and land ought to be freely accessible for appropriation by all, whether Mormon or non-Mormon.³¹ That year the Utah legislature

ignoring individual rights. It was, he argues, a simple, efficient, inexpensive system managed by county officials familiar with the problems that water users faced. Thomas, *Development of Institutions*, 91.

31 Bakken believes this declaration was the primary force behind the Irrigation Act of 1880, but that in passing this body of laws the Mormon legislature only gave lip service to individual appropriation. The new laws simply transferred power from the probate courts to county water commissions and kept much of the previous communitarian and exclusionist system intact. Bakken, *Development of Law*, 36, 38. Thomas argued that the 1880 law was possibly created due to fear of the federal government soon controlling the county courts, but he said that the changes were significant and disastrous—a “marked step in retrogression”—primarily because it declared that once water was appropriated it became private property. Thomas, *Development of Institutions*, 53–54, 56.

passed an act repealing the 1852 statute and creating “vested and accrued” primary (average stream) and secondary (spring floodwaters) water rights.³² Secondary claims were honored only when sufficient water existed to serve all primary rights, such as in early spring.³³ The new law was confusing for communities as they tried to interpret it. While recognizing established rights, it did not provide legal authorization to new appropriations.³⁴ In 1881, the district judge Phillip Emerson declared the 1880 law void because it violated the territorial Organic Act that had vested power over such decisions in district courts. Most counties reportedly ignored this judgment, and individuals continued to scramble to establish priority over water.³⁵ In 1886 in Lehi, Utah, older pioneers tried to dispossess newer settlers. In the consequent case, the Utah Supreme Court declared that settlers before 1880 had equal right to the water, but prior appropria-

32 Bakken, *Development of Law*, 73; Alexander, *Utah, The Right Place*, 223.

33 In addition, as a means for older pioneer communities to retain control of the water, the law divided primary water rights into three stages of settlement: prior to 1860, 1860 to 1880, and after 1880. Pisani, *To Reclaim a Divided West*, 49. In each category the rights of the users were honored equally before the rights of users in a latter category.

34 Hutchins, *Utah Law of Water Rights*, 9, and *Water Rights Laws*, 286.

35 Val Holley, “Showdown at Geddes Gulch: How Prior Appropriation Ambushed Weber County,” *Utah Historical Quarterly* 77, no. 4 (2009): 338.

tion became the rule for determining right in diversions made after that date. Robert Dunbar describes the situation in Utah after the 1880 law as “a jungle of uncontrolled appropriations and undetermined water rights.”³⁶ Water users in some counties decided the uncertainty meant that anybody could use any water they could divert.³⁷ Despite the confusion, irrigators in many areas such as along the Weber River in northern Utah and Salt Creek in central Utah resorted to the law to defend or attack claims on water.³⁸ But in other communities, including Vernon, water users avoided the non-Mormon courts and settled water difficulties through church courts. Water rights remained ambiguous until 1897, when the new state legislature codified prior appropriation as the sole standard for Utah.

This brief history shows some of the forces that, between settlement and statehood, caused Utahns to abandon a communal system of water management and to adopt that system used in other western states, where water was property allotted through prior appropriation. In Vernon, the transition was accomplished only with difficulty. Conflict there, as in other parts of the state, reflected, in the words of Thomas Alexander, a “battle between an older Utah which had been built upon cooperation and a newer Utah which was to emerge in the twentieth century built upon a capitalistic base.”³⁹

Vernon lies at the southern end of Rush Valley in current-day Tooele County. The Sheepprock Range curves to the south of this Mormon village in the shape of a scythe. In Israel Bennion’s time several streams—Vernon, Bennion, Dutch, and Harker—flowed from the mountains and converged in a delta, where farmers settled in 1863 because of the rich topsoil. Through the eons the

winding of the largest stream carved out a long valley, so Vernon lies about one hundred feet below the level of the flat. Early in the settlement of Vernon, farmers diverted water from a channel that flowed through the long, narrow valley.

During the disagreements over water between 1893 and 1896, Israel Bennion’s decisions were consistently made on the basis of authority and community, while his opponents upheld the authority of an individual to establish water rights independent of other users. Although a water master was appointed sometime in the 1870s, the Vernon Irrigation Company was not organized until June 27, 1892. A later water master writes that local farmers formed the company “to help solve some of the water problems that plagued many of the early settlers in the valley.”⁴⁰ However, many people came to resent the tightening control this company exerted and found onerous the assessments needed to expand community ditches.

In January 1894, Bennion summarized efforts during the previous year to settle “water difficulties, existing in Vernon.”⁴¹ John C. Sharp, the local LDS bishop, and Bennion, one of Sharp’s counselors, saw the benefits of continuing with an authority-driven system where church officials managed the water that was available to the community. Erick Johan Pehrson, the other counselor in the bishopric, advocated for a system that recognized individual claims on and democratic management of water. Bennion viewed Pehrson’s act as a selfish one, but he never discussed the fact that while Pehrson was on a mission in 1869, an unnamed speculator made a claim on his property, proved up, and took it from him.⁴² Pehrson might have once been bitter about the trend toward civil law having power independent of ecclesiastical

