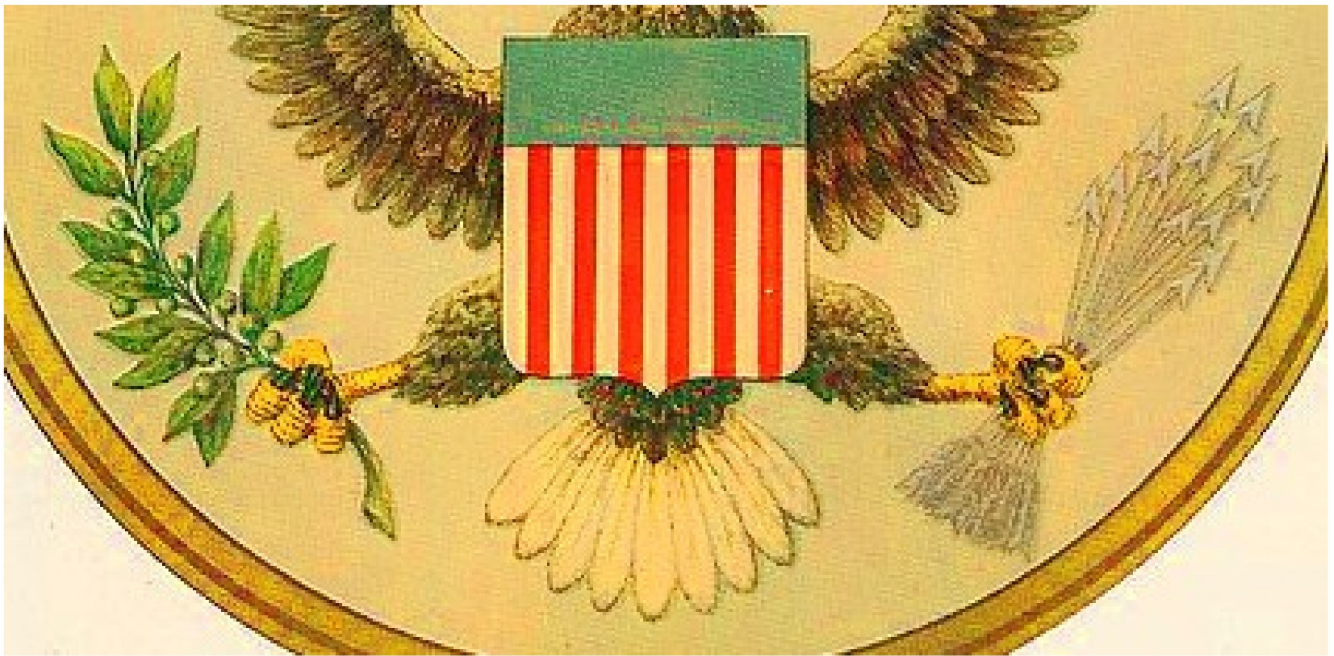


Chapter 4:

1834-1868:

The Development of U.S. Water Policy,



The Civil War,

&

The Two Treaties of

Fort Laramie

1834: Fort William (Laramie) is Founded:

In 1834 Robert Campbell & William Sublette established the first "Fort Laramie" here. Officially named Fort William after pioneer, frontiersman, trapper, fur trader, explorer, & mountain man William Sublette, *an agent of the Rocky Mountain Fur Company*¹, the post was rectangular, & small, measuring only 100 by 80 feet. Hewn cottonwood logs 15 feet high formed the fort's palisade.

With the beaver trade already in decline, Campbell & Sublette recognized that the future of the fur trade lay in trading with the Native population for buffalo robes. Fort William enjoyed a near monopoly on the buffalo trade in this region until a competing trading post, *Fort Platte*, was built a mile away in 1841. This rivalry spurred Fort William's owners to replace their own aging fort with a larger, adobe walled structure named Fort John.

Here, for 56 years successive waves of trappers, traders, Native Americans, missionaries, emigrants, soldiers, miners, ranchers & homesteaders came to trade & interacted.

Tribes, especially the Lakota (Sioux), traded tanned buffalo robes here for a variety of manufactured goods. Each spring caravans arrived with trade goods at the fort. In the fall, tons of buffalo hides & other furs were shipped east. Throughout the 1840's, however, the take of buffalo robes continually declined & Fort John's role changed. In 1841, the first of many westward-bound emigrants arrived at Fort John. Tens of thousands of emigrants bound for Oregon, California, & the Salt Lake Valley would stop at the fort. The traders at Fort John did a brisk seasonal business catering to the needs of emigrants.

Fort William in 1840, by Alfred Jacob Miller:



Wyoming State Historic Preservation Office, "Fort Laramie:
<http://www.wyohistory.org/encyclopedia/fort-laramie>

¹ Sabin, Edwin Legrand; Howard Simon; Marc Simmons (1995). *Kit Carson Days, 1809-1868*. University of Nebraska Press. p. 922. ISBN 978-0-8032-9238-3.

In 1849, the U.S. Army offered to purchase Fort John as part of a plan to establish a military presence along the emigrant trails. The owners of the Fort agreed to the sale, & on June 26, the post was officially renamed Fort Laramie, & it began its tenure as a military post. The Army quickly constructed new buildings for stables, officers' & soldiers' quarters, a bakery, guardhouse, & a powder magazine to house & support the fort garrison.

As the years went by, the post continued to grow in size & importance. Fort Laramie soon became the principal military outpost on the Northern Plains. Fort Laramie also became the primary hub for transportation & communication through the central Rocky Mountain region as emigrant trails, stage lines, the Pony Express, & the transcontinental telegraph all passed through the post.

Fort Laramie played an important role hosting several treaty negotiations with the Northern Plains Indian Nations, the most famous of which were the Horse Creek Treaty of 1851 and the still controversial and contested Treaty of 1868.

Sadly, relations that began amicably between Native Americans & the Army began to change as the number of emigrants using the overland trails swelled. As conflicts grew, major military campaigns were launched from the fort against the Northern Plains tribes, who fiercely defended their homeland against further encroachment by a nation moving west.

As the Indian Wars came to a close Fort Laramie's importance diminished. The post was abandoned & sold at public auction in 1890. Over the next 48 years, it nearly succumbed to the ravages of time. Preservation of the site was secured, however, in 1938 when Fort Laramie became part of the National Park System.²

Right: Alfred Jacob Miller's pictures of Fort Laramie are the only ones that survive showing the fort's first configuration as a wooden stockade. Walters Art Museum.³



<http://www.wyohistory.org/encyclopedia/fort-laramie>

² National Park Service, *History & Culture*, “Fort Laramie: Crossroads of a Nation Moving West “: <https://www.nps.gov/foia/learn/historyculture/index.htm>

³ Wyoming State Historic Preservation Office, “Fort Laramie: <http://www.wyohistory.org/encyclopedia/fort-laramie>

In 1849, The Discovery of Gold in The West led to the development of U.S. Water Policy, “The Prior Appropriations Doctrine”:

The American colonies were originally founded by the royal families of Europe, & were subject to *English* laws at the time. English water law was relatively simple & undeveloped, having unfolded in a land where water was abundant & conflicts over its use were correspondingly rare. The navigable waters of England belonged to the Crown & were available to the public for the purposes of navigation & fishing. The Crown’s ownership prevented these what were considered *economic activities* from being monopolized by individuals, thereby reducing the potential for conflict. Rights to the use of waters *not* used for navigation were held by those who owned the banks of the streams, & were therefore known as *riparian rights*.⁴

Water use conflicts were so rare in England & in the original American states that a body of *water law* was not well developed in the first decades of this country’s history.

The heart of the original riparian doctrine as developed in Europe as the idea that rivers were considered the most valuable places to establish buildings, *etc.*. Rivers enhanced the value of surrounding land, as each landowner along a river was entitled to receive the benefit of free-flowing water. This came to be known as the “natural flow” interpretation of the riparian doctrine. It held that landowners were allowed to remove water from streams *only* for basic domestic purposes such as drinking, bathing, cooking, & the watering of limited numbers of livestock. Landowners were otherwise required to leave rivers in an undiminished & unpolluted condition.⁵

The “Reasonable Use Riparian Doctrine”:

The riparian doctrine was modified during the Industrial Revolution to allow riparian landowners to make reasonable use of the waters flowing over their lands. This “reasonable use” interpretation gave each landowner the right to the use of water flowing over the land without diminution or obstruction.⁶

The features of the reasonable use riparian doctrine were:

1. Only riparian landowners could have rights to the use of water.
2. Owners of non-riparian lands & any others wishing to preserve free-flowing waters could not have *any* legal rights to the water.

4 Wilkinson, C. F. 1992. *Crossing the Next Meridian: Land, Water, and the Future of the West*. Island Press, Washington, D.C.

5 MacDonald, J. B. 1990. *Riparian Doctrine*. Pages 19-22 in Wright KR, ed. *Water Rights of the Fifty States and Territories*. American Water Works Association, Denver, CO.

6 Gould, G. A. 1990. *Water Rights Systems*. Pages 6-18 in *Water Rights of the Fifty States and Territories*. K. R. Wright, ed. American Water Works Association, Denver, CO.

How the California Gold Rush Changed Historic Water Use Patterns

Miners provided the primary impetus for changing the rules under the Spanish system allocating water in the American West, especially after gold was discovered in California in 1848.

The first gold deposits were found primarily along streams, and early miners usually established claims along the stream banks, where they could pan for gold directly.⁷

When the miners & other migrants moved to California, no government awaited them. The Gold Rush occurred near the end of the U.S.-Mexican War, after the Mexican government had been expelled, but before the region had been officially transferred to the United States.⁸

The miners adopted the “first come, first served” principle already in wide use on the public domain, where rights were based on occupation rather than ownership.⁹

The miners applied the same rules they used to govern access to mining claims. When applied to water, these rules became known as *the prior appropriation doctrine*.

The miners staked a claim to water by physically taking, or “appropriating” *what they needed*. Construction of the diversion necessary to take the water served as notice to other miners that the water was being appropriated. The first miners to appropriate water had the best right to continue using it. Subsequent appropriators were required to make do with what was left, if anything.

Right: The “sluices” of the Gold Rush were usually long wood boxes with “riffles” in them to catch the gold. *Photo label: “Ohio Repository, The (Canton, Ohio) May 8, 1845”*



<https://yesteryearsnews.wordpress.com/category/blue-collar/page/3/>

7 Gillilan, D. M. and T. C. Brown. 1997. *Instream Flow Protection: Seeking a Balance in Western Water Use*. Island Press, Washington, D.C.

8 Fischer, W.R. and W. H. Fischer. 1990. *Appropriation Doctrine*. Pages 23-30 in Wright KR, ed. *Water Rights of the Fifty States and Territories*. American Water Works Association. Denver, CO.

9 Gillilan, D. M. and T. C. Brown. 1997. *Instream Flow Protection: Seeking a Balance in Western Water Use*. Island Press, Washington, D.C.

“Junior” vs. “Senior” Water Rights:

Even if located upstream from a prior user’s diversion works, a subsequent “junior” water user was required to allow enough water to pass to meet the need of the downstream “senior” appropriator.

The “use it or lose it” principle was also incorporated within the prior appropriation system, so that miners not making beneficial use of their water were forced to surrender it to those who would.¹⁰

In the absence of definitive guidance from federal or state legislatures, the task of defining uniform principles fell to the California state courts.

In 1850, California’s first legislature had adopted the common practice (or common law) as the state’s legal foundation, & this meant that the allocation of water would be governed by riparian principles. But just one year later, the legislature adopted a statute that sanctioned the use of prior appropriation.

The uncertainty of their jurisdiction & the conflicting guidance given by the state legislature made it difficult for the early courts to define a uniform set of water allocation principles. Occasionally the courts developed hybrid doctrines that merged aspects of both the competing doctrines. Over time, their rulings increasingly reflected the precepts of the prior appropriation doctrine that prevailed in the mining camps. In 1855, the California Supreme Court clearly set forth its justification for adopting priority principles to resolve water disputes on the public domain. The court reasoned that the federal government had implicitly validated the new legal system by failing to object to it. *Irwin v. Phillips* (1855) is often cited as marking the birth of the prior appropriation doctrine.¹¹



Left: “man leans over a wooden sluice in California between 1890 and 1915. Rocks line the outside of the wood boards that create the sluice “Call number P-1252) is from the *Western History Department* of the Denver Public Library:
<http://digital.denverlibrary.org/>

Image location:
Wooden_gold_sluice_in_California_between_1890_and_1915..jpg

¹⁰ Anderson, T. L. and P. Snyder. 1997. *Water Markets: Priming the Invisible Pump*. Cato Institute, Washington, D.C.

¹¹ Gillilan, D. M. and T. C. Brown. 1997. *Instream Flow Protection: Seeking a Balance in Western Water Use*. Island Press, Washington, D.C.