36 Ibid., 337. See also Alexander, *Utah, the Right Place*, 223–24.

37 Holley, “Showdown at Geddes Gulch,” 338.

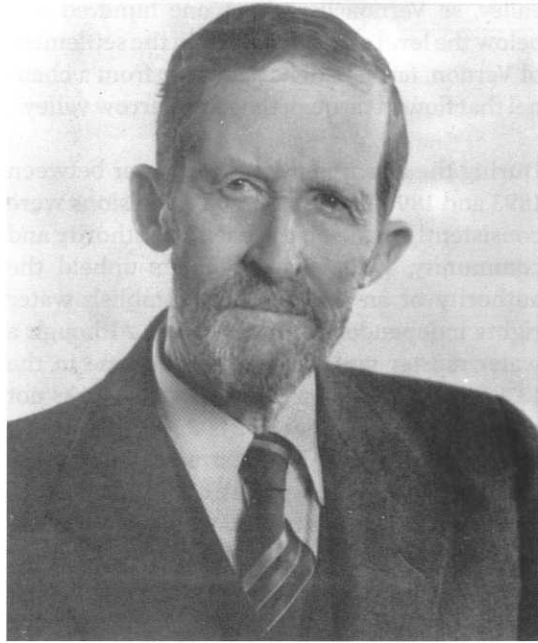
38 Clinton Robert Brimhall and Sandra Dawn Brimhall, “The Goshen and Mona Water Dispute, 1873–1881: A Case Study of the Struggle between Ecclesiastical and Secular Authority in Utah,” *Utah Historical Quarterly* 78, no. 4 (2010), 326–43. See also Holley, “Showdown at Geddes Gulch.”

39 Alexander, “John Wesley Powell, the Irrigation Survey, and the Inauguration of the Second Phase of Irrigation Development in Utah,” *Utah Historical Quarterly* 37, no. 2 (Spring 1969): 205.

40 Deveral J. Fredricson, “History of Vernon Irrigation Company,” in *Centennial Story Collection: Souvenir of Centennial Organization of Vernon Ward*, n.p.: Transcript Bulletin Press, 1977.

41 Israel Bennion, Journal, January 7, 1894, Israel Bennion Journals, 1883, 1894–1943, MS 13900, LDS Church History Library, Salt Lake City, Utah (hereafter CHL). According to their descendants living in Vernon—Jackie, Helen, and Raymond Pehrson—neither Erick nor his son Emil left journals, except for Erick’s missionary journal.

42 Raymond Pehrson, interview by the author, May 17, 2013. None of the Pehrsons now living in Vernon knows who this person was.

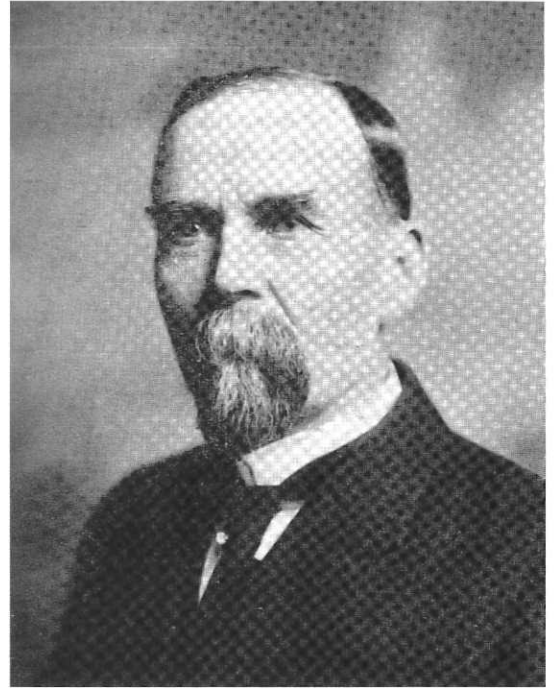


Israel Bennion.

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UTAH STATE HISTORICAL SOCIETY

influence, but he began paying attention to that new set of laws. Tangled relationships intensified the conflict: Sharp served as president of the Vernon Water Company; Pehrson was vice president, Bennion secretary. Also, Bennion had married as his first wife Sharp's cousin, and as his second wife, one of Pehrson's daughters.

In a long retrospective at the start of his journal Bennion described the historical context, writing that the "primary water rights to Vernon creek consisted of water for 220 acres of land, half meadow, and half plough land." He claimed that the community generally used the water from the first of June through the first of September each year. "In the early settlement of the place," he wrote, "A. P. Ericson and E. J. Pehrson, seeing here an opening, commenced to spread the water on land below the town." They used spring runoff (secondary water) from farmers located upstream. "Years rolled on; Vernon's 220 acres became 'run-out,' choked out with wild oats; did not yield enough to pay for cultivation." The infestation by wild



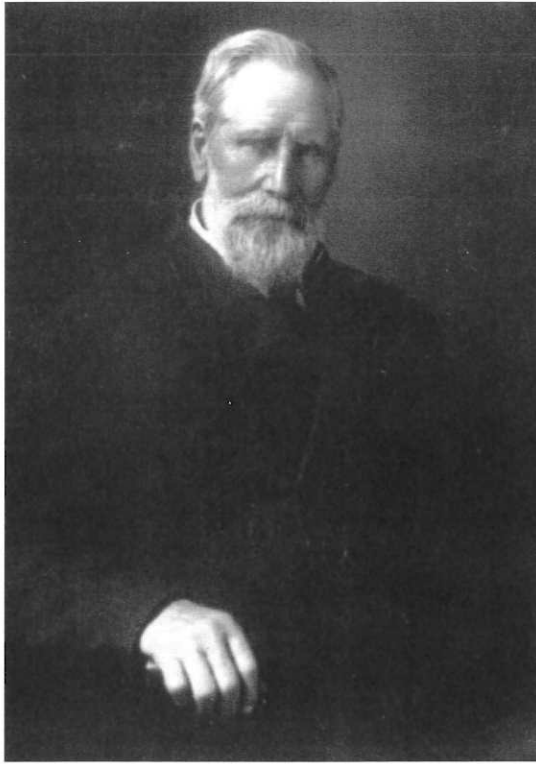
John C. Sharp, bishop of the LDS Vernon ward in 1894 and president of the Vernon Irrigation Company.