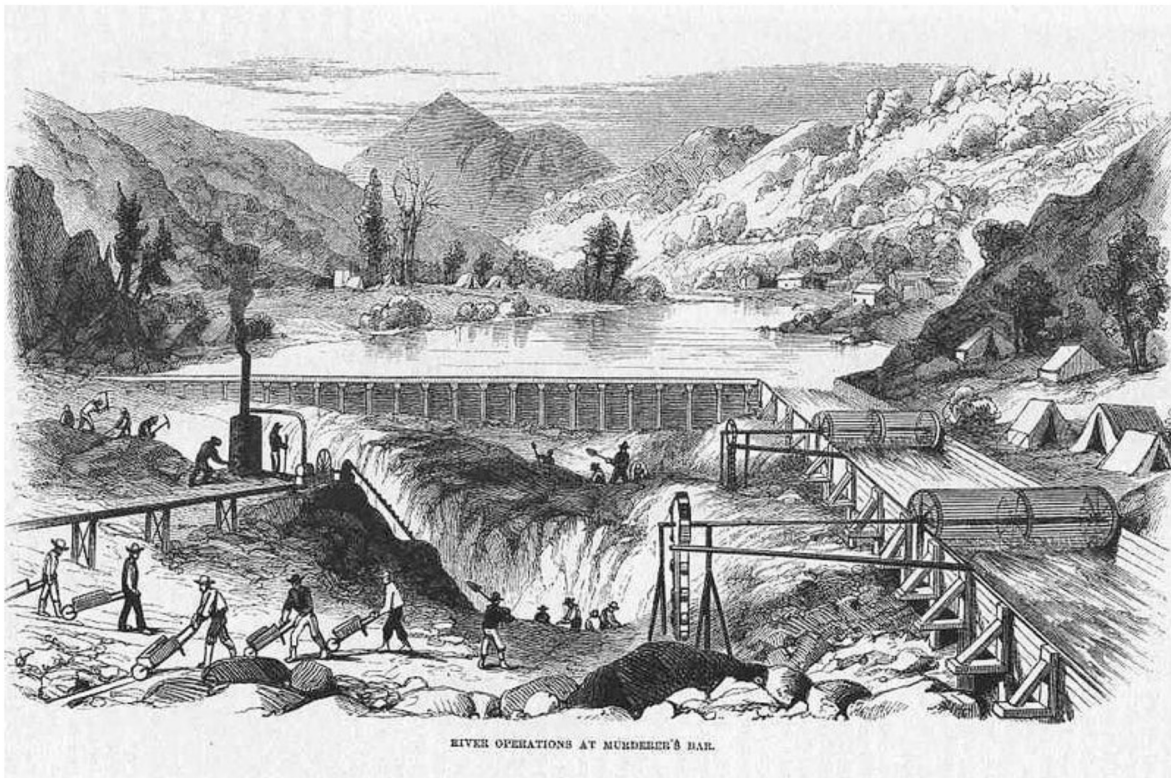
“Diverting Water” to Claim “Senior Rights” then got *out of hand*:

By the 1860s, the use of the prior appropriation doctrine was firmly established as the mechanism by which the California courts would resolve water conflicts occurring on the public domain.

The basic features of the prior appropriation doctrine were:

1. The right to use water could be obtained by taking the water & putting it to beneficial use.
2. The right was limited to the amount of water that was beneficially used.
3. First in time was first in right.
4. The water must be used or the right was lost.¹²

It soon became apparent that there were a number of problems with the operation of this system. One of the greatest problems was the prevalence of claims for excessive amounts of water. These problems eventually led people to call for adoption of new administrative systems to control the allocation & distribution of water.



Seeking gold in California river bottom", mid 1850s, Harper's Weekly Magazine, no author cited:

https://commons.wikimedia.org/wiki/File:Gold_seeking_river_operations_California.jpg

12 Wilkinson, C. F. 1992. **Crossing the Next Meridian: Land, Water, and the Future of the West.** Island Press, Washington, D.C.

In the prior appropriation system, to ensure that water was distributed in accordance with the priorities of the rights, any water user not receiving their legal share of a river's flow could place a "call" on the river. In response to the call, agents of the state required any water users with rights junior to those of the calling water user to curtail their diversions until the senior right was satisfied.

The states of *North & South* Dakota, Nebraska, Kansas, Oklahoma, & Texas all tried to take advantage of the developmental benefits of the new prior appropriation doctrine without upsetting the expectations of citizens who based their water claims on the common law riparian doctrine.¹³

Constitutions or statutes of many western states emphasize the fact that appropriations will no longer be valid just because they benefit someone; rights will be granted only if proposed water uses are also consistent with the public interest.

Water for domestic & for municipal needs receives *the highest priority* in all of the states that have established preferences, the use of water for agriculture is favored over all *but domestic uses*.¹⁴

Notice:

All aforementioned historical documentation re: "The Prior Appropriations Doctrine" was compiled by **Women in Natural Resources, Vol. 24 No. 3, 2003-04, "Evolution of U.S. Water Policy: Emphasis on the West"** By **Daina Dravnieks Apple**, *natural resource economist with the U.S. Forest Service, Staff Assistant to the Deputy Chief for Programs, Legislation, & Communication in Washington D.C. She served as Administrator, Workplace Relations in the Pacific Southwest Region in California; in the Washington Office she served as an economist on the Policy Analysis Staff, as a strategic planner for the National Forest System, & as an Assistant Regulatory Officer. She also was the Regional Land Use Appeals Coordinator, & was on the Engineering Staff in Region 5, San Francisco. She began her Forest Service career as an economist at the Pacific Southwest Research Station, Berkeley. Apple was elected Fellow of the Society of American Foresters, & is Past Chair of the National Capital SAF. She is a member of Sigma Xi Scientific Research Society; was elected Fellow of Phi Beta Kappa, & served as President of Phi Beta Kappa Northern California Association, & served as National Secretary. She is a graduate of the University of California at Berkeley, where she earned a B.Sc. in the Political Economy of Natural Resources and an M.A. in Geography.*¹⁵

13 Fischer, W.R. and W. H. Fischer. 1990. **Appropriation Doctrine. Pages 23-30 in Wright KR, ed. Water Rights of the Fifty States and Territories. American Water Works Association. Denver, CO.**

14 Wilkinson, C. F. 1992. **Crossing the Next Meridian: Land, Water, and the Future of the West. Island Press, Washington, D.C.**

15 **Full Article, "Evolution of U.S. Water Policy: Emphasis on the West":**
<http://www.webpages.uidaho.edu/winr/applewater.htm>

The Use of *Water Cannons*:

Prior to implementation of environmental regulations, Edward Matteson discovered easier access to gold by using jets of highly pressurized water to erode hillsides while diverting the sediment runoff through sluice boxes or to holding ponds. Matteson honed his technique in 1853 at locations in & around Nevada City, California, & the hillsides throughout western Nevada County were soon exposed to large scale industrial-sized monitors capable which *pulverized* hillsides.

Hydraulic Mining, French Corral, ca1866:



Photo from Library of Congress, as recorded by the "Mining History Association", Nevada City, California: <http://www.mininghistoryassociation.org/NevadaCity.htm>

During the 1860s, when hydraulic mining was at its apex in the Sierra Nevada foothills, entire hillsides were decimated & washed through gigantic sluices.

The North Bloomfield Mining & Gravel Company¹⁶, established in 1866, is the embodiment of the hydraulic mining era, as no other operation matched its scale, expense or productivity.

The company was owned by 30 different venture capitalists from San Francisco, led by a consortium of railroad barons.¹⁷

Hydraulic mining used high pressure hoses to funnel water through the nozzle of a monitor to wash rocks & gold-bearing gravel away:



SOURCE: The Union, "Hydraulic mining leads to historic environmental decision" by Mathew Renda: <http://www.theunion.com/news/local-news/hydraulic-mining-leads-to-historic-environmental-decision/>

¹⁶ Malakoff Diggins State Historic Park, about the "North Bloomfield Gravel Mining Company": <http://malakoffdigginsstatepark.org/history/north-bloomfield-gravel-mining-company/>

¹⁷ The Union, "Hydraulic mining leads to historic environmental decision" by Mathew Renda: <http://www.theunion.com/news/local-news/hydraulic-mining-leads-to-historic-environmental-decision/>

The operation consisted of a nearly 8,000-foot-long drainage tunnel at the current site of the Malakoff Diggins State Historic Park & seven large monitors capable of dislodging 50,000 tons of gravel daily during the peak of operation.

After the gravel was sifted for gold, much of the leftover sediment was dispensed down the Yuba River where it accumulated rapidly downstream.



"Photographic Print of Gold Mining in Nevada County, California, 1888", posted by Yoel Rider: https://guide.alibaba.com/shop/photographic-print-of-gold-mining-in-nevada-county-california-1888_52941691.html

All that debris had to go somewhere & almost immediately, with the invention of hydraulic mining, came the effects of the removal of many layers of ancient gravel beds laid down millions of years ago. People down below the diggings, in the valleys and all the way to San Francisco Bay, felt the impact of the mountain's destruction.

As hydraulic mining continued to add enormous sediment loads to downstream locations throughout the Sacramento Valley, habitations along the river began to experience increasingly devastating flooding problems, & navigation of rivers became increasingly treacherous for steamboats & other watercraft.

Farmers also began experiencing the detrimental effects from the large-scale sediment deposits traveling downstream.¹⁸

Eventually, outraged citizens of Marysville met & formed the *Anti-Debris Association* & gathered information to be used in lawsuits against hydraulic mining companies. The legislature debated the mining debris question & finally passed legislation authorizing the creation of a *State Engineering Office* with authority to examine the water problem, particularly as it related to matters of irrigation & debris. They attributed *negligence* on the part of the hydraulic miners. The group presented factual evidence to support its claims, & the miners threatened to boycott valley businesses.

¹⁸ The Union, "Hydraulic mining leads to historic environmental decision" by Mathew Renda: <http://www.theunion.com/news/local-news/hydraulic-mining-leads-to-historic-environmental-decision/>

1884: “The Sawyer Decision”—

Woodruff vs. North Bloomfield Gravel Mining Company¹⁹

In the fall of 1882, Edward Woodruff of Marysville filed suit in the United States Ninth Circuit Court in San Francisco seeking a perpetual injunction against the North Bloomfield and other mines on the Yuba River, & on the morning of June 18, 1883, at 5:00 a.m. disaster struck when the English Dam gave way. This was a wood & stone structure built in 1859 on the Middle Yuba River, & was more than 130’ high. Capacity was 650,000,000 cubic feet, & it was *full* at the time the dam broke. Water poured down the channel of the Middle Yuba River & swept away everything in its path. It took an hour & a half for the dam to drain dry. By 3:00 p.m. levees broke near Marysville, causing a flood that deposited *thousand of tons of sediment into the Feather River*. The dam was inspected just days before & no problems were detected. It has been theorized that *sabotage* was the cause of the break.

On January 7, 1884, after two years of litigation in the case of Woodruff vs. North Bloomfield Gravel Mining Company & over 2,000 witnesses with 20,000 pages of written testimony taken during the trial, Judge Lorenzo Sawyer’s decision (“The Sawyer Decision”) was handed down. The decision prohibited the discharge of debris in the Sierra Nevada regions. It imposed strict laws regarding any debris sent downstream & it did close *all loop-holes*. In essence, the ruling stated that “all tailings must stop”.²⁰

Sawyer, who was a federal judge (appointed by President Ulysses S. Grant) at the time, is roundly credited for handing down the first environmental decision from a judge in the history of the United States of America. The decision abruptly brought the hydraulic mining era to a close.

Right: Malakoff Diggins & several other sites easily spotted throughout western Nevada County, remain as a testament to the environmental devastation the form of mining wrought as early settlers sought their riches.²¹



Malakov Diggins State Park photo gallery:
http://www.parks.ca.gov/ImageGallery/?page_id=494

19 v.18, no.14-48, WOODRUFF V. NORTH BLOOMFIELD GRAVEL MINING CO. AND OTHERS. Circuit Court, D. California. January 7, 1884, 1. PUBLIC AND PRIVATE NUISANCE FROM MINING DEBRIS: <https://law.resource.org/pub/us/case/reporter/F/0018/0018.f.0753.pdf>

20 Malakoff Diggins State Historic Park, “The Sawyer Decision: Legal Action Taken To Stop Hydraulic Mining!” <http://malakoffdigginsstatepark.org/history/north-bloomfield-gravel-mining-company/sawyer-decision/>

21 The Union, "Hydraulic mining leads to historic environmental decision" by Mathew Renda: <http://www.theunion.com/news/local-news/hydraulic-mining-leads-to-historic-environmental-decision/>

In Addition to Sparking U.S. Water Policy, The Gold Rush *also* led U.S. Officials to Negotiate *Passage Through The Black Hills*

The U.S. government considered the west a “permanent Indian frontier”— an inhospitable land inhabited by “Indians” who were known for *raiding* trespassing settlers. The discovery of gold in California in 1849 at Sutter's Mill, *however*, created a high demand for settlers to travel west.