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MEN OF AFFAIRS IN THE STATE OF UTAH
(1914)

oats might have been a natural invasion or it might have been facilitated by depleted soil. This condition reduced pasture and the amount of grass hay available to cut. "Our stock soon trimmed off our little patch of ground, and there being nowhere else for them to go, we were compelled to feed them, from November 1st to May 1st. This meant poverty for beast, poverty for man."⁴³ By the early 1890s, open rangeland had been seriously overgrazed. Early settlers of southern Rush Valley stocked cattle, sheep, and horses in the valleys, foothills, and canyons, where native grasses had established ecological primacy.⁴⁴ Bennion inherited a depleted landscape both in his irrigated land and in the open land he may have used as a winter range for his cattle.

⁴³ Bennion, Journal, January 7, 1894. This continues Bennion's long summary of the previous year's events.

⁴⁴ Glynn Bennion, "A Pioneer Cattle Venture of the Bennion Family," *Utah Historical Quarterly* 34, no. 4 (1966): 315–25.



Erick John Pehrson, second counselor in the Vernon ward bishopric and vice president of the water company.

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JACQUELINE PEHRSON

However, Bennion noticed that someone was prospering: "Below [our fields], the two men I have named had hundreds of acres of hay and pasture. They sold us pasturage; they sold us hay; they got rich as we became poor; they fattened on what we threw away."⁴⁵ Bennion seemed to imply, in his summary of the previous year's conflict, that the rights of the community were above the rights of the individual and that when conditions changed, water practice had to change so that the community could continue to prosper.

⁴⁵ Thomas, in *Development of Institutions*, describes what was known as waste water, and Bennion's language here is similar. Thomas said that this is one of the problematic aspects of the 1880 irrigation act, which provided for filing on "excess" water to obtain secondary rights. Because water studies had not been performed, officials found it difficult to determine what "normal" flow was; consequently, they had trouble determining the excess.

Although Bennion expressed some self-doubt in his journal concerning his role in the conflict, he did not question his belief that Mormons were destined to fill the West. Prosperity was an index to righteousness and often worked against communal values. Both views were Eurocentric, disregarding the rights of the Goshutes who lived in Rush Valley before the Mormons came. Sometime during 1893, before his journal began, Bennion decided that it would improve the community to expand the land included in the domain of the irrigation company, which would also require using spring water previously used by Ericson and Pehrson. The conflict intensified: "When I read between the lines, and realized what was going on, and undertook to get out of the trap those men said 'no'; it would be an injury to them, to quit throwing away; it was their means of living. And the law said 'You must not make any change.'" Bennion proposed that the main body of settlers build a new canal and distribute excess runoff to new company land.⁴⁶

Transferring water from one location to another was acceptable under territorial law.⁴⁷ However, this new diversion of water was problematic because there had to be available water to appropriate before a new diversion could be made.⁴⁸ All water flowing to Vernon had certainly already been claimed. The appropriation doctrine had several other elements that caused Sharp and Bennion problems: first in time is first in right; no user could impair the rights of other users; and the water had to be put to beneficial use, or the right would be lost.⁴⁹ When Pehrson and Ericson diverted spring runoff, they claimed a right to that secondary water.

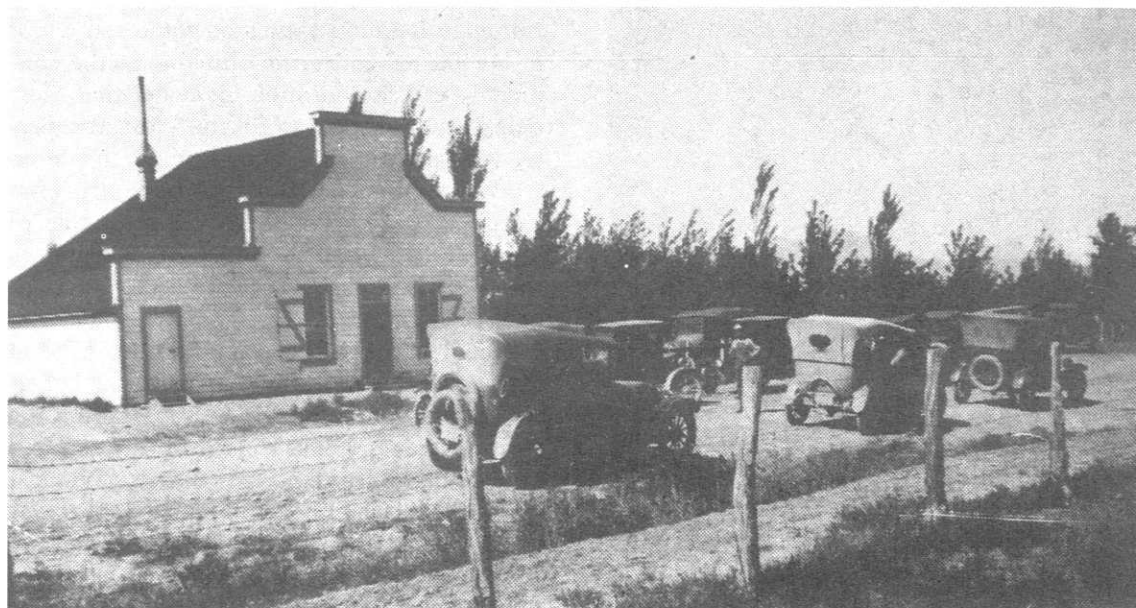
Although Bennion recognized the Pehrson and Ericson claim, he firmly believed that the community was more important than any individual right. He did not equivocate in his journal: "Knowing that the life of Vernon depended on her having the iron hand of Secondary Water Right removed from her throat, I interested that strong, determined, organizer, Bishop John C. Sharp, in the matter; and together we went to

⁴⁶ Bennion, Journal, January 7, 1894.