Posted to "The Way West" by Jean, used: <https://www.pinterest.com/OlympedeGouges/the-way-west/>
Map by NYSTROM Maps & Globes: [http://www.nystromeducation.com/c/nys-mapsandglobes.web?](http://www.nystromeducation.com/c/nys-mapsandglobes.web?@oH_pHyffGMnqg)

In the early 1850s, overland travelers *en route* to gold fields via the Platte River Road set off a series of confrontations between gold & *land* seeking European settlers, & native tribes *concerned* about the masses encroaching on their already *pushed-back* homelands.²²



“Simply Marvelous Horse World- The Wonderful World of Horses, article:
“Right Out Of History: Wagon Trains Celebrate Minnesota
150th Anniversary”:
<https://simplymarvelous.wordpress.com/2008/05/07/right-out-of-history-wagon-trains-celebrate-minnesota-150th-anniversary/>

Travelers were frightened by the turmoil & commotion caused by tribal raids, & thereby demanded government protection.

Right: Frederic Remington’s painting called “The Emigrants”, painted 1903.



Preserved on “Museum of Fine Arts”, 1000 museums webpage:
https://www.1000museums.com/art_works/frederic-remington-the-emigrants

²² Official Portal for North Dakota State Government, *The History & Culture of The Standing Rock Oyate*: <http://www.ndstudies.org/resources/IndianStudies/standingrock/migration.html>

A Treaty to Be Negotiated:

As a result, in 1851, under 13th U.S. President & the last President of the Whig Party, Millard Fillmore (First Unitarian Church), the federal government brought many of the Plains tribes together at Fort Laramie, including Lakota & Dakota bands, to establish *not only* peace between interwarring tribes, but *also* between the tribes & settlers.

Whig Party:

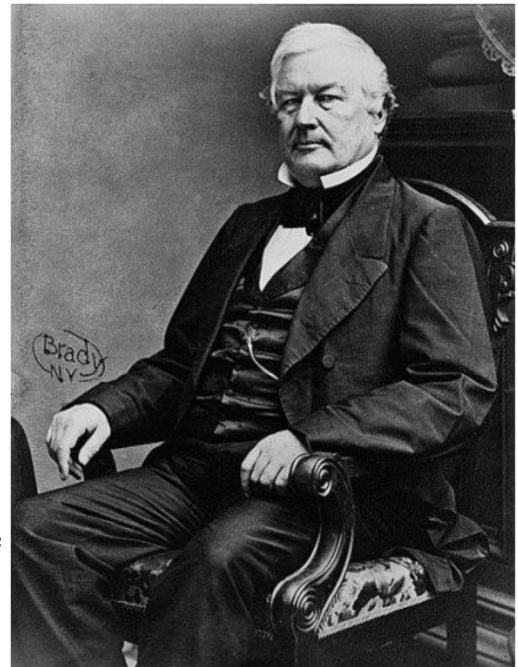
In 1834 political opponents of President Andrew Jackson organized a new party to contest pro-slavery Jacksonian Democrats. Guided by their most prominent leader, Henry Clay, they called themselves Whigs—the name of an earlier English anti-monarchist, anti-Catholic party—the better to stigmatize the seventh president as ‘King Andrew’. They were immediately derided by the Jacksonian Democrats as a party devoted to the interests of wealth & aristocracy, a charge they were never able to completely shake. Whigs were seen as champions of banks, business, corporations, economic growth, the positive liberal state, humanitarian reform, & morality in politics, & also as *opponents* of expansionism, executive tyranny, states’ rights, labor, & voting rights.

The party was founded by individuals united only in their antagonism to Jackson’s war on the Second Bank of the United States, & his high-handed measures in waging that war & ignoring Supreme Court decisions, the Constitution, & Indian rights embodied in treaties.

In Congress, Whigs supported the Second Bank of the United States, a high tariff, distribution of land revenues to the states, relief legislation to mitigate the effects of the great depression that followed the financial panics of 1837 & 1839, & federal reapportionment of House seats (a ‘reform’ likely to enlarge Whig representation in Congress). Studies of voting patterns in the states reveal Whig support of banks, limited liability for corporations, prison reform, educational reform, abolition of capital punishment, & temperance (abstaining from alcohol). They were considered a moralist, *anti-war party*, who attracted persons unhappy with brutal treatment of blacks & Native Americans. In 1852, as slavery’s expansion became the great issue of American politics, Whigs suffered a drastic decline in popularity, & by 1854 they were no longer able to hold the support of ‘cotton Whigs’. who found a more congenial political home in the Democratic party, or of ‘conscience Whigs’ who formed the new *Republican party*.²³

“May God save the country, for it is evident *the people will not.*”

– *Millard Fillmore*



Miller Center, University of Virginia:
<http://millercenter.org/president/fillmore>

23 History.com, “Whig Party”: <http://www.history.com/topics/whig-party>

1851: “*The Treaty of Fort Laramie with Sioux, etc.*” aka “The Horse Creek Treaty**”**

In the autumn of 1850, St. Louis newspapers announced a conference to negotiate rights of passage through American Indian lands for westward-bound emigrants. Fur traders, Indian agents, mountain men, missionaries & former U.S. Superintendent of Indian Affairs Thomas Harvey had been pushing this idea since 1846, when the swelling number of emigrants led to increasing complaints from the tribes. Harvey lobbied for a “general council,” arguing that “a trifling compensation for this right of way” would “secure [the Indians’] friendship.”

That year, Congress had authorized a conference for all the prairie tribes west & south of the Missouri River, & north of Texas. Its stated purpose was to benefit the tribes, promising them ample compensation for depredations against them & also an annuity—“an annual present, in goods, from their Great Father.”

The government encouraged the tribes to attend with all their women & children, explaining that a large force of soldiers would be on hand to ensure their safety. The government would “divide & subdivide the country;” this would be “for the permanent good of the Indians;” to “extinguish. . .the bloody wars which have raged from time immemorable.” The conference was set to begin Sept. 1, 1851 at Fort Laramie.

Conference co-commissioner David Mitchell left St. Louis July 24, & on August 30 he reached Fort Laramie, where thousands of Sioux, Arapaho & Cheyenne people waited. The Comanche, Kiowa, and Apache—tribes of the southern plains—had refused to come. The Shoshone, however, had come in force from their homelands in the northern Great Basin & along the Continental Divide. They, however, had not been invited.

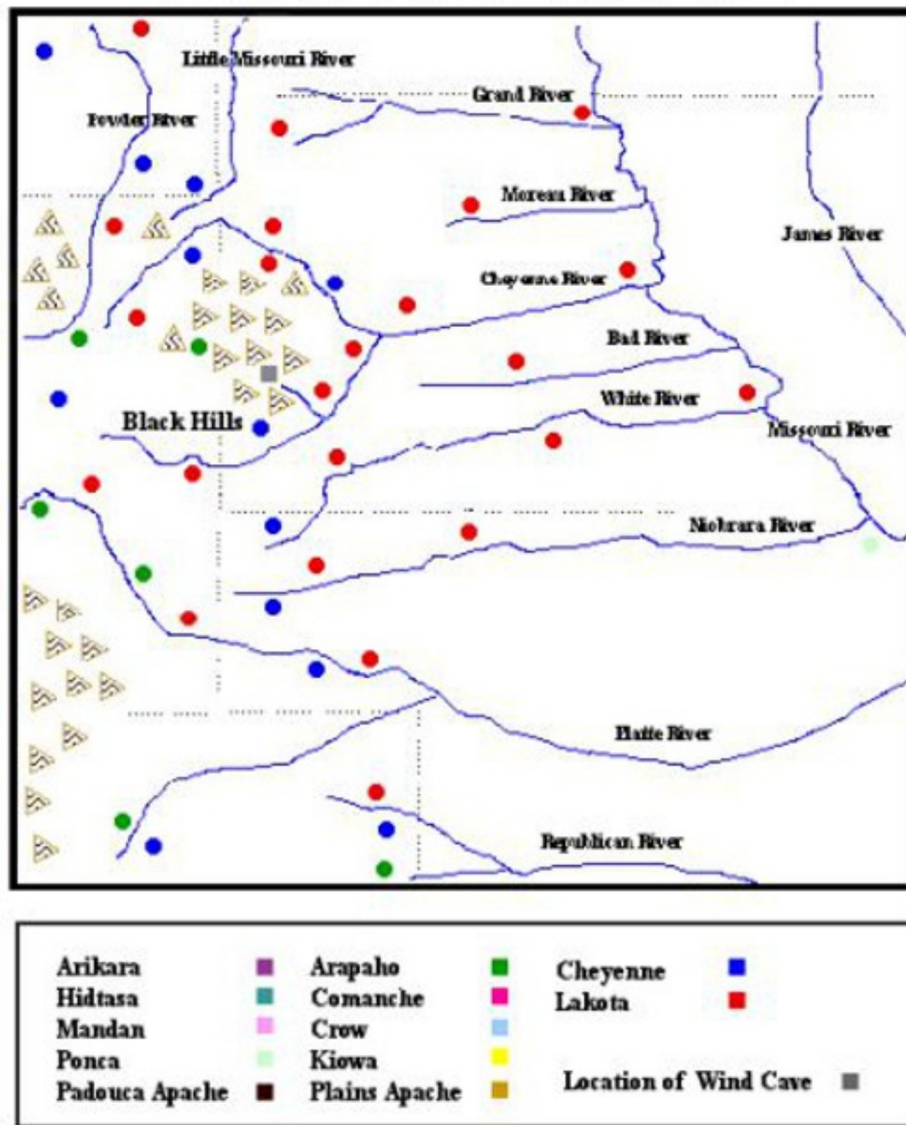
After consulting with the assembled tribes, the commissioners decided to move the conference about 30 miles east, to the mouth of Horse Creek on the North Platte River, just east of the present Wyoming-Nebraska border. Arriving there on September 5, Mitchell assigned the Platte’s north bank to tribal encampments and Horse Creek’s west side to the traders and interpreters. The east side of Horse Creek would be the meeting grounds. The council would open on Monday, September 8.

After smoking the peace pipe, Mitchell opened the council. “We do not come to you as traders,” he said. “We do not want your land, horses, robes, nor anything you have; but we come to advise with you, & to make a treaty with you for your own good.” He then promised the tribes compensation for 50 years, in part for allowing “the right of free passage for [the Great Father’s] White Children” over the increasingly popular emigrant trails.

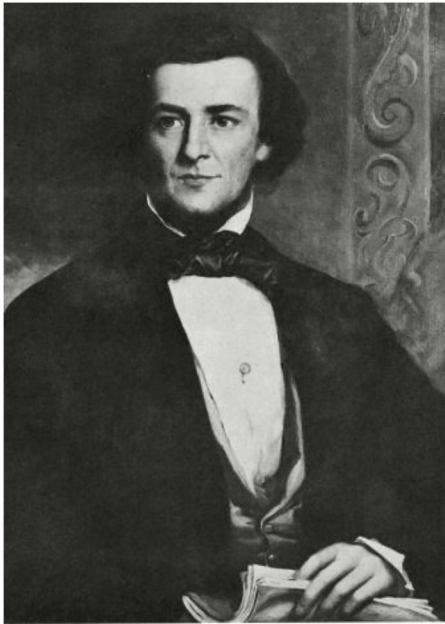
The government wanted to establish tribal territories so that the tribes’ Great Father could “punish the guilty and reward the good” for any future depredations. These divisions, Mitchell assured the tribes, were “not intended to take any of your lands away. . .or to destroy your rights to hunt, or fish, or pass over the country, as heretofore.” Instead, he explained that the boundaries would bring peace, & he emphasized again that the tribes would be well compensated.

Chapter 4: Development of U.S. Water Policy, The Civil War, & The Two Treaties of Fort Laramie

In the 1850s, there were many reports specifically identifying the whereabouts and numbers of Lakotas, Cheyennes, and Arapahos. The principal sources of information for this era include the Annual Reports of the Commissioner of Indian Affairs and Henry Schoolcraft’s Historical and Statistical Information Respecting the History, Condition and Prospects of the Indian Tribes of the United States (1851-57:3:629-631). There are also Lt. G. K. Warren’s 1855 map (in McDermott 1952:14-15) and reports from the Harney Expeditions (Warren 1875). Finally, Ferdinand Hayden’s work On the Ethnography and Philology of the Indian Tribes of the Missouri Valley (1862), was based on material he collected on his many different visits to the region.²⁴



²⁴ Paragraph & map was compiled by the National Park Service, “Wind River Cave, History & Culture: Chapter Five TREATIES AND BROKEN PROMISES: 1851 to 1877 “, page 90-91: <https://www.nps.gov/wica/learn/historyculture/upload/-7e-5-Chapter-Five-Treaties-and-Broken-Promises-Pp-84-132.pdf>



Colonel David D. Mitchell,
participant in the Fort Laramie
Treaty Conference of 1851.
(Courtesy of the Missouri Historical
Society)