⁴⁷ Thomas, *Development of Institutions*, 82.

⁴⁸ Ibid., 4.

⁴⁹ Ibid., 1, 2, 5.



This picture of Vernon, taken around 1915, shows the location of one of the ditches dug by the Vernon Irrigation Company in 1894 to flow along the town's primary street.

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THE PEOPLE OF VERNON: A COMPILATION OF
LIFE STORIES (1983)

the rescue.” Bennion’s journals do not specify his reasons, but he probably recognized that a new diversion above town to irrigate new fields would have to follow the rules set up by the 1880 law and would be junior to the claim made by Ericson and Pehrson. Continuing his summary of these acts, Bennion wrote, “Amid suspicion, accusation, and bitter opposition, we worked, and accomplished our object. We bought out Ericson, compromised with Pehrson; secured control of the secondary water rights, and then sold the same to Vernon for a reasonable sum; then as President and Secretary of the Vernon Irrigation Company, we secured the vote of the shareholders to extend our limits from 220 acres to 1100 acres.”⁵⁰ This process was completed following the advice of an attorney, LeGrand Young. On April 24, 1893, Bennion bought seventy-two-and-a-half acres for \$750.⁵¹ Following the principles of the new

standard of prior appropriation, Bennion and Sharp purchased the land and its water right, but did so with traditional, communal goals in mind. Bennion and Sharp’s purpose was to retain authority for water distribution in the irrigation company, in the person of the water master, who would be appointed by him and Sharp. The grantee index for Tooele County shows that through the years between 1894 and 1896 water shares were bought, sold, traded, and lost through assessment by the water company. To Bennion, such transactions assisted struggling farmers, thus serving the larger community.

Their next act was to initiate a new ditch “to carry the waters of Vernon Creek along the bench to the head of the street, there to be distributed.” Making a new ditch would enable farmers to irrigate land eastward of and higher than the old channel, including land on the bench or flat above Vernon. However, the stream would be distributed to five times as much land before it flowed to land below town, so there would not be as much water for use by Pehrson and Ericson, nor to other farmers whose land holdings did not expand as Bennion and Sharp’s did. Bennion thought of the ditch as “the means of beautifying and enlarging our town and opening to it the door of prosperity.” But the compromise that enabled this beautification required Pehrson to give up a bounty he had legal right to.

50 Bennion, Journal, January 7, 1894.

51 Grantee Index A 1888–1896, Tooele County Recorder’s Office, Tooele, Utah.

Bennion hoped his and Sharp's plan would mean the end of conflict over water. As the community prepared to construct the new diversion dam and ditch, he delivered a prayer: "Heavenly Father we have gathered at this place to make an irrigating ditch; wilt Thou bless and consecrate the performance of this labor to the welfare of our souls, and to the building up and beautifying of Zion." He then blessed the mountains that their "treasures of snow" would increase and the springs that they would "pour forth abundantly." He blessed the dam, canal, laterals, and fields "that they may yield abundantly, and that with less irrigation than heretofore, so that more land may be taken up, and more of Thy people provided with homes and the means of sustenance." Lastly, he blessed the people, saying that God would help them be unified and would modify the climate and hence amplify the water if they were righteous. He continued:

Wilt Thou bless these Thy Saints that dwell here, who have shown their faith by coming to this desert place to make a home. May Thy Spirit possess them; may they see eye to eye; realizing and appreciating Thy blessings, in increasing the water, in modifying the climate, and in fact, in giving them the riches of this earth, and the riches of eternity. May brotherly love abound; may the owners of water realize their responsibility to Thee, the Lord of the whole earth, and for a just remuneration, divide their water shares, with others of Thy worthy people; and may all be wise stewards, so that if a man shall sell three-fourths of his water, remaining fourth will produce more than the whole, before it was divided.⁵²

He predicted that dividing the water would multiply it, not unlike the New Testament miracle of the loaves and fishes. His prayer provided a way for good people to use the new laws (where water could be owned privately) in the service of the old tradition. The prayer of promise could have been heard as a not-so-veiled threat: without brotherly love, the water flow would diminish.

⁵² Bennion, *Journal*, January 7, 1894.

Late that summer and fall, the citizens of Vernon completed the diversion dam and ditch. Unfortunately, they first put the ditch to use during the winter. The water froze and flooded onto "the prairie." They then turned the water back into the old channel for the winter.

Despite Bennion's hope that the compromise would settle the problem, late the following spring of 1894, when farmers required water for irrigation, trouble resumed. While part of the problem was the unchangeable scarcity of water, another influence was the unwillingness to share in the work of maintaining the new ditches.⁵³ Irrigation organizations had the power to tax members for irrigation projects that would only help some of the members.⁵⁴ This was the situation in Vernon, where all the members of the company were assessed to expand the land of a few. This caused irritation because one of the few was the already-wealthy Bishop Sharp.