Opening Ceremony— Commissioner Mitchell said he was present on important business, & wanted everything done in good faith, then proclaimed they would smoke the pipe of peace, allowing only those whose hearts were free from deceit to touch the pipe. A large red pipestone calumet (ceremonial pipe) with a three foot stem ornamented with bright colored beads & hair was produced. The proper mixture of tobacco and kinnikinnick, which was the inner bark of red willow, was made up & put in the bowl. The interpreter of the Sioux then lit the pipe & handed it to Colonel Mitchell, who took a few puffs & passed it to Major Fitzpatrick. In turn he passed it on to the Sioux chiefs, & by them to the chiefs next in the circle. The natives smoked with great ceremony. The most common form was to point the pipe to the four corners of the compass, then up to the Great Spirit and down to the bad. To show the utmost degree of sincerity & truthfulness most of the smokers added an additional gesture for the particular occasion. This was done by drawing the right hand slowly along the stem from the bowl to the throat, which was symbolic of supreme good faith & the assurance of deep solemnity & reassurance.²⁵

“Too Many Indians, Not Enough Chiefs”— Mitchell then asked each tribe to designate a single chief, along with one or two tribal members to be fêted (decorated) in Washington, D.C. — a longstanding government practice with tribal representatives. He encouraged the tribes to take the next two days to “think, talk and smoke over” the proposals.

Peace Between Long-Warring Tribes, & The U.S Government— That afternoon, the Cheyenne offered reparations for the dead Shoshone by “cover[ing] the bodies”—a ceremony of apology. After offering a feast & gifts to their former enemies the Shoshone, the Cheyenne returned the scalps of the fallen & swore they had not danced a scalp dance to celebrate the taking of the Shoshone scalps. The brothers of the Shoshone victims accepted the scalps, embraced the Cheyenne & distributed the Cheyenne gifts among the Shoshones. After more speeches from both sides, the Cheyenne & Shoshone joined together in song and dance.

That night, the Mandan, Hidatsa, Arikara & Assiniboine tribes arrived from the upper Missouri River. The arrival on September 10 of a contingent of the Crow tribe from what’s now Montana swelled the number of natives gathered to an estimated 10,000.

Terra Blue, a Brulé Sioux, explained that, despite the tribe’s good intentions, the Sioux, the largest of the Plains tribes, could not appoint a single chief. That was simply not the way their politics worked.

²⁵ Nebraska State Historical Society, article “The Great Indian Treaty Council of 1851” by Burton S. Hill, page 98: http://www.nebraskahistory.org/publish/publicat/history/full-text/NH1966Indian_Treaty_1851.pdf

Separate Lands for Separate Tribes— The hard work of defining tribal territories began on Friday, September 12, despite the fact that questions of compensation & tribal chiefs & representatives remained unsettled. Since no one knew the region *or the tribes* better than the renown beloved Jesuit Priest Pierre-Jean De Smet, & also mountain man James Bridger: Mitchell instructed them, *with the assistance of the traders*, to create a map that respected traditional homelands.

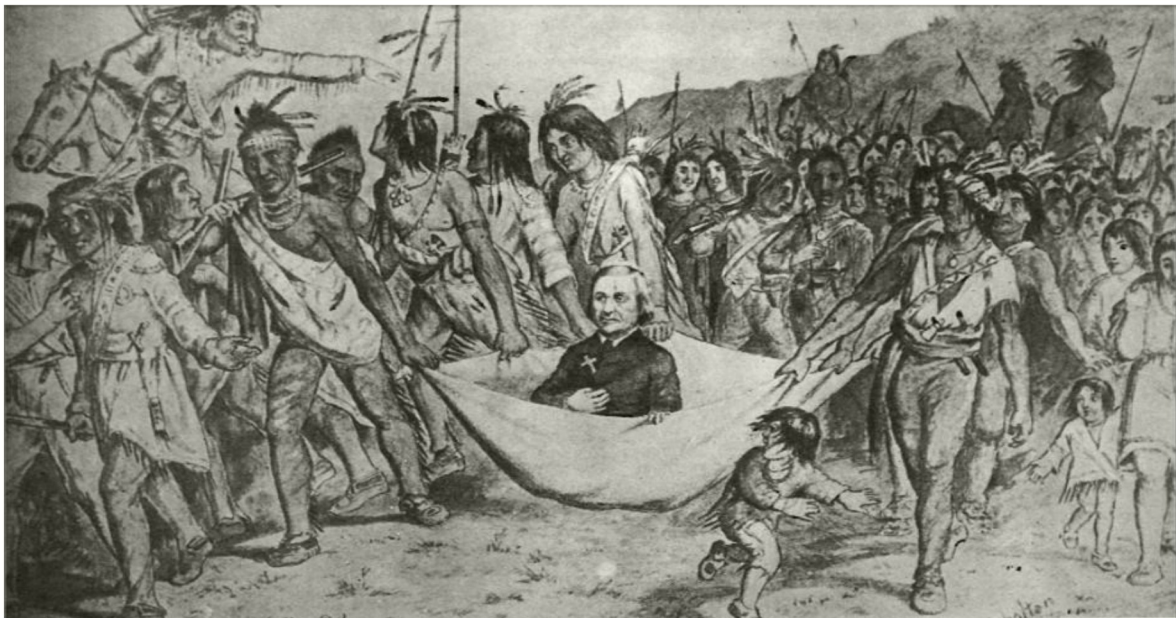
On Saturday, the commissioners presented their map to the tribes. The Oglala Sioux complained that their hunting grounds should extend south of the Platte, which the map designated as Cheyenne and Arapaho territory. Mitchell explained again that any tribe could venture into any region, as long as their intentions were peaceful. Although the Sioux remained skeptical, the tribes finally agreed to the newly defined territories.

Missouri River trader Alexander Culbertson made sure that lands north and west of the Crow territory tribe was designated for the Blackfeet, even though the Blackfeet were not present.

Baptisms— On Sunday, De Smet celebrated the Feast of the Exaltation of the Cross in front of a great crowd of Indians, mixed-bloods & whites. Afterwards, he baptized the willing. Ultimately, De Smet recorded baptisms of 239 Oglala; 305 Arapaho; 253 Cheyenne; 280 Brulé and Osage Sioux; 56 “in the camp of Painted Bear.”

Nearly all were children. He also baptized 61 mixed-bloods. In return, the Sioux named him Watankanga Waokia, “The Man Who Shows His Love for the Great Spirit.”

Tribally Renown *Father Pierre De Smet* being carried in for the Opening Ceremony:



From Nebraska State Historical Society, article “The Great Indian Treaty Council of 1851” by Burton S. Hill: http://www.nebraskahistory.org/publish/publicat/history/full-text/NH1966Indian_Treaty_1851.pdf

A New Chief for the Sioux:

By Monday, the Oglala, Brulé, Miniconjou & other bands of Sioux still had not named a single leader for the entire tribe. Frustrated, Mitchell announced he would choose for them. He selected the Brulé warrior **Conquering Bear**, described in the *Missouri Republican* as **“connected with a large and powerful family, running into several of the bands, & although no chief ... a brave of the highest reputation.”**

With trepidation, because the idea of a single leader was so contrary to tribal tradition, & because he himself was not yet considered a leader even among the Brulés, Conquering Bear accepted. **“I will try to do right to the whites, and hope they will do so to my people,”** he said, according to the newspaper.

The Treaty Signed:

Finally, on September 17, twenty-one chiefs representing the Sioux, Cheyenne, Arapaho, Crow, Mandan, Hidatsa, Arikara & Assiniboine signed the Horse Creek Treaty. They agreed to the government’s right to “form roads and establish military posts” in Indian territory; terms for maintaining peace & for assigning reparations for losses on either side; indemnity for any prior destruction caused by the emigrants; \$50,000 to each tribe for those damages; & \$50,000 in annual payments per tribe for 50 years.

Mixed Bloods & Gifts:

The traders, most of whom had married Indian women, sought a mixed-blood allotment. De Smet called this “the sole means of preserving union among all those wandering & scattered families, which become every year more & more numerous.”

Editor Chambers noted: “The white man who has taken a squaw for a wife, however honestly & virtuously they may have lived, is, with his wife, for ever debarred admission into society. He has shut himself out, & must reap the consequences which his own course has entailed upon him.”

The proponents suggested lands for the mixed-bloods near present-day Denver, but this was Cheyenne & Arapaho territory & they objected. Never legally recognized, many mixed-bloods did become dispossessed.

Gifts Presented:

Mitchell presented *each* chief with a military uniform & gilt sword before distributing the rest of the trinkets. Each band, “glad or satisfied, but always quiet,” accepted their gifts & dispersed. The remarkable 1851 Horse Creek Treaty Council was over.²⁶

²⁶ Wyoming State Historical Society, “Separate lands for separate tribes: The Horse Creek Treaty of 1851” by Lesley Wischmann: <http://www.wyohistory.org/essays/horse-creek-treaty>

**1851: “The Treaty of Fort Laramie with Sioux, etc.”
aka “The Horse Creek Treaty”, *transcript*:**

Excerpted articles of the treaty made & concluded at Fort Laramie, *on tribal grounds*, between D. D. Mitchell, *superintendent of Indian affairs*, & Thomas Fitzpatrick, *Indian agent*, commissioners specially appointed & authorized by the 13th President of the United States, *Millard Fillmore*, & the chiefs, headmen, & braves of the following Indian nations, residing *south of the Missouri River, east of the Rocky Mountains, & north of the lines of Texas & New Mexico*: the Sioux or *Dahcotahs*, Cheyennes, Arrapahoes, Crows. Assinaboines, Gros-Ventre Mandans, & Arrickaras, on September 17th, 1851.

ARTICLE 1.

The aforesaid nations, *parties to this treaty*. having assembled for the purpose of establishing & confirming peaceful relations amongst themselves, do hereby covenant & agree to abstain in future from all hostilities whatever against each other, to maintain good faith & friendship in all their mutual intercourse (international *or* interstate trade aka “commerce”), & to make an effective & lasting peace.

ARTICLE 2.

The aforesaid nations do hereby recognize the right of the United States Government to establish roads, military, & other posts, within their respective territories.

ARTICLE 3.

In consideration of the rights & privileges acknowledged in the preceding article, the United States bind themselves to protect the aforesaid Indian nations against the commission of all depredations by the people of the said United States, after the ratification of this treaty.

ARTICLE 4.

The aforesaid Indian nations do hereby agree & bind themselves to make restitution or satisfaction for any wrongs committed, *after the ratification of this treaty*, by any band or individual of their people, on the people of the United States, whilst lawfully residing in or passing through their respective territories.

ARTICLE 5. (*description of agreed boundaries*)

The aforesaid Indian nations do hereby recognize & acknowledge the following tracts of country, included within the metes & boundaries hereinafter designated, as their respective territories:

The territory of the Sioux or Dahcotah Nation, *commencing the mouth of the White Earth River*, on the Missouri River: thence in a southwesterly direction to the forks of the Platte River: thence up the north fork of the Platte River to a point known as the Red Bute, or *where the road leaves the river*; thence along the range of mountains known as the Black Hills, to the head-waters of Heart River; thence down Heart River to its mouth; & thence **down the Missouri River to the place of beginning.**

The territory of the Gros Ventre, *Mandans, & Arrickaras Nations*, commencing at the mouth of Heart River; thence up the Missouri River to the mouth of the Yellowstone River; thence up the Yellowstone River to the mouth of Powder River in a southeasterly direction, to the head-waters of the Little Missouri River; thence along the Black Hills to the head of Heart River, and thence down Heart River to the place of beginning.

The territory of the Assinaboin Nation, commencing at the mouth of Yellowstone River; thence up the Missouri River to the mouth of the Muscle-shell River; thence from the mouth of the Muscle-shell River in a southeasterly direction until it strikes the head-waters of Big Dry Creek; thence down that creek to where it empties into the Yellowstone River, nearly opposite the mouth of Powder River, and thence down the Yellowstone River to the place of beginning.

The territory of the Blackfoot Nation, commencing at the mouth of Muscle-shell River; thence up the Missouri River to its source; thence along the main range of the Rocky Mountains, in a southerly direction, to the head-waters of the northern source of the Yellowstone River; thence down the Yellowstone River to the mouth of Twenty-five Yard Creek; thence across to the head-waters of the Muscle-shell River, and thence down the Muscle-shell River to the place of beginning.

The territory of the Crow Nation, commencing at the mouth of Powder River on the Yellowstone; thence up Powder River to its source; thence along the main range of the Black Hills and Wind River Mountains to the head-waters of the Yellowstone River; thence down the Yellowstone River to the mouth of Twenty-five Yard Creek; thence to the head waters of the Muscle-shell River; thence down the Muscle-shell River to its mouth; thence to the head-waters of Big Dry Creek, and thence to its mouth.

The territory of the Cheyennes and Arrapahoes, commencing at the Red Bute, or the place where the road leaves the north fork of the Platte River; thence up the north fork of the Platte River to its source; thence along the main range of the Rocky Mountains to the head-waters of the Arkansas River; thence down the Arkansas River to the crossing of the Santa Fé road; thence in a northwesterly direction to the forks of the Platte River, and thence up the Platte River to the place of beginning.