Whatever their specific complaints, the independent-minded individuals in Vernon, disturbed by the restrictiveness of the new system, believed that Bennion and Sharp had taken advantage of them. On April 24, 1894, water from the creek began flowing in the new ditch. When Bennion "found the dam at the head of the irrigating ditch broken" two weeks later, he and Sharp repaired it.⁵⁵ A few days later the stockholders of the water company met to consider David Sharp's dissatisfaction with the new appropriations of water. David "made threats, and left the meeting."⁵⁶ David, Bishop Sharp's first cousin and Bennion's brother-in-law, complained because the company had forced him to make assessed payments in money or labor. When he refused to make these payments, the company stripped him of twelve shares of water.⁵⁷

⁵³ Thomas G. Alexander, "Irrigating the Mormon Heartland: The Operation of the Irrigation Companies in Wasatch Oasis Communities, 1847-1880," *Agricultural History* 76 (2002): 176.

⁵⁴ Thomas, *Institutions under Irrigation*, 125.

⁵⁵ Bennion, *Journal*, May 9, 1894.

⁵⁶ *Ibid.*, May 14, 1894.

⁵⁷ Refusal to pay assessments or work on the system also plagued the irrigation company in Orem, Utah. See Alexander, *Utah, the Right Place*, 223.



The next day David Sharp was arrested by an unnamed official for holding water out of his turn.⁵⁸ It might be that he was using a water share that the water company had stripped from him in lieu of an assessment. An ecclesiastical court tried him the next day.⁵⁹ Sharp retaliated, as reported by Bennion: "D. Sharp had watermaster D. Bennion [Bennion's brother] and Emil Pehrson arrested for breaking his dam."⁶⁰ Emil Pehrson, who helped fulfill the business of the water company, was Erick Pehrson's son, one of the two men who had originally filed on secondary water. The disagreeing parties, with the approval of their religious leader, the stake president, decided to submit their claims to the judgment of an arbitrator.⁶¹ The resulting settlement permitted David Sharp to withdraw from the irrigation company. In return, he "relinquish[ed] all claim to water from October 1st to April 1st of each year." If he was angry about being assessed work or money for an irrigation system that did not benefit him directly, the terms of the settlement likely satisfied his complaint. Sharp took his water shares with him when he left the company, including

This head gate, used when the author was a child, is probably close to the same location as the diversion dam built by the Vernon Irrigation Company in 1894. In the mountains, six miles in the background, are the sources of Vernon irrigation water, currently stored in a reservoir and transported across the flat in an underground pipe.

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AUTHOR'S COLLECTION

those he had lost because of delinquent payments, but he agreed to irrigate a limited amount of land, "not to exceed 30 acres."⁶²

While the arbitration seemed to solve one problem, a week later there was more trouble. "In the evening, Emil Pehrson came to me, and said he would not abide the rules of the Irrigation Company, but would insist on having his turn as it was before any changes were made," Bennion recorded. "I cautioned him against taking such a course, and told him that if the corporation were broken up, within two years the people would be begging to have it reestablished, and to have the measures adopted they

58 Bennion, Journal, May 15, 1894.

59 Ibid., May 16, 1894.

60 Ibid., May 17, 1894.

61 Ibid., May 18, 1894.

62 Ibid., May 22, 1894.



are now so unwilling to accept.”⁶³ Emil, Erick Pehrson’s son, demanded a return to the schedule of water turns from before Bennion and the bishop revised them. His complaint centered not on the assessment but on the duration of his water turn. In addition, perhaps he had watched the water declining in his ditches due to drought. He believed the fault lay with the irrigation company. On a plat map of Vernon roughly dated around the turn of the century, Emil Pehrson owned five parcels of land.⁶⁴ The map shows land being watered from the new ditch, located farther up the bench and to the east than the older irrigation works. Since four of the parcels owned by Pehrson could have been watered directly from the creek, irrigating from the new ditch would have brought water to one-fifth of his land but decreased the flow to the other four-fifths. Pehrson talked “extremely hard” to Bennion about the plan devised by Bennion and Bishop Sharp. He said their acts were dishonest and that they had “robbed the widows and fatherless,” presumably because they had less water to spread across their gardens and small fields. Bennion declared that “the Lord will vindicate me, and also

⁶³ Ibid., May 28, 1894.

⁶⁴ Map of Vernon, no date [circa 1900], in the Tooele County Recorder’s Office, Tooele, Utah. The map post dates 1893.

John C. Sharp’s mansion, built on his property southward in Vernon, is the grandest structure in the history of Vernon.

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Bishop Sharp, as I know that our motives have been for the building up of His Kingdom.”⁶⁵

Pehrson contended that many of the people in Vernon, those who could not afford to acquire more property, had less water when the new land came under irrigation.⁶⁶ Although Pehrson viewed the water company’s act as oppressive, the bishop would have seen the irrigation company as the means through which Vernon

⁶⁵ Bennion, Journal, June 3, 1894.

⁶⁶ Ironically, Pehrson found himself in a position similar to non-Mormon settlers in Utah, who found irrigation companies’ control of water to be excessive. In 1880 the Utah Supreme Court in *Munroe v. Ivie* wrote: “This is a free country, and the lands are open to all, and the appropriation of the water is open to all, and the legislature cannot pass any law that will put it into the power of an irrigating company to control and manage the waters of any part of the Territory, regardless of the rights of the parties. Nor will the court allow irrigating companies to become engines of oppression.” Albert Hagen, *Reports of Cases Determined in the Supreme Court of the Territory of Utah from the January Term, 1877, to the June Term, 1880 Inclusive* (Chicago: Callaghan, 1881), 2:538.

could open new land to irrigation. But although Bennion remarked several times on the bishop's aggressive self-interest, he, too, considered the rights of the community, as embodied in the authority of the bishop, to be superior to the rights of the individual. Bennion, the bishop, and a handful of others stood alone in this judgment. "Opposition to the Bishop runs high," he wrote in June 1894.⁶⁷ Tension had grown because stream flow had declined, inadequate to satisfy irrigation demands. In fact the stream was so low that Bennion could not get water to flow through a new ditch around the upper end of his field.⁶⁸ A week later the water had "given out."⁶⁹ It was a bad year to try to water five times more land with a reduced stream.

On July 4, when the community traditionally gathered to celebrate its freedoms, Bennion wrote about the division between the bishop's faction and the rest of town: "No celebration here, excepting a promiscuous gathering at Durrants', without leadership, without order. The Saints here, on various fancied grievances, have arrayed themselves against the Ward authorities; thus greatly retarding the social, and religious well-being of the Ward." Like his communalism, his reverence for authority was religious in origin. That fall he attended the LDS church's general conference in Salt Lake City, later writing, "The irrigation question was talked of; the course already taken by Bishop Sharp and I in regard to those things was strongly recommended; otherwise we will be brought, in a measure, into subjection to our enemies, who are watching us."⁷⁰ By "enemies," he probably referred to the general incursion of non-Mormons into Utah. He and others believed laxity in this effort would likely take

water rights away from the Mormons, especially if they were not united. Bennion wrote that it wasn't only in Vernon that LDS church authorities worried about the effects of prior appropriation. "The organization of the Utah Company, at the head of which stands the First Presidency, is a move towards making Zion the head and not the heel," he wrote. "The Saints were urged to divide the water and the land, and make such use of both, as to support the most settlers possible; in the organized wards; and to avoid scattering too much."⁷¹ For Bennion, dividing the land and water amongst the community simply made good practical sense, because it was a mingling of economics and religion. The acts and proclamations of Mormon leaders threatened non-Mormon settlers, but this push to retain authority over water with the wards also caused difficulties for newcomers and for other marginal users of the water.

That fall and winter Bennion worked on various projects that would make better use of water during the following spring. He plowed ditches and hauled sods, "making dams in the gulches, so as to catch the flood water and level up the ground."⁷² He completed one ditch "by working hard in wind, rain, and snow." He wanted to complete this ditch so he could use it "very early in the spring."⁷³ His desire was to catch the water before the normal irrigation schedule, just as Erikson and Pehrson had done. Even after the ground froze hard, he kept working, hauling "straw manure to fill up old ditches in hay meadow."⁷⁴

Once again, winter brought a long period of peace. When spring came, trouble resumed. Bennion wrote, "By arrangement with other water owners, Bishop Sharp, Brother Pehrson, and I have been dividing the irrigating water equally. A few days ago Brother Pehrson claimed that the Bishop had been taking more than his share, so he went and stopped my

⁶⁷ Bennion, Journal, June 8, 1894.

⁶⁸ Ibid., June 12, 1894.

⁶⁹ Ibid., June 18, 1894.

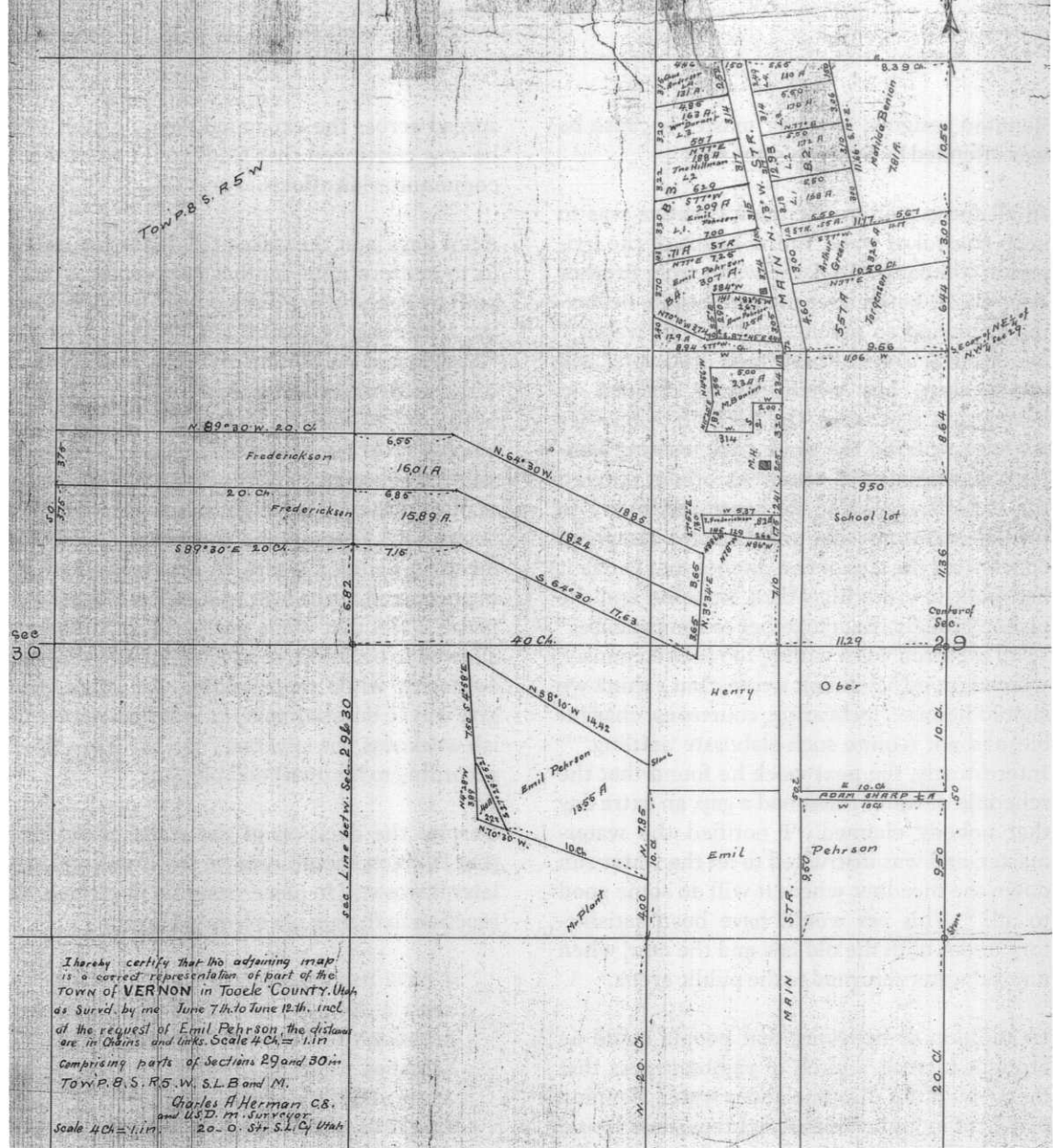
⁷⁰ Ibid., October 8, 1894. The *Deseret Evening News*, October 8, 1894, reported that Franklin Richards spoke in the Mormon General Conference, saying that it was not a good time for the saints to "throw down their guard." They should not be moved to "narrow-minded contrivances for the benefit of the few to the injury of the whole," and they should do nothing in the political arena that would weaken them. During the same conference, Joseph F. Smith said that they should take up land adjacent to already-formed communities, rather than trying to settle in isolated areas where there was no church organization.

⁷¹ Bennion, Journal, October 8, 1894. In an article entitled "Working for Utah," a Mr. Wantland wrote that incorporation of the Utah Company was possibly an effort by the Mormon church to retain political control of land and water when Utah became a state. *Deseret Evening News*, October 8, 1894.

⁷² Bennion, Journal, November 30, 1894.

⁷³ Ibid., December 5, 1894.

⁷⁴ Ibid., February 5, 1895.



stream.”⁷⁵ For some reason Pehrson stopped Bennion’s stream and not the bishop’s, the person he thought was taking more than his share. A few days later, Bennion wrote, “Brother Pehrson gave me a scolding about ‘water,’ with incidental hits against the Bishop and David [Bennion]. Said we were dishonest. I feel that I can hardly tolerate Brother Pehrson’s insults, but I have complained about it to the church authorities before, and they have counseled ‘putting up with it,’ excusing him on account of age, and training; saying ‘you can’t change the spots on

75 Ibid., March 29, 1895. It’s not clear whether Bennion meant father or son, but references to age and habit suggest the elder Pehrson, Erick.

This plat map of Vernon shows the parcels of land owned by Emil Pehrson.

TOOELE COUNTY RECORDER’S OFFICE

the leopard.”⁷⁶ Bennion’s view of communitarian control by church leaders made it difficult for him to embrace any other perspective, so he blamed upbringing and age for Pehrson’s obstinance. Bennion listened to Pehrson more out of a condescending charity than out of a desire to be convinced that his neighbor might have a legitimate complaint. That same day David

76 Ibid., March 30, 1895.

Bennion resigned as water master because he was offended by Pehrson's remarks.

In all these matters, Bennion's motive was to keep control of water in the hands of the irrigation company: "Took the water from Brother Pehrson 20 hours after my turn began, he having grumbled so much about lack of water."⁷⁷ On April 8, David Sharp took the water ten hours early, but when caught claimed to have made a mistake. On April 10, a Brother Anderson played the same trick, costing Bennion eight hours of water. As others entered the battle over water, he continued to try to mediate. Brothers Elg and Durrant disagreed concerning the size of two ditches that Durrant had built to cross Elg's land. Bennion and the bishop brought them together to compromise.⁷⁸ "The brethren were willing to receive counsel, which is good," Bennion wrote, "but I think we should be wise, forbearing, courteous, charitable, and not require such elaborate 'settling.'"⁷⁹ Interestingly, the next week he found that the schedule of water turns had a gap, an extra day that nobody claimed. "I notified the water-master, and was instructed to let the water run down the meadow, where it will do some good to all."⁸⁰ This act would have been satisfactory under both the old law and the new, when unused water returned to the public arena.

In addition to believing that people could be brought to such a pitch of righteousness that they would not disagree about water, Bennion persisted in his belief that righteousness would increase the water: "Watered the lucern by nine o'clock; the surplus water covering most of the hayland. Took the water down to the lower farm, very large stream. I have set the example of selling half my water, and do not miss it."⁸¹ He was determined to make the water

spread across the expanded farming area, and he was convinced that God would reward his communitarian efforts.

A few days later the stake presidency was called in to settle a new conflict concerning a dam built by Pehrson in a ditch owned by the bishop but traversing Pehrson's land. Bennion wrote, "I feel that at the bottom of this, as well as many of our difficulties, is too great love for the things of this world, and too little appreciation of the 'unspeakable things of the Kingdom.' A dollar is allowed precedence of the love and fellowship of our brother."⁸² He might have been speaking about both Pehrson and the bishop. After the meeting, Bennion wrote, "A general handshaking occurred at the last; and apparently all was peace. I feel that while such trifling things are allowed to occasion, so much settling by higher authority, while men holding the priesthood give way to bursts of temper, exhibitions of selfish weakness, the adversary can work mischief, according to his own good pleasure."⁸³

Despite the decision of the stake presidency that Pehrson should remove the dam, five days later it was still in place. Bennion described his reaction to their years of squabbling:

I have become discouraged, working with a divided, fault-finding people; and don't feel to undertake any more schemes. Utah is about to become a state, and the chances are that irrigation laws will be revised. In the interests of the state (the people), committees should investigate the sources of water supply, securing to prior holders reasonable rights and privileges; and throwing open all surplus to occupation and settlement; providing for economical use of water, as against waste, destruction, selfishness, etc. We are educated to think that another's

⁷⁷ Ibid., April 1, 1895.

⁷⁸ They agreed that the ditch should remain the same size, that Durrant should keep it clean, and that Durrant's old ditch would be abandoned so Elg could fill it in. They were warned not to allow water to back up onto a neighbor's land. Ibid., April 30, 1895.

⁷⁹ Ibid.

⁸⁰ Ibid., May 6, 1895.

⁸¹ Ibid., May 8, 1895. Powell, in Report on the Lands, 104-06, wrote that the streams actually did increase in volume directly after the early Mormon settlements. He rejected several explanations, such as the laying of railroad tracks, the cultivation of the soil, or divine

providence. Instead, Powell attributed the increase to changes in the surface of the land on which rain fell: damage to forests and grassland forced water to flow into streams rather than being absorbed into the earth. Powell also suggested that causes were removal of driftwood and beaver dams that impeded flow. Bennion may have watched the increase in the stream, but chose to believe that God's blessing was the cause.

⁸² Bennion, Journal, May 11, 1895.

⁸³ Ibid., May 12, 1895.

loss is our gain. The idea of gain to both is, in our philosophy, adverse to all law and reason. We are in need of a higher education, a broader philanthropy, a deeper philosophy, a charitable, brotherly, Christianity; "each man seeking the interest of his neighbor;" "preferring another, in honor, before ourselves." This would tend to bring about harmony in matters pertaining to irrigation and also in a number of other directions.⁸⁴

Bennion recognized the new law supporting prior appropriation but hoped that communitarian feeling would enable distribution of water in a manner that wouldn't stint progress and would provide for all members of the community.

In a further effort to solve the problems, Sharp asked for impartial arbitrators, the bishop and his counselors from a neighboring town, to judge the case.⁸⁵ Bennion wrote that as he was irrigating his own field, Brother Pehrson "talked water" again, wondering which side Bennion was on in the cases he wanted to bring against the bishop. He wrote, "I said I could only judge of the rightfulness or wrongfulness of a matter on hearing it, and then if obliged to take any part, it would be to espouse the cause of truth."⁸⁶ Later that month Bennion and the bishop decided to "withdraw our opposition to Brother Pehrson and sustain him as counselor; but have little to do with him." How could they have little to do with him in such a small town as Vernon, when all three men were members of one bishopric, had familial bonds through marriage, and had to work together? Bennion continued, "We consider him a good man but eccentric, lacking in sensibility, and order. Also a little too much in love with the things of this world." Despite his propensity to judge harshly those who did not agree with him, Bennion understood the problem with pointing fingers: "In entering in this judgment of him, my own faults loom up big before me."⁸⁷ At the end of that year, Sharp announced that the difficulty between himself and Pehrson had been satis-

factorily settled and that the bishopric was in harmony. But water struggles in the desert are never really over.

Soon Bennion left Vernon and attempted to farm closer to Harker Canyon on a homestead he named Ben Lomond. He aimed to show users lower on the creek that moving higher would cause them to prosper. When that project did not work out as he had hoped, he formed another community near the mouth of Bennion Canyon, naming it Benmore. He and the other families who joined him, including the Skidmores, used water directly from the canyon and tested the new theories of dry farming. Bennion persisted in believing that if people cooperated and followed conservationist principles, God would bless them with ample water.

The land that once was the town of Benmore now sits idle, and only a few foundations remain—monuments to Bennion's reluctance to enter an age where religious community was separate from economics. His nature was formed by an opposition between values identified as Mormon—community, authority, and the belief that obedience will bring prosperity—and western American values—independence and the aggressive acquisition of resources. The practical exigency of scarce water and pasture forced the compromise of abstract ideology for every western rancher. The choices Bennion made concerning these scarce resources moderated his character and values. Ironically, when the community most needed to work together during a dry year, the law was moving from supporting communal benefit to private ownership. His propensity to cling to previous communal traditions put him at odds with the community he strove to represent and unify.

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WEB EXTRA

At history.utah.gov/water, you'll find a sampling of the water use records available at the Utah State Historical Society's research center, including journals, correspondence, and water filings.

84 Ibid., May 16, 1895.

85 Ibid., May 24, 1895.

86 Ibid., June 3, 1895.

87 Ibid., June 23, 1895.